AND IN:

Court File No. T-382-22

FEDERAL COURT

B E T W E E N:

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

Applicants

and

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

Respondents

WRITTEN REPRESENTATION OF THE ATTORNEY GENERAL OF CANADA

Motion to Strike

April 11, 2022

ATTORNEY GENERAL OF CANADA

Department of Justice Canada

Ontario Regional Office
National Litigation Sector
120 Adelaide Street West, Suite 400
Toronto, ON M5H 1T1

Fax: (416) 973-0809

David Aaron / John Provart / Nur Muhammed-Ally

Tel: (343) 804-9782 / (647) 256-0784 / (647) 256-0776

David.Aaron@justice.gc.ca / John.Provart@justice.gc.ca / Nur.Muhammed-Ally@justice.gc.ca

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OVERVIEW

1. It is plain and obvious that the underlying applications are moot and that all the Applicants, save for two, lack standing. These applications for judicial review challenge the now revoked proclamation declaring a public order emergency under the *Emergencies Act,* and the associated measures in the *Emergency Measures Regulations* (Regulations) and Emergency Economic Measures Order (Order) (collectively, the Emergency Measures). Those very limited measures were only in effect for nine (9) days. Four applications for judicial review (applications) were commenced between February 17, 2022 and February 23, 2022 – the day the Emergency Measures were revoked.

2. All of the applications are moot as there is no live controversy between the parties. The Emergency Measures have been revoked; there is nothing concrete or tangible for the Court to opine on, as it noted in the context of an interim injunction in one of the applications at issue. The Court ought not to exercise its discretion to hear the moot matters as there is no adversarial context. While some disagreement regarding public policy choices may remain, there is no "collateral consequence" that requires a hearing. The Court would be straying outside its traditional role by making law in the abstract; this is especially the case in what appears to be a relative vacuum of concrete *Charter* facts. In any event, legislated review mechanisms are mandated by the *Emergencies Act* itself, in the form of a Parliamentary Review Committee and a legislated inquiry (Inquiry) into the circumstances that led to the declaration of a public order emergency, and the measures taken in response, which renders these applications duplicative and unnecessary, in the circumstances.

3. With the exception of Applicants Cornell and Gircys, none of the Applicants satisfy the requirements for standing. Neither Kristen Nagle (Nagle) nor Canadian Frontline Nurses (CFN) had their bank accounts frozen and their participation in the events giving rise to the public order emergency continued after the Emergency Measures were enacted. Jeremiah Jost (Jost) and Harold Ristau (Ristau) did not have their financial assets frozen nor were they more directly affected by the Emergency Measures than any other member of the public. Public interest standing should not be

granted to the Canadian Civil Liberties Association (CCLA) or the Canadian Constitution Foundation (CCF) because their proposed arguments are moot and duplicate the arguments of those with direct standing (i.e. Cornell and Gircys). Moreover, the issues they raise will be considered by way of the Parliamentary review and legislated Inquiry processes. Therefore, their applications are not an effective means of bringing these matters before the Court.

PART I – FACTS

A. TIMELINE AND LEGISLATIVE SCHEME

1) The *Emergencies Act*

4. On February 14, 2022, the Governor in Council (GIC) issued a proclamation declaring a public order emergency pursuant to section 17(1) of the *Emergencies Act* thereby necessitating the taking of special temporary measures to deal with the emergency (the Proclamation).

5. On February 15, 2022, the GIC made the Regulations and the Order pursuant to subsection 19(1) of the *Emergencies Act*.

6. On February 21, 2022, the House of Commons voted to confirm the declaration of a public order emergency proclaimed on February 14, 2022.

7. On February 23, 2022, the GIC directed that a proclamation be issued revoking the declaration of a public order emergency, thereby rendering the Regulations and Order of no force or effect. At that time, and pursuant to subsection 15(2) of the *Emergencies Act,* the revocation of the public order emergency resulted in "all orders and regulations made pursuant to the declaration or all orders and regulations so made […] are revoked effective on the revocation of the declaration."

8. The *Emergencies Act* requires that a Parliamentary Review Committee consisting of members from both Houses of Parliament be created in order to review

the "exercise of powers and the performance of duties and functions pursuant to a declaration of emergency."[1]

9. In addition to the Parliamentary Review Committee, the *Emergencies Act* stipulates that the GIC must "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" within sixty days after the revocation of the declaration of emergency.[2]

10. Finally, the *Emergencies Act* requires that a report of the Inquiry be laid before each House of Parliament within 360 days of the revocation of the declaration of emergency.[3]

2) The Applicants

11. Four applications for judicial review have been commenced challenging the Emergency Measures:

Canadian Frontline Nurses and Kristen Nagle (T-306-22)

12. On February 18, 2022, CFN and Nagle commenced an application for judicial review challenging the Proclamation on the basis that it is *ultra vires*, unreasonable, and violates the *Charter* and *Canadian Bill of Rights*.

13. CFN is a not-for-profit corporation. Nagle is a registered nurse, and a member and director of CFN. Both oppose public health mandates and restrictions imposed in response to the COVID-19 pandemic.

14. CFN and Nagle each assert direct standing on the basis of their participation in the "Freedom Convoy 2022" blockade of downtown Ottawa (Convoy). Neither claim public interest standing.

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[1] *Emergencies Act*, s. 62(1), RSC 1985, c 22 (4th Supp) [***Emergencies Act***].
[2] *Ibid*, s. 63(1).
[3] *Ibid*, s. 63(2).

Canadian Civil Liberties Association (T-316-22)

15. On February 18, 2022, the CCLA commenced an application for judicial review challenging the Emergency Measures on the basis that they are *ultra vires*, unreasonable, and/or violate the *Charter*.

16. The CCLA describes itself as an independent, non-profit, non-governmental organization dedicated to defending and promoting fundamental human rights and civil liberties.

17. The CCLA asserts public interest standing based on its record of engagement in issues related to human rights and civil liberties.

18. The CCLA does not allege that it was directly affected by the decisions it challenges.

Canadian Constitution Foundation (T-347-22)

19. On February 23, 2022, the CCF commenced an application for judicial review challenging the Emergency Measures, on the basis that they are unlawful and violate the *Charter*.

20. The CCF describes itself as an independent, national, and non-partisan charity that seeks to protect constitutional freedoms.

21. It asserts public interest standing based on its record of engagement in constitutional issues.

22. The CCF does not assert that it was directly affected by the decisions it challenges.

Jost, Cornell, Gircys, and Ristau (T-382-22)

23. On February 24, 2022, Jeremiah Jost (Jost), Edward Cornell (Cornell), Vincent Gircys (Gircys), and Harold Ristau (Ristau) (collectively, the Jost applicants) commenced an application for judicial review challenging the Emergency Measures on

the basis that they are *ultra vires*, violate the *Constitution Act*, 1867, the *Charter*, the *Canadian Bill of Rights*, and international law and agreements.

24. The Jost applicants are private citizens who claim direct standing based on their participation in the Convoy. They do not assert public interest standing. Unlike Jost and Ristau, Cornell and Gircys were directly affected by the Emergency Measures since their financial accounts were frozen pursuant to the Order.

PART II – ISSUES

25. Whether it is plain and obvious that the applications should be struck without leave to amend, as:

(a) They are moot, and the discretionary factors do not weigh in favour of hearing the matter.

(b) The majority of the Applicants lack direct standing.

(c) Public interest standing is not warranted in the circumstances.

PART III – SUBMISSIONS

A. TEST FOR A MOTION TO STRIKE

26. As Justice MacTavish noted in *Lukács,* the Court's jurisdiction to strike a proceeding derives from its inherent jurisdiction to control its own process.[4]

27. The threshold to be applied on a motion to strike is whether the application is "bereft of any possibility of success" such that it should be struck based on mootness or standing.[5] The Court will consider whether it is plain and obvious that the application

[4] *Lukács v Canada (President, Natural Sciences and Engineering Research Council*, 2015 FC 267 at para 24 [***Lukács***], cited with approval in *1397280 Ontario Ltd v Canada (Employment and Social Development)*, 2020 FC 20 at para 11 [***1397280 Ontario***]; see also *Rebel News* Network *Ltd v Canada (Leaders' Debates Commission)*, 2020 FC 1181 at para 32 [***Rebel News***].
[5] *Rebel News* at paras 33-34.

is doomed to fail,[6] or whether there is "a 'show stopper' or a 'knockout punch' – an obvious, fatal flaw striking at the root of this Court's power to entertain the application."[7]

28. Although this threshold is high, this Court and the Federal Court of Appeal have struck applications for judicial review on many occasions, particularly on the basis of mootness[8] and standing.[9]

29. A judicial determination that a case is moot and lacking discretionary grounds for proceeding provides a valid basis for dismissal. Additionally, alleging that the *Charter* has been infringed "does not automatically convert a moot application into a live controversy nor does it require the Court to exercise its discretionary authority to hear a moot application."[10] The task of the motions judge is to "gain 'a realistic

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[6] *Wenham v Canada (Attorney General)*, 2018 FCA 199 at paras 32-33.
[7] *Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc*, 2013 FCA 250 at para 47 [***JP Morgan***].
[8] See, e.g., *Cardin v Canada (AG)*, 2017 FCA 150; *Lukács v Canada (Transportation Agency)*, 2016 FCA 227; *JP Morgan*; *Fogal v Canada* (2000), 1999 CanLII 7932, 167 FTR 266 (TD) [***Fogal***], aff'd [2000] FCJ No 916 (CA) (QL), leave to appeal to SCC ref'd [2001] SCCA No 84 (QL); *Labbé v Létourneau* (1997), 1997 CanLII 4928, 128 FTR 291 (TD); *Rahman v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 137 [***Rahman***]; *Narvey v McNamara*, 1997 CanLII 5553, 140 FTR 1 (TD); *Canada (AG) v Canada (Information Commissioner)*, 1997 CanLII 6362, [1998]1 FC 337 (TD); *Lee v Canada (Minister of Citizenship and Immigration)*, 1997 CanLII 4837, 126 FTR 229 (TD); *Pauktuutit, Inuit Women's Assn v Canada*, 2003 FCT 139 at paras 13-23; *Moses v Canada*, 2003 FC 1417 at para 11; *Chiu v Canada (National Parole Board)*, 2005 FC 1516; *Lukács; Khalifa v Canada (Minister of Citizenship and Immigration)*, 2016 FC 119; *Kardava v Canada (Minister of Citizenship and Immigration)*, 2016 FC 159; *0769449 BC Ltd (Kimberly Transport) v Vancouver Fraser (Port Authority)*, 2016 FC 645; *1397280 Ontario* at para 11.
[9] *Soprema Inc. v Canada (Attorney General)*, 2021 FC 732; *Novo Nordisk Canada Inc. v Canada (Health)*, 2019 FC 822; *Canadian Shipowners Association v Laurentian Pilotage Authority*, 2016 FC 1007; *54039 Newfoundland and Labrador Limited (George Street Association) v St. John's Port Authority*, 2011 FC 740; *Ridgeview Restaurant Limited v Canada (Attorney General)*, 2010 FC 506, aff'd 2011 FCA 52; *Canwest Mediaworks Inc v Canada (Minister of Health)*, 2007 FC 752, at para 10, aff'd 2008 FCA 207.
[10] *Rebel News* at para 49.

appreciation' of the application's 'essential character' by reading it holistically and practically."[11]

B. THE APPLICATIONS ARE MOOT

1) Test for Mootness

30. A matter is moot where there is no longer a live issue between the parties and an order will have no practical effect.[12] If a matter is moot, the Court may choose to exercise its discretion to hear the application, upon considering the following factors: (1) the presence of an adversarial context; (2) the appropriateness of applying scarce judicial resources; and (3) the Court's sensitivity to its role relative to that of the legislative branch of government. A judicial determination that a case is moot and lacking discretionary grounds for proceeding provides a valid basis for dismissal.

2) First Branch of Doctrine of Mootness: No Live Controversy

31. There is no live controversy between the parties given that the Emergency Measures have been revoked. There is nothing concrete or tangible for the Court to opine on that will impact the rights and interests of the parties, as the Emergency Measures are no longer in force. Any argument that the applicants could still face consequences from the Emergency Measures "is speculative and would not justify proceeding with …[a matter]… which is moot."[13]

32. The applications amount to requests for declarations which fail to provide live issues for judicial resolution, contrary to this Court's guidance that requests for declaratory relief cannot sustain a moot case in and of itself.[14] Put another way, mootness "cannot be avoided" on the basis that declaratory relief is sought.[15]

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[11] *JP Morgan* at para 50.
[12] *Borowski v Canada (AG)*, [1989] 1 SCR 342 at p. 353 [***Borowski***].
[13] *N.O. v Canada (Minister of Citizenship and Immigration)*, 2016 FCA 214 at para 4, citing *Guzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 358 at para 4.
[14] See for example, *Rebel News* at para 64.
[15] *Fogal* at paras 24-27; see also *Rahman* at paras 17-21.

Moreover, "a declaration may only be granted if it will have a practical utility, that is, if it will settle a 'live controversy' between the parties."[16]

33. In this case, there is no such practical utility given the revocation of the Emergency Measures. There is no remedy left for the Court to order that will have any practical effect on any of the applicants' rights. As the Court noted in dismissing the stay motion brought by the applicants in T-306-22, a determination "would have no practical effect because the Emergencies Measures including the *Public Order Emergency Proclamation* have already been revoked."[17] While the Court was careful to avoid prejudging the mootness of the underlying application on that motion, there is no difference in principle between the two proceedings.

34. In this context, the Court should avoid expressing an opinion on a question of law where it is not necessary to do so to dispose of the case, especially as Constitutional questions are in issue; abstract Constitutional pronouncements may prejudice future cases.[18] As the Federal Court of Appeal has also noted, "a mere jurisprudential interest fails to satisfy the need for a concrete and tangible controversy."[19]

35. Finally, the *Emergencies Act*'s requirements for both a parliamentary review (already underway[20]) and an inquiry must also be considered.[21] They will examine the circumstances that led to the proclamation of a public order emergency, and the measures taken to deal with it. As the Court of Appeal recently held, "gratuitously

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[16] *Income Security Advocacy Centre v Mette*, 2016 FCA 167 at para 6, citing *Daniels rv Canada* (*Indian Affairs and Northern Development*, 2016 SCC 12, [2016] 1 SCR 99 at para 11, *Solosky v The Queen*, 1979 CanLII 9, [1980] 1 SCR 821 and *Borowski*.
[17] *Canadian Frontline Nurses and Kristen Nagle v Canada (Attorney General)*, 2022 FC 284 at para 19.
[18] *Phillips v Nova Scotia Commissioner of Inquiry into the Westray Mine Tragedy*, 1995 CanLII 86 (SCC) at paras 9-12; *Mackay v Manitoba*, [1989] 2 S.C.R. 357 at p. 361-2; *Danson v Ontario (Attorney General)*, 1990 CanLII 93 (SCC), [1990] 2 S.C.R. 1086 at 1099-1101.
[19] *Air Canada Canadian Union of Public Employees (Air Canada Component) v Air Canada*, 2021 FCA 67 at para 7 [***Air Canada***], citing *Borowski*.
[20] https://www.parl.ca/Committees/en/DEDC.
[21] See ss. 62 and 63 of the *Emergencies Act*.

interpreting the former wording of a provision in issue, in a case with no practical consequences, just to create a legal precedent, would be a form of law-making for the sake of law-making. That is not our proper task."[22] This is especially the case when Parliament has legislated review mechanisms.

3) Second Branch: Discretionary Grounds

36. The Court ought not to exercise its discretion to entertain these moot applications. There is no adversarial context in relation to the relief sought as the public order emergency has ended and the Emergency Measures are no longer in effect. There is nothing left to adjudicate. Opining on a matter that is academic is not an optimal use of judicial resources, especially in light of the legislative mechanisms that exist in the form of parliamentary review and the legislated Inquiry. The Court would be going beyond its traditional role if it opined on a matter where there is no real dispute to resolve.

a) Adversarial context

37. On the first discretionary factor, while there may be disagreement with policy in this case, there is no legally relevant adversarial context with respect to the issue for which relief is sought (i.e., the invocation of the *Emergencies Act*).

38. In *Borowski*, the Court explained that an adversarial context is one where "collateral consequences" arise in related proceedings. For example, "if the resolution of an issue in an otherwise moot proceeding determines the availability of liability or prosecution in a related proceeding between the parties".[23]

39. There is no such collateral consequence here that warrants a hearing. None of the Applicants had their accounts frozen except for Cornell and Gircys, and their accounts are no longer frozen as a result of, or subject to, the Emergency Measures.

[22] *Canadian Union of Public Employees (Air Canada Component) v Air Canada*, 2021 FCA 67 at para 13.
[23] *Azhaev v Canada (Public Safety and Emergency Preparedness),* 2014 FC 219 at para 22; *Pelletier v Fort William First Nation,* 2021 FC 562 at paras 14-16.

Indeed, subsection 15(2) of the *Emergencies Act* confirms that these measures cannot remain in effect once revoked.[24]

40. Similarly, should any of the Applicants suggest that an adversarial context may yet come into existence, this would not satisfy the requirement that there remain an adversarial context in the present case despite the issue in question being moot.[25] The possibility of a future adversarial context is insufficient.

41. Finally, a dispute over whether the Emergency Measures were constitutional and whether *Charter* declarations should issue is insufficient to establish an adversarial context as the measures have been revoked. While these allegations might be serious, as this Court acknowledged in striking the moot application in *Rebel News*, "it is not the role of this Court to decide purely abstract and academic questions when there is no obvious, useful purpose to be served by granting the declaratory relief sought by an applicant."[26]

42. There is no adversarial context to be generated by freestanding requests for declaratory relief, even *Charter* declarations. As this Court recently noted in *Germa*, with reference to the Supreme Court's decision in *Mackay v Manitoba*, "a judicial review is not a reference where a party is seeking more general pronouncements."[27]

Practical Utility / Judicial Economy

43. The jurisprudence makes clear that where a proceeding will not have a "practical effect upon the rights of the parties, it has lost its primary purpose" and so

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[24] *Emergencies Act*, s. 15(2)
[25] See: *Newman's Valve Limited v Canada (National Revenue)*, 1997 CanLII 11998 (CA CITT), *Osakpamwan v Canada (Public Safety and Emergency Preparedness),* 2016 FC 267 at paras 25-28, *Huo v Canada (Citizenship and Immigration),* 2021 FC 1230 at para 10.
[26] *Rebel News* at paras 58 and 64, citing *Lee v Canada (Minister of Citizenship and Immigration)*, [1997] FCJ No 242, 1997 CanLII 4837 at para 9.
[27] *Germa v Canada (AG)*, 2021 FC 134 at para 22, citing *Mackay v Manitoba*, 1989 CanLII 26 (SCC), [1989] 2 SCR 357.

the "Court should no longer devote scarce resources to it".[28] In addition, under the "judicial economy" analysis, courts may consider: (a) whether the matter is likely to recur and is evasive of review; and (b) whether the moot matter is of national or public importance.[29]

44. Judicial economy weighs against the Court exercising its discretion here for several reasons. The Applicants seeking to quash the Emergency Measures have obtained the relief sought, as they are no longer in effect. Any declaration that the Emergency Measures were invalid or otherwise not compliant with the *Charter* would provide no practical utility. There is no concrete or tangible relief to be provided that warrants the Court's intervention. The Emergency Measures were in place for short duration, and there is no continuing impact.

45. In "exceptionally rare cases, the need to settle uncertain jurisprudence can assume such great practical importance that a court may nevertheless exercise its discretion to hear a moot appeal."[30] This is not such a case. Deciding these appeals involves the application of settled *Charter* and administrative law jurisprudence to a unique and particular factual matrix.

46. The question of whether the *Emergencies Act* was properly invoked is not evasive of review. In fact, Parliament saw fit to embed in the legislation itself adequate review and oversight mechanisms to ensure accountability:

(a) The Government is required to table a motion in both Houses of Parliament to confirm the declaration within seven sitting days after the proclamation is issued.[31] It is also obligated to table orders and regulations in both Houses of Parliament two days after issuance;[32]

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[28] *Amgen Canada Inc v Apotex Inc*, 2016 FCA 196 at para 16 [***Amgen***], citing Borowski.
[29] *Borowski* at p. 353.
[30] *Amgen* at para 16 citing *M v H*, [1999] 2 SCR 3 at paras 43-44.
[31] *Emergencies Act*, s 58(1).
[32] *Ibid*, s 61(2).

(b) The establishment of a joint committee of both Houses of Parliament for the purposes of reviewing the "exercise of powers and performance of duties and functions pursuant to a declaration of emergency" is also mandated.[33]

(c) An Inquiry is to be "held into the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency". It is to be established within sixty days after the revocation of the declaration of emergency, and a report submitted to both Houses of Parliament a year after the revocation.[34]

47. It would be unnecessarily duplicative to have a parallel court proceeding while Government actions are being reviewed by parliamentarians, and through the eventual Inquiry.

48. Finally, the *Emergencies Act* is invoked in exceptional circumstances. The likelihood of this particular scenario recurring is unknown, and there is no evidence to suggest that the unusual circumstances that gave rise to the declaration would recur. These review and oversight mechanisms noted above may provide helpful insight, or recommendations, and result in policy changes that could preclude such a scenario from recurring. These mechanisms distinguish the present applications from other cases in which evasiveness of review has been invoked, for example, where the live controversy had existed for many years and its resolution would "continue to determine" subsequent disputes.[35]

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[33] The Parliamentary Review Committee shall include at least one member of the House of Commons from each party that has a recognized membership of twelve or more persons in that House and at least one senator from each party in the Senate that is represented on the committee by a member of the House of Commons. See *Emergencies Act*, s. 62(2).

[34] *Emergencies Act*, s. 60 to 63.

[35] *Saskatchewan (Minister of Agriculture, Food and Rural Revitalization) v Canada (Attorney General)*, 2005 FC 1027 at para 26 (a case involving a longstanding dispute over egg quota allocations, which had expired by the time of the hearing but would continue to inform future quota orders).

49. Moreover, the matter here does not warrant a hearing on the merits simply because it concerns the first invocation of the *Emergencies Act*. Matters of "national importance" do not automatically weigh in favour of proceeding with a moot case on discretionary grounds. There must be an additional "social cost in leaving the matter undecided."[36] There is no clear social cost that would require this Court to hear these moot applications.

Proper Role of the Court

50. The third *Borowski* factor concerns the need for the Court to demonstrate a measure of awareness of its proper law-making function. The Supreme Court cautioned in *Borowski* that a court faced with a request to adjudicate a matter that has become academic must "be sensitive to its role as the adjudicative branch in our political framework. Pronouncing judgments in the absence of a dispute affecting the rights of the parties may be viewed as intruding into the role of the legislative branch".[37]

51. Another relevant factor here is Parliament's role. The Federal Court of Appeal has noted that Parliament's role in supervising the decision-making body in question is relevant to the third *Borowski* factor, and has declined to exercise its discretion to allow a moot case to proceed where Parliament also has a role in considering the same issues.[38]

52. Parliament created specific tools in the *Emergencies Act* to review the exercise of the powers and the exercise of the duties pursuant to the declaration of a public order emergency in this case, as well as to inquire into the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency. These are the measures Parliament saw fit to create to ensure accountability within the system. The Court should not opine on revoked measures for the sake of establishing a legal precedent without any practical consequences.[39] It is "entirely speculative and

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[36] *Borowski* at p. 362.
[37] *Borowski* at p. 362; *Amgen* at para 16.
[38] *Democracy Watch v Canada (AG)*, 2018 FCA 195 at paras 20-22.
[39] *CUPE (Air Canada Component) v Air Canada*, 2021 FCA 67 at para 13; *Epicept*

premature" to guess what might occur in response to the Parliamentary review processes, never mind any potential future emergency.[40]

53. The existence of an ongoing Parliamentary review process, as well as an upcoming legislated Inquiry, calls "for an extra measure of caution before the Court decides an issue that need not be decided to resolve a live dispute."[41] The matter here has strong public policy dimensions. These applications pertain to the executive branch's decision to declare a public order emergency for a short duration. The applicants seek to continue these proceedings in a context where no live dispute exists, and whilst the legislative branch is in the midst of reviewing the decision made, and a legislated Inquiry is pending. The Court would be encroaching upon the legislative and executive spheres if the applications were heard.

C. APPLICANTS LACK STANDING

54. A party must have standing to bring an application for judicial review. There are two types of standing: direct and public interest standing.

55. The issue of standing may be decided on a preliminary motion to strike.[42]

1) Direct Standing

56. Generally, a litigant must be directly affected by the matters at issue in order to have standing to raise them in court. This is known as direct standing, or standing as of right. In the Federal Court, this requirement is set out in s. 18.1(1) of the *Federal Courts Act*:

18.1 (1) An application for judicial review may be made by the Attorney General of	**18.1 (1)** Une demande de contrôle judiciaire peut être présentée par le procureur

Corporation v Canada (Health), 2011 FCA 2019 at para 10.
[40] *Rebel News supra* at para 62.
[41] *Democracy Watch v Canada (AG)*, 2018 FCA 195 at para 22, citing *Democracy Watch v British Columbia (Conflict of Interest Commissioner)*, 2017 BCCA 366 at para 14.
[42] *Finlay v Canada (Minister of Finance)*, 1986 CanLII 6 at para 20 (SCC) [***Finlay***].

Canada or by anyone directly affected by the matter in respect of which relief is sought.	général du Canada ou par quiconque est directement touché par l'objet de la demande.

57. To establish direct standing, an applicant must show that the impugned decision:

(a) directly affects their rights;

(b) imposes legal obligations on them; or

(c) prejudicially affects them.[43]

58. Where the impugned administrative action applies broadly to the public at large, as do the Emergency Measures, the prejudice asserted in support of standing "must be qualitatively different" from that suffered by the public at large.[44] The fact that an individual feels strongly about the Emergency Measures, or feels inconvenienced by them, is insufficient.[45]

59. An Applicant bears the burden of adducing sufficient evidence to establish that they are more directly affected by the Emergency Measures than is the public generally.[46]

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[43] *Friends of the Canadian Wheat Board v Canada*, 2011 FCA 101 at para 21; *League for Human Rights of B'nai Brith Canada v Odynsky*, 2010 FCA 307 at para 58.
[44] *Judicial Review of Administrative Action in Canada*, Donald J.M. Brown, John M. Evans, Ch 4:24.
[45] *Kulchyski v Trent University*, 2001 CanLII 11691 (ON CA) para 43.
[46] *Skibsted v Canada (Environment and Climate Change)*, 2021 FC 416 para 85-86.

Kristen Nagle lacks standing

60. Nagle's evidence demonstrates that her support for, and participation in, the Convoy was unaffected by the Emergency Measures. In fact, she willingly acted in contravention of the Emergency Measures without suffering negative consequences.

61. After the Emergency Measures came into force, Nagle continued to engage in the same Convoy-related conduct that she had engaged in prior to their implementation, without suffering any negative consequences. For example, she continued to:

(a) solicit donations in support of the Convoy; [47]

(b) distribute funds to members of the Convoy; [48]

(c) provide other material support to members of the Convoy; [49]

(d) participate in the Convoy by travelling to prohibited areas in downtown Ottawa;[50] and,

(e) bring minors to prohibited areas in downtown Ottawa to participate in the Convoy.[51]

62. Nagle's bank accounts and financial resources were never frozen.[52]

63. Nagle was not forcibly removed from participating in the Convoy. She left the Convoy and downtown Ottawa on February 19, 2022 of her own accord.[53]

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[47] Affidavit of Kristen Nagle, sworn March 4, 2022 [**Nagle affidavit**] at paras 19, 32, 33.
[48] Nagle affidavit at paras 19, 20, 23, 32, 33.
[49] Nagle affidavit at paras 19, 20, 23, 32, 33.
[50] Nagle affidavit at para 30.
[51] Nagle affidavit at paras 30 and 49.
[52] Nagle affidavit at para 40
[53] Nagle affidavit at para 52.

64. Nagle retained the same ability to express her opposition to public health measures as did other members of the public. She remained at liberty to express her views outside of the prohibited places demarcated in the Regulations.

65. Nagle intentionally violated the Emergency Measures for days after their implementation, without consequence. Practically speaking, the Emergency Measures cannot be said to have prejudicially affected her.

Canadian Frontline Nurses lacks standing

66. CFN is a federally-incorporated, not-for-profit corporation.[54]

67. There is no evidence to suggest that:

(a) anyone other than Nagle acted on behalf of CFN at any material time;

(b) any director, officer, member, or employee of CFN, other than Nagle, attended or supported the Convoy;

(c) CFN took any action or engaged in any conduct separate or distinct from Nagle; and,

(d) the Emergency Measures affected CFN any differently than they affected Nagle.

68. Even if the Emergency Measures caused a temporary reduction in financial contributions to CFN, judicial review cannot be used to protect interests that are strictly of a commercial nature.[55] Accordingly, CFN lacks direct standing for the same reasons as Nagle.

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[54] Nagle affidavit at para 4 and Exhibit A.
[55] *Island Timberlands LP v Canada (Minister of Foreign Affairs)*, 2009 FCA 353 at para 7.

Jeremiah Jost lacks standing

69. Jost's evidence demonstrates that he was no more directly affected by the Emergency Measures than were other members of the public.

70. The Regulations temporarily prohibited any member of the public from participating in public assemblies in designated areas. Jost does not suggest that he was precluded from exercising his constitutional rights or civil liberties outside of those designated places. The restrictions imposed by the Regulations on his right to participate in the Convoy blockading downtown Ottawa applied equally to all members of the public.

71. The Emergency Measures imposed temporary legal obligations on all members of the public to refrain from engaging in prohibited activities in defined locations within downtown Ottawa. These legal obligations were no more applicable to Jost than to any other individual.

72. Jost does not assert that he was forcibly removed from downtown Ottawa or that he was otherwise specifically targeted by law enforcement. Instead, he left downtown Ottawa of his own volition in order to comply with legal obligations that applied to everyone.

73. Jost was no more prejudicially affected by the Emergency Measures than were any other members of the general public who wished to protest in downtown Ottawa. He remained at liberty to engage in public discourse or to exercise his constitutional rights outside of the specific areas defined in the Regulations.

Harold Ristau lacks standing

74. To establish direct standing, a party must demonstrate a causal relationship between the impugned decision and the prejudice that resulted.[56] That evidence cannot

[56] *Finlay* at paras 17 and 21.

be speculative.[57] Effects that are "too indirect, remote or speculative" to establish a causal link will not support a claim for standing. [58]

75. Ristau only participated in the Convoy for one day, on February 12, 2022.[59] This was before the Emergency Measures came into effect. He confirms that these measures did not impede his ability to participate in the Convoy in Ottawa.[60]

76. Ristau did not have accounts or financial resources frozen under the Order.

77. Ristau speculates, without evidence, that he suffered negative consequences upon returning home from Ottawa and that these consequences were directly caused by the Emergency Measures, rather than his participation in the Convoy. For example, Ristau speculates that the following events occurred as a direct result of the Emergency Measures:

(a) Individuals in his seminary refused communion with him;[61]

(b) His life was threatened; [62]

(c) Staff at his place of employment were threatened; [63]

(d) He received phone calls from a military veteran threatening harm and accusing him of desecrating the War Memorial, insurrectionism, and supporting Nazism, amongst other accusations; [64]

(e) His boss said he could not support the Convoy and required him to

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[57] *Hupacasath First Nation v Canada (Foreign Affairs and International Trade Canada)*, 2015 FCA 4 at para 104; *Mckeil Marine Limited v Canada (Attorney General),* 2016 FC 1063 (CanLII) at para 26.
[58] *Finlay* at para 22; *Canadian Council for Refugees v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 1131, at paras 24-29.
[59] Affidavit of Harold Ristau, sworn March 9, 2022 [**Ristau affidavit**] at para 10.
[60] Ristau affidavit at paras. 8-27.
[61] Ristau affidavit at para 30
[62] Ristau affidavit at para 30
[63] Ristau affidavit at paras 30, 36.
[64] Ristau affidavit at paras 31-33

include a disclaimer on all work correspondence stating that his views were his own; [65]

(f) His freedom of religion and worship at the War Memorial has been impaired and he does not know if he will ever feel safe there because "the government will be going after anyone who supported the Freedom Convoy;" [66] and,

(g) His reputation and integrity have been diminished as a result of being "labelled an insurrectionist and an enemy". [67]

78. Ristau attributes these occurrences to the decision to invoke the Emergency Measures without providing any factual basis to support these speculative conclusions. For example, he states that:

(a) He has been "directly and substantially harmed by the *Emergencies Act*" for participating in the Convoy and praying at the War Memorial, despite the fact that the Emergency Measures were not in force when he did so;[68]

(b) The Emergency Measures "emboldened" the aforementioned veteran by "labell[ing] anyone who supported the protests as an enemy of the state and an insurrectionist".[69] Aside from being speculative, this assertion is factually incorrect as the Emergency Measures use no such labels;

(c) His boss would not have spoken to him about his beliefs "if the Emergencies Act declaration had not occurred";[70] and,

(d) "[He is] being threatened, intimidated, guilted, shamed, shunned, and ostracized within [his] religious community in a way that would not be

[65] Ristau affidavit at paras 39-41
[66] Ristau affidavit at paras 44-45
[67] Ristau affidavit at para 46
[68] Ristau affidavit at paras 10 and 29.
[69] Ristau affidavit at para 37.
[70] Ristau affidavit at para 39.

occurring but for the Emergencies Act being invoked".[71]

79. There is nothing in the pleadings or the evidence indicating that the Emergency Measures directly affected Ristau's rights, imposed legal obligations on him, or prejudicially affected him. Accordingly, he lacks direct standing.

Edward Cornell and Vincent Gircys have standing

80. Unlike the other applicants who claim direct standing, Cornell and Gircys have adduced evidence demonstrating that they were directly affected by the Emergency Measures.

81. Cornell testifies that his bank account, debit card, and credit cards were frozen pursuant to the Order, he was unable to use them, and as a result, he was unable to pay his bills.[72]

82. Similarly, Gircys states that his bank accounts, credit card, and debit cards were frozen pursuant to the Order.[73] As a result, he lacked funds for fuel or food and had to rely on donations from strangers to facilitate his return home.

83. The evidence demonstrates that the Emergency Measures prejudicially affected Cornell and Gircys by temporarily denying them access to their financial resources. Accordingly, they satisfy the third element of the test for direct standing, although their application is still moot for the reasons noted above.

2) Public Interest Standing

84. Public interest standing is a matter of discretion, to be exercised in a purposive, flexible, and generous manner. Its underlying purposes are to ensure that state action conforms to the Constitution and statutory authority, and that there are practical and effective ways to challenge the legality of state action.[74] Public interest standing should

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[71] Ristau affidavit at para 43
[72] Affidavit of Edward Cornell, sworn February 23, 2022 at paras. 21-27.
[73] Gircys affidavit at paras 50-55.
[74] *Canada (Attorney General) v Downtown Eastside Sex Workers United Against*

generally be denied where another reasonable and effective means exists to bring the issues before the Court.[75] The Supreme Court has said that, "[a]ll of the other relevant considerations being equal, a [party] with standing as of right will generally be preferred."[76]

85. In exercising discretion to grant public interest standing, the Court will consider:

(a) whether there is a serious justiciable issue raised;

(b) whether the applicant has a real stake or a genuine interest in it; and

(c) whether, in all the circumstances, the proposed suit is a reasonable and effective way to bring the issue before the courts.[77]

86. These factors are to be interpreted flexibly, liberally and cumulatively, in light of the underlying purposes of public interest standing.[78]

87. The Respondent does not contest that both the CCLA and CCF have a genuine interest in the enactment of the Emergency Measures. However, the issues they raise are moot and will be examined via the Parliamentary review process and legislated Inquiry. Additionally, the parallel proceedings brought by directly affected applicants raise the same issues as CCLA and CCF but represent a more reasonable and effective means of bringing this matter before the Court.

88. When assessing the reasonable and effective means element of the test for public interest standing, the Court should take a purposive approach and consider, in light of realistic alternatives available given all the circumstances of the case, "whether the proposed action is an economical use of judicial resources, whether the issues are

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Violence Society, 2012 SCC 45, [2012] 2 SCR 524 at para 31 [***Downtown Eastside***].

[75] *Finlay* at para 35.

[76] *Downtown Eastside* at para 37.

[77] *Downtown Eastside* at para 37.

[78] *Downtown Eastside* at para 53.

presented in a context suitable for judicial determination in an adversarial setting and whether permitting the proposed action to go forward will serve the purpose of upholding the principle of legality".[79]

89. Factors relevant to this determination include: a party's capacity to bring forward an application; whether the case is of public interest; whether there are realistic alternative means favouring a more efficient and effective use of judicial resources; and the potential impact of granting public interest standing on others who are equally or more directly affected.[80]

90. As noted above, the matters raised by the CCLA and CCF are moot. On this basis alone, the Applicants failed to satisfy the requirement for public interest standing.

91. Regardless, granting public interest standing to CCLA and CCF would not be an economical use of judicial resources, since the grounds set out in their notices of application are largely duplicative of those found in the notice of application filed by Cornell and Gircys. Cornell and Gircys seek judicial review of the same impugned decisions as do the CCLA and CCF and their application alleges that the Emergency Measures violate the same sections of the *Charter* as do CCLA and CCF.[81] Duplication necessarily undermines efficiency.

92. Additionally, the CCLA and CCF applications lack the adversarial setting that the Supreme Court has identified as being preferable, and which exists in an application brought by a party with direct standing. The Supreme Court has noted that "'[C]oncrete adverseness' sharpens the debate of the issues and the parties' personal stake in the outcome helps ensure that the arguments are presented thoroughly and diligently." [82]

93. Denying the CCLA and CCF public interest standing does not necessarily deprive them of the opportunity to provide the Court with their perspective, since they

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[79] *Democracy Watch v Canada (Attorney General)*, 2018 FC 1290 para 60, citing *Downtown Eastside* at para 50.
[80] *Downtown Eastside* at para 51.
[81] Notices of Application of CCLA, CCF, Cornell and Gircys.
[82] *Downtown Eastside* at para 29.

may apply to intervene in the Cornell and Gircys application, if it proceeds. The Supreme Court has noted that:

> the views of the public litigant who cannot obtain standing need not be lost. Public interests organizations are, as they should be, frequently granted intervenor status. The views and submissions of intervenors on issues of public importance frequently provide great assistance to the courts. Yet that assistance is given against a background of established facts and in a time frame and context that is controlled by the courts. A proper balance between providing for the submissions of public interest groups and preserving judicial resources is maintained.[83]

94. The Court should decline to exercise its discretion to grant public interest standing to the CCLA and CCF.

PART IV– Order Sought

95. The Respondent, the Attorney General of Canada, requests that the applications be struck without leave to amend.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Date at Ottawa this 11th day of April 2022.

David Aaron / John Provart / Nur Muhammed-Ally
Of Counsel for the Respondent Attorney General of Canada

[83] *Canadian Council of Churches v Canada et al.*, 1992 CanLII 116 at p 263 (SCC).

PART V – LIST OF AUTHORITIES

Caselaw

1. *Lukács v Natural Sciences and Engineering Research Council of Canada*, 2015 FC 26

2. *1397280 Ontario Ltd v Canada (Employment and Social Development)*, 2020 FC 20

3. *Rebel News Network Ltd v Canada (Leaders' Debates Commission)*, 2020 FC 1181

4. *Wenham v Canada (Attorney General)*, 2018 FCA 199

5. *Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc*, 2013 FCA 250 [2014] 2 FCR 557

6. *Cardin v Canada (AG)*, 2017 FCA 150

7. *Lukács v Canada (Transportation Agency)*, 2016 FCA 227

8. *Fogal v Canada* (2000), 1999 CanLII 7932, 167 FTR 266 (TD), aff'd [2000] FCJ No 916 (CA) (QL), leave to appeal to SCC ref'd [2001] SCCA No 84 (QL)

9. *Labbé v Létourneau* (1997), 1997 CanLII 4928, 128 FTR 291 (TD)

10. *Rahman v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 137

11. *Narvey v McNamara*, 1997 CanLII 5553, 140 FTR 1 (TD)

12. *Canada (AG) v Canada (Information Commissioner)*, 1997 CanLII 6362, [1998]1 FC 337 (TD)

13. *Lee v Canada (Minister of Citizenship and Immigration)*, 1997 CanLII 4837, 126 FTR 229 (TD)

14. *Pauktuutit, Inuit Women's Assn v Canada*, 2003 FCT 139

15. *Moses v Canada*, 2003 FC 1417

16. *Chiu v Canada (National Parole Board)*, 2005 FC 1516

17. *Khalifa v Canada (Minister of Citizenship and Immigration)*, 2016 FC 119

Caselaw

18. *Kardava v Canada (Minister of Citizenship and Immigration)*, 2016 FC 159
19. *0769449 BC Ltd (Kimberly Transport) v Vancouver Fraser (Port Authority)*, 2016 FC 645
20. *Soprema Inc. v Canada (Attorney General)*, 2021 FC 732
21. *Novo Nordisk Canada Inc. v Canada (Health)*, 2019 FC 822
22. *Canadian Shipowners Association v Laurentian Pilotage Authority*, 2016 FC 1007
23. *54039 Newfoundland and Labrador Limited (George Street Association) v St. John's Port Authority*, 2011 FC 740
24. *Ridgeview Restaurant Limited v Canada (Attorney General)*, 2010 FC 506, aff'd 2011 FCA 52
25. *Canwest Mediaworks Inc v Canada (Minister of Health)*, 2007 FC 752, aff'd 2008 FCA 207
26. *Borowski v Canada (AG)*, [1989] 1 SCR 342
27. *N.O. v Canada (Minister of Citizenship and Immigration)*, 2016 FCA 214
28. *Guzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 358
29. *Income Security Advocacy Centre v Mette*, 2016 FCA 167
30. *Daniels rv Canada (Indian Affairs and Northern Development*, 2016 SCC 12, [2016] 1 SCR 99
31. *Solosky v The Queen*, 1979 CanLII 9, [1980] 1 SCR 821
32. *Canadian Frontline Nurses and Kristen Nagle v Canada (Attorney General)*, 2022 FC 284 (unreported)
33. *Phillips v Nova Scotia Commissioner of Inquiry into the Westray Mine Tragedy*, 1995 CanLII 86 (SCC)
34. *Mackay v Manitoba*, 1989 CanLII 26 (SCC), [1989] 2 SCR 357
35. *Danson v Ontario (Attorney General)*, 1990 CanLII 93 (SCC), [1990] 2 S.C.R. 1086

Caselaw

36. *Air Canada Canadian Union of Public Employees (Air Canada Component) v Air Canada*, 2021 FCA 67

37. *Canadian Union of Public Employees (Air Canada Component) v Air Canada,* 2021 FCA 67

38. *Azhaev v Canada (Public Safety and Emergency Preparedness),* 2014 FC 219

39. *Pelletier v Fort William First Nation,* 2021 FC 562

40. *Newman's Valve Limited v Canada (National Revenue)*, 1997 CanLII 11998 (CA CITT)

41. *Osakpamwan v Canada (Public Safety and Emergency Preparedness),* 2016 FC 267

42. *Huo v Canada (Citizenship and Immigration),* 2021 FC 1230

43. *Germa v Canada (AG)*, 2021 FC 134

44. *Amgen Canada Inc v Apotex Inc*, 2016 FCA 196

45. *Saskatchewan (Minister of Agriculture, Food and Rural Revitalization) v Canada (Attorney General)*, 2005 FC 1027

46. *McKenzie v British Columbia (Minister of Public Safety and Solicitor General),* 2007 BCCA 507

47. *Democracy Watch v Canada (AG)*, 2018 FCA 195

48. *CUPE (Air Canada Component) v Air Canada,* 2021 FCA 67

49. *Epicept Corporation v Canada (Health)*, 2011 FCA 2019

50. *Democracy Watch v British Columbia (Conflict of Interest Commissioner)*, 2017 BCCA 366

51. *Finlay v Canada (Minister of Finance)*, 1986 CanLII 6 (SCC)

52. *Friends of the Canadian Wheat Board v Canada*, 2011 FCA 101

53. *League for Human Rights of B'nai Brith Canada v Odynsky*, 2010 FCA 307

54. *Kulchyski v Trent University*, 2001 CanLII 11691 (ON CA)

Caselaw

55. *Skibsted v Canada (Environment and Climate Change)*, 2021 FC 416

56. *Island Timberlands LP v Canada (Minister of Foreign Affairs)*, 2009 FCA 353

57. *Hupacasath First Nation v Canada (Foreign Affairs and International Trade Canada)*, 2015 FCA 4

58. *Mckeil Marine Limited v Canada (Attorney General),* 2016 FC 1063

59. *Canadian Council for Refugees v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 1131

60. *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, [2012] 2 SCR 524

61. *Democracy Watch v Canada (Attorney General)*, 2018 FC 1290

62. *Canadian Council of Churches v Canada et al.*, 1992 CanLII 116 (SCC)

Secondary Sources

63. *Judicial Review of Administrative Action in Canada*, Donald J.M. Brown, John M. Evans, Ch 4:24

APPENDIX A – STATUTES AND REGULATIONS

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

(a) the declaration and all orders and regulations made pursuant to the declaration, or **(b)** the declaration and all orders and regulations made pursuant to the declaration to the extent that the declaration, orders and regulations apply with respect to that area, as the case may be, are revoked effective on the revocation of the proclamation. **Effect of revocation of amendment** **(4)** Where, pursuant to this Act, a proclamation amending a declaration of a public welfare emergency is revoked, all orders and regulations made pursuant to the amendment and all orders and regulations to the extent that they apply pursuant to the amendment are revoked effective on the revocation of the proclamation.	abrogée, les décrets ou règlements consécutifs à la modification, ainsi que les dispositions des autres décrets et règlements qui lui sont consécutifs, sont abrogés en même temps.
Motion for confirmation of proclamation continuing a declaration **60 (1)** A motion for confirmation of a proclamation continuing a declaration of emergency and of any orders and regulations named in the motion pursuant to subsection (3), signed by a minister of the Crown, together with an explanation of the reasons for issuing the proclamation, a report on any consultation with the lieutenant governors in council of the provinces with respect to the proclamation and a report on the review of orders and regulations conducted before the issuing of the proclamation, shall be laid before each House of Parliament within seven	**Motion de ratification de la prorogation** **60 (1)** Il est déposé devant chaque chambre du Parlement, dans les sept jours de séance suivant la prise d'une proclamation de prorogation d'une déclaration de situation de crise, une motion de ratification de la proclamation et des décrets et règlements mentionnés dans la motion en conformité avec le paragraphe (3), signée par un ministre et accompagnée d'un exposé des motifs de la prise de la proclamation, d'un compte rendu des consultations avec les lieutenants-gouverneurs des provinces au sujet de la proclamation, ainsi que d'un rapport de l'examen des décrets et règlements effectué avant la prise de la proclamation.

sitting days after the proclamation is issued. **Motion for confirmation of proclamation amending a declaration** **(2)** A motion for confirmation of a proclamation amending a declaration of emergency, signed by a minister of the Crown, together with an explanation of the reasons for issuing the proclamation and a report on any consultation with the lieutenant governors in council of the provinces with respect to the proclamation, shall be laid before each House of Parliament within seven sitting days after the proclamation is issued. **Orders and regulations named** **(3)** A motion for confirmation of a proclamation continuing a declaration of emergency shall name the orders and regulations in force on the issuing of the proclamation that the Governor in Council believed, on reasonable grounds, continued at that time to be necessary or, in the case of a proclamation issued pursuant to subsection 43(1), advisable, for dealing with the emergency. **Consideration** **(4)** Where a motion is laid before a House of Parliament as provided in subsection (1) or (2), that House shall, on the sitting day next following the sitting day on which the motion was so laid, take up and consider the motion. **Vote** **(5)** A motion taken up and considered in accordance with subsection (4) shall be debated without interruption and, at such time as the House is ready for the question, the Speaker shall forthwith, without further debate or amendment,	**Motion de ratification de la modification** **(2)** Il est déposé devant chaque chambre du Parlement, dans les sept jours de séance suivant la prise d'une proclamation de modification d'une déclaration de situation de crise, une motion de ratification de la proclamation signée par un ministre et accompagnée d'un exposé des motifs de la prise de la proclamation et d'un compte rendu des consultations avec les lieutenants-gouverneurs des provinces au sujet de la proclamation. **Mention des décrets et règlements** **(3)** Une motion de ratification d'une proclamation de prorogation d'une déclaration de situation de crise mentionne les décrets et règlements qui sont en vigueur lors de la prise de la proclamation et dont le gouverneur en conseil croit, pour des motifs raisonnables, la prorogation nécessaire à ce moment ou, dans le cas d'une proclamation prise en vertu du paragraphe 43(1), opportune pour faire face à la situation de crise. **Étude** **(4)** La chambre du Parlement saisie d'une motion en application des paragraphes (1) ou (2) étudie celle-ci dès le jour de séance suivant celui de son dépôt. **Mise aux voix** **(5)** La motion mise à l'étude conformément au paragraphe (4) fait l'objet d'un débat ininterrompu; le débat terminé, le président de la chambre met immédiatement aux voix toute question nécessaire pour décider de la motion.

put every question necessary for the disposition of the motion.

Revocation of proclamation

(6) If a motion for confirmation of a proclamation is negatived by either House of Parliament, the proclamation, to the extent that it has not previously expired or been revoked, is revoked effective on the day of the negative vote and no further action under this section need be taken in the other House with respect to the motion.

Revocation of orders or regulations

(7) If a motion for confirmation of a proclamation continuing a declaration of emergency is amended by either House of Parliament by the deletion therefrom of an order or regulation named in the motion pursuant to subsection (3), the order or regulation is revoked effective on the day on which the motion, as amended, is adopted.

Orders and Regulations
Tabling in Parliament

61 (1) Subject to subsection (2), every order or regulation made by the Governor in Council pursuant to this Act shall be laid before each House of Parliament within two sitting days after it is made.

Reference to Committee

(2) Where an order or regulation made pursuant to this Act is exempted from publication in the *Canada Gazette* by regulations made under the *Statutory Instruments Act*, the order or regulation, in lieu of being laid before each House of Parliament as required by subsection (1), shall be referred to the Parliamentary Review Committee within two days after it is made or, if

Abrogation de la proclamation

(6) En cas de rejet de la motion de ratification de la proclamation par une des chambres du Parlement, la proclamation, sous réserve de sa cessation d'effet ou de son abrogation antérieure, est abrogée à compter de la date du vote de rejet et l'autre chambre n'a pas à intervenir sur la motion.

Abrogation des décrets et règlements

(7) Si une motion de ratification d'une proclamation de prorogation d'une déclaration de situation de crise est modifiée par une chambre du Parlement par la suppression d'un décret ou d'un règlement qui, en application du paragraphe (3), y est mentionné, le décret ou le règlement en question est abrogé à compter du jour de l'adoption de la motion.

Décrets et règlements
Dépôt devant le Parlement

61 (1) Sous réserve du paragraphe (2), les décrets ou règlements pris par le gouverneur en conseil en application de la présente loi sont déposés devant chaque chambre du Parlement dans les deux jours de séance suivant la date de leur prise.

Renvoi au comité

(2) Lorsqu'un décret ou un règlement d'application de la présente loi est soustrait à la publication dans la *Gazette du Canada* par les règlements d'application de la *Loi sur les textes réglementaires*, le décret ou le règlement, plutôt que d'être déposé conformément au paragraphe (1), est renvoyé au comité d'examen parlementaire dans les deux jours suivant sa prise ou, si le comité n'est pas

the Committee is not then designated or established, within the first two days after it is designated or established.	alors constitué, dans les deux premiers jours suivant sa constitution.
Motion for revocation or amendment	**Motion d'abrogation ou de modification**
(3) Where a motion, for the consideration of the Senate or the House of Commons, to the effect that an order or regulation laid before it pursuant to subsection (1) be revoked or amended, signed by not less than ten members of the Senate or twenty members of the House of Commons, as the case may be, is filed with the Speaker thereof, that House of Parliament shall take up and consider the motion within three sitting days after it is filed.	**(3)** Dans les cas où le président du Sénat ou de la Chambre des communes est saisi d'une motion signée par au moins dix sénateurs ou vingt députés, selon le cas, demandant l'abrogation ou la modification d'un décret ou d'un règlement déposé devant la chambre en application du paragraphe (1), cette chambre étudie la motion dans les trois jours de séance suivant la saisine.
Vote	**Mise aux voix**
(4) A motion taken up and considered in accordance with subsection (3) shall be debated without interruption and, at such time as the House is ready for the question, the Speaker shall forthwith, without further debate or amendment, put every question necessary for the disposition of the motion.	**(4)** La motion mise à l'étude conformément au paragraphe (3) fait l'objet d'un débat ininterrompu; le débat terminé, le président de la chambre met immédiatement aux voix toute question nécessaire pour décider de la motion.
Motion for concurrence	**Motion d'agrément**
(5) If a motion debated in accordance with subsection (4) is adopted by the House, a message shall forthwith be sent from that House informing the other House that the motion has been so adopted and requesting that the motion be concurred in by that other House.	**(5)** En cas d'adoption d'une motion conformément au paragraphe (4) par une chambre, celle-ci adresse un message à l'autre chambre pour l'en informer et requérir son agrément.
Consideration	**Étude**
(6) Where a request for concurrence in a motion is made pursuant to subsection (5), the House to which the request is made shall take up and consider the motion within three sitting days after the request is made.	**(6)** La chambre dont l'agrément est requis en application du paragraphe (5) étudie la motion adoptée par l'autre chambre dans les trois jours de séance suivant la requête.
Vote on motion for concurrence	**Mise aux voix**
	(7) La motion mise à l'étude conformément au paragraphe (6) fait l'objet d'un débat ininterrompu; le débat terminé, le président de la chambre met immédiatement aux voix toute question nécessaire pour décider de la motion.

(7) A motion taken up and considered in accordance with subsection (6) shall be debated without interruption and, at such time as the House is ready for the question, the Speaker shall forthwith, without further debate or amendment, put every question necessary for the disposition of the motion.	**Abrogation ou modification du décret ou du règlement**
Revocation or amendment of order or regulation	**(8)** Le décret ou le règlement qui fait l'objet d'une motion étudiée en application du paragraphe (6) et agréée est abrogé ou modifié conformément à la motion dès la date prévue par celle-ci; cette date ne peut toutefois pas être antérieure à celle de l'agrément.
(8) If a motion taken up and considered in accordance with subsection (6) is concurred in, the order or regulation is revoked or amended in accordance with the motion, effective on the day specified in the motion, which day may not be earlier than the day of the vote of concurrence.	**Comité d'examen parlementaire Examen**
Parliamentary Review Committee Review by Parliamentary Review Committee	**62 (1)** L'exercice des attributions découlant d'une déclaration de situation de crise est examiné par un comité mixte de la Chambre des communes et du Sénat désigné ou constitué à cette fin.
62 (1) The exercise of powers and the performance of duties and functions pursuant to a declaration of emergency shall be reviewed by a committee of both Houses of Parliament designated or established for that purpose.	**Composition du comité**
Membership	**(2)** Siègent au comité d'examen parlementaire au moins un député de chaque parti dont l'effectif reconnu à la Chambre des communes comprend au moins douze personnes, et au moins un sénateur de chaque parti, représenté au Sénat, dont un député appartient au comité.
(2) The Parliamentary Review Committee shall include at least one member of the House of Commons from each party that has a recognized membership of twelve or more persons in that House and at least one senator from each party in the Senate that is represented on the committee by a member of the House of Commons.	**Serment de secret**
Oath of secrecy	**(3)** Les membres du comité d'examen parlementaire et son personnel prêtent le serment de secret figurant à l'annexe.
(3) Every member of the Parliamentary Review Committee and every person employed in the work of the Committee	**Réunions à huis clos**
	(4) Les réunions du comité d'examen parlementaire en vue de l'étude des décrets ou règlements qui lui sont renvoyés en application du paragraphe 61(2) se tiennent à huis clos.
	Abrogation ou modification
	(5) Si, dans les trente jours suivant le renvoi prévu par le paragraphe 61(2), le comité d'examen parlementaire adopte une motion d'abrogation ou de modification d'un décret ou d'un

shall take the oath of secrecy set out in the schedule. **Meetings in private** **(4)** Every meeting of the Parliamentary Review Committee held to consider an order or regulation referred to it pursuant to subsection 61(2) shall be held in private. **Revocation or amendment of order or regulation** **(5)** If, within thirty days after an order or regulation is referred to the Parliamentary Review Committee pursuant to subsection 61(2), the Committee adopts a motion to the effect that the order or regulation be revoked or amended, the order or regulation is revoked or amended in accordance with the motion, effective on the day specified in the motion, which day may not be earlier than the day on which the motion is adopted. **Report to Parliament** **(6)** The Parliamentary Review Committee shall report or cause to be reported the results of its review under subsection (1) to each House of Parliament at least once every sixty days while the declaration of emergency is in effect and, in any case, **(a)** within three sitting days after a motion for revocation of the declaration is filed under subsection 59(1); **(b)** within seven sitting days after a proclamation continuing the declaration is issued; and **(c)** within seven sitting days after the expiration of the declaration or the revocation of the declaration by the Governor in Council.	règlement ayant fait l'objet du renvoi, cette mesure s'applique dès la date prévue par la motion; cette date ne peut toutefois pas être antérieure à celle de l'adoption de la motion. **Rapport au Parlement** **(6)** Le comité d'examen parlementaire dépose ou fait déposer devant chaque chambre du Parlement un rapport des résultats de son examen au moins tous les soixante jours pendant la durée de validité d'une déclaration de situation de crise, et, en outre, dans les cas suivants : **a)** dans les trois jours de séance qui suivent le dépôt d'une motion demandant l'abrogation d'une déclaration de situation de crise en conformité avec le paragraphe 59(1); **b)** dans les sept jours de séance qui suivent une proclamation de prorogation d'une situation de crise; **c)** dans les sept jours de séance qui suivent la cessation d'effet d'une déclaration ou son abrogation par le gouverneur en conseil. **Enquête** **63 (1)** Dans les soixante jours qui suivent la cessation d'effet ou l'abrogation d'une déclaration de situation de crise, le gouverneur en conseil est tenu de faire faire une enquête sur les circonstances qui ont donné lieu à la déclaration et les mesures prises pour faire face à la crise. **Dépôt devant le Parlement** **(2)** Le rapport de l'enquête faite en conformité avec le présent article est déposé devant chaque chambre du Parlement dans un délai de trois cent soixante jours suivant la cessation

Inquiry **63 (1)** The Governor in Council shall, within sixty days after the expiration or revocation of a declaration of emergency, cause an inquiry to be held into the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency. **Report to Parliament** **(2)** A report of an inquiry held pursuant to this section shall be laid before each House of Parliament within three hundred and sixty days after the expiration or revocation of the declaration of emergency.	d'effet ou l'abrogation de la déclaration de situation de crise.