



27 January 2023

The Honourable Paul Rouleau
Public Order Emergency Commission
c/o Main Floor Security Desk
90 Sparks Street
Ottawa, Ontario
K1A 0A3

Dear Mr Rouleau,

Re – Public Order Emergency Commission (“the Commission”) – Emergencies Act R.S.C 1985 c.22 (4th Supp) (“the Act”) - Order in Council P.C. 2022-392 (“the Order”)

The Institute for Freedom & Justice (“IFJ”) is a registered Canadian charity founded in 2006. The IFJ was established to create and build an understanding of the foundation, spirit, philosophy, and legal force of our Canadian Constitution, including the Charter of Rights & Freedoms and the foundational principles that contribute to good governance.

We are confident that the Commission shares these values along with our commitment to ethical, responsible, and transparent performance of the functions of government in Canada.

The invocation of the Emergencies Act was a controversial act of enforcement which has drawn strong and sharply contrasting views from Canadians. Along with millions of others we have closely followed the proceedings of the Commission and we are grateful to you and the Commission staff for your dedication to the demanding work required of you to manage and conclude this highly complex and challenging process.

Our country is looking to return to normalcy and to leave behind us the public health measures which were the origins of the ‘Freedom Convoy’ protest in Ottawa in the Winter of 2022. Canadians are looking to you to openly and transparently provide guidance, counsel, insight, and constructive closure which will help the country to turn the page, within the framework of the Constitution and the Charter of Rights & Freedoms. We recognize the enormity of your responsibility. Our comments and requests are made in good faith with the intention of assisting the process and recognition of the Commission’s obligations to Parliament and to all Canadians.

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We understand that the Public Inquiry carried out by the Commission is mandated by Section 63(1) of the Act whereby:

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

Further, the Public Inquiry is to result in a report being issued to each House of Parliament as specifically required by Section 63(2) of the Act as follows:

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

The governance of the Public Inquiry by the Commission, whilst not specifically required by the Act, is set out in the Order of the Governor in Council upon the recommendation of the Prime Minister and whereby the tabling of the report of the Commission is prescribed in Sections (a) (iv) and (vi) (b) as follows:

“..direct the Commissioner to submit to the Governor in Council a final report in both official languages on their findings and recommendations no later than February 6, 2023.”

And,

“...require that the report of the Public Inquiry into the 2022 Public Order Emergency be laid before each House of Parliament by February 20, 2023.”

A. Content of the Report:

In the interests of transparency and confidence in the process we feel it is appropriate to ask for following confirmation in relation to the content of the reports.

- 1. Please confirm that the report to be submitted by the Commission to the Governor in Council will be identical to the report to be laid by the Commission before each House of Parliament*

2. Timing of the Report:

The Public Inquiry and the work of the Commission is a matter of statutory obligation imposed upon the government by Section 63(1) of the Act. It requires that the final report is to be laid before each House of Parliament in accordance with Section 63(2). Although a provision was later inserted in the Order (on the recommendation of the Prime Minister), that the Governor in Council should receive a report in advance of the Houses of Parliament, the Act makes no such express requirement.

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At the outset of the Public Inquiry, you said that “Its focus will remain squarely on the decision of the federal government: Why did it declare an emergency; how did it use its powers; and were those actions appropriate.”

One of the outcomes of the Public Inquiry, envisaged by the Act, is that the report may be critical of the government or its agencies. The potential for such an outcome explains the requirement of the Act that the report be laid only before the Houses of Parliament.

Submission of an advance report to the Governor in Council, and thereby the Cabinet including the Prime Minister, carries a high-risk of criticism concerning the transparency and integrity of the Public Inquiry process. This may result in a loss of confidence by Canadians in the fairness of the Commission and may mire the final part of the Public Inquiry in controversy.

Notwithstanding the above, the wording of the Order permits the Commission to comply with both the Act and the Order whilst maintaining the confidence of Canadians in the Public Inquiry process itself. The timing of the report to the Governor in Council in accordance with the Order is “*not later than February 6, 2023*” and the timing for the report to be laid before each House of Parliament is “*by February 20, 2023*”. Therefore, if the full and final report of the Commission is ready on February 6th for submission to the Governor in Council, then surely the report can also be laid before each House of Parliament on the same day.

We would therefore ask for the following assurance:

- Please confirm the Commission will submit its full and final report of the Public Inquiry to the Governor in Council and each House of Parliament simultaneously on the same day.*

We respectfully ask that you please provide your response to our two requests by 6pm ET on Wednesday 1st of February 2023 by email to info@freedomandjustice.ca

Yours sincerely,

Sonya Anderson
Executive Director
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