Court File No. A-73-24 (Lead appeal)

FEDERAL COURT OF APPEAL

B E T W E E N:

ATTORNEY GENERAL OF CANADA

Appellant
(Respondent on Cross-Appeal)

- and -

CANADIAN CIVIL LIBERTIES ASSOCIATION

Respondent
(Appellant on Cross-Appeal)

- and -

ATTORNEY GENERAL OF ALBERTA and ATTORNEY GENERAL OF SASKATCHEWAN

Interveners

MEMORANDUM OF FACT AND LAW OF THE RESPONDENT, CANADIAN CIVIL LIBERTIES ASSOCIATION

October 4, 2024

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CONTENTS

OVERVIEW

1. The *Emergencies Act*,[1] when properly invoked, grants extraordinary powers to the executive branch of the federal government. In recognition of the Act's powers and the risk of overreach and misuse, Parliament established two stringent thresholds that must be met before a public order emergency can be declared: there must be "threats to the security of Canada", and the emergency must be so serious that it constitutes a "national emergency".

2. On February 14, 2022, the federal government invoked the Act for the first time in history. It proclaimed the "Freedom Convoy" protests to constitute a national public order emergency.[2] The government believed these protests — unlike previous terrorist attacks, economic crises, and the pandemic — met the necessary legal thresholds.

3. But those thresholds were not met. The protests did not, as the Act requires, create a "threat to the security of Canada" within the meaning of s. 2 of the *Canadian Security Intelligence Service Act* — a fact the Director of CSIS had confirmed at the time. Nor was there a "national emergency" within the meaning of s. 3 of the *Emergencies Act*. The Act does not permit the government to proclaim an emergency based on nebulous or strained claims about economic instability and international trade, a general sense of unrest, or foreign donations to a cause. Even the presence of a small number of dangerous individuals in specific locations, while a proper priority for law enforcement, could not justify a *nation-wide* emergency. Moreover, the situation could have been managed with existing laws. Accordingly, the *Emergency Proclamation* could not be justified in light of the factual and legal constraints at play.

4. The *Emergency Proclamation* led to two pieces of *Charter*-infringing subordinate legislation: the *Emergency Measures Regulations*[3] and the *Emergency Economic Measures Order*.[4] The *Regulations* prohibited various forms of participation

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1 *Emergencies Act*, R.S.C. 1985 c. 22 [***EA***].
2 *Proclamation Declaring a Public Order Emergency*, S.O.R./2022-20 [***Emergency Proclamation***] [Appeal Book ["AB"], Vol. 4, Tab 13.1, pp. 1308-13].
3 *Emergency Measures Regulations*, S.O.R./2022-21 [***Regulations***] [AB, Vol. 4, Tab 13.3, p. 1328].
4 *Emergency Economic Measures Order*, S.O.R./2022-22 [***Economic Order***] [AB, Vol. 4, Tab 13.4, p. 1337].

in public assembly, thereby infringing fundamental freedoms under s. 2. The *Economic Order* infringed s. 8 of the *Charter* because it effectively allowed the police to instruct financial institutions to freeze protestors' assets and obliged those institutions to divulge private information to the police — all absent judicial authorization or any objective standard of suspicion. These infringements could not be justified under s. 1.

5. The application judge recognized all of this, and the Attorney General has not discharged its burden to show error in his conclusions. Importantly, the application judge recognized that the objective legal thresholds that Parliament built into the *Emergencies Act* had to be satisfied before the government could unlock the Act's extraordinary powers. Contrary to the Attorney General's central argument on this appeal, these thresholds do not bend, much less break, in exigent circumstances. The powers exercised in this case arise from the *Emergencies Act*, not emergencies themselves — and the thresholds in the Act must be respected. Here, they were not.

PART I — STATEMENT OF FACTS

6. The CCLA generally takes no issue with the Attorney General's factual summary. As the application judge noted, "[t]here has been less dispute in these proceedings about what happened than with how the events should be characterized in applying the law".[5] What follows relies largely on the facts the application judge found.

A. THE *EMERGENCIES ACT*

7. The *Emergencies Act* extends to the Governor in Council ("**GIC**") the power to declare (by way of proclamation) different types of emergencies. Only one type is at issue here: the "public order emergency".[6] Declaration of such an emergency is a condition precedent to the exercise of the powers available under the Act.

8. The GIC's authority to invoke the *Emergencies Act* is subject to a set of cascading conditions precedent. A public order emergency may be declared when — and only when — the GIC believes "on reasonable grounds" that the two criteria set

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5 *Canadian Frontline Nurses v. Canada (Attorney General)*, 2024 FC 42 [***CFN***], at para. 30.
6 *EA*, s. 16.

out in s. 16 of the Act are met.

9. The first criterion is that there must be "threats to the security of Canada", which "has the meaning assigned by section 2 of the [*CSIS Act*]".[7] That section includes four types of activities, only one of which is relevant here: threats include activities "directed toward or in support of the threat or use of acts of serious violence against persons or property" to achieve a political or ideological goal in Canada.[8] However, threats to the security of Canada do not include lawful advocacy, protest or dissent, unless carried on in conjunction with threats or acts of "serious violence".

10. The second criterion is that the emergency must be so serious that it constitutes a "national emergency". Section 3 of the Act defines "national emergency" as an "urgent and critical situation of a temporary nature" that "seriously endangers the lives, health or safety of Canadians", "exceed[s] the capacity or authority of a province to deal with it" and cannot be effectively dealt with under any other law of Canada.

11. Only once these two thresholds are met *may* the GIC proclaim an emergency. Even then, they are not required to do so. If the GIC does decide to declare an emergency, the proclamation must specify: (a) the state of affairs; (b) the measures the GIC anticipates may be necessary; and (c) "if the effects of the emergency do not extend to the whole of Canada, the area of Canada to which the effects … extend".[9]

B. FACTUAL CIRCUMSTANCES LEADING TO THE *EMERGENCY PROCLAMATION*

(i) The "Freedom Convoy" and Government Responses

12. On January 22, 2022, a group of individuals prepared to drive across Canada to protest the Public Health Agency of Canada's announcement that essential service providers and truck drivers would no longer benefit from a vaccine exemption for entry to Canada. They identified themselves as "Freedom Convoy 2022". They left Prince Rupert, British Columbia, planning to reach Ottawa by the end of January.[10]

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7 *EA*, s. 16.

8 *Canadian Security Intelligence Service Act*, R.S.C. 1985, c. C-23 [***CSIS Act***], s. 2(c). This is the only type of threat to the security of Canada upon which the GIC relied.

9 *EA*, s. 17(2).

10 *CFN*, at para. 33.

13. The convoy arrived in Ottawa on January 28, 2022.[11] By that time, it consisted of hundreds of vehicles, including tractor trailers, and thousands of individuals.[12] Its stated goal was to gridlock downtown Ottawa until the vaccine mandates were repealed.[13]

14. Many Convoy participants were peaceful. Yet the Convoy also brought noise and disruption. Some protesters subjected downtown Ottawa to truck horns, train whistles, fireworks, megaphones, late-night street parties, and engine fumes.[14] There were also reported incidents of harassment, assault, and intimidation, among others against racialized, 2SLGBTQIA+ and other marginalized communities, which led the police to lay criminal charges.[15] The application judge recognized that this created "intolerable conditions for many residents and workers in the district".[16]

15. Between January 30 and February 2, 2022, the protestors began to organize for a prolonged occupation of Ottawa's core.[17] On February 3, 2022, the Mayor of Ottawa submitted a request for additional resources to deal with the protest.[18] On February 6, 2022, the Mayor declared a state of emergency.[19] The next day, the Ontario Provincial Police described the Convoy as a "threat to national security" and requested an additional 1,800 officers from other agencies.[20] The protest grew and, from February 8 to 10, 2022, the Convoy numbered about 418 vehicles.[21]

(ii) Protests in other jurisdictions

16. While the Freedom Convoy protests were in Ottawa, smaller local protests sprang up elsewhere. By and large, these were managed and any issues resolved prior

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11 *CFN*, at para. 34.
12 *CFN*, at para. 34; Affidavit of Rebecca Coleman, sworn April 4, 2022 [**Coleman Affidavit**], at para. 16, Ex. N [AB, Vol 7, Tab 13.11, p. 3691].
13 *CFN*, at para, 34, Affidavit of Abigail Deshman, sworn March 4, 2022, [**Deshman Affidavit**], at para. 42, Ex. F [AB, Vol 5, Tab 13.7.6, p. 1723].
14 *CFN*, at para. 35.
15 *CFN*, at para. 35; Deshman Affidavit, at para. 42 [AB, Vol 5, Tab 13.7, pp. 1581-82].
16 *CFN*, at para. 35; Coleman Affidavit, at para. 9, Ex. S [AB, Vol 7, Tab 13.11.19, p. 3736].
17 *CFN*, at para. 36.
18 *CFN*, at para. 37.
19 *CFN*, at para. 38.
20 *CFN*, at para. 38; Coleman Affidavit, at para. 112, Ex GGGGG, [AB, Vol 7, Tab 13.11.113, p. 4252-53].
21 Coleman Affidavit, at para. 58, Ex DDD, [AB, Vol 7, Tab 13.11.56, p. 3981].

to the invocation of the *Emergencies Act*. Key examples include the protests in Vancouver and Victoria; Calgary; Regina; Toronto; and at the Nova Scotia/New Brunswick border — all of which were resolved within less than a day or two.[22]

17. There were also several protests at the border. One blockaded the Ambassador Bridge in Windsor, Ontario, beginning on February 6, 2022. The Superior Court of Justice granted an injunction to end this blockade on February 11.[23] On February 13, the police removed the protestors and laid approximately 44 criminal charges; traffic resumed the next day.[24] Another protest began on a high in Sarnia, Ontario on February 8; access was restored by February 14.[25] A third occurred at the Peace Bridge near Fort Erie, Ontario, on February 12, but it was resolved by February 14.[26]

18. Despite these protests being resolved prior to the declaration of a public order emergency on February 14, 2022, three key border protests remained ongoing at the time: Emerson, Manitoba; Coutts, Alberta; and the Pacific Highway crossing in B.C. The application judge's reasons detail these events,[27] including the discovery of firearms, ammunition, and body armour at Coutts. Two of these protests were largely resolved before the powers of the *Regulation* and the *Economic Order* came into force on February 15. The Pacific Highway protest resolved through negotiations, without arrests; it is unclear to what extent, if at all, the police relied on the emergency powers to do this, and the Attorney General did not file evidence on this point.

(iii) Government responses to the protests

(a) Provincial government responses

19. Most provinces did not see the need to take any decisive legislative or executive action in response to the protests, but a few relied on their own emergency legislation. On February 11, 2022, Ontario declared a province-wide state of emergency under its

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22 See Schedule "A".
23 *CFN*, at para. 47.
24 *CFN*, at para. 47.
25 *CFN*, at para. 48.
26 *CFN*, at para. 49.
27 *CFN*, at paras. 50, 51, 56. On Emerson, see Deshman Affidavit, at para. 53 [AB, Vol 5, Tab 13.7, p. 1584]. On Coutts, see Deshman Affidavit, at para. 54 [AB, Vol 5, Tab 13.7, pp. 1587-88]. On Pacific Highway, see Deshman Affidavit, at para. 55 [AB, Vol 5, Tab 13.7, p. 1588].

Emergency Management and Civil Protection Act.[28] The next day, it enacted a regulation to protect critical infrastructure.[29] Nova Scotia issued an *Emergency Management Act* directive prohibiting the blockading of highways and borders.[30]

(b) Federal government response

20. Prior to invoking of the *Emergencies Act*, the Prime Minister consulted with the "Incident Response Group" ("**IRG**") and Cabinet. The IRG was "a dedicated emergency committee to the Prime Minister".[31] It both provided advice to the Prime Minister and "help[ed] support coordination and information exchange amongst Ministers and drive forward a whole-of-government response".[32] The IRG met three times in February 2022: the 10th, the 12th, and the 13th.[33] Cabinet also met on the 13th.[34]

21. The discussion at these meetings, as well as the direct advice the Prime Minister received from the Clerk of the Privy Council (i.e., the head of the public service), led to the invocation of the *Emergencies Act*. The substance of those discussions and the advice to the Prime Minister will be reviewed in detail where relevant below.

C. THE INVOCATION OF THE *EMERGENCIES ACT*

22. After the meeting of the full Cabinet on February 13, 2022, the question of invoking the *Emergencies Act* was delegated to the Prime Minister, *ad referendum*.[35]

23. On February 14, 2022, despite the fact that the most concerning protests outside of Ottawa had largely resolved, the GIC accepted the Prime Minister's recommendation to invoke the *Emergencies Act* — as she was constitutionally bound to do.[36] She issued a Proclamation pursuant to s. 17(1) of the *EA* declaring that there were reasonable grounds to believe a "public order emergency" existed, throughout

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28 *CFN*, at para. 40; Coleman Affidavit, at para. 73, Ex TTT, [A.B., Vol 7, Tab 13.11.72, p. 4066]; O. Reg 69/22 (Declaration of Emergency); O. Reg 70/22 (Confirmation of Declaration of Emergency).
29 O. Reg. 71/22 (Critical Infrastructure and Highways).
30 *Direction of the Minister under a Declared State of Emergency* [AB, Vol. 4, Tab 13.6.4, p. 1376].
31 Affidavit (#1) of Steven Shragge (April 2, 2022) ("**Shragge Affidavit #1**"), at para. 5 [AB, Vol. 6, Tab 13.9, p. 3397].
32 Shragge Affidavit #1, at para. 5 [AB, Vol. 6, Tab 13.9, p. 3397].
33 Shragge Affidavit #1, at paras. 7-8 [AB, Vol. 6, Tab 13.9, p. 3397].
34 Shragge Affidavit #1, at para. 9 [AB, Vol. 6, Tab 13.9, p. 3397].
35 *CFN*, at para. 52.
36 See generally the CCLA-CCF Joint Memorandum of Argument on the interlocutory appeal.

Canada,[37] resulting from:

- 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;
- adverse effects on the Canadian economy and threats to economic security resulting from blockades of critical infrastructure;
- adverse effects resulting from the impacts of the blockades on Canada's relationship with its trading partners, including the U.S.;
- 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; and
- the potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians.

24. The *Emergency Proclamation* was supported by an explanation issued pursuant to s. 58 of the *EA* ("Section 58 Explanation"). The Section 58 Explanation operates as the reasons for the Proclamation.[38] It outlines, in a very general way, many of the facts reviewed above, putting all of those facts on essentially equal footing without assessment of their credibility or the level of risk they import. The Explanation will be reviewed in greater detail as it becomes relevant to the issues on review. That said, it contains two notable additions to the foregoing.

25. First, the Section 58 Explanation evinces a serious concern not so much for the health and safety of Canadians, but for economic impacts relating to the operability of Canada's borders and its international trade interests. Perhaps the only section of the Explanation that contains meaningful detail is the section outlining the impact of the protests on the flow of trade at the border.[39] It refers to expressions of "concern" from the President of the United States and the Governor of Michigan regarding the economic impacts of the protests. The government was clearly anxious that the protests were "eroding confidence in Canada as a place to invest and do business".[40]

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37 *Emergency Proclamation*, at p. 2, para (a) [AB Vol 4, Tab 13.1, p 1308].
38 See Section 58 Explanation, at p. 4 [AB, Vol. 4, Tab 13.2, p. 1317]; *CFN*, at para. 69.
39 See Section 58 Explanation, at pp. 6-7 [AB, Vol. 4, Tab 13.2, pp. 1319-20].
40 Section 58 Explanation, at p. 10 [AB, Vol. 4, Tab 13.2, p. 1323].

26. Second, the Section 58 Explanation expresses concerns about the *possibility* that there were elements "Ideologically Motivated Violent Extremism" ("**IMVE**") and within the protests.[41] Among other things, it refers to two ideologically motivated incidents that occurred around the relevant time, while noting that "a link to the convoy ha[d] not yet been established".[42] There is also reference to unspecified "incidents" in the United States that advocated for disruption and threatened violence.[43]

D. THE *EMERGENCY MEASURES REGULATIONS*

27. The *Emergency Measures Regulations* came into force on February 15, 2022, creating three key prohibitions backed by the threat of conviction and imprisonment.

- Section 2(1) prohibited 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 ("**Prohibition on Public Assembly**").
- Section 4(1) prohibited travelling to an area where a s. 2 assembly is taking place, subject to limited exemptions ("**Prohibition on Travel to an Assembly**").
- Section 5 prohibited anyone from directly or indirectly collecting or providing property to a s. 2 assembly or for the purpose of benefitting a person who is facilitating or participating in an assembly ("**Prohibition on Providing Property**").
- Section 10(2) created penalties for failure to comply with the above Regulations. If someone fails to comply, a peace offer may "take the necessary measures to ensure the compliance". Summary conviction could lead to a fine of up to $500 and imprisonment for up to six months; an indictable conviction could lead to a fine of up to $5,000 and imprisonment for up to five years ("**Prosecution Provision**").

E. THE *EMERGENCY ECONOMIC MEASURES ORDER*

28. Section 2(1) of the Order required banks, credit unions, insurance companies, crowd-funding platforms, and others to freeze the assets and accounts of "designated

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41 See Section 58 Explanation, at p. 11 [AB, Vol. 4, Tab 13.2, p. 1324].
42 Section 58 Explanation, at p. 12 [AB, Vol. 4, Tab 13.2, p. 1325].
43 Section 58 Explanation, at p. 12 [AB, Vol. 4, Tab 13.2, p. 1325].

person[s]". Designated persons included individuals engaged, directly or indirectly, in an activity prohibited by ss. 2 to 5 of the *Emergency Measures Regulations*.[44]

29. Pursuant to s. 3 of the Order, the above institutions also had a duty to determine whether they are in possession of property owned, held, or controlled by or on behalf of a designated person. If they were, they had to register with the Financial Transactions and Reports Analysis Centre of Canada ("**FINTRAC**"), pursuant to s. 4(1).

30. Significantly, pursuant to s. 5, these entities had to disclose, without delay, to the RCMP or CSIS: (a) the existence of property in their possession or control that they have reason to believe was owned or controlled by or on behalf of a designated person; and (b) information about transactions relating to such property.

F. DECISION ON JUDICIAL REVIEW

(i) Unreasonable invocation of the *Emergencies Act*

31. The application judge applied the reasonableness standard to the GIC's decision to declare a public order emergency pursuant to s. 17(1) of the *Emergencies Act*.[45] He concluded that the decision was unreasonable.

32. In applying reasonableness, the application judge recognized that the question was "whether the Governor in Council, acting on the recommendation of Cabinet, reasonably formed the belief that reasonable grounds existed to declare a public order emergency under s. 17 of the Act", defining "reasonable grounds" as the "point where credibility-based probability replaces suspicion".[46] More specifically, the question was whether there were reasonable grounds to conclude that each of the requisite objective thresholds in the Act — the existence of a "national emergency" and "threats to the security of Canada"— were met.

33. With respect to the existence of a "national emergency", the application judge agreed that the situation was critical and required an urgent resolution, but found that

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44 *Economic Measures*, s. 1.
45 *CFN*, at para. 195.
46 *CFN*, at para. 202, quoting *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para. 114.

the evidence before the GIC "d[id] not support the conclusion that [the protests] could not have been effectively dealt with under other laws of Canada, as it was in Alberta, or that it exceeded the capacity or authority of a province to deal with it".[47] Accordingly, there was no national emergency, and the GIC's decision to invoke the *EA* was unreasonable and *ultra vires*.[48]

34. With respect to "threats to the security of Canada", the application judge noted that the meaning of this term was significantly constrained by the *Emergency Act*'s incorporation of s. 2 of the *CSIS Act*. The only relevant paragraph of the *CSIS Act* — s. 2(c)— described threats to the security of Canada as "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".[49] As there was no doubt that the activities in question had such a purpose,[50] the application judge focused on the meaning of "serious violence" in relation to both persons and property.[51]

35. In relation to persons, the application judge interpreted serious violence to include any "hurt or injury, whether physical or psychological, that interferes in a substantial way with the physical or psychological integrity, health or well-being of the complainant".[52] He agreed with the Attorney General that the harm did not need to amount to violence of threats of violence rising to the level of death or endangerment of life, but could not conclude that the evidence disclosed an objective basis, based on compelling and credible information, for the GIC's belief in such violence. Reports of violent incidents and threats of violence and arrests were "vague and unspecified".[53] The weapons seizure in Coutts remained the sole act or threat of serious violence.[54] The Proclamation's fifth ground for invoking the *EA* referred to the potential for an increase in the level of unrest and violence. Yet, except for the situation in Ottawa, the

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47 *CFN*, at para. 255.
48 *CFN*, at para. 255.
49 *CFN*, at para. 260.
50 *CFN*, at para. 265.
51 *CFN*, at para. 288; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21, at para. 71.
52 *CFN*, at para. 280, quoting *R. v. C.D.K.*, 2005 SCC 78, at para. 20.
53 *CFN*, at para. 290.
54 *CFN*, at para. 290.

record did not indicate that local police were unable to deal with the protests.[55]

36. In relation to property, the application judge reasoned that s. 2(c) would be met by several offences in the *Code* relating to destruction or damage to property, including critical infrastructure, which are punishable on indictment. He concluded that destruction or damage to critical infrastructure could amount to serious violence, but concluded that "[t]he harm being caused to Canada's economy, trade and commerce, was very real and concerning but it did not constitute threats or the use of serious violence to persons or property".[56] The GIC's reliance on this was not reasonable.

(ii) *Charter* infringements of the *Regulations* and the *Economic Order*

37. The application judge then considered whether the *Regulations* and the *Economic Order* violated the rights and freedoms guaranteed by the *Charter*, and, if so, whether these breaches were justified under s. 1. In particular, he asked whether the prohibitions in the *Regulations* violated sections 2(b), (c), and (d).[57] He also considered whether the *Economic Order* infringed s. 8.[58]

38. On s. 2(b), the application judge found that the *Regulation* violated the right to the freedom of expression. In his view, by criminalizing the entire protest, the Regulations limited the right to expression of protestors who wanted to convey dissatisfaction with government policies, but who did not intend to participate in the blockades.[59] Under the terms of the *Regulation*, peaceful protesters were subject to enforcement actions as much as someone who had behaved in a manner that could reasonably be expected to lead to a breach of the peace.[60]

39. On s. 2(c), the application judge concluded that the *Regulations* did not breach the right to peaceful assembly because they applied only to anti-government protests that were likely to result in a breach of the peace.[61]

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55 *CFN*, at para. 294.
56 *CFN*, at para. 296.
57 *CFN*, at para. 302.
58 *CFN*, at para. 325.
59 *CFN*, at para. 307.
60 *CFN*, at para. 308.
61 *CFN*, at para. 311.

40. On s. 2(d), the application judge found no breach of freedom of association because people were free to communicate with each other in pursuit of their collective goals and form whatever organization they thought necessary to do so elsewhere.[62]

41. On s. 8, the application judge concluded that two provisions of the *Economic Order* breached the right to be free from unreasonable search and seizure. This was the case for s. 2(1) of the *Economic Order*, which empowered financial institutions to freeze — and therefore seize — the assets of any designated person. As the application judge recognized, most members of the public would understand governmental action that results in the content of a bank account being unavailable to the owner of that account as a seizure.[63] Similarly, he found that s. 5, which required financial institutions to disclose private information, such as what money people have and how they spent it, to the RCMP, authorized "searches" because the persons to whom that information related had a reasonable expectation of privacy in their private financial and transactional records.[64]

42. These searches and seizures were not "reasonable" in the sense of the *Charter* because the Order failed to require reasonable grounds before a search was conducted.[65] The RCMP superintendent who oversaw the implementation of the Economic Order confirmed on cross-examination that the RCMP required only bare belief before freezing accounts and accessing the underlying financial information. The failure to require some objective standard breached s. 8.[66]

43. Finally, on s. 1, the application judge agreed with the Attorney General that the objectives underlying the *Regulations* and the *Economic Order* were pressing and substantial and that they were rationally connected to the provisions. But he could not agree that the measures were minimally impairing. In his view, "[t]he Regulations and Economic Order fail the minimal impairment test for two reasons: 1) they were applied

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62 *CFN*, at para. 317.
63 *CFN*, at para. 334.
64 *CFN*, at para. 328-29.
65 *CFN*, at para. 335.
66 *CFN*, at para. 341.

throughout Canada; and 2) there were less impairing alternatives available".[67]

PART II — ISSUES

44. The Attorney General raises two overarching issues in this appeal:[68]

A. That the application judge erred in failing to properly apply the reasonableness standard of review to the GIC's discretionary decision to declare a public order emergency under the *EA*;

B. That the application judge erred in finding that the *Regulations* and the *Economic Order* were contrary to ss. 2(b) and 8 of the *Charter*, and were not saved under s. 1.

45. By way of cross-appeal, the CCLA raises one issue: that the *Regulations* infringed s. 2(c) of the *Charter*.

PART III — SUBMISSIONS

A. THE APPLICATION JUDGE CORRECTLY APPLIED *VAVILOV* IN HOLDING THAT THE DECISION TO INVOKE THE *EMERGENCIES ACT* WAS UNREASONABLE

(i) Standard of review

46. There is no dispute that Orders in Council like the *Emergency Proclamation* are reviewable for reasonableness. Reasonableness requires a reviewing court to ask "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision".[69] What divides the parties in this appeal is what reasonableness required of the application judge in this context.

47. On appeal, this Court will step into the shoes of the Federal Court and ask whether it "identified the appropriate standard of review and applied it correctly".[70] But stepping into the Federal Court's shoes does not mean ignoring their previous

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67 *CFN*, at para. 353.

68 The Attorney General's arguments on the interlocutory appeal regarding the application judge's Rule 312 decision is addressed in the joint factum of the CCLA and the CCF.

69 *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 99 (emphasis added), citing *Dunsmuir v. New Brunswick*, 2008 SCC 9, at paras. 47, 74; *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, at para. 13.

70 *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, at para. 45, citing *Telfer v. Canada Revenue Agency*, 2009 FCA 23, at para. 18; *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42, at para. 10.

wearer. As this Court has explained, the *Agraira* standard does not mean "that the appellant can or should ignore the reasons given by the Federal Court in rejecting its application".[71] Where the application judge "appears to have given a complete answer to all the arguments that it advances", the appellant "bears a strong tactical burden to show on appeal that the Federal Court's reasoning is flawed".[72]

48. The Attorney General asserts that it bears no such burden because the application judge's reasons do not provide a complete answer. Respectfully, while the Attorney General disagrees with the application judge's reasons, they address each issue in detail and each argument the parties raised in the court below. They are complete. The burden applies. It has not been displaced.

(a) Discretion and deference to Cabinet is not unlimited

49. Related to the standard of review, the Attorney General argues that the GIC had "broad discretion" to decide whether to invoke the *Emergencies Act*, both because of its position "at the apex of the Canadian executive" and in light of the idea that the *Emergencies Act* takes a "preventative approach".[73]

50. The suggestion that there is discretion here that is owed special deference ignores the important distinction between (1) the *objective determination* of whether the statutory thresholds in s. 17 of the Act were met, and (2) the *discretionary decision* of whether to invoke the Act. While the latter attracts substantial deference, the margin of appreciation afforded to the former is "narrow".[74]

51. Section 17 of the *Emergencies Act* provides the GIC with the discretion to invoke (or not to invoke) the Act; however, that discretion only arises once there are objective, reasonable grounds to believe that there is an emergency that threatens the security of Canada. Absent this objective determination, no discretion arises. This is

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71 *Bank of Montreal v. Canada (Attorney General)*, 2021 FCA 189, at para. 4.

72 *BMO*, 2021 FCA 189, at para. 4, cited in *Canada RNA Biochemical Inc. v. Canada (Health)*, 2021 FCA 213, at para. 7; *Canada (Attorney General) v. Lloyd*, 2022 FCA 127, at para. 27; *Le-Vel Brands, LLC v. Canada (Attorney General)*, 2023 FCA 177, at para. 32.

73 Memorandum of Fact and Law of the Appellant, the Attorney General of Canada [**AGC Memorandum**], at paras. 97, 100.

74 *Gitxaala Nation v. Canada*, 2016 FCA 187, at para. 153.

apparent from the language of s. 17, which provides that the GIC "may" declare a public order emergency *only* when it "believes, on reasonable grounds" that such an emergency exists and necessitates special measures.

52. The application judge correctly acknowledged the importance of this distinction.[75] For example, with respect to the determination of whether there was "serious violence" constituting a "threat to the security of Canada", he relied on this Court's decision in *Entertainment Software* to hold that this was "more akin to the legal determinations courts make, governed by legal authorities, not policy".[76]

53. All of this is consistent with this Court's decision in *Gitxaala Nation*, which recognizes that there are statutes in which the GIC "makes decisions that have some legal content", and that "[o]n these occasions, signaled by specific legislative language, the margin of appreciation courts afford to the Governor in Council will be narrow".[77] That is the case with respect to the legal determinations at issue here, like whether there are reasonable grounds to believe that there are threats to the security of Canada.

54. Nothing in the foregoing is affected by the Rouleau Report's suggestion that these thresholds include "broad, open-ended concepts such as 'threat' and 'serious' that leave scope for reasonable people to disagree".[78] Open-endedness does not convert the objective inquiry into whether there are reasonable grounds into a discretionary decision. And while "threat" may be a general concept, it is particularized in the *Emergencies Act*: it is not just any threat, but a threat within the meaning of s. 2 of the *CSIS Act* that matters. In these circumstances, it was entirely proper for the application judge to conclude that the interplay of text, context and purpose left room for a single reasonable interpretation.[79] This is explained in more detail below.

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75 *CFN*, at para. 288.

76 *CFN*, at para. 210, quoting *Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100, at para. 34.

77 *Gitxaala Nation v. Canada*, 2016 FCA 187, at para. 153. , citing *Canadian National Railway Co. v. Canada (Attorney General)*, 2014 SCC 40; *Public Mobile Inc. v. Canada (Attorney General)*, 2011 FCA 194.

78 AGC Memorandum, at para. 101, citing *Report of the Public Inquiry into the 2022 Public Order Emergency*, vol 1 (Ottawa: His Majesty the King in Right of Canada, 2023) [**POEC Report**], at 207-208.

79 *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21, at para. 71, quoting *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 124.

55. The Attorney General's suggestion that the decision at issue here is a discretionary one to which significant deference ought to be afforded is undercut by the preamble to the *Emergencies Act*, which makes clear that the GIC, in employing the powers under the Act, is subject to the *Charter* and "must have regard to the *International Covenant on Civil and Policial Rights*, particularly with respect to those fundamental rights that are not to be limited or abridged even in a national emergency".[80] These constraints impose serious limits on Cabinet's discretion, which in any event arises only after the *EA*'s thresholds are met.

(ii) The invocation of the *Emergencies Act* was unreasonable

56. The central question in the court below was whether the decision to issue the *Emergency Proclamation* was reasonable in light of the factual and legal constraints that bore upon it.[81] The factual constraints included the evidentiary record and the general factual matrix that bore on the GIC's decision.[82] The key legal constraints included the governing statutory scheme (which restricts the exercise of the GIC's powers and delimit the scope of its authority),[83] and the principles of statutory interpretation (which require the GIC's decisions about particular provisions to be "consistent with the text, context and purpose the provision").[84]

57. Here, the GIC unreasonably concluded that the protest had created "threats to the security of Canada" that were sufficiently serious to create a "national emergency". Neither of these stringent thresholds was met. The GIC also declared the emergency was present throughout all of Canada, in defiance of requirement to specify which areas were truly affected.[85] The decision was therefore both unreasonable and *ultra vires*.[86]

(a) No "threats to the security of Canada"

58. Pursuant to s. 16 of the Act, in order to declare a public order emergency, the

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80 *International Covenant on Civil and Political Rights*, Can. T.S. 1976 No. 47, Preamble.
81 *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 99. There is no dispute that the consultation requirement in s. 25(1) of the *Emergencies Act* was met.
82 *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 126.
83 *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 108-110.
84 *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 120.
85 *EA*, s. 17(2)(c).
86 *Portnov v. Canada (Attorney General)*, 2021 FCA 171, at paras. 25-28.

GIC must have "reasonable grounds to believe" that there are "[t]hreats to the security of Canada" — the definition of which is incorporated by reference from s. 2 of the *CSIS Act*. These threats must arise from activities "directed toward or in support of the threat or use of acts of serious violence against persons or property" to achieve a political or ideological goal in Canada.[87] They do not include lawful protest or dissent, unless it involves threats of "serious violence".

59. The record fails to disclose the "compelling and credible information" necessary to justify the conclusion that there were reasonable grounds to believe that these stringent requirements were met.[88]

60. Indeed, the evidence before the GIC was to the contrary: the Director of CSIS has confirmed that "at no point did the Service assess that the protests in Ottawa or elsewhere … constituted a threat to the security of Canada under section 2 of the *CSIS Act*".[89] CSIS is an expert intelligence agency responsible for discharging Canada's fundamental responsibility regarding "the protection of Canada's national security" and "the security of Canadians".[90] Its home statute — the *CSIS Act* — is central to this judicial review. Accordingly, CSIS's opinion that the protests did not present threats to the security of Canada ought to have carried great weight with Cabinet (and the IRG). For whatever reason, it did not.[91]

61. Moreover, the record confirms that CSIS's opinion was well-founded, as the protests did not present any risk of national and "serious violence". While acknowledging that "threats to the security of Canada" includes threats of "serious violence against … property", the GIC's justification for the *Emergency Proclamation* still relies on an untenably strained interpretation of the meaning of "serious violence".

62. The precise definition of this term is explored in greater detail below, but for now it suffices to say that, despite what the Attorney General now argues, the

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87 *CSIS Act*, s. 2(c). This is the only type of threat to the security of Canada upon which the GIC relied.
88 *R. v. Beaver*, 2022 SCC 54, at para. 72(6); AGC Memorandum, at para. 111.
89 *CFN*, at para. 268; Public Order Emergency Commission, "Public Summary: Canadian Security Intelligence Service (CSIS) *in camera*, *ex parte* Hearing", Affidavit of Cara Zwibel, sworn December 11, 2022, Exhibit "I" [AB, Vol. 6, Tab 13.8.9, p. 3359].
90 *CSIS Act*, Preamble.
91 *CFN*, at para. 285.

application judge largely agreed with the arguments it made in the court below. In particular, the application judge confirmed that the term "does not require threats of violence, or actual violence, rising to the level of death or endangerment of life".[92] The standard the application judge accepted was in fact quite low: "any hurt or injury to a person that interferes with the health or comfort of the person and that is more than merely transient or trifling in nature".[93] If anything, this standard is too low but, even so, it does not give rise to reversible error.

63. The "violence" contemplated in the *Emergency Proclamation* and particularized in the Section 58 Explanation falls far short of the requisite seriousness.[94] Parked cars are not serious violence. Horns are not serious violence. A loss of revenue and the interruption of supplies is not serious violence. Nor is dilution of Canada's relationship with its trading partners. None of these causes serious harm to persons or property — and the suggestion that that level of harm was at stake is not established on any reasonable review of the record before the GIC. Ultimately, while disruptive, these outcomes fall short of the degree of violence required by the *CSIS Act* — a conclusion with which CSIS itself agreed.

64. The record underlying the GIC's decision confirms CSIS's assessment that there were no threats to the security of Canada. While the Attorney General has claimed Cabinet confidences over the specific submissions to the GIC on February 14, the minutes of the Cabinet meeting the day before provides meaningful insight into the assessment of the situation on the ground.

65. The February 13 Cabinet meeting involved a "situational update" from the National Security Intelligence Advisor ("**NSIA**"), Jody Thomas. The meeting minutes confirm NSIA Thomas's key concerns were centered on "blockages" at multiple ports of entry, social media "continu[ing] to play an active role" in communication between protestors, and "slow roll vehicle activity" being effective.[95]

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92 *CFN*, at para. 280.
93 *CFN*, at para. 280.
94 Section 58 Explanation, at pp. 1-2 [AB, Vol. 4, Tab 13.2, p. 1314-15].
95 Cabinet Meeting Minutes (February 13, 2022), at p. 8 [AB, Vol. 9, Tab 13.22, p. 5453].

66. Otherwise, NSIA Thomas' update on the situation was very positive. She confirmed that "law enforcement gains have been important" and there was "potential for a breakthrough in Ottawa".[96] She described the "Ideologically Motivated Violent Extremism" threat picture as "stable".[97]

67. The February 13 Cabinet meeting minutes also contain a CSIS assessment of the possible implications of the *Emergencies Act* "[a]cross the IMVE Space".[98] CSIS's assessment of the situation was generally that the protests were not comprised solely of those holding extreme views; instead, "protestors espouse[d] a range of grievances (often intertwined with conspiracy theories) in support of their opposition to public health measures" and "comprised of a range of individuals from across Canadian society".[99] Perhaps for this reason, the assessment was that the invocation of the *Emergencies Act* would "likely galvanize the broader anti-government narratives" and could "increase the number of Canadians holding extreme anti-government views".[100]

68. Cabinet did not accept CSIS's opinion. To the contrary, it sought an "alternative threat assessment" on February 14, 2022.[101] That morning, NSIA Thomas e-mailed a small group on behalf of the Clerk of the Privy Council. She sought an assessment "about the threat of [the] blockades", the "characters involved", "[t]he weapons", and "[t]he motivation".[102] In other words, Cabinet wanted a second opinion.

69. But no alternative threat assessment was ever prepared[103] — instead, the final piece of advice produced was the "Invocation Memorandum" prepared by the Clerk of the Privy Council.[104] The Invocation Memorandum recommended that the Prime

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96 Cabinet Meeting Minutes (February 13, 2022), at p. 8 [AB, Vol. 9, Tab 13.22, p. 5453].
97 Cabinet Meeting Minutes (February 13, 2022), at p. 8 [AB, Vol. 9, Tab 13.22, p. 5453].
98 Cabinet Meeting Minutes (February 13, 2022), at p. 12 [AB, Vol. 9, Tab 13.22, p. 5457].
99 Cabinet Meeting Minutes (February 13, 2022), at p. 12 [AB, Vol. 9, Tab 13.22, p. 5457].
100 Cabinet Meeting Minutes (February 13, 2022), at p. 12 [AB, Vol. 9, Tab 13.22, p. 5457]; see also Final Order and Annex A (DES-13-22) [AB, Vol. 9, Tab 13.23.2, p. 5483].
101 See Clerk of the Privy Council, "Invoking the *Emergencies Act* to End Nation-Wide Protests and Blockades" (February 14, 2022) [**Invocation Memorandum**] [AB, Vol. 6, Tab 13.8.2, p. 3214].
102 E-mail from Jody Thomas to Mike MacDonald (February 14, 2022) [AB, Vol. 6, Tab 13.8.12, p. 3390]. The body of Ms. Thomas's e-mail directs her inquiry to "David". One of the recipients of the e-mail is redacted with a s. 38 claim. However, in the circumstances, it is reasonable to infer that the "David" here is David Vigneault, the Director of CSIS.
103 Public Order Emergency Commission Testimony of Clerk Charette and Deputy Clerk Drouin (November 18, 2022) [AB, Vol. 6, Tab 13.8.4, p. 3248, lns. 23-26].
104 Invocation Memorandum, [AB, Vol. 6, Tab 13.8.2, p. 3213].

Minister invoke the *Emergencies Act*. The Clerk would explain that the Invocation Memorandum "captur[ed] all that we thought was necessary, pulling it all together in one spot, the culmination … of the public service advice to the prime minister".[105] The Prime Minister would also confirm that the memorandum was "essential" to him; in his words, "it was a big thing, not a small thing, to have the head of the public service formally recommend the invocation of the *Emergencies Act*".[106]

70. The Invocation Memorandum contains no discussion of discrete risks of "serious violence". Instead, it reiterates general concerns about disruption of the peace, impacts on the economy, and engagement in "slow roll activity, slowing down traffic and creating traffic jams, in particular near [points of entry]".[107] The Clerk's advice regarding whether there were "threats to the security of Canada" is summarized in one paragraph:

> [W]hile municipal and provincial authorities have taken decisive action in key affected areas, such as law enforcement activity at the Ambassador Bridge in Windsor, considerable effort was necessary to restore access to the site and will be required to maintain access. The situation across the country remains concerning, volatile and unpredictable. While there is **no** current evidence of significant implications by extremist groups or international sponsors, PCO notes that the disturbance and public unrest is being felt across the country and beyond the Canadian borders, which **may** provide further momentum to the movement and lead to irremediable harms — including to social cohesion, national unity, and Canada's international reputation. In PCO's view, this fits within the statutory parameters defining threats to the security of Canada, though this conclusion may be vulnerable to challenge.[108]

71. The Clerk was right: this conclusion is vulnerable to challenge, in at least two respects. First, the legislative thresholds set in the *Emergencies Act* cannot be met by harms to "social cohesion, national unity, and Canada's international reputation".[109] Nothing less than "serious violence" that is ideologically motivated will suffice.

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105 Public Order Emergency Commission Testimony of Clerk Charette and Deputy Clerk Drouin (November 18, 2022) [AB, Vol. 6, Tab 13.8.4, p. 3245, lns. 19-23].

106 Public Order Emergency Commission Testimony of Prime Minister Trudeau (November 25, 2022) [AB, Vol. 6, Tab 13.8.3, p. 3234, lns. 11-14].

107 Invocation Memorandum [AB, Vol. 6, Tab 13.8.2, p. 3217].

108 Invocation Memorandum [AB, Vol. 6, Tab 13.8.2, p. 3220].

109 Invocation Memorandum [AB, Vol. 6, Tab 13.8.2, p. 3220].

Second, the Clerk's conclusion is, on its face, impermissibly speculative. It confirms there is no current evidence of IMVE issues; it also speculates that there is "disturbance" and "unrest" that may provide "momentum". This ethereal reasoning falls short of what is required to establish reasonable grounds. Indeed, as the application judge noted, "the evidence in support of PCO's analysis was not abundant".[110]

72. The application judge also considered these deficiencies with specific reference to the statement in the Section 58 Explanation that "[v]iolent incidents and threats of violence and arrests related to the protests have been reported across Canada".[111] As he noted, this statement "rested primarily on what was uncovered at Coutts, Alberta when the RCMP executed search warrants and discovered firearms, ammunition and the indicia of right wing extremist elements". The reports of violent incidents and threats of violence "were vague and unspecified apart from allegations that tow truck drivers in Ottawa had been threatened should they assist the police".[112] He went on:

> The only specific example of threats of serious violence provided is Coutts. Arrests related to the protests may have amounted to evidence of activities directed toward or in support of the threat or use of acts of serious violence against persons or property, but the arrests, aside from those at Coutts, appear to all have been for minor offences. There had yet to be any actual serious violence or threats of it, other than in Coutts, when the decision was made. The Prime Minister acknowledged this in his POEC testimony:
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> > "And the fact that there was not yet any serious violence that had been noted was obviously a good thing, but we could not say that there was no potential for serious violence".[113]

73. For reasons explained in detail below, this sort of "speculation" does not constitute the reasonable grounds required by the *EA*.[114] The application judge dealt with this squarely in his reasons, with reference to the Section 58 Explanation:

> Much of the Section 58 Explanation is devoted to the deleterious effects of the blockades on Canada's economy. The strongest connection to

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110 *CFN*, at para. 287.
111 *CFN*, at para. 284.
112 *CFN*, at para. 290.
113 *CFN*, at para. 290.
114 *CFN*, at para. 291.

> activities directed toward or in support of the threat or use of acts of serious violence against persons or property is found in the section of the explanation discussing the fifth specified reason for the Proclamation – the potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians. This section speculates that the convoy could lead to an increase in the number of individuals who support ideologically motivated violent extremism. […]
>
> While these events are all concerning, the record does not support a conclusion that the Convoy had created a critical, urgent and temporary situation that was national in scope and could not effectively be dealt with under any other law of Canada. The situation at Coutts was dealt with by the RCMP employing provisions of the Criminal Code. The Sûreté du Québec dealt with the protests in that province and the Premier expressed his opposition to the Emergencies Act being deployed there. Except for Ottawa, the record does not indicate that the police of local jurisdiction were unable to deal with the protests.
>
> Ottawa was unique in the sense that it is clear that the OPS had been unable to enforce the rule of law in the downtown core, at least in part, due to the volume of protesters and vehicles. The harassment of residents, workers and business owners in downtown Ottawa and the general infringement of the right to peaceful enjoyment of public spaces there, while highly objectionable, did not amount to serious violence or threats of serious violence.[115]

74. These factual conclusions are difficult to displace on appeal. Indeed, the Attorney General mounts no serious challenge to them, aside from essentially arguing that the application judge should have accepted the assertions in the Section 58 Explanation at face value. But judicial review requires more. The question is whether those assertions were reasonable in light of both the facts and law. They were not.

75. Ultimately, the GIC did not follow CSIS's assessment that there were no threats to the security of Canada, without explaining the reasons for departing from it and without waiting for an alternative assessment. Additionally, despite the dearth of evidence of serious violence, and notwithstanding the reservations of the Invocation Memorandum, the GIC invoked the *Emergencies Act*. This was not reasonable.

76. As indicated, the Attorney General cannot seriously dispute the application

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[115] *CFN* at paras. 293-95.

judge's factual conclusions. Perhaps for that reason, its focus is on allegations that the application judge erred in "wrongly interpret[ing] the *EA* for himself", particularly in relation to the threshold issue of "threats to the security of Canada" and the meaning of "reasonable grounds".[116] These arguments are addressed below.

(1) *No error in interpreting "threats to the security of Canada" with reference to the CSIS Act*

77. The Attorney General argues that the application judge "erred by interpreting this phrase exclusively by reference to its meaning in the context of the *CSIS Act*.[117] The Attorney General says that the context of the *Emergencies Act* matters and that it somehow changes the meaning of "threats to the security of Canada".

78. Precisely *how* that context changes the meaning of this phrase — particularly when the Act says that that term "has the meaning assigned by section 2 of the [*CSIS Act*]"[118] — is not clear. Neither the Attorney General nor the Cabinet have put forward a clear alternative interpretation to the one expressly provided in the *Emergencies Act* — they say only that the meaning must somehow be different. In any event, the application judge accepted that the context was important, as he recognized that the term "must be interpreted with reference to the meaning of that term as it is defined in section 2 of the *CSIS Act* and incorporated in section 16 of the *EA*".[119]

79. The Attorney General's goal here appears to be to defeat an argument that no one has ever made: that CSIS's opinion that there were no threats to the security of Canada was determinative of whether Cabinet could invoke the *Emergencies Act*. The CCLA agrees that this opinion was not determinative. But it was an input into Cabinet's decision-making, and even Cabinet recognized that it ought to do more work to determine if a contrary opinion could be justified. To this end, it ordered an "alternative threat assessment".[120] Of course, that assessment was never completed, and the *Emergencies Act* was invoked.

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116 AGC Memorandum, at para. 119.
117 AGC Memorandum, at para. 119, citing *CFN*, at paras. 287-288, 372.
118 *EA*, s. 16.
119 *CFN*, at para. 259.
120 See Invocation Memorandum [AB, Vol. 6, Tab 13.8.2, p. 3214].

80. Consistent with this, the application judge gave the CSIS assessment "some weight".[121] He did not give it determinative weight, nor did he use it as a trump, in reviewing the reasonableness of the Cabinet's decision. But he did consider it, as Cabinet should have.

81. Implicit in the Attorney General's argument that context can change the meaning of "threats to the security of Canada" is the idea that somehow this term imposes a lower threshold in the *Emergencies Act* than it does in the *CSIS Act*. This interpretation makes little sense in light of the consequences of that threshold being met in the *CSIS Act* relative to those in the *Emergencies Act*.

82. The *CSIS Act*, as the Attorney General notes, empowers a civilian intelligence agency with a defined mandate to investigate threats requiring security intelligence, and the phrase "threats to the security of Canada" operates as a threshold for CSIS to exercise its intelligence-gathering mandate for specific activities.[122] These measures must be "reasonable and proportional in the circumstances, and they cannot violate the *Charter* without judicial authorization.[123]

83. The *Emergencies Act* provides a stark contrast. On its face, it licences the government to create and implement regulations that limit some *Charter* rights. This is on the terms of the Act itself: s. 19(1) notably provides limits on public assembly, which obviously goes to the core of freedom of expression. Once there is a "threat to the security of Canada" so serious so as to be a national emergency, the *EA* does not require the government to seek judicial authorization before implementing these *Charter*-infringing measures. To be clear, this does not mean that any such infringements would be justified.

84. The idea that somehow the threshold for invoking the surveillance powers in the *CSIS Act* could be lower than the threshold for invoking the impressive array of powers in the *Emergencies Act* makes little sense. As explained above, if anything, the

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121 *CFN*, at para. 284.

122 AGC Memorandum, at para. 122, citations omitted.

123 *CSIS Act*, ss. 12.1(2), 12.1(3.2). This does not confer law enforcement power and the Service cannot commit crimes, detain people, or cause serious, dangerous property damage (*CSIS Act*, s. 12.2).

Emergencies Act imposes a higher threshold than the *CSIS Act*. The exercise of powers in the *CSIS Act* requires reasonable belief that there are threats to the security of Canada, while the *Emergencies Act* requires more: a reasonable belief that such threats exist and that they are serious enough to constitute a national emergency.

85. Here, it is not obvious why threats that failed to meet the *CSIS Act* bar would meet the higher threshold built into the *Emergencies Act*. The concerns mentioned in the Section 58 Explanation — for example, the security of Canada's borders and IMVE — are concerns within CSIS's mandate. Yet CSIS determined that they did not create security threats. It is not obvious why the "different actors" and "different considerations" involved in invoking the *Emergencies Act* should have led to a different conclusion.[124] Put simply, the Attorney General's argument continues to beg a difficult question: what are the "threats to the security of Canada" that Cabinet should respond to that CSIS would not?

86. To be clear, none of the foregoing is meant to suggest that CSIS's determination controlled Cabinet's decision to invoke the *Emergencies Act*, or that Cabinet's decision was unreasonable simply because it differed from CSIS's determination. But it was a seriously important — perhaps even the most important — consideration.

87. This is especially so given CSIS's unique expertise in collecting and assessing the facts and evidence usually necessary to determine whether any threats to the security of Canada in fact exist. Indeed, one of CSIS's "principal activit[ies]" is the "investigation, analysis and the retention of information and intelligence on security threats".[125] It produces what might be termed "security intelligence", which is "the product both of information collected, often through covert investigations, and of 'an analysis of the information based on an assessment of its significance in both a national and international context'".[126] This special expertise is one of CSIS's distinct

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124 AGC Memorandum, at para. 120.

125 *X (Re)*, 2016 FC 1105, at para. 159, citing Canada, Parliament, Senate, Special Committee of the Senate on the Canadian Security Intelligence Service, *Delicate Balance: A Security Intelligence Service in a Democratic Society* (November 1983) [*Pitfield Report*] at para. 28.

126 Canada, Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police, *Freedom and Security under the Law*, Second Report, Vol. 1 (Ottawa: Privy Council Office, 1981) [*McDonald Commission Report*], at p. 419, cited in Kent Roach, "The Unique Challenges of

advantages vis-à-vis the RCMP; when CSIS was set up, the "collection of security intelligence and information was seen as a specialized function distinct from policing".[127] In this way, CSIS was designed to provide the most robust assessment of whether the protests constituted "threats to the security of Canada".

88. Finally, the legislative development of the term "threats to the security of Canada" and CSIS itself is worth exploring. As indicated, CSIS is a civilian agency separate from the RCMP. It was created due to the RCMP's previous failures and overreaches — it had conducted illegal activities in the name of national security.[128] The McDonald Commission, tasked with investigating these failures, recommended the establishment of what would become CSIS, with an expressly defined and limited mandate in order to restrain and deter illegal activities.[129] The McDonald Commission considered it "essential to set these boundaries in legislation", as the statutory definition would "express Parliament's will as to the kinds of political activities it regards as threats to the security of Canada".[130] This is where the definition of "threats to the security of Canada" began. The McDonald Commission's recommendations and the draft legislation were later considered by the Pitfield Senate Committee, which confirmed that one "cannot overstate the importance of this definition", as it would constitute "the basic limit on the agency's freedom of action" and would provide "a benchmark for assessment of agency activities by review bodies".[131]

89. It is precisely because the definition of "threats to the security of Canada" had been exhaustively debated and considered that it was incorporated into the *Emergencies Act*. It was implemented to curb overreach and provide objective, ascertainable boundaries to the government's extraordinary emergency powers, as it did for CSIS.[132] Contrary to the Attorney General's submissions, there is no basis to

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Terrorism Prosecutions: Towards a Workable Relation between Intelligence and Evidence" in *Research Studies of the Commission of Inquiry into the Investigation of the Bombing of Air Indian Flight 182*, Vol. 4 (Ottawa: Supply and Services, 2010), at p. 24.

127 *Charkaoui v Canada (Citizenship and Immigration)*, 2008 SCC 38, at paras. 21-23.

128 *X (Re)*, 2016 FC 1105, at para. 121.

129 *X (Re)*, 2016 FC 1105, at para. 121.

130 *McDonald Commission Report*, at p. 428.

131 *Pitfield Report*, at p. 12.

132 Canada, Parliament, *House of Commons Debates*, 33rd Parl. 2nd Sess., Vol. 9 (November 16, 1987), at p. 10810.

disturb this Parliamentary intention.

90. The application judge was correct to hold that there is only one reasonable interpretation of the meaning of "threats to the security of Canada".[133] That does not mean that every individual has to agree about whether the interpretation is met. But it does mean that, as a matter of law, the statute can only bear a single meaning: the meaning given to that term by s. 2 of the *CSIS Act*.

(2) *No error in interpreting "serious violence"*

91. The application judge agreed with the Attorney General that the meaning of "serious violence" in s. 2(c) of the *CSIS Act*, as imported into the *Emergencies Act,* did not require threats of violence, or actual violence, rising to the level of death or endangerment of life.[134] Despite this, the Attorney General argues that the application judge erred in interpreting this term, in two ways.

92. First, the Attorney General argues that the application judge erred in holding that s. 2(c) of the *CSIS Act* requires that violence or threats of violence to *persons* must rise to "at least [the level] contemplated by the term 'bodily harm' in the *Criminal Code*" (i.e., "any hurt or injury to a person that interferes with the health or comfort of the person and that is more than merely transient or trifling in nature").[135] The Attorney General says this concept has no application to the *Emergencies Act*,[136] and argues that serious violence refers to any violence more serious than "minor" or *de minimis* acts of violence, such as throwing a tomato at a politician.[137]

93. Respectfully, this interpretation must be rejected. Nothing in the context or legislative history of s. 2(c) of the *CSIS Act* supports the appellant's impoverished interpretation of the violence threshold. The suggestion that the exceptional powers conferred by the *CSIS Act* or the *Emergencies Act*, could be unlocked by a thrown tomato or other petty disobedience makes little sense, especially in light of those

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133 Contrary to what is argued at AGC Memorandum, at paras. 4, 102.
134 *CFN*, at para. 280.
135 *CFN*, at para. 280; *Criminal Code*, R.S.C. 1985, c. C-46, s. 2.
136 AGC Memorandum, at para. 128.
137 AGC Memorandum, at para. 129.

statutes' recognition of the importance of *Charter* rights.

94. With respect to context, the application judge was right to consider the definition of "bodily harm" in the *Criminal Code.* As Commissioner Rouleau noted, "[t]he term "serious violent offence" has been held, albeit in a different statutory context, to mean an offence in which someone causes or attempts to cause "serious bodily harm".[138] The Supreme Court has confirmed that "serious bodily harm" means "any hurt or injury, whether physical or psychological, that interferes in a substantial way with the physical or psychological integrity, health or well-being of the complainant".[139] The *Criminal Code* also considers a "serious personal injury offence" to be one that involves the "use or attempted use of violence" *and* endangers the life or safety of another person, or inflicts severe psychological damage.[140]

95. The use of these terms across statutes is not unusual for Parliament, nor is it unusual for their meanings to be connected. As the Supreme Court recognized in *Vavilov*, this shared meaning "accords with the presumption of consistent expression, according to which the legislature is presumed to use language such that the same words have the same meaning both within a statute and across statutes".[141] Indeed, the words to be interpreted in a statute depend "not only on their immediate context but also on a larger context which includes the Act as a whole and the statute book as a whole…. Therefore, other things being equal, interpretations that minimize the possibility of conflict or incoherence among different enactments are preferred".[142]

96. The application judge's decision to apply these principles of statutory interpretation, and to use it in reviewing the reasonableness of the GIC's interpretation, is consistent with *Vavilov*.

97. With respect to the legislative history, the *Pitfield Report* of the Special

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138 POEC Report, vol. 3, at p. 227.

139 *R. v. C.D.K.*, 2005 SCC 78, at para. 20, citing *R. v. McCraw*, [1991] 3 S.C.R. 72, at p. 81.

140 *Criminal Code*, s. 752; see *R. v. Goforth*, 2005 SKCA 12, at para. 21, cited in *R. v. Steele*, 2014 SCC 61, at para. 39.

141 *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 44 (emphasis added), citing R. Sullivan, *Sullivan on the Construction of Statutes* (6th ed. 2014), at p. 217.

142 *R. v. Ulybel Enterprises Ltd.*, 2001 SCC 56, at para. 30, quoting Ruth Sullivan, *Driedger on the Construction of Statutes* (3rd ed. 1994), at 288.

Committee on the Canadian Security Intelligence Service supports the application judge's approach. As the Committee noted, s. 2(c) of the *CSIS Act* "appears to be primarily directed at terrorism".[143] The definition of "serious violence" is a crucial qualifier to ensure that the *Act* does not apply to "activities which are not eligible subjects to be put under surveillance".[144] As the Committee observed, the term "serious violence" must receive a sufficiently narrow interpretation such that it excludes "garden-variety civil disobedience, even involving illegality".[145]

98. Second, the Attorney General argues that the application judge erred in holding that serious violence to *property* includes the "several offences in the *Code* relating to destruction or damage to property, including critical infrastructure, which are punishable on indictment".[146] The application judge pointed to, "[i]n particular, destruction or damage to critical infrastructure could amount to serious violence to property should it take down systems such as the electrical grid or natural gas supply required to heat homes and run industries across the country".[147]

99. To be clear, the application judge accepted the Attorney General's argument that economic disruption *could* amount to "serious violence". He took the view that "destruction or damage to critical infrastructure could amount to serious violence to property should it take down systems such as the electrical grid or natural gas supply required to heat homes and run industries across the country".[148] The Attorney General now argues that this threshold was met because of alleged food and medicine shortages, but the Section 58 Explanation was far more circumspect on this point: it suggested that "[a] failure to keep international crossings open could result in a shortage of crucial medicine, food and fuel".[149] It was open to the application judge to find that

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143 *Pitfield Report*, at p. 13. See also Leah West, Jake Norris and Michael Nesbitt, "Threats to the Security of Canada: Same, Same but Different", (2023) 46-1 Man. LJ 27, at 36, suggesting that the *Criminal Code*'s definition of "terrorist activity" in s. 83.01(b)(ii) is an important interpretive aid.

144 See *Pitfield Report*, at p. 9, quoted in *Charkaoui v Canada (Citizenship and Immigration)*, 2008 SCC 38, at para. 22.

145 House of Commons, Standing Committee on Justice and Legal Affairs, *Evidence,* 32–2, No 12 (10 April 1984) at 12:17-12:21 (Hon. Warren Allmand, Notre-Dame-de-Grâce, Lachine East, L & Hon. Bob Kaplan, Solicitor General of Canada).

146 *CFN*, at para. 281.

147 *CFN*, at para. 281.

148 *CFN*, at para. 281.

149 Section 58 Explanation, at p. 4 [AB, Vol. 4, Tab 13.2, p. 1313].

this possibility was not reasonably supported, as there was no substantial evidence in the record of Canadians going hungry, without medicine, or without gas.

100. Ultimately, there is no merit to the Attorney General's suggestion that these conclusions were not the application judge's to make.[150] The meaning of s. 2(c) was a critical legal constraint bearing on the GIC's decision to invoke the *EA*. Reasonableness review required the application judge to determine whether the GIC's reasons demonstrated that it was alive to the modern principle of statutory interpretation, including the text, context, and purpose of the statutory provision.[151] This constraint was particularly pressing here because of the harsh consequences that could befall both Canada's citizens and its fundamental values from an unduly broad interpretation of s. 2(c).[152] This is the stuff of reasonableness review. The application judge did not err.

(b) No "national emergency"

101. Section 16 of the *Emergencies Act* also requires there be a "national emergency", which is comprised of an urgent and critical situation that:

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

102. The legislative history confirms Parliament intended the *Emergencies Act* to be a measure of last resort. When Bill C-77 was introduced for final reading, the sponsoring minister confirmed the *EA* incorporated both "the inadequacy of the normal legal framework" and the presence of threats that "exceed provincial capabilities" into the definition of "national emergency".[153] Perhaps even more telling is the legislative committee exchange between the chair (Mr. Blackburn, NDP) and the Executive Director of Emergency Preparedness Canada (Mr. Snarr):[154]

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150 AGC Memorandum, at para. 134.
151 *Mason v. Canada (Citizenship and Immigration),* 2023 SCC 21, at para. 69.
152 *Mason v. Canada (Citizenship and Immigration),* 2023 SCC 21, at para. 69.
153 Canada, Parliament, *House of Commons Debates*, 33rd Parl., 2nd Sess., Vol. 12, at p. 14765.
154 Mr. Snarr was technically a witness but his presence, as Executive Director of Emergency Preparedness (which had produced the Working Paper designed to review the policy, constitutional

> Mr. Blackburn (Brant): It says: *and that cannot be effectively dealt with under any other law of Canada.* Does that mean the government, when contemplating proclaiming an emergency, would have to make absolutely clear that the *Criminal Code*, for example, could not handle the situation; in other words, if we had a riot or a series of riots in a city and it was not felt that, by "reading the Riot Act" and imposing or using the *Criminal Code*, the regular law enforcement agencies could cope with that situation?
>
> Mr. Snarr: That is exactly right.[155]

103. In this case, however, the government did not make "absolutely clear" that the situation could not be handled — nor could it. The record could not support a reasonable conclusion that there was a "national emergency", for at least two reasons.

104. First, for the reasons already given with respect to the absence of "serious violence", there was no "serious endanger[ment]" of the lives, health or safety of Canadians. The trade-related impacts of the protests show concerns for commerce, but nothing suggests that there was evidence to conclude that health or safety was seriously at stake, particularly given that law enforcement had demonstrated the ability to clear border crossings (e.g., at the Ambassador Bridge).[156] Even the violent incidents in the record — namely, Coutts — did not produce a truly national threat. This alone is sufficient to establish that there was no "national emergency".

105. Second, as the application judge said, "[w]hile I agree that the evidence supports the conclusion that the situation was critical and required an urgent resolution by governments the evidence, in my view, does not support the conclusion that it could not have been effectively dealt with under other laws of Canada, as it was in Alberta, or that it exceeded the capacity or authority of a province to deal with it'".[157] Both operational capacity and legal authority were available.[158] Indeed, the advice to

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and legal basis for the *Emergencies Act*, Bill C-77), Mr. Snarr was really there to provide "legal advice" (Canada, Parliament, House of Commons, Legislative Committee on Bill C-77, Minutes of Proceedings and Evidence, 33rd Parl., 2nd Sess., No. 8 (March 29, 1988), at p. 18).

155 Canada, Parliament, House of Commons, Legislative Committee on Bill C-77, Minutes of Proceedings and Evidence, 33rd Parl., 2nd Sess., No. 8 (March 29, 1988), at p. 23.

156 See RCMP Situation Report (February 14, 2022) [AB, Vol. 9, Tab 13.19.4, p. 5291].

157 *CFN*, at para. 254.

158 See a high-level overview of the joint policing agencies' operational plan in RCMP Situation Report (February 13, 2022) [AB, Vol. 9, Tab 13.19.4, at p. 5331].

Cabinet from the RCMP Commissioner was that, as of the morning the Act was invoked, the police had not yet exhausted their toolkit:

> … I am of the view that we have not yet exhausted all available tools that are already available through the existing legislation. There are instances where charges could be laid under existing authorities for various *Criminal Code* offences occurring right now in the context of the protest. The Ontario Provincial *Emergencies Act* just enacted will also help in providing additional deterrent tools to our existing toolbox.[159]

106. Likewise, the evidence on the ground was that the police *had succeeded* in clearing the vast majority of protests outside of Ottawa, including in Coutts and in Windsor.[160] This demonstrates that in both Alberta and Ontario there was capacity to deal with the protests without the additional powers of the *Emergencies Act*.

107. The IRG and Cabinet also contemplated, but did not exercise, a wide variety of authorities and options prior to the invocation of the *Emergencies Act*. The minutes from the IRG's final meeting on February 13 reflect consideration of the following:

- "Deploy CAF tow trucks to Windsor/Ottawa/Coutts/Emerson";[161]
- "Deploy CAF to unoccupied CI particularly border crossings";[162]
- "Private sector security in some protests";[163]
- "Promote Provincial and Territorial implementation of Maximum Enforcement Strategy comparable to approach taken by Ontario by maximizing penalties including revocation of licenses, loss of operating certificates and fines for those using private or commercial vehicles";[164]
- "Exercise any available powers under the *Not-for-Profit Act* to void the convoy being registered under the Act";[165] and

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159 E-mail Exchange between RCMP Commissioner Brenda Lucki and Mike Jones (February 14, 2022), Zwibel Affidavit, Exhibit E [AB, Vol. 6, Tab 13.8.5, p. 3252]; see RCMP Situation Report (February 13, 2022) [AB, Vol. 9, Tab 13.19.4, p. 5334].

160 See RCMP Situation Report (February 14, 2022) [AB, Vol. 9, Tab 13.19.4, p. 5291], showing that normal operations resumed at midnight with 32 arrests made and 37 vehicles towed, and that a "significant threat" had been removed in Coutts. Border serves at Coutts were fully restored by the next day (see Section 58 Explanation [AB, Vol. 4, Tab 13.2, p. 1321]).

161 Final Order and Annex A (DES-13-22) [AB, Vol. 9, Tab 13.23.2, p. 5483].

162 IRG Meeting Minutes (February 13, 2022), at p. 11 [AB, Vol. 9, Tab 13.21.6, p. 5469].

163 IRG Meeting Minutes (February 13, 2022), at p. 10 [AB, Vol. 9, Tab 13.21.6, p. 5468].

164 IRG Meeting Minutes (February 13, 2022), at p. 10 [AB, Vol. 9, Tab 13.21.6, p. 5468].

165 IRG Meeting Minutes (February 13, 2022), at p. 10 [AB, Vol. 9, Tab 13.21.6, p. 5468].

- "Ontario to [*sic*] looking at commandeering trucks as part of emergency measures".[166]

108. The IRG's reference to the Canadian Armed Forces brings forward two notable, unexercised powers in the *National Defence Act*.[167] The first is s. 273.6(2), which gives the federal Cabinet the power to authorize the military to "provide assistance in respect of any law enforcement matter", as long as (a) such assistance is in the "national interest" and (b) the matter "cannot be effectively dealt" with absent the military. The second, under s. 275, is known as "aid of the civil power". It allows a province to requisition military aid to address riots or disturbances of the peace.

109. Along the same lines, s. 67 of the *Criminal Code* — in addition to the variety of offences that were actually charged or could have been in relation to the protests — provides for what is colloquially known as "reading the Riot Act": a power to disperse groups gathered "unlawfully and riotously" on pain of imprisonment. Sections 63–66 also enjoin rioting and unlawful assembly.

110. The Attorney General places emphasis on the fact that the "law" contemplated by s. 3 of the *Emergencies Act* is the law of Canada. Even if that is the case, the foregoing are Canadian laws. But the critical law here — the *Criminal Code* — is federal statute enforced by provincial (and municipal) authorities. Their application of those laws — and their view that those laws were sufficient — is a compelling consideration undermining the reasonableness of the GIC's decision.

111. The Attorney General's response to the foregoing focuses on the issue of provincial inability or incapacity. Each of its arguments is added below.

(1) *Allegations of nationwide provincial incapacity were not justified*

112. The Attorney General reiterates that the Section 58 Explanation set out three specific allegations of incapacity. However, none of these are sustainable on a meaningful review of the facts or the law.

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166 IRG Meeting Minutes (February 13, 2022), at p. 14 [AB, Vol. 9, Tab 13.21.6, p. 5472].
167 *National Defence Act*, R.S.C., 1985, c. N-5.

113. First, there is a suggestion that, in Ottawa, police were "unable to enforce the rule of law in the downtown core due to the overwhelming volume of protesters".[168] But how the *Emergency Proclamation* and its associated regulations could respond to this issue is far from obvious. Nothing in that legislation increased police's operational capacity; it merely provided them new legal powers to deploy and new legal obligations to enforce. This was not responsive. If the issue was that the police could not enforce the rule of law, new laws would not have helped them.

114. Second, the Section 58 Explanation suggests that there was an inability to compel tow truck operators to clear vehicles in Ontario. One answer to this was military aid (which, incidentally, could have also addressed the concern above). The military could have supplemented police in Ottawa and elsewhere, including by assisting with towing. But no government asserted authority under the *National Defence Act*. While the use of the military to assist with unrest is a fraught decision, it pales in comparison to the suspension of civil liberties the *Emergency Proclamation* empowered.

115. Third, the Section 58 Explanation noted that, outside of Ontario, the police could not compel insurance companies to cancel or suspend the insurance of designated vehicles or persons.[169] While it is true that provinces other than Ontario did not have this power when the *Emergencies Act* was invoked, they could have obtained it by using emergency legislation, as Ontario did. Other provinces had even more powerful analogues of this legislation. Most notably, Alberta's *Emergency Management Act* allows the relevant Minister to "authorize or require … any qualified person to render aid of a type the person is qualified to provide"; the Minister can also make any orders necessary. [170] The fact that Alberta decided not to exercise this power does not mean it was not available and cannot justify the invocation of the *Emergencies Act*.

116. Inherent in most of the above explanations lies an important point: federal disagreement with provincial decisions not to exercise particular powers is not a

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168 Section 58 Explanation, at p. 13 [AB, Vol. 4, Tab 13.2, p. 1321].

169 As of February 17, 2022 — three days after the invocation of the *Emergencies Act*, and two days after the entry into force of the *Emergency Measures Regulations* — the police had yet to exercise this power (E-mail from Denis Beaudoin (February 17, 2022) [AB, Vol. 9, Tab 13.18.12, p. 5197]).

170 *Emergency Management Act*, R.S.A. 2000, c. E-6.8, ss. 19(1)(d), 19(1.1).

sufficient basis to conclude that the situation "exceed[ed] the capacity or authority" of the provinces or could not "be effectively dealt with" under existing law. The existence of available capacities and authorities is fatal to the assertion of provincial inability.

117. To conclude otherwise would require an untenably strained statutory interpretation of s. 3 of the *Emergencies Act*. It would "require that the *Emergencies Act*'s use of the phrase 'cannot be effectively dealt with under any other law' also implies 'will not be effectively dealt with under any other law'".[171] Nothing in the text, context, or purpose of the Act permits this substitution.

118. To the contrary, the *Emergencies Act* evinces a clear intention to assiduously guard the line between provincial and federal authority — it does not permit the federal government to override a provincial government's decision not to exercise its powers. The Act was designed with a recognition that federal emergency powers sit upon a delicate constitutional foundation, as noted in the relevant Working Paper: "[A]s Mr. Justice Beetz … stated in the *Anti-Inflation Reference*, [the national emergency doctrine operates] as a 'partial and temporary alteration of the division of powers between Parliament and the provincial legislatures' in "times of national crisis".[172] The present definition of "national emergency" was based on Beetz J.'s opinion in *Re: Anti-Inflation Act*, which required emergencies to "transcend" provincial authority before justifying resort to the POGG emergency power.[173] This definition starts in the Preamble,[174] but later becomes operative in s. 3 of the *Emergencies Act*.

119. Accordingly, emergency powers are only available in times of genuine provincial incapacity, not simply provincial inaction. This is for good reason: the provinces are best placed to determine the state of play within their borders and how best to respond to it. Only where they are incapable of doing so may the federal government intervene.

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171 Leah West, Michael Nesbitt and Jake Norris, "Invoking the *Emergencies Act* in Response to the Truckers' "Freedom Convoy 2022"" (2022) 70:2 *Criminal Law Quarterly* 262, at p. 290.

172 Emergency Preparedness Canada, *Working Paper – Bill C-77: An Act to Provide for Safety and Security in Emergencies* (1987), at p. 6 [citations omitted].

173 *Re: Anti-Inflation Act*, [1976] 2 S.C.R. 373, at p. 436.

174 Emergency Preparedness Canada, *Working Paper – Bill C-77: An Act to Provide for Safety and Security in Emergencies* (1987), at p. 9.

120. Given the available alternative authorities, it was unreasonable for the GIC to conclude that the requisite thresholds had been met. The federal government may have disagreed with the nature and extent of the various provincial responses. But this disagreement was no justification for resorting to the *Emergencies Act* to take control of provincial powers and blur the lines that federalism firmly draws.

(2) *Section 3 does not require an assessment of each provinces' internal capacity to resolve the entire emergency*

121. The Attorney General again advances an interpretive argument that revolves around the use of the singular "province" in the definition of "national emergency" in s. 3 of the *EA* (i.e., "exceed the capacity or authority of a province"). The argument goes that because of this declension, s. 3 must relate "to whether the emergency extends beyond provincial borders, preventing any one province from resolving the entire crisis, or at least one province having indicated the emergency is beyond its capacity or authority, such that the provinces collectively are unable to resolve the crisis".[175]

122. This is not the case. Not only is this argument inconsistent with s. 33(2) of the *Interpretation Act*, which provides that "[w]ords in the singular include the plural", but it cannot be sustained when s. 3 is read together with s. 17(2)(c) of the *Emergencies Act*. Together, those sections make clear that the obligation on the GIC is not just to consider whether a single province is capable of resolving the entire crisis, but to interrogate each provinces' capacity to deal with the crisis within their borders.

123. Section 17(2)(c) specifically obligates the GIC to specify "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". There is a close relationship between this provision and s. 3: if a province *can* deal with the crisis within its borders, then the emergency is not national to that extent, and, pursuant to s. 17(2)(c) the GIC would note this in any proclamation of a public order emergency.

124. In simple terms, Parliament has indicated that the government should take care in assessing the breadth of each emergency, and indeed should assess whether a given

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[175] AGC Memorandum, at para. 173.

emergency is extant in each province. Evidence that *some provinces* requested assistance with specific issues is not evidence that *all provinces* were incapable of dealing with the situation confronting them.

(3) *The Attorney General's reliance on provincial requests for federal assistance is misplaced*

125. The Attorney General argues that provincial incapacity is in part demonstrated by requests from Alberta and Manitoba for federal assistance in resolving protests at ports of entry.[176] A minister from each province had written a letter to this effect.[177]

126. But it is difficult to conclude that *Cabinet* reasonably relied on these letters as establishing provincial incapacity, given the clear statements to the contrary in the government's report on its consultations with provincial First Ministers. Alberta was "opposed to the invocation of the *Emergencies Act*", as Alberta had "all the legal tools and operational resources required to maintain order".[178] Likewise, Manitoba was "not satisfied the *Emergencies Act* should be applied in Manitoba".[179]

127. In fairness, the Section 58 Explanation does note that there were requests for "federal support" from Ottawa (for policing services), Ontario (with respect to the Ambassador Bridge), and Alberta (with respect to tow truck capacity at Coutts). But these requests could not reasonably be taken as indicia of *nationwide* inability supporting the decision to declare an emergency of national scope.

(iii) The application judge made no reversible administrative law errors

(a) No error in reviewing "reasonable grounds"

128. The Attorney General argues that the application judge "never considered whether the GIC's reasoning demonstrated reasonable grounds for *its* belief that a public order emergency existed".[180]

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176 AGC Memorandum, at para. 176.
177 Affidavit of Madeline Ross, Exhibit "Q" [AB, Vol. 4, Tab 13.6.24, p. 1468]; Exhibit "S" [AB, Vol. 4, Tab 13.6.26, at p. 1473].
178 Shragge Affidavit #1, Ex. B. [AB, Vol. 6, Tab 13.9.2, p. 3420]
179 Shragge Affidavit #1, Ex. B. [AB, Vol. 6, Tab 13.9.2, p. 3421].
180 AGC Memorandum, at para. 113.

129. This argument is impossible to sustain in light of the application judge's explicit statement to the contrary: "The requirement to be met on judicial review, as the Court found in *Spencer-FC*, was whether there was a reasonable basis in the record to support that opinion, including the criterion of no alternative, applying a deferential standard of review".[181] The Attorney General may disagree with the turns of phrase in the application judge's reasons but, as explained below, the application judge is presumed to both know and apply the law. Function review of his reasons confirms that presumption has not been displaced here.

130. The Attorney General's more fundamental complaint is that there is no relationship between the "reasonable grounds" referred to in the *EA* and Parliament's use of "reasonable grounds" in other statutes. The argument is that Cabinet can consider "'possibilities' that are supported by compelling and credible information".[182]

131. There is no support for this expansive interpretation in the text, context, or purpose of the *Emergencies Act*. Belief of reasonable grounds entails that there is "an objective basis for the belief which is based on compelling and credible information".[183] The Act is forward-looking, but that is the case for all statutes that refer to this standard — provisions applying this standard almost always authorizes action in advance of full knowledge or confirmation of what they seek to prevent. This is the case, for example, for warrant provisions in the *Criminal Code*.

132. More fundamentally, two principles of statutory interpretation (which are constraints that apply to all administrative decision-makers, even the Cabinet) confirm that the use of "reasonable grounds" here means what it usually does: "an objective basis for the belief which is based on compelling and credible information" that entailed a reasonable *probability* — not just the *possibility* — of violence.[184]

133. The Supreme Court's decision in *R. v. D.L.W.* provides guidance on why this

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181 *CFN*, at para. 283 (emphasis added), citing *Spencer v Canada (Health),* 2021 FC 621.
182 AGC Memorandum, at para. 116.
183 *R. v. Beaver*, 2022 SCC 54, at para. 72(6), citing *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, at para. 114. There is no distinction between belief on "reasonable grounds" and belief on "reasonable and probable grounds" (*R. v. Loewen*, 2011 SCC 21, at para. 5).
184 *R. v. Beaver*, 2022 SCC 54, at para. 72(6).

established meaning is important:

> First, when Parliament uses a legal term with a well-understood legal meaning, it is presumed that Parliament intended to incorporate that legal meaning into the statute. Second, any departure from that legal meaning must be clear, either by express language or necessary implication from the statute.[185]

134. *Vavilov* puts this point in terms of the presumption of consistent expression, "according to which the legislature is presumed to use language such that the same words have the same meaning both within a statute and across statutes".[186]

135. The application judge rightly recognized that "reasonable grounds to believe" is an objective standard that is deployed in myriad contexts and statutes.[187] He relied on *Mugesera* — a case involving the application of reasonable grounds in the administrative law context — to hold that the "standard requires something more than mere suspicion but less than the standard applicable in civil matters of proof on the balance of probabilities".[188] It requires "an objective basis for the belief which is based on compelling and credible information".[189] This consistency with both precedent and principle is precisely what *Vavilov* requires.[190]

136. Like the application judge, the Supreme Court has used jurisprudence from different contexts to interpret this statutory term of art. This occurred most recently in *Beaver*, a case concerning s. 495 of the *Criminal Code*, which empowers a peace officer to arrest without a warrant where "on reasonable grounds, he believes" that an offence has been committed. In interpreting that language, the Supreme Court provided a comprehensive review of the relevant jurisprudence, which included both administrative law and criminal law jurisprudence. The language of the provision in *Beaver* ("on reasonable grounds, he believes") is almost identical to the language in

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185 *R. v. D.L.W.*, 2016 SCC 22, at para. 18 (emphasis added).
186 *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65, at para. 44, citing R. Sullivan, *Sullivan on the Construction of Statutes* (6th ed. 2014), at p. 217
187 See, e.g., *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, s. 11; *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, s. 55.
188 *CFN*, at para. 282, citing *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, at para. 114.
189 *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, at para. 114.
190 *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at paras. 105, 111-14.

the *Emergencies Act* ("believes, on reasonable grounds").[191] The Attorney General's insistence that this jurisprudence does not assist is not compelling in this context.

137. In any event, the Attorney General appears to accept that the application judge articulated the correct standard, but argues that Cabinet "may reasonably consider 'possibilities' that are supported by compelling and credible information".[192] Exactly what sort of possibilities are contemplated here is not clear, but what is clear is that at first instance the Attorney General argued that the national scope of the *Emergency Proclamation* was necessary to "prevent new [protests] — which could have formed anywhere in Canada".[193] This dramatically levels down the thresholds set out in the legislation. There was no cogent evidence that protests "could have formed anywhere" and therefore that the thresholds were met everywhere.

138. To the extent that Cabinet interpreted "reasonable grounds" to mean that these sorts of "possibilities" met, its interpretation was both out of step with the governing jurisprudence and unreasonable. Suspicion will not suffice. Parliament did not empower the Cabinet to act on the suspicion that something might possibly go wrong in the future. There is a forward-looking nature to the powers in the *Emergencies Act*, but they are tempered by the understanding that reasonable invocation of the Act confers an impressively broad array of powers on the executive.

(b) No error in the structure of the application judge's reasons

139. The Attorney General faults the application judge because "[h]e did not start with the GIC's reasoning in the s. 58 explanation", and because he "did not even meaningfully summarize that reasoning".[194]

140. In making this submission, the Attorney General invites this Court to prefer excessive scrutiny — really, a treasure hunt for error — over the well-settled, functional approach to review of judicial reasons. The application judge was not obligated to "set out the obvious or show how they arrived at their conclusion in a

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191 *R. v. Beaver*, 2022 SCC 54.
192 AGC Memorandum, at para. 116.
193 See AGC Federal Court Memorandum, at para. 164 [AB, Vol. 15, Tab. 11, p. 7673].
194 AGC Memorandum, at paras. 95, 104.

'watch me think' fashion".[195] Judges — especially ones as experienced with judicial review as the application judge — are "presumed to know the law on basic points", like the point that reasonableness review begins with the decision-maker's reasons.[196]

141. There is no credible argument that the application judge was not aware of the Section 58 Explanation or somehow failed to review it. The fact that he did not "start" with the Section 58 Explanation says nothing. For example, his reasons recognize that:

- "[i]n these proceedings, the Section 58 Explanation constitutes the reasons for the decision";[197]
- meaningful review was possible because, *inter alia*, "[t]he Section 58 Explanation serves as the reasons for the decision to invoke the *EA*";[198]
- the Section 58 Explanation expresses a "serious concern on behalf of the GIC for the economic impacts relating to the operation of the border crossings and international trade interests";[199]
- "[t]he potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians is addressed at some length in the Section 58 Explanation";[200]
- The Section 58 Explanation concluded that the protests had "created a critical, urgent, temporary situation that is national in scope and cannot effectively be dealt with under any other law of Canada";[201]
- The parties' arguments centered around the content of the Section 58 Explanation, which the application judge summarized in great detail.[202]

142. When the reasons are read as a whole — as they must be[203] — it is apparent that the Section 58 Explanation was top of mind for the application judge. There is no merit to the suggestion that he did not "grapple" with it, [204] or that somehow the structure of the reasons shows that the application judge did not pay respectful attention

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195 *Canada v. Long Plain First Nation*, 2015 FCA 177, at para. 143
196 *Canada v. Long Plain First Nation*, 2015 FCA 177, at para. 143, cited in *Millennium Pharmaceuticals Inc. v. Teva Canada Limited*, 2019 FCA 273, at para. 11. See *R. v. R.E.M.*, 2008 SCC 51, at paras. 35, 55.
197 *CFN*, at para. 68.
198 *CFN*, at para. 218.
199 *CFN*, at para. 251.
200 *CFN*, at para. 252.
201 *CFN*, at para. 254.
202 See *CFN*, at paras. 226, 228, 231-33.
203 *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 94.
204 AGC Memorandum, at para. 104.

to it.[205] He did — he simply found that, when considered together with the record, it did not support a reasonable decision to invoke the *Emergencies Act*.

143. The same is true of the complaints about specific turns of phrase in the reasons. The Attorney General focuses in particular on the statement, "I conclude that there was no national emergency justifying the invocation of the *Emergencies Act* and the decision to do so was therefore unreasonable and *ultra vires*".[206] Respectfully, this focus on two words — "I conclude" — is emblematic of the picayune approach to review that the Attorney General is proposing. These words do not change the fact that the overriding focus was the reasonableness of the GIC's decision.

144. Finally, the Attorney General takes issue with this paragraph:

> At the outset of these proceedings, while I had not reached a decision on any of the four applications, I was leaning to the view that the decision to invoke the EA was reasonable. I considered the events that occurred in Ottawa and other locations in January and February 2022 went beyond legitimate protest and reflected an unacceptable breakdown of public order. I had and continue to have considerable sympathy for those in government who were confronted with this situation. Had I been at their tables at that time, I may have agreed that it was necessary to invoke the Act. And I acknowledge that in conducting judicial review of that decision, I am revisiting that time with the benefit of hindsight and a more extensive record of the facts and law than that which was before the GIC.[207]

145. These candid contemplations do not displace the rigour of the rest of the application judge's reasons, which, for the reasons above, consistently display the posture necessary and appropriate on judicial review.

146. There is no doubt that judicial review is conducted with hindsight, just in the sense that it occurs after a decision is made. But that does not mean the application supplemented his understanding of what occurred on February 14, 2022, with facts not known at the time, as occurred in the COVID-19 cases that the Attorney General relies

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205 AGC Memorandum, at para. 106.
206 AGC Memorandum, at para. 107, citing *CFN*, at para. 255.
207 *CFN*, at para. 370.

on.[208] Nothing in the reasons suggests this occurred.

147. Indeed, it is not clear what the application judge meant by referring to a "more extensive record of the facts and law than that which was before the GIC". The facts the application judge relied on were largely undisputed. As explained in the CCLA-CCF joint memorandum on the interlocutory appeal, what the judge relied on was either before the GIC or necessary background that the GIC was aware of (e.g., the Invocation Memorandum, and the Clerk of the Privy Council and Prime Minister's explanation of how that memorandum is used). These inputs on judicial review were not supplemental to the GIC's deliberations, they were essential to them. The law was admittedly expanded, as it often is on judicial review. And indeed, it had to be, as the GIC's interpretation and application of the law were flawed. The application judge identifying those flaws and concluding the decision was unreasonable is not a reviewable problem.

148. The application judge's acknowledgement that he may have made the same decision as the GIC, or that prior to hearing argument he would have upheld it, means little. It is an observation that tensions were high around the Cabinet table and in Canada more generally. But those tensions are more an explanation why an unreasonable decision was made than a basis to excuse it. Judicial review provides the sober second thought to confirm whether a decision is reasonable. That it is removed from the exigencies of the situation is a feature, not a defect, of the process.

(c) <u>The "prevention" rationale does not insulate the decision from judicial review and should be used with caution</u>

149. At various points, the Attorney General argues that the exigencies of the situation and the "cost of failure" can relax the intensity of judicial review of Cabinet decisions to invoke the *Emergencies Act* or can relax the stringency of the legal thresholds built into the Act.[209] The Attorney General argues that the decision of how best to use public resources in fast-moving situations "must be left to the GIC".[210] To the extent that the application judge did not defer on this basis, he is said to have erred.

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208 AGC Memorandum, at para. 112.
209 AGC Memorandum, at para. 110.
210 AGC Memorandum, at para. 100.

150. There are two specific responses to this, both of which embed the same basic point: deference based on exigency is a fraught path, particularly when the stakes are as high as the *Emergencies Act* allows them to be.

151. First, as the foregoing has shown, the record did not support a reasonable conclusion that the stringent thresholds of the *Emergencies Act* were met. The extent of the overriding deference that the Attorney General seeks here — deference that would relax the reviewability of all decisions made under the Act — stands in stark contrast to the clear Parliamentary intention to subject decisions to invoke the Act to judicial review. The application judge recognized that "[t]he legislative history … is clear that judicial review of the reasonableness of invocation was contemplated by Parliament when the statute was enacted", and that "[t]he intent was to ensure that Canadians would have the ability to challenge the decision in court".[211] The intent was also that "the courts have an important role in controlling the actions of the executive in times of emergency".[212]

152. Simply put, Parliament's intention was that the *courts* would be called upon to answer the legal question of whether any invocation of the *Emergencies Act* was lawful. The extent of the deference that the Attorney General seeks here would effectively insulate the GIC's decision from judicial review and undermine that intention. *Vavilov* further confirms that judicial review, while sensitive and respective, nonetheless entails a "robust, evaluation of administrative decisions".[213]

153. Second, this Court should exercise caution in vindicating a general "prevention" rationale as a reasonable exercise of the *Emergencies Act*. It is true that the Act does not require Cabinet to wait until a threat has materialized before taking

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211 *Canadian Civil Liberties Association v. Canada (Attorney General)*, 2023 FC 118, at paras. 56-57. Canada, Parliament, House of Commons, Legislative Committee on Bill C-77, an Act to amend the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, *Minutes of Proceedings and Evidence of the Legislative Committee*, 33rd Parl., 2nd Sess., vol. 1, no. 1 (February 23, 1988), at p. 15.

212 Canada, Parliament, House of Commons, Legislative Committee on Bill C-77, an Act to amend the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, *Minutes of Proceedings and Evidence of the Legislative Committee*, 33rd Parl., 2nd Sess., vol. 1, no. 1 (February 23, 1988), at p. 15.

213 *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 12, citing *Dunsmuir v. New Brunswick,* 2008 SCC 9, at para. 28.

action — it can do so based on "threats" of future violence.[214] But the Attorney General's argument takes this statutory grant of power to its extreme: it says the overbreadth of the orders was necessary because they were designed to "prevent new [protests] — which could have formed anywhere in Canada".[215] This dramatically levels down the thresholds set out in the legislation. There was no clear evidence that protests "could have formed anywhere" or that the thresholds were met everywhere.

154. The Attorney General supports this preventative approach on the basis of jurisprudence from the terrorism context (e.g., *Suresh* and *Charkaoui*).[216] But caution should be exercised in applying these cases this way. Indeed, *Suresh* involved allegations of terrorist financing,[217] and *Charkaoui* involved an individual being detained on a security certificate indicating that his alleged terrorist activities constituted threats to the security of Canada.[218] The decisions in both cases suffered from procedural and *Charter*-related defects that led to them being quashed.

155. The lesson from these cases and Canada's experience with terrorism generally is that the broad goal of preventing national security issues is not a license to abandon the rule of law or the protection of civil liberties. One need look no further than Canada's likely contribution to the detention and torture of individuals like Maher Arar, Abullah Almalki, Ahmad Abou-Elmaati, and Muayyed Nureddin.[219] As Justice Iacobucci noted in his related inquiry report, "Canada must choose means to deal with terrorism that are governed by the rule of law and respect for our cherished values of freedom and due process".[220] Whether in response to terror or emergency, this balance, while difficult, is essential to maintain.

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214 *EA*, s. 16.
215 AGC Memorandum, at para. 164.
216 AGC Memorandum, at para. 70.
217 *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, at paras. 5-6.
218 See *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9, at para. 10.
219 Canada, the Honourable Frank Iacobucci, Q.C., Commissioner, *Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin* (Ottawa: Privy Council Office, 2008) [*Iacobucci Report*], at p. 12 et seq.
220 *Iacobucci Report*, Commissioner's Statement.

B. THE APPLICATION JUDGE DID NOT ERR IN FINDING THAT THE INFRINGEMENTS OF SS. 2(B) AND 8 OF THE *CHARTER* WERE NOT DEMONSTRABLY JUSTIFIED

156. The Attorney General acknowledges that the standard of review on the various *Charter* issues is correctness.[221] Nonetheless, it argues the application judge erred in finding that the *Regulations* unjustifiably limited freedom of expression under s. 2(b) of the *Charter*, and that the *Economic Order* was contrary to s. 8.[222] In the alternative, the Attorney General argues that to the extent that these measures limited *Charter* rights, any limit was "minimal, temporary, and justified in light of the unfolding public order emergency".[223] These arguments should be dismissed.

(i) The *Regulations* violated s. 2(b) of the *Charter*

157. The application judge held that the prohibitions set out in the *Regulations* — the Prohibition on Public Assembly (s. 2), the Prohibition on Travel to an Assembly (s. 4), and the Prohibition on Providing Property (s. 5) — inhibited basic and essential forms of democratic participation. These prohibitions targeted any "public assembly that may reasonably be expected to lead to a breach of the peace" (i.e., "(a) the serious disruption of the movement of persons or goods or the serious interference with trade; (b) the interference with the function of critical infrastructure; or (c) the support of the threat or use of acts of serious violence against persons or property").[224]

158. The application judge was correct to conclude that these prohibitions infringed s. 2(b) of the *Charter*. The purpose of protecting this freedom is to "ensure that everyone can manifest their thoughts, opinions, … however unpopular, distasteful or contrary to the mainstream".[225] Therefore, subject only to narrow exceptions, s. 2(*b*) captures "any activity or communication that conveys or attempts to convey meaning".[226] The application judge rightly recognized that the *Regulations* "criminalize[d] attendance at the protests by anyone, no matter if they participated in

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221 AGC Memorandum, at para. 90.
222 AGC Memorandum, at para. 199.
223 AGC Memorandum, at para. 200.
224 *Regulations*, SOR/2022-21.
225 *Ward v. Quebec (Commission des droits de la personne et des droits de la jeunesse)*, 2021 SCC 43, at para. 59, citing *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927, at p. 968.
226 *Thomson Newspapers Co. v. Canada (Attorney General)*, [1998] 1 S.C.R. 877, at para. 81; *Canadian Broadcasting Corp. v. Canada (Attorney General)*, 2011 SCC 2, at para. 34.

the actual conduct leading to a breach of peace"; "[b]y criminalizing the entire protest, the Regulations limited the right to expression of protestors who wanted to convey dissatisfaction with government policies, but who did not intend on participating in the blockades".[227] The application judge accepted that the *Regulations* would criminalize, for example, someone who wanted to protest by standing on Parliament Hill with a placard. Insofar as free expression encompasses the right to express oneself in public spaces — including inherently *political* spaces — this is a constitutional problem.

159. The Attorney General's argument to the contrary centres around the idea that "not all activities associated with protests fall within the scope of s. 2 freedoms".[228]

160. This is true, at least with respect to violence or threats of violence,[229] but it is not responsive to the constitutional defect the application judge identified. That defect was quite simply that the *Regulations* enjoined activities that fell far short of violence.

161. No jurisprudence binding on this Court circumscribes s. 2(b) as narrowly as the Attorney General suggests, and for good reason: "demonstrating is a well-established activity", and that "the right to protest government action lies at the very core of the guarantee of freedom of expression".[230] Attendance at a public assembly and funding participants in an assembly that has protest at its purpose meets this broad definition, particularly where the protest is against government policy.

162. A final point should be made about the Attorney General's suggestion that "purely physical" activities are not expressive.[231] This is difficult to square with the Supreme Court's recognition that, subject only to narrow exceptions, s. 2(*b*) captures "any activity or communication that conveys or attempts to convey meaning".[232] Distinguishing between activities that are "purely physical" and activities that convey meaning is fraught in the context of protest. As the application judge noted, protests

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227 *CFN*, at para. 307.
228 AGC Memorandum, at para. 205.
229 *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927, at p. 970.
230 *Figueiras v. Toronto (Police Services Board)*, 2015 ONCA 208, at para. 69, citing *Ontario Teachers' Federation v. Ontario (Attorney General)* (2000), 49 O.R. (3d) 257 (C.A.), at para. 34.
231 AGC Memorandum, at para. 205.
232 *Thomson Newspapers Co. v. Canada (Attorney General)*, [1998] 1 S.C.R. 877, at para. 81, citing *Libman v. Quebec (Attorney General)*, [1997] 3 S.C.R. 569, at para. 31; *Canadian Broadcasting Corp. v. Canada (Attorney General)*, 2011 SCC 2, at para. 34.

are "inherently disruptive" — that disruption is, however, part of the expression.[233] This Court should not endorse the Attorney General's narrowing of freedom of expression to exclude "purely physical" activities, particularly when "unobstructed access to and diffusion of ideas" is a prerequisite to the "proper functioning of democratic governance" and protected by s. 2(b) of the *Charter*.[234]

(ii) The *Economic Order* infringed s. 8 of the *Charter*

163. In attempting to displace the application judge's conclusions that ss. 2(1), 5 and 6 of the *Economic Order* were contrary to s. 8 of the *Charter*, the Attorney General makes two arguments. First, it says that the application judge erred in finding that s. 2(1) authorized "seizures". Second, the Attorney General argues that any "searches" authorized by ss. 5 and 6 were reasonable. Each of these arguments is answered below.

(a) Section 2(1) authorized unreasonable seizures

164. The application judge rightly concluded that s. 2(1) — which empowered financial institutions to freeze the assets of any designated person by ceasing to deal with them, without judicial authorization and without any reasonable grounds — authorized "seizures" within the meaning of s. 8 of the *Charter*. In his view, this freezing constituted a seizure along the lines described in the Supreme Court's decisions in *Dyment* and *Thomson Newspapers*.[235] This conclusion was correct — even the police themselves would refer to these powers as "seizure[s]".[236]

165. Both of these cases, as well as their interpretation in *Laroche*, are critical here. *Dyment* confirmed that "the essence of a seizure under s. 8 is the taking of a thing from a person by a public authority without that person's consent".[237] *Thomson Newspaper* recognized that a seizure is "the taking hold by a public authority of a thing belonging to a person against that person's will".[238]

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233 *CFN*, at para. 306, citing *Harper v. Canada (Attorney General)*, 2004 SCC 33, at paras. 47, 66,
234 *Grant v. Torstar Corp.,* 2009 SCC 61, at para. 48, quoting *Switzman v. Elbling*, [1957] S.C.R. 285, at p. 306.
235 *CFN*, at para. 334.
236 E-mail from Denis Beaudoin (February 17, 2022) [AB, Vol. 9, Tab 13.18.12, p. 5197].
237 *R. v. Dyment*, [1988] 2 S.C.R. 417, at p. 431.
238 *Thomson Newspapers Ltd. v. Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)*, [1990] 1 S.C.R. 425, at p. 493.

166. *Laroche* reined these cases in by recognizing that s. 8 conferred protection against unreasonable seizures while also falling short of full protection of property rights. *Laroche* assessed the constitutionality of criminal restraint orders covering intangible property like bank accounts, among other things. The Court recognized that an overly broad interpretation of "seizure" under s. 8 would "eventually transform a provision intended to protect individual privacy into a constitutional guarantee of property rights, which was deliberately not included in the *Charter*".[239] Accordingly, the word seizure must be defined according to "the context and the objective of the guarantee".[240] That is, "[a] detention of property, in itself, does not amount to a seizure for *Charter* purposes — there must be a superadded impact upon privacy rights occurring in the context of administrative or criminal investigation".[241]

167. That superadded impact arises here, by virtue of the close connection between s. 2(1) and the *Regulations.* Section 2(1) authorizes the freezing of the assets of a "designated person", which is "any individual or entity that is engaged, directly or indirectly, in an activity prohibited by sections 2 to 5 of the *Emergency Measures Regulations*". Designated individuals who contravene those prohibitions commit an offence punishable by imprisonment, contrary to s. 10 of the *Regulations*. In this way, s. 2(1) furthered the criminal law purposes behind the *Emergency Measures Regulations*. This is not, as the Attorney General puts it, a seizure that is "for reasons other than administrative or criminal investigation"[242] — these seizures were designed to work in tandem with the investigations that lead to charges under the *Regulations*.

168. Notably, the Attorney General has not advanced the argument that, if s. 2(1) authorizes seizures within the meaning of s. 8 it is nonetheless reasonable. Nor could it. This seizure was not a reasonable way to further the government's law enforcement objectives. It put the entirety of a designated person's assets within the control of the state, or at least outside of their own control. The impacts of this freezing are dramatic:

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239 *Quebec (Attorney General) v. Laroche*, 2002 SCC 72, at para. 52.
240 *Quebec (Attorney General) v. Laroche*, 2002 SCC 72, at para. 53.
241 *Quebec (Attorney General) v. Laroche*, 2002 SCC 72, at para. 53, quoting S. C. Hutchison, J. C. Morton and M. P. Bury, *Search and Seizure Law in Canada* (Toronto: Carswell, 1993) (loose-leaf updated 2002, release 2), at p. 2-5.
242 AGC Memorandum, at para. 225.

they deny individuals access to money needed to buy food and water. This freezing occurred without judicial authorization or even reasonable grounds.[243] It could not be reasonable within the meaning of s. 8.

(b) Sections 5 and 6 authorized unreasonable searches

169. There is no dispute that ss. 5 and 6 facilitated searches. Section 5 required financial institutions to disclose private information regarding designated persons to the RCMP or CSIS, while s. 6 empowered governments or their institutions to disclose private information to financial institutions. This bank account information unquestionably engaged account holders' reasonable expectations of privacy, [244] as an individual's purchases can "broadcast a wealth of personal information capable of revealing personal and core biographical information about the purchaser, from the restaurants they frequent, the destinations they visit, the hobbies they enjoy, to the health supplements they use. Internet users may even have an acute privacy interest in the *fact* of their electronic purchases especially as our marketplaces rapidly migrate online".[245] Insofar as it reveals peoples' lifestyle and personal choices, this information lies at the "biographical core" of personal privacy.[246] This being the case, "any non-consensual examination by the state was a 'search'; and any taking, a 'seizure'".[247]

170. The dispute between the parties lies in whether these searches were reasonable within the meaning of s. 8 of the *Charter*. Where a search is authorized by law, the search or seizure is reasonable within the meaning of s. 8 "if the law itself is reasonable and if the manner in which the search is carried out is reasonable".[248]

171. As early as *Hunter v. Southam*, the Supreme Court confirmed that s. 8's preventative approach militates in favour of a prior judicial approval.[249] Searches and seizures conducted without prior judicial authorization — as is the case here — are presumptively unreasonable. The burden of establishing reasonableness thus rests with

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243 *CFN*, at para. 335.
244 *R. v. Bykovets*, 2024 SCC 6, at para. 38, citing *R. v. Spencer*, 2014 SCC 43, at para. 31.
245 *R. v. Bykovets*, 2024 SCC 6, at para. 62, citing *R. v. Marakah,* 2017 SCC 59, at para. 33.
246 *R. v. Tessling*, 2004 SCC 67, at para. 25.
247 *R. v. Cole*, 2012 SCC 53, at para. 39.
248 *R. v. McGregor*, 2023 SCC 4, at para. 26, citing *R. v. Collins*, [1987] 1 S.C.R. 265, at p. 278
249 *Hunter et al. v. Southam Inc*., [1984] 2 S.C.R. 145, at pp. 161-62.

the Attorney General.[250]

172. The application judge rightly recognized that the Attorney General failed to discharge this burden. He found that the RCMP had exercised the authority to search and seize under the *Economic Order* on the basis of "bare belief".[251] This absence of any judicial authorization or substitutable threshold of suspicion is fatal to the constitutionality of the Order.

173. The absence of any objective standard justifying state intrusion was confirmed by RCMP Superintendent Denis Beaudoin, who has been the Director of Financial Crime, Federal Policing Criminal Operations since 2021.[252] Superintendent Beaudoin oversaw the implementation of the Order.[253] He explained that, "in practice, the police provided financial service providers with information about particular individuals or entities, which the financial service providers could use in conjunction with other information" to determine whether steps needed to be taken".[254] In cross-examination, Superintendent Beaudoin was pressed on the threshold the RCMP met before it shared information on designated persons with banks and other institutions. He explained that the RCMP did not apply a standard of either reasonable grounds or a standard of reasonable suspicion.[255] All they required was bare belief.[256]

174. The problems with the police identifying designated persons without reference to any objective standard were compounded when they shared this information with banks. The banks were plainly lost as to how to go about identifying "designated persons" and looking to the RCMP: meeting notes show that banks were "wondering" how to identify designated persons; they were told to "leverage the news" and that the RCMP "could try to provide names of people arrested, to help the banks have a better

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250 *Goodwin v. British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 46, at para. 56.
251 *CFN*, at para. 337.
252 Affidavit (#1) of Denis Beaudoin [**Beaudoin Affidavit #1**], at para. 1 (April 22, 2022) [AB, Vol. 8, Tab 13.12, p. 4627].
253 Beaudoin Affidavit #1, at para. 2 [AB, Vol. 8, Tab 13.12, p. 4627].
254 Beaudoin Affidavit #1, at para. 9 [AB, Vol. 8, Tab 13.12, p. 4628].
255 Cross-Examination of Denis Beaudoin (June 21, 2022) [AB, Vol. 8, Tab 18, at p. 4937, lns. 16-19].
256 Cross-Examination of Denis Beaudoin (June 21, 2022) [AB, Vol. 8, Tab 18, at p. 4937, lns. 9-13].

picture of the status of the designated people on the ground".[257] This makes sense, since identifying designated persons is a law-enforcement activity, not a banking one. While the RCMP reiterated at times that banks were responsible for identification, in practice it is hard to see how any independent determinations would be made.

175. Superintendent Beaudoin went on to confirm that, beyond what the RCMP provided to banks, the other information at their disposal included "just public knowledge that, you know, they would have information about your name, your date of birth, bank account information, transactions" and "the internet and social media".[258]

176. None of this was reasonable within the meaning of s. 8, and the application judge rightly concluded that "the failure to require that some objective standard be satisfied before the accounts were frozen breached s. 8".[259]

177. Contrary to the Attorney General's submissions, *Goodwin* is no answer here. *Goodwin* holds that "[w]here an impugned law's purpose is regulatory and not criminal, it may be subject to less stringent standards" under s. 8.[260] But *Goodwin* — a case involving the administrative immediate roadside prohibition scheme in British Columbia — nonetheless applied the rule of presumptive unreasonableness set out in *Hunter v. Southam.* And the scheme upheld in that case still required police to employ an objective standard: reasonable suspicion.[261]

178. This critical feature was absent in this case, and it is no answer to say that its absence can be excused by the "limited scope, duration, and focus of the information sharing authorized by ss. 5 and 6 of the *Economic Order* in this non-criminal, emergency context". Respectfully, this argument places undue emphasis on the scope, duration and focus of the information obtained, to the detriment of the meaning of "designated persons". The *Economic Order* describes a designated person simply as

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257 RCMP Minutes from Meeting with Banks (February 18, 2022) [AB, Vol. 9, Tab 13.18.10, p. 5189]; see RCMP Supplementary Timeline of Events (February, 24, 2022) [AB, Vol. 9, Tab 13.8.11, p. 5195].

258 Cross-Examination of Denis Beaudoin (June 21, 2022) [AB, Vol. 8, Tab 18, at p. 4940, lns. 6-22].

259 *CFN*, at para. 341.

260 *Goodwin v. British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 46, at para. 60, citing *British Columbia Securities Commission v. Branch*, [1995] 2 S.C.R. 3, at para. 52; *R. v. McKinlay Transport Ltd.*, [1990] 1 S.C.R. 627, at p. 647 (*per* Wilson J).; *R. v. Jarvis*, 2002 SCC 73.

261 *Goodwin v. British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 46, at para. 62.

"any individual or entity that is engaged, directly or indirectly, in an activity prohibited by sections 2 to 5 of the *Emergency Measures Regulations*".[262] That determination was left entirely to the financial institutions and the RCMP. Without further guidance in the *Economic Order*, the RCMP foisted this responsibility on the banks, leaving them to "wonder" how to identify designated persons.[263] As a result, the *Economic Order*'s ambiguity permitted both financial institutions and the RCMP to intrude on the privacy of individuals based on unfounded, subjective beliefs. This is unreasonable.

(iii) The *Charter* infringements could not survive s. 1 scrutiny

179. The Attorney General bears a heavy burden to demonstrate that any found *Charter* rights infringements are justified under s. 1. This requires *evidence*, not just *inference*,[264] to show that the laws at issue pursue a pressing and substantial objective, and that the means chosen are proportionate to that objective.[265]

180. In this case, the Attorney General adduced little evidence to support the contention that the *Charter* infringements described above — infringements of ss. 2, and 8 — are demonstrably justified. The evidence largely consisted in: the affidavit of Superintendent Beaudoin; an affidavit of a Privy Council Office employee, Steven Shragge (generally explaining the Cabinet and IRG processes); and background (mostly news articles) attached to a paralegal's affidavit.

181. Although some measure of deference is accorded to the government in the s. 1 analysis, the record before this Court leaves little support for the sweeping measures implemented using the *Emergencies Act*. And again, gaps in the record, insofar as they relate to assertions of privilege, may justify an adverse inference.

182. The laws at issue here founder where laws often do: at minimal impairment. Minimal impairment requires the government "to show that the measure at issue

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262 *Economic Order*, s. 1.

263 RCMP Minutes from Meeting with Banks (February 18, 2022) [AB, Vol. 9, Tab 13.18.10, p. 5189]; see RCMP Supplementary Timeline of Events (February, 24, 2022) [AB, Vol. 9, Tab 13.8.11, p. 5195].

264 *R. v. Ndhlovu*, 2022 SCC 38, at para. 118, citing *R. v. Sharpe*, 2001 SCC 2, at para. 78.

265 *R. v. Bissonnette*, 2022 SCC 23, at para. 120, citing *R. v. Nur*, 2015 SCC 15, at para. 111; *R. v. Oakes*, [1986] 1 S.C.R. 103, at pp. 139-40.

impairs the right as little as reasonably possible in furthering the legislative objective".[266] The laws must be "carefully tailored".[267] This did not occur here.

183. The laws failed to be minimally impairing for two reasons. First, they applied throughout Canada, exposing everyone within the country to their reach absent justification. The fact that the laws were not enforced in particular areas is inconsequential when they applied everywhere. It is no answer that police and banks intended to (or even did) enforce the measures selectively when the measures could simply have been tailored to the actual emergent issues. Second, there were less impairing alternatives available. The *Emergency Economic Measures Order* provides a good example: police needed an objective standard of suspicion as a prerequisite to asset freezing or information sharing. And there were other options, including judicious use of the military, that may have avoided *Charter* infringements altogether.

184. The Attorney General argues that the *Regulations* were a proportional means of achieving its ends — that is, "to implement an *effective* solution to this multifaceted crisis".[268] Yet this is but a partial exposition of the aims of the *Emergencies Act*. In particular, its preamble also states that, in implementing the special temporary measures authorized under the Act, the Governor in Council remains "subject to the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights* and must have regard to the *International Covenant on Civil and Political Rights*, particularly with respect to those fundamental rights that are not to be limited or abridged even in a national emergency".[269]

185. The justificatory analysis under s. 1 therefore cannot focus solely on the *Regulations* and the *Economic Order*'s objective of bringing an end to the protests. The analysis must also consider whether they did so in a manner that respected the GIC's legislatively mandated observance of the fundamental rights and freedoms of individuals. In other words, at this stage of the analysis, the Attorney General is

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266 *Frank v. Canada (Attorney General)*, 2019 SCC 1, at para. 66, citing *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199, at para. 160.

267 *Frank v. Canada (Attorney General)*, 2019 SCC 1, at para. 66, citing *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1, at para. 149.

268 AGC Memorandum, at para. 206 (emphasis in original).

269 *EA*, Preamble, para. 3.

required to demonstrate that there were no less harmful means of achieving the *EA*'s legislative goal of preserving and protecting fundamental rights even in emergency situations where temporary measures may be required.[270]

186. The Attorney General has not done so and cannot point to the measure of deference afforded to the state to excuse its failure to demonstrably justify its infringement of fundamental freedoms. "While the government is entitled to deference in formulating its objective, that deference is not blind or absolute".[271]

187. In particular, the Attorney General's attempts to justify the *Regulations*' infringement of s. 2(b) ignores that the expression at issue strikes at the very core of the values underlying freedom of expression. As described above, political expression of the type engaged in by these protesters is prerequisite to the proper functioning of democratic governance. For that reason, it is deserving of the fullest extent of the Constitution's protection. Indeed, political expression is "the single most important and protected type of expression".[272] "The state therefore cannot act to hinder or condemn a political view without to some extent harming the openness of Canadian democracy and its associated tenet of equality for all".[273]

188. It is not open to the state to restrict such a fundamentally important right based on vague, unsubstantiated apprehensions concerning "the potential for an increase in the level of unrest and violence", the unfounded risks that "demonstrators would simply regroup and re-establish somewhere else", or [t]he use of social media and encrypted chat apps".[274] The *Regulations'* sweeping limitations on speech captured conduct that evidently bore no connection to what the state alleges was an ongoing national emergency. They therefore restricted the rights of the citizenry to engage in the speech necessary for the continuance of Canada's democracy without furthering the aims of

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270 *CFN*, at para. 118; see also *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37, at para. 53.

271 *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37, at para. 55.

272 *Hansman v. Neufeld*, 2023 SCC 14, at para. 91, quoting *Harper v. Canada (Attorney General)*, 2004 SCC 33, at para. 11 (per McLachlin C.J. and Major J., dissenting in part, but not on this point).

273 *R. v. Keegstra*, [1990] 3 S.C.R. 697, at p. 764; *Harper v. Canada (Attorney General)*, 2004 SCC 33, at para. 12 (per McLachlin C.J. and Major J., dissenting in part).

274 AGC Memorandum, at paras. 211-12.

the *EA* or the *Regulations*. These measures were not minimally impairing.

189. The Attorney General's efforts to justify the *Economic Order*'s infringement of s. 8 is vulnerable on similar grounds. The Attorney General argues that the *Economic Order* needed a national scope to effectively disrupt the funding of the blockades because "[c]onvoy participants came across the country".[275] Yet this argument does nothing to address the fact that the GIC implemented a national economic measure with no objective means to limit its scope to those who were participating in the protests. As the application judge conclude, "someone who had nothing to do with the protests could find themselves without the means to access necessaries for household and other family purposes while the accounts were suspended".[276]

190. The fact that "Parliament had a *reasonable basis* for concluding that perceived harms existed" is of little comfort if the measures crafted to respond to that harm do not themselves operate on a reasonable basis. [277] By failing to tailor the impact of the *Economic Order* to those with an objective connection to the protests, Parliament necessarily captured targeted individuals where doing so bore no connection to the *Economic Order*'s objective of ending the protests. This was not minimally impairing.

191. For similar reasons, there was no proportionality here. The salutary effects — clearing of the protests — could have been achieved using existing authorities. Many protests were cleared by the time the *EA* was invoked. The deleterious effects included the nationwide suspension of civil liberties. Exigency cannot excuse this.

C. CROSS-APPEAL: THE *REGULATIONS* INFRINGED S. 2(C) OF THE *CHARTER*

192. The foregoing notwithstanding, the application judge found that the Prohibition on Public Assembly and Prohibition on Travel to an Assembly did not violate the freedom of peaceful assembly in s. 2(c) of the *Charter*. In doing so, he erred.

193. The application judge agreed with the Attorney General that "gatherings that employ physical force, in the form of enduring or intractable occupations of public

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275 AGC Memorandum, at para. 247.
276 *CFN*, at para. 357.
277 AGC Memorandum, at para. 215.

space that block local residents' ability to carry out the functions of their daily lives, in order to compel agreement [with the protestors' objective] are not constitutionally protected".[278] He pointed to s. 19(1)(a)(i) of the *Emergencies Act*, which authorizes regulations prohibiting "any public assembly that may reasonably be expected to lead to a breach of the peace", and concludes that the evidence supported the conclusion that the Regulations fell within that scope. [279] In other words, his view was that the *Regulations* could not infringe the freedom to peaceful assembly because they supposedly targeted only assemblies that breached the peace.

194. These conclusions are difficult to reconcile with the application judge's s. 2(b) analysis. With respect to s. 2(b), the application judge had concluded that "the effect of the Regulations was to criminalize attendance at the protests by anyone, no matter if they participated in the actual conduct leading to a breach of peace". Because the *Regulations*' infringement of s. 2(b) rested on their criminalization of non-violent protesters, they also necessarily infringed s. 2(c).

195. An infringement of s. 2(b), to the extent it is based on factual matrix involving an assembly, necessarily works a breach of s. 2(c). Indeed, the purpose of freedom of assembly in s. 2(c) is closely related to freedom of expression in s. 2(b). Indeed, "[f]reedom of assembly is 'speech in action'".[280] Like freedom of expression (and religion, and assembly), s. 2(c) "protects rights fundamental to Canada's liberal democratic society".[281] Guy Régimbald and Dwight Newman observe a similar point about the relationship between freedom of association and protest in *The Law of the Canadian Constitution*: "protest activity will be activity that conveys or attempts to convey meaning, with the result that the same activity can be analyzed under the freedom of expression guarantee".[282] To the extent that expression that includes an assembly is protected by s. 2(b), it should also be protected by freedom of assembly.

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278 *CFN*, at para. 313.
279 *CFN*, at para. 312.
280 *Ontario (A.G.) v. Dieleman* (1994), 20 O.R. (3d) 229 (Gen. Div.) at pp. 329-330.
281 *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1, at para. 48.
282 Guy Régimbald and Dwight Newman, *The Law of the Canadian Constitution*, 2nd ed. (Toronto,: LexisNexis, 2017), at p. 645, citing *British Columbia Teachers' Federation v. British Columbia Public School Employers' Assn.*, 2009 BCCA 39.

196. Partly for this reason, the Supreme Court has at times declined to deal with s. 2(c) after reaching a conclusion on s. 2(b). This occurred, for example, in *Law Society of British Columbia v. Trinity Western University*.[283] In *Trinity Western*, the majority declined to conduct separate analyses of s. 2(a), 2(b), 2(d), and 15 because "the religious freedom claim [was] sufficient to account for the expressive, associational, and equality rights of [the claimants] in the analysis".[284] As McLachlin C.J. wrote in concurrence, the guarantees enshrined in ss. 2(b), 2(d), and 15 were "include[d]…in the ambit of freedom of religion".[285]

197. Appellate courts have applied a similar analysis to overlapping claims under ss. 2(b) and 2(c). In *Figueiras*, Rouleau J.A. reasoned that "[h]aving found a s. 2(b) violation, there is no need to address Mr. Figueiras' s. 2(c) argument", as "issues related to Mr. Figueiras' freedom of assembly are subsumed by the s. 2(b) analysis".[286] Justice Sossin reached a similar conclusion in *Trinity Bible Chapel*. He held that the appellants' right to freedom of expression was captured in their other *Charter* claims because "the appellants' s. 2(a) rights accounted for their related rights to express their religious beliefs, assemble for the purpose of engaging in religious activity, and associate with others who share their faith".[287]

198. These authorities suggest that a s. 2(b) infringement based on the limitation of non-violent protest necessitates a s. 2(c) infringement. This makes sense given the courts' reluctance to place limits on disruptive but ultimately non-violent protest[288] — a mirror of the courts' reluctance to place limits on non-violent expression. To the extent the application judge concluded otherwise, he was respectfully in error.

199. In the Court below, the Attorney General argued otherwise by relying on

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283 *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32. See also *R. v. Khawaja*, 2012 SCC 69, at para. 66.
284 *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32, at para. 77.
285 *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32, at para. 122 (*per* McLachlin C.J., concurring).
286 *Figueiras v. Toronto (Police Services Board)*, 2015 ONCA 208, at para. 75.
287 *Ontario (Attorney General) v. Trinity Bible Chapel*, 2023 ONCA 134, at para. 67.
288 *CFN*, at para. 206, citing *Harper v Canada (Attorney General)*, 2004 SCC 33 at paras 47 and 66.

essentially two cases: *Lecompte* and *Guelph*.[289]

200. *Lecompte* was a case about the constitutionality of s. 63 of the *Criminal Code*, which prohibited assemblies that resulted in "tumultuous" breaches of the peace. The Quebec Court of Appeal interpreted "tumultuous" as limiting only non-peaceful assemblies or assemblies that began peacefully but degenerated into riots.[290]

201. The difficulty with the reliance on this case is two-fold. First, *Lecompte* is essentially a pure legal opinion — there is no factual foundation to consider. Given the Supreme Court's consistent admonitions against adjudicating constitutional issues in the absence of such a foundation,[291] reliance on this case should be sparing. Second, it where an assembly is entirely violent, there may be no infringement. *Lecompte* is unhelpful as it does not express a final opinion on whether "tumultuous" enjoins non-violent protest (i.e., protest that would not otherwise have been protected under s. 2(b)).

202. In any event, what is clear is that the *Regulations* go far beyond prohibiting violent assemblies, or even assemblies that can be reasonably expected to be violent — they prohibit assemblies that disrupt, for example, highways. Prohibiting this sort of disruption, at least where it is non-violent, is contrary to s. 2(c) of the *Charter.*

203. *Guelph* was a case about an injunction to stop protestors from accessing private property. This case is from the Superior Court of Justice and is not binding in any way, and there does not appear to be any other case relying on it.

204. A crucial finding in that case was that there was "no evidence that [the road at issue] had been traditionally designated for public use".[292] Indeed, in the past, the lands at issue had been used for agricultural purposes and included areas of uncleared forest and wetlands. That is not the case here. The roads of concern to the government were seriously public: the road to Parliament. There can be no reasonable dispute that these are public roads where protests are constitutionally protected.

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289 *R. v. Lecompte*, 2000 CanLII 8782 (Q.C. C.A.); *Guelph (City) v. Soltys*, 2009 CanLII 42449 (Ont. S.C.).
290 *R. v. Lecompte*, 2000 CanLII 8782 (Q.C. C.A.), at para. 16.
291 *R. v. DeSousa*, [1992] 2 S.C.R. 944, at p. 954; see *R. v. Mills*, [1999] 3 S.C.R. 668, at para. 41.
292 *Guelph (City) v. Soltys*, 2009 CanLII 42449 (Ont. S.C.), at para. 26.

205. To be clear, the *Trinity Bible College* line of cases suggests that the application judge's conclusions with respect to s. 2(b) may have entitled him to omit analyzing s. 2(c) entirely.[293] However, having decided to assess s. 2(c) and having already concluded that the *Regulations* targeted peaceful protesters, the application judge was bound to conclude that the *Regulations* infringed s. 2(c).

206. With that said, it is important to recognize that s. 2(c) has normative force separate and apart from s. 2(b). Section 2(b) concerns itself exclusively with expressive activities, while s. 2(c) places constitutional emphasis on "the assembly itself": "the assembly is, in its own right, 'the constitutional event'".[294] The value inherent in this event echoes the value of association. As Dickson C.J. put it in *Reference re Public Service Employee Relations Act (Alta.)*:

> Association has always been the means through which political, cultural and racial minorities, religious groups and workers have sought to attain their purposes and fulfil their aspirations; it has enabled those who would otherwise be vulnerable and ineffective to meet on more equal terms the power and strength of those with whom their interests interact and, perhaps, conflict.[295]

207. Freedom of assembly likewise enshrines the importance of collective action, and the liberty to engage in political protest must be at the constitutionally protected core of this fundamental freedom. It is essential to the achievement of the "larger objects of the *Charter*", including the maintenance of "a free and democratic political system".[296] Simply put, s. 2(c) goes beyond the protection of individual expression and recognizes that there is value not just in speech, but in speaking together.

PART IV — ORDER SOUGHT

208. The CCLA requests this appeal be dismissed and that the cross-appeal be allowed. The CCLA does not seek costs and asks that no costs be awarded against it.

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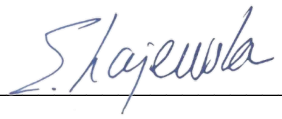
293 *Ontario (Attorney General) v. Trinity Bible Chapel*, 2023 ONCA 134, at para. 71.

294 Jamie Cameron, *Freedom of Assembly and Section 2(c) of the Charter: Report for the Public Order Emergency Commission* (Public Order Emergency Commission, September 2022), at p. 15.

295 *Reference re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313, at para. 87 (dissenting), cited in *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1, at para. 57.

296 *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, at pp. 344 and 346.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 4th day of October, 2024.



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SCHEDULE A — TABLE OF RESOLVED PROTESTS

Location	Event	Date	Resolved
Nova Scotia / New Brunswick border	A convoy of trucks blocked traffic lanes and restricted border access at this border. The RCMP were on the scene to monitor the situation and keep the peace, and traffic was able to move through the crossing.[297]	**January 23**	**January 23**
Vancouver, Kelowna, Victoria, British Columbia	Hundreds of vehicles entered Vancouver's downtown core and caused significant congestion, but it was generally peaceful and resolved with a handful of arrests. In Victoria, 2,500 people gathered outside the legislature, but the crowd thinned out and traffic was normal by late afternoon.[298]	**February 5**	**February 5**
Regina, Saskatchewan	A protest near the Legislative Building took place. The Regina Police Service issued 30 parking tickets and two traffic safety tickets. The last vehicle moved out of the protest by the end of the weekend.[299]	**February 5**	**February 6**
Calgary, Alberta	This protest involved about 20 vehicles bocking lanes of traffic in front of city hall, among other things. Police issued approximately 80 tickets to individuals identified as committing an offence.[300]	**February 7**	**February 7**
Toronto, Ontario[301]	The first Toronto protest occurred close to the legislature, where protestors and their trucks blocked an intersection. By 7 p.m., the police began clearing the intersection. Despite delays, police maintained access to key areas (e.g., hospitals). Overall, the protest was relatively peaceful.	**February 5**	**February 7**
	In anticipation of a second protest, the police publicly said that they would pre-emptively close key roadways, including certain highways and roads downtown. They did; by the evening, most roads had reopened. The mayor said that the protest was "largely peaceful and respectful", and the police "had a clear plan" that was "carried out capably and carefully".	**February 12**	**February 12**

297 Deshman Affidavit, at para. 44 [AB, Vol 5, Tab 13.7, p. 1582].
298 Deshman Affidavit, at para. 46 [AB, Vol 5, Tab 13.7, p. 1582].
299 Deshman Affidavit, at para. 47 [AB, Vol 5, Tab 13.7, p. 1583].
300 Deshman Affidavit, at para. 48 [AB, Vol 5, Tab 13.7, p. 1583].
301 Deshman Affidavit, at paras. 49-50 [AB, Vol 5, Tab 13.7, p. 1584].

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4. *Emergencies Act*, R.S.C. 1985 c. 22.
5. *Emergency Economic Measures Order*, S.O.R./2022-22.
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APPENDIX A — STATUTES AND REGULATIONS

Canadian Security Intelligence Service Act, R.S.C. 1985, c. C-23, s. 2 ("threats to the security of Canada"), s. 12.1(2), s. 12.2

threats to the security of Canada means (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).	***menaces envers la sécurité du Canada*** Constituent des menaces envers la sécurité du Canada les activités suivantes : a) l'espionnage ou le sabotage visant le Canada ou préjudiciables à ses intérêts, ainsi que les activités tendant à favoriser ce genre d'espionnage ou de sabotage; b) les activités influencées par l'étranger qui touchent le Canada ou s'y déroulent et sont préjudiciables à ses intérêts, et qui sont d'une nature clandestine ou trompeuse ou comportent des menaces envers quiconque; c) les activités qui touchent le Canada ou s'y déroulent et visent à favoriser l'usage de la violence grave ou de menaces de violence contre des personnes ou des biens dans le but d'atteindre un objectif politique, religieux ou idéologique au Canada ou dans un État étranger; d) les activités qui, par des actions cachées et illicites, visent à saper le régime de gouvernement constitutionnellement établi au Canada ou dont le but immédiat ou ultime est sa destruction ou son renversement, par la violence. La présente définition ne vise toutefois pas les activités licites de défense d'une cause, de protestation ou de manifestation d'un désaccord qui n'ont aucun lien avec les activités mentionnées aux alinéas a) à d).
Measures to reduce threats to the security of Canada **12.1 (1)** If there are reasonable grounds to believe that a particular activity constitutes a threat to the security of Canada, the Service	**Mesures pour réduire les menaces envers la sécurité du Canada** **12.1 (1)** S'il existe des motifs raisonnables de croire qu'une activité donnée constitue une menace envers la sécurité du Canada, le

may take measures, within or outside Canada, to reduce the threat.	Service peut prendre des mesures, même à l'extérieur du Canada, pour réduire la menace.
Limits	**Limites**
(2) The measures shall be reasonable and proportional in the circumstances, having regard to the nature of the threat, the nature of the measures, the reasonable availability of other means to reduce the threat and the reasonably foreseeable effects on third parties, including on their right to privacy.	**(2)** Les mesures doivent être justes et adaptées aux circonstances, compte tenu de la nature de la menace et des mesures, des solutions de rechange acceptables pour réduire la menace et des conséquences raisonnablement prévisibles sur les tierces parties, notamment sur leur droit à la vie privée.
Alternatives	**Autres options**
(3) Before taking measures under subsection (1), the Service shall consult, as appropriate, with other federal departments or agencies as to whether they are in a position to reduce the threat.	**(3)** Avant de prendre des mesures en vertu du paragraphe (1), le Service consulte, au besoin, d'autres ministères ou organismes fédéraux afin d'établir s'ils sont en mesure de réduire la menace.
Canadian Charter of Rights and Freedoms	***Charte canadienne des droits et libertés***
(3.1) The *Canadian Charter of Rights and Freedoms* is part of the supreme law of Canada and all measures taken by the Service under subsection (1) shall comply with it.	**(3.1)** La *Charte canadienne des droits et libertés* fait partie de la loi suprême du Canada et toutes les mesures prises par le Service en vertu du paragraphe (1) s'y conforment.
Warrant — *Canadian Charter of Rights and Freedoms*	**Mandat — *Charte canadienne des droits et libertés***
(3.2) The Service may take measures under subsection (1) that would limit a right or freedom guaranteed by the *Canadian Charter of Rights and Freedoms* only if a judge, on an application made under section 21.1, issues a warrant authorizing the taking of those measures.	**(3.2)** Le Service ne peut, en vertu du paragraphe (1), prendre des mesures qui limiteraient un droit ou une liberté garanti par la *Charte canadienne des droits et libertés* que si, sur demande présentée au titre de l'article 21.1, un juge décerne un mandat autorisant la prise de ces mesures.
Condition for issuance	**Condition**
(3.3) The judge may issue the warrant referred to in subsection (3.2) only if the judge is satisfied that the measures, as authorized by the warrant, comply with the *Canadian Charter of Rights and Freedoms*.	**(3.3)** Le juge ne peut décerner le mandat visé au paragraphe (3.2) que s'il est convaincu que les mesures, telles qu'autorisées par le mandat, sont conformes à la *Charte canadienne des droits et libertés*.
Warrant — Canadian law	**Mandat — droit canadien**
(3.4) The Service may take measures under subsection (1) that would otherwise be contrary to Canadian law only if the measures have been authorized by a warrant issued under section 21.1.	**(3.4)** Le Service ne peut, en vertu du paragraphe (1), prendre des mesures qui seraient par ailleurs contraires au droit canadien que si ces mesures ont été autorisées

Notification of Review Agency **(3.5)** The Service shall, after taking measures under subsection (1), notify the Review Agency of the measures as soon as the circumstances permit. **Clarification** **(4)** For greater certainty, nothing in subsection (1) confers on the Service any law enforcement power.	par un mandat décerné au titre de l'article 21.1. **Avis à l'Office de surveillance** **(3.5)** Dans les plus brefs délais possible après la prise de mesures en vertu du paragraphe (1), le Service avise l'Office de surveillance de ces mesures. **Précision** **(4)** Il est entendu que le paragraphe (1) ne confère au Service aucun pouvoir de contrôle d'application de la loi.
Prohibited conduct **12.2 (1)** In taking measures to reduce a threat to the security of Canada, the Service shall not **(a)** cause, intentionally or by criminal negligence, death or bodily harm to an individual; **(b)** wilfully attempt in any manner to obstruct, pervert or defeat the course of justice; **(c)** violate the sexual integrity of an individual; **(d)** subject an individual to torture or cruel, inhuman or degrading treatment or punishment, within the meaning of the Convention Against Torture; **(e)** detain an individual; or **(f)** cause the loss of, or any serious damage to, any property if doing so would endanger the safety of an individual.	**Interdictions** **12.2 (1)** Dans le cadre des mesures qu'il prend pour réduire une menace envers la sécurité du Canada, le Service ne peut : **a)** causer, volontairement ou par négligence criminelle, des lésions corporelles à un individu ou la mort de celui-ci; **b)** tenter volontairement de quelque manière d'entraver, de détourner ou de contrecarrer le cours de la justice; **c)** porter atteinte à l'intégrité sexuelle d'un individu; **d)** soumettre un individu à la torture ou à d'autres peines ou traitements cruels, inhumains ou dégradants, au sens de la Convention contre la torture; **e)** détenir un individu; **f)** causer la perte de biens ou des dommages importants à ceux-ci si cela porterait atteinte à la sécurité d'un individu.

Controlled Drugs and Substances Act, S.C. 1996, c. 19, s. 11

Information for search warrant **11 (1)** A justice who, on *ex parte* application, is satisfied by information on oath that there are reasonable grounds to believe that **(a)** a controlled substance or precursor in respect of which this Act has been contravened, **(b)** any thing in which a controlled substance or precursor referred to in paragraph (a) is contained or concealed, **(c)** offence-related property, or **(d)** any thing that will afford evidence in respect of an offence under this Act or an offence, in whole or in part in relation to a contravention of this Act, under section 354 or 462.31 of the *Criminal Code* is in a place may, at any time, issue a warrant authorizing a peace officer, at any time, to search the place for any such controlled substance, precursor, property or thing and to seize it. **Application of section 487.1 of the *Criminal Code*** **(2)** For the purposes of subsection (1), an information may be submitted by telephone or other means of telecommunication in accordance with section 487.1 of the *Criminal Code*, with such modifications as the circumstances require. **Execution in Canada** **(3)** A warrant issued under subsection (1) may be executed at any place in Canada. Any peace officer who executes the warrant must have authority to act as a peace officer in the place where it is executed. **Duty of peace officer executing warrant** **(4)** Section 487.093 of the *Criminal Code*, other than paragraph 487.093(1)(c), applies with respect to a warrant issued under subsection (1).	**Mandat de perquisition** **11 (1)** Le juge de paix qui, sur demande *ex parte*, est convaincu sur la foi d'une dénonciation faite sous serment qu'il existe des motifs raisonnables de croire à la présence, en un lieu, d'un ou de plusieurs des articles énumérés ci-dessous peut délivrer à un agent de la paix un mandat l'autorisant, à tout moment, à perquisitionner en ce lieu et à les y saisir : **a)** une substance désignée ou un précurseur ayant donné lieu à une infraction à la présente loi; **b)** une chose qui contient ou recèle une substance désignée ou un précurseur visé à l'alinéa a); **c)** un bien infractionnel; **d)** une chose qui servira de preuve relativement à une infraction à la présente loi ou, dans les cas où elle découle en tout ou en partie d'une contravention à la présente loi, à une infraction prévue aux articles 354 ou 462.31 du *Code criminel*. **Application de l'article 487.1 du *Code criminel*** **(2)** La dénonciation visée au paragraphe (1) peut se faire par téléphone ou tout autre moyen de télécommunication, conformément à l'article 487.1 du *Code criminel*, compte tenu des adaptations nécessaires. **Exécution au Canada** **(3)** Le mandat peut être exécuté en tout lieu au Canada. Tout agent de la paix qui exécute le mandat doit être habilité à agir à ce titre dans le lieu où celui-ci est exécuté. **Obligation de l'agent de la paix qui exécute le mandat** **(4)** L'article 487.093 du *Code criminel*, sauf l'alinéa 487.093(1)c), s'applique à l'égard

Search of person and seizure

(5) Where a peace officer who executes a warrant issued under subsection (1) has reasonable grounds to believe that any person found in the place set out in the warrant has on their person any controlled substance, precursor, property or thing set out in the warrant, the peace officer may search the person for the controlled substance, precursor, property or thing and seize it.

Seizure of things not specified

(6) A peace officer who executes a warrant issued under subsection (1) may seize, in addition to the things mentioned in the warrant,

(a) any controlled substance or precursor in respect of which the peace officer believes on reasonable grounds that this Act has been contravened;

(b) any thing that the peace officer believes on reasonable grounds to contain or conceal a controlled substance or precursor referred to in paragraph (a);

(c) any thing that the peace officer believes on reasonable grounds is offence-related property; or

(d) any thing that the peace officer believes on reasonable grounds will afford evidence in respect of an offence under this Act.

Where warrant not necessary

(7) A peace officer may exercise any of the powers described in subsection (1), (5) or (6) without a warrant if the conditions for obtaining a warrant exist but by reason of exigent circumstances it would be impracticable to obtain one.

Seizure of additional things

(8) A peace officer who executes a warrant issued under subsection (1) or exercises powers under subsection (5) or (7) may seize, in addition to the things mentioned in the warrant and in subsection (6), any thing that the peace officer believes on reasonable

du mandat délivré en vertu du paragraphe (1).

Fouilles et saisies

(5) L'exécutant du mandat peut fouiller toute personne qui se trouve dans le lieu faisant l'objet de la perquisition en vue de découvrir et, le cas échéant, de saisir des substances désignées, des précurseurs ou tout autre bien ou chose mentionnés au mandat, s'il a des motifs raisonnables de croire qu'elle en a sur elle.

Saisie de choses non spécifiées

(6) Outre ce qui est mentionné dans le mandat, l'exécutant peut, à condition que son avis soit fondé sur des motifs raisonnables, saisir :

a) toute substance désignée ou tout précurseur qui, à son avis, a donné lieu à une infraction à la présente loi;

b) toute chose qui, à son avis, contient ou recèle une substance désignée ou un précurseur visé à l'alinéa a);

c) toute chose qui, à son avis, est un bien infractionnel;

d) toute chose qui, à son avis, servira de preuve relativement à une infraction à la présente loi.

Perquisition sans mandat

(7) L'agent de la paix peut exercer sans mandat les pouvoirs visés aux paragraphes (1), (5) ou (6) lorsque l'urgence de la situation rend son obtention difficilement réalisable, sous réserve que les conditions de délivrance en soient réunies.

Saisie d'autres choses

(8) L'agent de la paix qui exécute le mandat ou qui exerce les pouvoirs visés aux paragraphes (5) ou (7) peut, en plus des choses mentionnées au mandat et au paragraphe (6), saisir toute chose dont il a des motifs raisonnables de croire qu'elle a été obtenue ou utilisée dans le cadre de la perpétration d'une infraction ou qu'elle servira de preuve à l'égard de celle-ci.

grounds has been obtained by or used in the commission of an offence or that will afford evidence in respect of an offence.	

Criminal Code, R.S.C. 1985, c. C-46, s. 462.33, s. 487.014, s. 490.8, s. 752

Application for restraint order 462.33 (1) The Attorney General may make an application in accordance with subsection (2) for a restraint order under subsection (3) in respect of any property. **Procedure** (2) An application made under subsection (1) for a restraint order under subsection (3) in respect of any property may be made ex parte and shall be made in writing to a judge and be accompanied by an affidavit sworn on the information and belief of the Attorney General or any other person deposing to the following matters, namely, (a) the offence or matter under investigation; (b) the person who is believed to be in possession of the property; (c) the grounds for the belief that an order of forfeiture may be made under subsection 462.37(1) or (2.01) or 462.38(2) in respect of the property; (d) a description of the property; and (e) whether any previous applications have been made under this section with respect to the property. **Restraint order** (3) A judge who hears an application for a restraint order made under subsection (1) may — if the judge is satisfied that there are reasonable grounds to believe that there exists, within the province in which the judge has jurisdiction or any other province, any property in respect of which an order of forfeiture may be made under subsection 462.37(1) or (2.01) or 462.38(2), in respect of a designated offence alleged to have been committed within the province in which the judge has jurisdiction — make an order prohibiting any person from disposing of, or otherwise dealing with any interest in, the property specified in the order otherwise than	**Demande d'ordonnance de blocage** 462.33 (1) Le procureur général peut, conformément au paragraphe (2), demander une ordonnance de blocage en vertu du paragraphe (3) à l'égard de tout bien. **Procédure** (2) Une demande présentée en vertu du paragraphe (1) en vue d'obtenir une ordonnance de blocage en vertu du paragraphe (3) à l'égard de tout bien peut être faite ex parte et doit être faite par écrit à un juge et être accompagnée d'un affidavit sous serment sur la dénonciation et croyance du procureur général ou de toute autre personne déposant sur les questions suivantes, à savoir, a) l'infraction ou l'affaire faisant l'objet de l'enquête ; (b) la personne que l'on croit être en possession du bien; c) les motifs de croire qu'une ordonnance de confiscation peut être rendue en vertu des paragraphes 462.37(1) ou (2.01) ou 462.38(2) à l'égard du bien; (d) une description de la propriété; et e) si des demandes antérieures ont été faites en vertu du présent article à l'égard du bien. **Ordonnance de blocage** (3) Un juge qui entend une demande d'ordonnance de blocage rendue en vertu du paragraphe (1) peut — s'il est convaincu qu'il existe des motifs raisonnables de croire qu'il existe, dans la province dont relève le juge ou dans toute autre province , tout bien à l'égard duquel une ordonnance de confiscation peut être rendue en vertu des paragraphes 462.37(1) ou (2.01) ou 462.38(2), à l'égard d'une infraction désignée qui aurait été commise dans la province sur laquelle le juge a compétence — rendre une

in the manner that may be specified in the order. **Effect of order** (3.01) A restraint order issued under subsection (1) has effect throughout Canada. **Property outside Canada** (3.1) A restraint order may be issued under this section in respect of property situated outside Canada, with any modifications that the circumstances require. **Idem** (4) An order made by a judge under subsection (3) may be subject to such reasonable conditions as the judge thinks fit. **Notice** (5) Before making an order under subsection (3) in relation to any property, a judge may require notice to be given to and may hear any person who, in the opinion of the judge, appears to have a valid interest in the property unless the judge is of the opinion that giving such notice before making the order would result in the disappearance, dissipation or reduction in value of the property or otherwise affect the property so that all or a part thereof could not be subject to an order of forfeiture under subsection 462.37(1) or (2.01) or 462.38(2). **Order in writing** (6) An order made under subsection (3) shall be made in writing. **Undertakings by Attorney General** (7) Before making an order under subsection (3), a judge shall require the Attorney General to give such undertakings as the judge considers appropriate with respect to the payment of damages or costs, or both, in relation to (a) the making of an order in respect of property situated within or outside Canada; and (b) the execution of an order in respect of property situated within Canada.	ordonnance interdisant à toute personne de disposer d'un bien spécifié dans l'ordonnance ou de s'en occuper autrement autrement que de la manière qui peut être précisée dans l'ordonnance. **Effet de l'ordonnance** (3.01) Une ordonnance de blocage rendue en vertu du paragraphe (1) a effet partout au Canada. **Biens hors du Canada** (3.1) Une ordonnance de blocage peut être rendue en vertu du présent article à l'égard de biens situés à l'extérieur du Canada, avec les adaptations nécessaires. **Idem** (4) L'ordonnance rendue par un juge en vertu du paragraphe (3) peut être assujettie aux conditions raisonnables qu'il juge appropriées. **Avis** (5) Avant de rendre une ordonnance en vertu du paragraphe (3) relativement à un bien, un juge peut exiger qu'un avis soit donné et entendre toute personne qui, de l'avis du juge, semble avoir un intérêt valable dans le bien à moins que le juge ne soit d'avis que le fait de donner un tel avis avant de rendre l'ordonnance entraînerait la disparition, la dissipation ou la réduction de la valeur du bien ou affecterait autrement le bien de sorte que tout ou partie de celui-ci ne pourrait faire l'objet d'une ordonnance de confiscation en vertu du paragraphe 462.37(1) ou (2.01) ou 462.38(2). **Ordonnance écrite** (6) L'ordonnance rendue en vertu du paragraphe (3) est rendue par écrit. **Engagements du procureur général** (7) Avant de rendre une ordonnance en vertu du paragraphe (3), un juge exige du procureur général qu'il prenne les engagements qu'il juge appropriés à l'égard du paiement des dommages-intérêts ou des dépens, ou des deux, relativement à :

Service of order (8) A copy of an order made by a judge under subsection (3) shall be served on the person to whom the order is addressed in such manner as the judge directs or as may be prescribed by rules of court. **Registration of order** (9) A copy of an order made under subsection (3) shall be registered against any property in accordance with the laws of the province in which the property is situated. **Continues in force** (10) An order made under subsection (3) remains in effect until (a) it is revoked or varied under subsection 462.34(4) or revoked under paragraph 462.43(a); (b) it ceases to be in force under section 462.35; or (c) an order of forfeiture or restoration of the property is made under subsection 462.37(1) or (2.01), 462.38(2) or 462.41(3) or any other provision of this or any other Act of Parliament. **Offence** (11) Any person on whom an order made under subsection (3) is served in accordance with this section and who, while the order is in force, acts in contravention of or fails to comply with the order is guilty of an indictable offence or an offence punishable on summary conviction.	a) la prise d'une ordonnance concernant des biens situés à l'intérieur ou à l'extérieur du Canada; et b) l'exécution d'une ordonnance relative à des biens situés au Canada. **Signification de l'ordonnance** (8) Une copie de l'ordonnance rendue par un juge en vertu du paragraphe (3) est signifiée à la personne à qui l'ordonnance est adressée de la manière qu'ordonne le juge ou que peuvent prescrire les règles de pratique. **Enregistrement de l'ordonnance** (9) Une copie d'une ordonnance rendue en vertu du paragraphe (3) est enregistrée sur tout bien conformément aux lois de la province dans laquelle le bien est situé. **Maintien en vigueur** (10) Une ordonnance rendue en vertu du paragraphe (3) demeure en vigueur jusqu'à ce que a) il est révoqué ou modifié en vertu du paragraphe 462.34(4) ou révoqué en vertu de l'alinéa 462.43a); b) il cesse d'être en vigueur en vertu de l'article 462.35; ou c) une ordonnance de confiscation ou de restitution du bien est rendue en vertu des paragraphes 462.37(1) ou (2.01), 462.38(2) ou 462.41(3) ou de toute autre disposition de la présente loi ou de toute autre loi fédérale. **Infraction** (11) Quiconque à qui une ordonnance rendue en vertu du paragraphe (3) est signifiée conformément au présent article et qui, pendant que l'ordonnance est en vigueur, agit en contravention ou omet de se conformer à l'ordonnance est coupable d'un acte criminel ou une infraction punissable sur déclaration de culpabilité par procédure sommaire.
General production order **487.014 (1)** Subject to sections 487.015 to 487.018, on *ex parte* application made by a peace officer or public officer, a justice or	**Ordonnance générale de communication** **487.014 (1)** Sous réserve des articles 487.015 à 487.018, le juge de paix ou le juge peut, sur demande ex parte présentée par un

judge may order a person to produce a document that is a copy of a document that is in their possession or control when they receive the order, or to prepare and produce a document containing data that is in their possession or control at that time.	agent de la paix ou un fonctionnaire public, ordonner à toute personne de communiquer un document qui est la copie d'un document qui est en sa possession ou à sa disposition au moment où elle reçoit l'ordonnance ou d'établir et de communiquer un document comportant des données qui sont en sa possession ou à sa disposition à ce moment.
Application for restraint order **490.8 (1)** The Attorney General may make an application in accordance with this section for a restraint order under this section in respect of any offence-related property.	**Demande d'ordonnance de blocage** **490.8 (1)** Le procureur général peut, conformément au présent article, demander une ordonnance de blocage en vertu du présent article à l'égard de tout bien infractionnel.
Definitions **752** In this Part, ***serious personal injury offence*** means **(a)** an indictable offence, other than high treason, treason, first degree murder or second degree murder, involving **(i)** the use or attempted use of violence against another person, or **(ii)** conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage on another person, and for which the offender may be sentenced to imprisonment for ten years or more, or **(b)** an offence or attempt to commit an offence mentioned in section 271 (sexual assault), 272 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 273 (aggravated sexual assault). (*sévices graves à la personne*)	**Définitions** **752** Dans cette partie, ***sévices graves à la personne*** signifie **(a)** un acte criminel, autre que la haute trahison, la trahison, le meurtre au premier degré ou le meurtre au deuxième degré, impliquant **(i)** l'usage ou la tentative d'usage de la violence contre une autre personne, ou **(ii)** un comportement mettant en danger ou susceptible de mettre en danger la vie ou la sécurité d'autrui ou infligeant ou susceptible d'infliger des dommages psychologiques graves à autrui, et pour laquelle le contrevenant peut être condamné à une peine d'emprisonnement de dix ans ou plus, ou **(b)** une infraction ou tentative de commettre une infraction mentionnée à l'article 271 (agression sexuelle), 272 (agression sexuelle armée, menaces à l'encontre d'un tiers ou infliction de lésions corporelles) ou 273 (agression sexuelle grave). (sévices graves à la personne)

Emergencies Act, R.S.C. 1985, c. 22 (4th Supp.), s. 3(b), 16, 17(2), 25

s. 3(b) **National emergency** 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 … and that cannot be effectively dealt with under any other law of Canada.	**Crise nationale** Pour l'application de la présente loi, une situation de crise nationale résulte d'un concours de circonstances critiques à caractère d'urgence et de nature temporaire, auquel il n'est pas possible de faire face adéquatement sous le régime des lois du Canada et qui, selon le cas: a) met gravement en danger la vie, la santé ou la sécurité des Canadiens et échappe à la capacité ou aux pouvoirs d'intervention des provinces;
s. 16 In this Part, ***declaration of a public order emergency*** means a proclamation issued pursuant to subsection 17(1); (*declaration d'état d'urgence*) ***public order emergency*** means an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency; (*état d'urgence*) ***threats to the security of Canada*** has the meaning assigned by section 2 of the Canadian Security Intelligence Service Act. (*menaces envers la sécurité du Canada*)	Les définitions qui suivent s'appliquent à la présente partie. ***déclaration d'état d'urgence*** Proclamation prise en application du paragraphe 17(1). (*declaration of a public order emergency*) ***état d'urgence*** Situation de crise causée par des menaces envers la sécurité du Canada d'une gravité telle qu'elle constitue une situation de crise nationale. (*public order emergency*) ***menaces envers la sécurité du Canada*** S'entend au sens de l'article 2 de la *Loi sur le service canadien du renseignement de sécurité*. (*threats to the security of Canada*)
s. 17(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	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.

(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.	
Consultation 25 (1) Subject to subsections (2) and (3), before the Governor in Council issues, continues or amends a declaration of a public order emergency, the lieutenant governor in council of each province in which the effects of the emergency occur shall be consulted with respect to the proposed action. **Idem** (2) Where the effects of a public order emergency extend to more than one province and the Governor in Council is of the opinion that the lieutenant governor in council of a province in which the effects of the emergency occur cannot, before the issue or amendment of a declaration of a public order emergency, be adequately consulted without unduly jeopardizing the effectiveness of the proposed action, the lieutenant governor in council of that province may be consulted with respect to the action after the declaration is issued or amended and before the motion for confirmation of the declaration or amendment is laid before either House of Parliament. **Indication** (3) The Governor in Council may not issue a declaration of a public order emergency where the effects of the emergency are confined to one province, unless the lieutenant governor in council of the province has indicated to the Governor in Council that the emergency exceeds the capacity or authority of the province to deal with it.	**Consultation** 25 (1) Sous réserve des paragraphes (2) et (3), le Gouverneur en conseil, avant de faire, de proroger ou de modifier une déclaration d'état d'urgence, consulte le lieutenant-gouverneur en conseil de chaque province touché par l'état d'urgence. **Idem** (2) Lorsque plus d'une province est touchée par un état d'urgence et que le gouverneur en conseil est d'avis que le lieutenant-gouverneur en conseil d'une province touché ne peut être convenablement consulté, avant la declaration ou sa modification, sans que soit compromise l'efficacité des mesures envisagées, la consultation peut avoir lieu après la prise des mesures mais avant le dépôt de la motion de ratification devant le Parlement. **Pouvoirs ou capacité de la province** (3) Le gouverneur en conseil ne peut faire de declaration en cas d'état d'urgence se limitant principalement à une province que si le lieutenant-gouverneur en conseil de la province lui signale que l'état d'urgence échappe à la capacité ou aux pouvoirs d'intervention de la province.

***Emergency Economic Measures Order*, S.O.R./2022-22.**

Definitions 1 The following definitions apply to this Order: **designated person** means any individual or entity that is engaged, directly or indirectly, in an activity prohibited by sections 2 to 5 of the Emergency Measures Regulations. (personne désignée) **entity** includes a corporation, trust, partnership, fund, unincorporated association or organization or foreign state. (entité) **Duty to cease dealings** 2 (1) Any entity set out in section 3 must, upon the coming into force of this Order, cease (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. **Insurance policy** (2) Paragraph 2(1)(d) does not apply in respect of any insurance policy which was valid prior to the coming in force of this Order other than an insurance policy for any vehicle being used in a public assembly	**Définitions** 1 Les définitions qui suivent s'appliquent au présent décret : **entité** S'entend notamment d'une personne morale, d'une fiducie, d'une société de personne, d'un fonds, d'une organisation ou d'une association dotée de la personnalité morale ou d'un État étranger. (entity) **personne désignée** Toute personne physique ou entité qui participe, même indirectement, à l'une ou l'autre des activités interdites au titre des articles 2 à 5 du Règlement sur les mesures d'urgence. (designated person) **Obligations de cesser les opérations** 2 (1) Dès l'entrée en vigueur du présent décret, les entités visées à l'article 3 doivent cesser : a) toute opération portant sur un bien, où qu'il se trouve, appartenant à une personne désignée ou détenu ou contrôlé par elle ou pour son compte ou suivant ses instructions; b) toute transaction liée à une opération visée à l'alinéa a) ou d'en faciliter la conclusion; c) de rendre disponible des biens — notamment des fonds ou de la monnaie virtuelle — à une personne désignée ou à une personne agissant pour son compte ou suivant ses instructions, ou au profit de l'une ou l'autre de ces personnes; d) de fournir des services financiers ou connexes à une personne désignée ou à son profit ou acquérir de tels services auprès d'elle ou à son profit. **Police d'assurance** (2) Toutefois, l'alinéa 2(1)d) ne s'applique pas à l'égard d'une police d'assurance effective — au moment de l'entrée en vigueur du présent décret — portant sur un

referred to in subsection 2(1) of the Emergency Measures Regulations. **Duty to determine** 3 The following entities must 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: (a) authorized foreign banks, as defined in section 2 of the Bank Act, in respect of their business in Canada, and banks regulated by that Act; (b) cooperative credit societies, savings and credit unions and caisses populaires regulated by a provincial Act and associations regulated by the Cooperative Credit Associations Act; (c) foreign companies, as defined in subsection 2(1) of the Insurance Companies Act, in respect of their insurance business in Canada; (d) companies, provincial companies and societies, as those terms are defined in subsection 2(1) of the Insurance Companies Act; (e) fraternal benefit societies regulated by a provincial Act in respect of their insurance activities and insurance companies and other entities regulated by a provincial Act that are engaged in the business of insuring risks; (f) companies regulated by the Trust and Loan Companies Act; (g) trust companies regulated by a provincial Act; (h) loan companies regulated by a provincial Act; (i) entities that engage in any activity described in paragraphs 5(h) and (h.1) of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act; (j) entities authorized under provincial legislation to engage in the business of dealing in securities or to provide	véhicule autre que celui utilisé lors d'une assemblée publique visée au paragraphe 2(1) du Règlement sur les mesures d'urgence. **Vérification** 3 Il incombe aux entités mentionnées ci-après de vérifier de façon continue si des biens qui sont en leur possession ou sous leur contrôle appartiennent à une personne désignée ou sont détenus ou contrôlés par elle ou pour son compte : a) les banques étrangères autorisées, au sens de l'article 2 de la Loi sur les banques, dans le cadre de leurs activités au Canada, et les banques régies par cette loi; b) les coopératives de crédit, caisses d'épargne et de crédit et caisses populaires régies par une loi provinciale et les associations régies par la Loi sur les associations coopératives de crédit; c) les sociétés étrangères, au sens du paragraphe 2(1) de la Loi sur les sociétés d'assurances, dans le cadre de leurs activités d'assurance au Canada; d) les sociétés, les sociétés de secours et les sociétés provinciales, au sens du paragraphe 2(1) de la Loi sur les sociétés d'assurances; e) les sociétés de secours mutuel régies par une loi provinciale, dans le cadre de leurs activités d'assurance, et les sociétés d'assurances et autres entités régies par une loi provinciale qui exercent le commerce de l'assurance; f) les sociétés régies par la Loi sur les sociétés de fiducie et de prêt; g) les sociétés de fiducie régies par une loi provinciale; h) les sociétés de prêt régies par une loi provinciale; i) les entités qui se livrent à une activité visée aux alinéas 5h) et h.1) de la Loi sur le recyclage des produits de la

portfolio management or investment counselling services; (k) entities that provide a platform to raise funds or virtual currency through donations; and (l) entities that perform any of the following payment functions: (i) the provision or maintenance of an account that, in relation to an electronic funds transfer, is held on behalf of one or more end users, (ii) the holding of funds on behalf of an end user until they are withdrawn by the end user or transferred to another individual or entity, (iii) the initiation of an electronic funds transfer at the request of an end user, (iv) the authorization of an electronic funds transfer or the transmission, reception or facilitation of an instruction in relation to an electronic funds transfer, or (v) the provision of clearing or settlement services.	criminalité et le financement des activités terroristes; j) les entités autorisées en vertu de la législation provinciale à se livrer au commerce des valeurs mobilières ou à fournir des services de gestion de portefeuille ou des conseils en placement; k) les plateformes collaboratives et celles de monnaie virtuelle qui sollicitent des dons; l) toute entité qui exécute l'une ou l'autre de fonctions suivantes : (i) la fourniture ou la tenue d'un compte détenu au nom d'un ou de plusieurs utilisateurs finaux en vue d'un transfert électronique de fonds, (ii) la détention de fonds au nom d'un utilisateur final jusqu'à ce qu'ils soient retirés par celui-ci ou transférés à une personne physique ou à une entité, (iii) l'initiation d'un transfert électronique de fonds à la demande d'un utilisateur final, (iv) l'autorisation de transfert électronique de fonds ou la transmission, la réception ou la facilitation d'une instruction en vue d'un transfert électronique de fonds, (v) la prestation de services de compensation ou de règlement.
Registration requirement — FINTRAC 4 (1) The entities referred to in paragraphs 3(k) and (l) must register with the Financial Transactions and Reports Analysis Centre of Canada established by section 41 of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act if they are in possession or control of property that is owned, held or controlled by or on behalf of a designated person.	**Inscription obligatoire — Centre** 4 (1) Les entités visées aux alinéas 3k) et l) doivent s'inscrire auprès du Centre d'analyse des opérations et déclarations financières du Canada constitué par l'article 41 de la Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes s'ils ont en leur possession un bien appartenant à une personne désignée ou détenu ou contrôlé par elle ou pour son compte ou suivant ses instructions.
Reporting obligation — suspicious transactions (2) Those entities must also report to the Centre every financial transaction that occurs or that is attempted in the course of their activities and in respect of which there are reasonable grounds to suspect that	**Opérations douteuses**

(a) the transaction is related to the commission or the attempted commission of a money laundering offence by a designated person; or (b) the transaction is related to the commission or the attempted commission of a terrorist activity financing offence by a designated person.	(2) Elles doivent également déclarer au Centre toute opération financière effectuée ou tentée dans le cours de ses activités et à l'égard de laquelle il y a des motifs raisonnables de soupçonner qu'elle est liée à la perpétration — réelle ou tentée — par à une personne désignée : a) soit d'une infraction de recyclage des produits de la criminalité; b) soit d'une infraction de financement des activités terroristes.
Reporting obligation — other transactions (3) Those entities must also report to the Centre the transactions and information set out in subsections 30(1) and 33(1) of the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations.	**Autres opérations** (3) Elles doivent également déclarer au Centre les opérations visées aux paragraphes 30(1) ou 33(1) du Règlement sur le recyclage des produits de la criminalité et le financement des activités terroristes.
Duty to disclose — RCMP or CSIS 5 Every entity set out in section 3 must 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).	**Obligation de communication à la GRC et au SCRC** 5 Toute entité visée à l'article 3 est tenue de communiquer, sans délai, au commissaire de la Gendarmerie royale du Canada ou au directeur du Service canadien du renseignement de sécurité : a) le fait qu'elle croit que des biens qui sont en sa possession ou sous son contrôle appartiennent à une personne désignée ou sont détenus ou contrôlés par elle ou pour son compte; b) tout renseignement portant sur une transaction, réelle ou projetée, mettant en cause des biens visés à l'alinéa a).
Disclosure of information 6 A Government of Canada, provincial or territorial institution may disclose information to any entity set out in section 3, if the disclosing institution is satisfied that the disclosure will contribute to the application of this Order.	**Communication** 6 Toute institution fédérale, provinciale ou territoriale peut communiquer des renseignements au responsable d'une entité visée à l'article 3, si elle est convaincue que les renseignements aideront à l'application du présent décret.
Immunity 7 No proceedings under the Emergencies Act and no civil proceedings lie against an entity for complying with this Order.	**Immunité** 7 Aucune poursuite en vertu de la Loi sur les mesures d'urgence ni aucune procédure civile ne peuvent être intentées contre une entité qui se conforme au présent décret.
Coming into force 8 This Order comes into force on the day on which it is registered.	

	Entrée en vigueur 8 Le présent décret entre en vigueur à la date de son enregistrement.

***Emergency Management Act*, R.S.A. 2000, c. E-6.8, ss. 19.**

Powers of Minister in emergency	**Pouvoirs du ministre en cas d'urgence**
19. (1) On the making of the declaration and for the duration of the state of emergency, the Minister may do all acts and take all necessary proceedings including the following:	19. (1) Dès la déclaration et pour la durée de l'état d'urgence, le ministre peut faire tous les actes et prendre toutes les mesures nécessaires, notamment :
a) put into operation an emergency plan or program;	a) mettre en œuvre un plan ou programme d'urgence ;
b) authorize or require a local authority to put into effect an emergency plan or program for the municipality;	b) autoriser ou obliger une autorité locale à mettre en vigueur un plan ou un programme d'urgence pour la municipalité;
c) acquire or utilize any real or personal property considered necessary to prevent, combat or alleviate the effects of an emergency or disaster;	c) acquérir ou utiliser tout bien immobilier ou personnel jugé nécessaire pour prévenir, combattre ou atténuer les effets d'une situation d'urgence ou d'une catastrophe ;
d) authorize or require or make an order to authorize or require any qualified person to render aid of a type the person is qualified to provide;	d) autoriser ou exiger ou rendre une ordonnance autorisant ou obligeant toute personne qualifiée à fournir une aide d'un type pour lequel la personne est qualifiée ;
e) control or prohibit or make an order to control or prohibit travel to or from any area of Alberta;	e) contrôler ou interdire ou rendre une ordonnance pour contrôler ou interdire les déplacements à destination ou en provenance de toute région de l'Alberta;
f) provide for or make an order to provide for the restoration of essential facilities and the distribution of essential supplies and provide, maintain and co-ordinate or make an order to provide, maintain and co-ordinate emergency medical, welfare and other essential services in any part of Alberta;	f) prévoir ou ordonner de prévoir le rétablissement des installations essentielles et la distribution des fournitures essentielles et fournir, entretenir et coordonner ou ordonner de fournir, entretenir et coordonner les services médicaux d'urgence, de bien-être et autres services essentiels services dans n'importe quelle partie de l'Alberta;
g) order the evacuation of persons and the removal of livestock and personal property from any area of Alberta that is or may be affected by a disaster and make arrangements for the adequate care and protection of those persons or livestock and of the personal property;	g) ordonner l'évacuation des personnes et l'enlèvement du bétail et des biens personnels de toute région de l'Alberta qui est ou pourrait être touchée par une catastrophe et prendre des dispositions pour assurer les soins et la protection adéquats de ces personnes ou du bétail et des biens personnels ;
h) authorize the entry into any building or on any land, without warrant, by any person in the course of implementing an emergency plan or program;	h) autoriser l'entrée dans tout bâtiment ou sur tout terrain, sans mandat, par toute personne dans le cadre de la mise en œuvre d'un plan ou programme d'urgence;
i) cause the demolition or removal of any trees, structures or crops if the demolition or removal is necessary or appropriate in order	

to reach the scene of a disaster, or to attempt to forestall its occurrence or to combat its progress; j) procure or fix prices or make an order to procure or fix prices for food, clothing, fuel, equipment, medical supplies, or other essential supplies and the use of any property, services, resources or equipment within any part of Alberta for the duration of the state of emergency; k) authorize the conscription or make an order for the conscription of persons needed to meet an emergency. (1.1) In addition to any other orders the Minister is authorized to make under this Act, the Minister may make any order necessary, in the Minister's opinion, to lessen the impact of the emergency. (2) As it relates to the acquisition of real property, subsection (1)(c) does not apply to real property located within a national park or an Indian reserve. (3) If the Minister acquires or utilizes real or personal property under subsection (1) or if any real or personal property is damaged or destroyed due to an action of the Minister in preventing, combating or alleviating the effects of an emergency or disaster, the Minister shall cause compensation to be paid for it. (4) The Lieutenant Governor in Council may make regulations in respect of any matter mentioned in subsection (1). (5) Subject to subsection (5.1), on the making of an order under section 18(1) respecting an emergency in respect of which a state of local emergency has been declared, the local authority is responsible in the municipality for the co-ordination and implementation of the necessary plans or programs prepared pursuant to this Act. (5.1) If the Minister authorizes the Managing Director or another person under subsection (6), the Managing Director or the other person authorized by the Minister is responsible for the co-ordination and implementation of the necessary plans or	i) provoquer la démolition ou l'enlèvement d'arbres, de structures ou de cultures si la démolition ou l'enlèvement est nécessaire ou approprié pour atteindre les lieux d'une catastrophe, ou pour tenter d'empêcher sa survenance ou d'en combattre la progression ; j) obtenir ou fixer les prix ou rendre une ordonnance pour obtenir ou fixer les prix de la nourriture, des vêtements, du carburant, de l'équipement, des fournitures médicales ou d'autres fournitures essentielles et l'utilisation de tout bien, service, ressource ou équipement dans n'importe quelle partie de l'Alberta pour la durée de l'état d'urgence; k) autoriser la conscription ou ordonner la conscription des personnes nécessaires pour faire face à une situation d'urgence. (1.1) Outre les autres arrêtés que le ministre est autorisé à prendre en vertu de la présente loi, le ministre peut prendre tout arrêté nécessaire, à son avis, pour atténuer l'impact de la situation d'urgence. (2) En ce qui concerne l'acquisition de biens immeubles, l'alinéa (1)c) ne s'applique pas aux biens immeubles situés dans un parc national ou une réserve indienne. (3) Si le ministre acquiert ou utilise des biens immobiliers ou personnels en vertu du paragraphe (1) ou si des biens immobiliers ou personnels sont endommagés ou détruits en raison d'une action du ministre visant à prévenir, combattre ou atténuer les effets d'une situation d'urgence ou d'une catastrophe, le ministre en fait payer une indemnité. (4) Le lieutenant-gouverneur en conseil peut, par règlement, porter sur toute question mentionnée au paragraphe (1). (5) Sous réserve du paragraphe (5.1), sur prise d'une ordonnance en vertu du paragraphe 18(1) concernant une situation d'urgence à l'égard de laquelle un état d'urgence local a été déclaré, l'autorité locale est responsable dans la municipalité de la co- la coordination et la mise en œuvre des plans

programs prepared pursuant to this Act and all persons and agencies involved in the implementation are subject to the control and direction of the Managing Director or the other authorized person. (6) The Minister may, by order, authorize another person to be responsible for the co-ordination and implementation of the necessary plans or programs prepared pursuant to this Act and all persons and agencies involved in the implementation are subject to the control and direction of that person. (7) On the making of an order under section 18(1), the Minister may, by order, authorize the Managing Director or any other person to exercise some or all of the powers given to the Minister under subsection (1) or (1.1). (8) The Regulations Act does not apply to an order made under subsection (1)(d), (e), (f), (g), (j) or (k) or (1.1).	ou programmes nécessaires préparés en vertu de la présente loi. (5.1) Si le ministre autorise le directeur général ou une autre personne en vertu du paragraphe (6), le directeur général ou l'autre personne autorisée par le ministre est responsable de la coordination et de la mise en œuvre des plans ou programmes nécessaires préparés en vertu de la présente loi. et toutes les personnes et agences impliquées dans la mise en œuvre sont soumises au contrôle et à la direction du directeur général ou de l'autre personne autorisée. (6) Le ministre peut, par arrêté, autoriser une autre personne à être responsable de la coordination et de la mise en œuvre des plans ou programmes nécessaires préparés en vertu de la présente loi et toutes les personnes et agences impliquées dans la mise en œuvre sont soumises au contrôle et à la direction de cette personne. (7) Sur prise d'une ordonnance en vertu de l'article 18(1), le ministre peut, par arrêté, autoriser le directeur général ou toute autre personne à exercer tout ou partie des pouvoirs conférés au ministre en vertu du paragraphe (1) ou (1.1). (8) La Loi sur les règlements ne s'applique pas aux arrêtés pris en vertu des alinéas (1)d), e), f), g), j) ou k) ou (1.1).

Emergency Measures Regulations, S.O.R./2022-21

Interpretation **1 The following definitions apply to these Regulations** **Act** means the Emergencies Act (Loi) **critical infrastructure** means the following places, including any land on which they are located: (a) airports, aerodromes, heliports, harbours, ports, piers, lighthouses, canals, railway stations, railways, tramway lines, bus stations, bus depots and truck depots; (b) infrastructure for the supply of utilities such as water, gas, sanitation and telecommunications; (c) international and interprovincial bridges and crossings; (d) power generation and transmission facilities; (e) hospitals and locations where COVID-19 vaccines are administered; (f) trade corridors and international border crossings, including ports of entry, ferry terminals, customs offices, bonded warehouses, and sufferance warehouses. (infrastructures essentielles) **foreign national** has the same meaning as in subsection 2(1) of the Immigration and Refugee Protection Act (étranger) **peace officer** means a police officer, police constable, constable, or other person employed for the preservation and maintenance of the public peace (agent de la paix) **protected person** has the same meaning as in subsection 95(2) of the Immigration and Refugee Protection Act (personne protégée) **Prohibition — public assembly**	**Définitions** 1 Les définitions qui suivent s'appliquent au présent règlement. **agent de la paix** Tout officier de police ou agent de police employé à la préservation et au maintien de la paix publique. (peace officer) **étranger** S'entend au sens du paragraphe 2(1) de la Loi sur l'immigration et la protection des réfugiés. (foreign national) **infrastructures essentielles** Les lieux ci-après, y compris le terrain sur lequel ils sont situés : a) les aéroports, aérodromes, héliports, havres, ports, gares maritimes, jetées, phares, canaux, gares ferroviaires et chemins de fer, terminus d'autobus et garages d'autobus ou de camions; b) les infrastructures servant à la fourniture de services publics tels que l'eau, le gaz, l'assainissement et les télécommunications; c) les ponts et les ouvrages de franchissement internationaux et interprovinciaux; d) les installations de production et de transmission d'énergie; e) les hôpitaux et les endroits où sont administrés les vaccins contre la COVID-19; f) les axes commerciaux et les postes frontaliers internationaux, y compris les points d'entrée, les bureaux de douanes, les entrepôts de stockage et les entrepôts d'attente. (critical infrastructure) **Loi** La Loi sur les mesures d'urgence. (Act) **personne protégée** S'entend au sens du paragraphe 95(2) de la Loi sur l'immigration et la protection des réfugiés. (protected person) **Interdiction – assemblée publique**

2 (1) A person must not participate in a public assembly that may reasonably be 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. **Minor** (2) A person must not cause a person under the age of eighteen years to participate in an assembly referred to in subsection (1). **Prohibition — entry to Canada — foreign national** 3 (1) A foreign national must not enter Canada with the intent to participate in or facilitate an assembly referred to in subsection 2(1). **Exemption** (2) Subsection (1) does not apply to (a) a person registered as an Indian under the Indian Act; (b) a person who has been recognized as a Convention refugee or a person in similar circumstances to those of a Convention refugee within the meaning of subsection 146(1) of the Immigration and Refugee Protection Regulations who is issued a permanent resident visa under subsection 139(1) of those regulations; (c) a person who has been issued a temporary resident permit within the meaning of subsection 24(1) of the Immigration and Refugee Protection Act and who seeks to enter Canada as a protected temporary resident under subsection 151.1(2) of the Immigration and Refugee Protection Regulations;	2 (1) Il est interdit de participer à une assemblée publique dont il est raisonnable de penser qu'elle aurait pour effet de troubler la paix par l'un des moyens suivants : a) en entravant gravement le commerce ou la circulation des personnes et des biens; b) en entravant le fonctionnement d'infrastructures essentielles; c) en favorisant l'usage de la violence grave ou de menaces de violence contre des personnes ou des biens. **Mineur** (2) Il est interdit de faire participer une personne âgée de moins de dix-huit ans à une assemblée visée au paragraphe (1). **Interdiction – entrée au Canada – étranger** 3 (1) Il est interdit à l'étranger d'entrer au Canada avec l'intention de participer à une assemblée visée au paragraphe 2(1) ou de faciliter une telle assemblée. **Exemption** (2) Le paragraphe (1) ne s'applique pas aux personnes suivantes : a) une personne inscrite à titre d'Indien sous le régime de la Loi sur les Indiens; b) la personne reconnue comme réfugié au sens de la Convention, ou la personne dans une situation semblable à celui-ci au sens du paragraphe 146(1) du Règlement sur l'immigration et la protection des réfugiés, qui est titulaire d'un visa de résident permanent délivré aux termes du paragraphe 139(1) de ce règlement; c) la personne qui est titulaire d'un permis de séjour temporaire au sens du paragraphe 24(1) de la Loi sur l'immigration et la protection des réfugiés et qui cherche à entrer au Canada à titre de résident temporaire protégé aux termes du paragraphe 151.1(2) du Règlement sur

(d) a person who seeks to enter Canada for the purpose of making a claim for refugee protection; (e) a protected person; (f) a person or any person in a class of persons whose presence in Canada, as determined by the Minister of Citizenship and Immigration or the Minister of Public Safety and Emergency Preparedness, is in the national interest.	l'immigration et la protection des réfugiés; d) la personne qui cherche à entrer au Canada afin de faire une demande d'asile; e) la personne protégée; f) sa présence au Canada est, individuellement ou au titre de son appartenance à une catégorie de personnes, selon ce que conclut le ministre de la Citoyenneté et de l'Immigration ou le ministre de la Sécurité publique et de la Protection civile, dans l'intérêt national.
Travel 4 (1) A person must not travel to or within an area where an assembly referred to in subsection 2(1) is taking place.	**Déplacements** 4 (1) Il est interdit de se déplacer à destination ou à l'intérieur d'une zone où se tient une assemblée visée au paragraphe 2(1).
Minor — travel near public assembly (2) A person must not cause a person under the age of eighteen years to travel to or within 500 metres of an area where an assembly referred to in subsection 2(1) is taking place.	**Déplacements à proximité d'une assemblée publique – mineur** (2) Il est interdit de faire déplacer une personne âgée de moins de dix-huit ans, à destination ou à moins de 500 mètres de la zone où se tient une assemblée visée au paragraphe 2(1).
Exemptions (3) A person is not in contravention of subsections (1) and (2) if they are (a) a person who, within of the assembly area, resides, works or is moving through that area for reasons other than to participate in or facilitate the assembly; (b) a person who, within the assembly area, is acting with the permission of a peace officer or the Minister of Public Safety and Emergency Preparedness; (c) a peace officer; or (d) an employee or agent of the government of Canada or a province who is acting in the execution of their duties.	**Exemptions** (3) Ne contrevient pas aux paragraphes (1) et (2) : a) la personne qui réside, travaille ou circule dans la zone de l'assemblée, pour des motifs autres que de prendre part à l'assemblée ou la faciliter; b) la personne qui, relativement à la zone d'assemblée, agit avec la permission d'un agent de la paix ou du ministre de la Sécurité publique et de la Protection civile; c) l'agent de la paix; d) l'employé ou le mandataire du gouvernement du Canada ou d'une province qui agit dans l'exercice de ses fonctions.
Use of property — prohibited assembly 5 A person must not, directly or indirectly, use, collect, provide make available or invite a person to provide property to facilitate or participate in any assembly referred to in subsection 2(1) or for the purpose of	

benefiting any person who is facilitating or participating in such an activity.	
Designation of protected places	**Utilisation de biens – assemblée interdite**
6 The following places are designated as protected and may be secured: (a) critical infrastructures; (b) Parliament Hill and the parliamentary precinct as they are defined in section 79.51 of the Parliament of Canada Act; (c) official residences; (d) government buildings and defence buildings (e) any property that is a building, structure or part thereof that primarily serves as a monument to honour persons who were killed or died as a consequence of a war, including a war memorial or cenotaph, or an object associated with honouring or remembering those persons that is located in or on the grounds of such a building or structure, or a cemetery; (f) any other place as designated by the Minister of Public Safety and Emergency Preparedness.	5 Il est interdit, directement ou non, d'utiliser, de réunir, de rendre disponibles ou de fournir des biens — ou d'inviter une autre personne à le faire — pour participer à toute assemblée visée au paragraphe 2(1) ou faciliter une telle assemblée ou pour en faire bénéficier une personne qui participe à une telle assemblée ou la facilite. **Désignation de lieux protégés** 6 Les lieux suivants sont protégés et peuvent être aménagés : a) les infrastructures essentielles; b) la cité parlementaire et la Colline parlementaire au sens de l'article 79.51 de la Loi sur le Parlement du Canada; c) les résidences officielles; d) les immeubles gouvernementaux et les immeubles de la défense; e) tout ou partie d'un bâtiment ou d'une structure servant principalement de monument érigé en l'honneur des personnes tuées ou décédées en raison d'une guerre — notamment un monument commémoratif de guerre ou un cénotaphe —, d'un objet servant à honorer ces personnes ou à en rappeler le souvenir et se trouvant dans un tel bâtiment ou une telle structure ou sur le terrain où ceux-ci sont situés, ou d'un cimetière; f) tout autre lieu désigné par le ministre de la Sécurité publique et de la Protection civile.
Direction to render essential goods and services 7 (1) Any person must make available and render the essential goods and services requested by the Minister of Public Safety and Emergency Preparedness, the Commissioner of the Royal Canadian Mounted Police or a person acting on their behalf for the removal, towing and storage of any vehicle, equipment, structure or other object that is part of a blockade.	**Ordre de fournir des biens et services essentiels** 7 (1) Toute personne doit rendre disponibles et fournir les biens et services essentiels demandés par le ministre de la Sécurité publique et de la Protection civile, du commissaire de la Gendarmerie royale du Canada, ou la personne agissant en leur nom pour l'enlèvement, le remorquage et l'entreposage de véhicules, d'équipement,
Method of request (2) Any request made under subsection (1) may be made in writing or given verbally by a person acting on their behalf.	
Verbal request (3) Any verbal request must be confirmed in writing as soon as possible.	

Period of request 8 A person who, in accordance with these Regulations, is subject to a request under section 7 to render essential goods and services must comply immediately with that request until the earlier of any of the following: (a) the day referred to in the request; (b) the day on which the declaration of the public order emergency expires or is revoked; or (c) the day on which these Regulations are repealed. **Compensation for essential goods and services** 9 (1) Her Majesty in right of Canada is to provide reasonable compensation to a person for any goods or services that they have rendered at their request under section 7, which amount must be equal to the current market price for those goods or services of that same type, in the area in which the goods or services are rendered. **Compensation** (2) Any person who suffers loss, injury or damage as a result of anything done or purported to be done under these Regulations may make an application for compensation in accordance with Part V of the Emergencies Act and any regulations made under that Part, as the case may be. **Compliance — peace officer** 10 (1) In the case of a failure to comply with these Regulations, any peace officer may take the necessary measures to ensure the compliance with these Regulations and with any provincial or municipal laws and allow for the prosecution for that failure to comply. **Contravention of 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	des structures ou de tout autre objet qui composent un blocage. **Modalités** (2) La demande faite au titre du paragraphe (1) peut être faite par écrit ou communiquée verbalement ou la personne agissant en son nom. **Demande verbale** (3) La demande verbale est confirmée par écrit dès que possible. **Période de validité** 8 Quiconque fait l'objet d'une demande au titre de l'article 7 pour la fourniture de biens et de services essentiels est tenu de s'y conformer dans les plus brefs délais jusqu'à la première des dates suivantes : a) la date indiqué à la demande; b) la date de l'abrogation ou la cessation d'effet de la déclaration d'état d'urgence; c) la date de l'abrogation du présent règlement. **Indemnisation pour les biens et services essentiels** 9 (1) Sa Majesté du chef du Canada accorde une indemnité raisonnable à la personne pour les biens fournis et les services rendus à sa demande aux termes de l'article 7 dont le montant équivaut au taux courant du marché pour les biens et services de même type, dans la région où les biens ont été fournis ou où les services ont été rendus. **Indemnisation** (2) Toute personne qui subit des dommages corporels ou matériels entraînés par des actes accomplis, ou censés l'avoir été, en application du présent règlement peut, à cet égard, présenter une demande d'indemnisation conformément à la partie V de la Loi sur les mesures d'urgence et à ses règlements d'application, le cas échéant. **Application des lois** 10 (1) En cas de contravention au présent règlement, tout agent de la paix peut prendre

(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. **Coming into force** 11 This Order comes into force on the day on which it is registered.	les mesures nécessaires pour faire observer le présent règlement ou toutes lois provinciales ou municipales et permettre l'engagement de poursuites pour cette contravention. **Pénalités** (2) Quiconque contrevient au présent règlement est coupable d'une infraction passible, sur déclaration de culpabilité : a) par procédure sommaire, d'une amende maximale de 500 $ et d'un d'emprisonnement maximal de six mois, ou de l'une de ces peines; b) par mise en accusation, d'une amende maximale de 5 000 $ et d'un emprisonnement maximal de cinq ans, ou de l'une de ces peines. **Entrée en vigueur** 11 Le présent règlement entre en vigueur à la date de son enregistrement.

National Defence Act, R.S.C., 1985, c. N-5, s. 273.6, 275.

Public Service **273.6 (1)** Subject to subsection (2), the Governor in Council or the Minister may authorize the Canadian Forces to perform any duty involving public service. **Law enforcement assistance** **(2)** The Governor in Council, or the Minister on the request of the Minister of Public Safety and Emergency Preparedness or any other Minister, may issue directions authorizing the Canadian Forces to provide assistance in respect of any law enforcement matter if the Governor in Council or the Minister, as the case may be, considers that **a)** the assistance is in the national interest; and **b)** the matter cannot be effectively dealt with except with the assistance of the Canadian Forces. **Exception** **(3)** Subsection (2) does not apply in respect of assistance that is of a minor nature and limited to logistical, technical or administrative support. **Restriction** **(4)** The authority of the Minister under this section is subject to any directions issued by the Governor in Council.	**Service publique** **273.6 (1)** Sous réserve du paragraphe (2), le gouverneur en conseil ou le ministre peut autoriser les Forces canadiennes à accomplir toute tâche de service public. **Aide aux forces de l'ordre** **(2)** Le gouverneur en conseil, ou le ministre, à la demande du ministre de la Sécurité publique et de la Protection civile ou de tout autre ministre, peut émettre des directives autorisant les Forces canadiennes à prêter assistance relativement à toute question relative à l'application de la loi si le gouverneur en conseil : ou le ministre, selon le cas, estime que **a)** l'assistance est dans l'intérêt national ; et **b)** la question ne peut être réglée efficacement qu'avec l'aide des Forces canadiennes. **Exception** **(3)** Le paragraphe (2) ne s'applique pas à l'égard d'une aide de nature mineure et limitée à un soutien logistique, technique ou administratif. **Restriction** **(4)** L'autorité du ministre en vertu du présent article est assujettie aux directives émises par le gouverneur en conseil.
Riot or disturbance **275.** The Canadian Forces, any unit or other element thereof and any officer or non-commissioned member, with materiel, are liable to be called out for service in aid of the civil power in any case in which a riot or disturbance of the peace, beyond the powers of the civil authorities to suppress, prevent or deal with and requiring that service, occurs or is, in the opinion of an attorney general, considered as likely to occur.	**Émeute ou troubles** **275**. Les Forces canadiennes, toute unité ou autre élément de celles-ci et tout officier ou militaire du rang, avec du matériel, sont susceptibles d'être appelés au service au profit du pouvoir civil dans tous les cas où une émeute ou trouble de la paix, au-delà des pouvoirs des autorités civiles de supprimer, d'empêcher ou de traiter et d'exiger ce service, se produit ou est, de l'avis d'un procureur général, considéré comme susceptible de se produire.