



Court File No.: T-382-22

FEDERAL COURT

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

APPLICATION UNDER Sections 18(1), 18.1, and 18.2 of the *Federal Courts Act* and Rules 301
of the *Federal Courts Rules*.

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the Applicants. The relief claimed by the Applicants appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicants. The Applicants requests that this application be heard at Ottawa, Ontario.

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

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

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

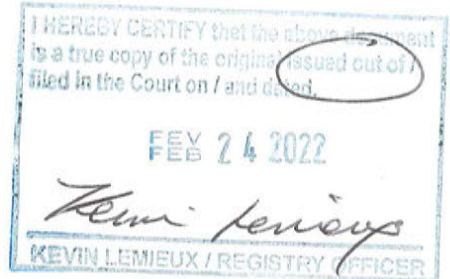
Date: February 23, 2022

**ORIGINAL SIGNED BY
KEVIN LEMIEUX
A SIGNÉ L'ORIGINAL**

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APPLICATION

1. This is an Application for Judicial Review pursuant to sections 18(1), 18.1 and 18.2 of the *Federal Courts Act* R.S.C., 1985, c. F-7 of the Respondents' declaration that a "public order emergency" exists under s.17(1) of the *Emergencies Act* (R.S.C., 1985, c. 22 (4th Supp.)) (the "**Emergencies Act**"). Specifically, the Applicants seek judicial review of the Order-in-Council subject title "Special Temporary Measures for Public Order Emergency" issued February 14, 2022 with PC Number 2022-0106 (hereinafter the "**Valentine's Day Declaration**").

2. Further, and in the alternative, this is an Application for Judicial Review pursuant to sections 18(1), 18.1 and 18.2 of the *Federal Courts Act* R.S.C., 1985, c. F-7 of the Respondent's regulations passed under s.19(1) of the *Emergencies Act*. Specifically, the Applicants seek judicial review of the Order-in-Council subject title "Emergency Economic Measures Regulations" issued February 15, 2022, with PC Number 2022-0107 and thereafter made into regulation SOR/ 2022-0021 (hereinafter the "**February 15 Regulations**").

3. Further, and in the alternative, this is an Application for Judicial Review pursuant to sections 18(1), 18.1 and 18.2 of the *Federal Courts Act* R.S.C., 1985, c. F-7 of the Respondent's Order-in-Council passed under s.19(1) of the *Emergencies Act*. Specifically, the Applicants seek judicial review of the Order-in-Council subject title "Emergency Measures Order" issued February 15, 2022, with PC Number 2022-0108 and thereafter made into regulation SOR/ 2022-0022 (hereinafter the "**February 15 Economic Order**").

4. Further, and in the alternative, this is an Application for a declaration of invalidity of any or all of the Valentine's Day Declaration, February 15 Regulations, and the February 15 Economic Order.

5. Further, and in the alternative, this is an Application for a declaration that the *Emergencies Act* is inconsistent with s.91, s.92 and s.96 of the *Constitution Act, 1867*, 30 & 31 Vict, c 3 (the "**Constitution Act, 1867**") and s.2(b), s.2(c), s.2(d), s.6, s.7, s.8, s.9, s.12 and s.15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (the "**Charter**" and "**Constitution**").

Act, 1982", respectively), and to the extent of those inconsistencies, is of no force and effect pursuant to s.52(1) of the *Constitution Act, 1982*.

6. Further, this an Application for interlocutory relief pursuant to s.18.2 of the *Federal Courts Act* for an injunction, stay, or order in the nature of a writ of *prohibition* prohibiting or enjoining any or all of the Valentine's Day Declaration, February 15 Regulations, and the February 15 Economic Order from having legal effect until the herein proceedings are complete.

7. The Applicants state, and the fact is, the Valentine's Day Declaration, February 15 Regulations, and the February 15 Economic Order, collectively or individually:

- (a) are *ultra vires* the provision of the *Emergencies Act* or any other enabling statute or instrument;
- (b) are *ultra vires* s.91 of the *Constitution Act, 1867*;
- (c) violate s.96 of the *Constitution Act, 1867*;
- (d) violate s.2(b), s.2(c), s.2(d), s.6, s.7, s.8, s.9, s.12 and s.15 of the *Charter*;
- (e) violate s.1 of *Canadian Bill of Rights S.C. 1960, c. 44*;
- (f) violate constitutional principles, specifically rule of law, constitutionalism, parliamentary sovereignty, separation of powers, and contractual expectations (hereinafter "**constitutional principles**");
- (g) violate the preamble of the *Emergencies Act*;
- (h) violate the *International Covenant on Civil and Political rights*, specifically Articles 1(2), 2, 4,5 7,8, 9, 10(1), 12(1), 16, 17, 18, 19, 22(1), 26 and 47;
- (i) violate the *International Covenant on Economic, Social and Cultural Rights*, specifically Articles 1(2), 2(2), 3, 4, 5, 6(1), 11(1) and 25; and
- (j) violate international law obligations, specifically principles of customary international law including the general principle of the rule of law, the principle of non-discrimination, the United Nations Declaration of Human Rights, freedom from fear and international human rights norms (hereinafter "**international law obligations**").
- (k) violate the *Vienna Convention on the Law of Treaties*.

As a result, the Applicants make this application for:

8. The following relief:

- (a) An order abridging the time for the service of this Application, if necessary;
- (b) An order for an expedited hearing;
- (c) An order pursuant to section 18.1(3)(a) of the *Federal Courts Act* quashing, any or all, of the Valentine's Day Declaration, February 15 Regulations, and the February 15 Economic Order;
- (d) A declaration that any or all of the Valentine's Day Declaration, February 15 Regulations, and the February 15 Economic Order are *ultra vires* the provision of the *Emergencies Act* or any other enabling statute or instrument;
- (e) A declaration pursuant to section 52(1) of the *Constitution Act*, 1982, that any or all, of the *Emergencies Act*, Valentine's Day Declaration, February 15 Regulations, and the February 15 Economic Order are of no force and effect to the extent of their inconsistency with any or all of s.91, s.92 and s.96 of the *Constitution Act*, 1867; s.2(b), s.2(c), s.2(d), s.6, s.7, s.8, s.9, s.12 and s.15 of the *Canadian Charter of Rights and Freedoms* as read in conformity with Articles 1(2), 2, 4,5 7,8, 9, 10(1), 12(1), 16, 17, 18, 19, 22(1), 26 and 47 of the *International Covenant on Civil and Political Rights*; Articles 1(2), 2(2), 3, 4, 5, 6(1), 11(1) and 25 of the *International Covenant on Economic, Social and Cultural Rights*, and constitutional principles and international law obligations;
- (f) A declaration that any or all, of the *Emergencies Act*, Valentine's Day Declaration, February 15 Regulations, and the February 15 Economic Order are construed and applied as not to abrogate, abridge or infringe or authorize the abrogation, abridgment or infringement of any of the rights or freedoms recognized and declared as per s.2 of the *Canadian Bill of Rights* due to infringing of s.1 of the *Canadian Bill of Rights*;
- (g) A declaration that any or all, of the *Emergencies Act*, Valentine's Day Declaration, February 15 Regulations, and the February 15 Economic Order are void for vagueness under s.7 of the *Charter* or otherwise;
- (h) An interim injunction preventing the Valentine's Day Declaration, February 15 Regulations, and the February 15 Economic Order from having any force or effect in Canada until the entirety of the herein proceedings are complete;

- (i) Should the Valentine's Day Declaration, February 15 Regulations and February 15 Economic Order lapse before the herein application is heard, or the *lis* be otherwise *prima facie* moot, an order that the matter proceed in full notwithstanding it is technically moot, on the grounds that the matters in issue are of public importance and their determination is in the public interest. Further, there will remain an adversary context that helps guarantee the issues are well and fully argued by parties who have a stake in the outcome. Further, judicial economy supports it, and hearing the matter is within the Court's proper adjudicative role;
- (j) Costs; and
- (k) Such further and other relief as counsel may advise and this Honourable Court deems just and equitable.

THE GROUNDS FOR THIS APPLICATION ARE:

The Parties

9. The Applicant, Jeremiah Jost, has participated in peaceful protest in and around Parliament Hill in Ottawa since January 29, 2022. He intends to continue protesting at Parliament Hill until all the federal government Covid vaccine mandates are lifted. He has also engaged in financial support of other protest participants in Ottawa, utilizing his bank account to receive and distribute funds.

10. The Applicant, Edward Cornell, is a decorated Canadian military veteran who had his bank account and credit card account searched, seized and frozen on the collective authority of the *Emergencies Act*, Valentine's Day Declaration, February 15 Regulation, and February 15 Economic Order.

11. The Applicant, Vincent Gircys, is a retired police officer who had his bank account and credit card account searched, seized and frozen on the collective authority of the *Emergencies Act*, Valentine's Day Declaration, February 15 Regulation, and February 15 Economic Order.

12. The Applicant, Reverend Harold Ristau, is a decorated Canadian military veteran and pastor who participated in the peaceful protest in and around Parliament Hill in Ottawa by leading participants in prayer, issuing a benediction and praying near a war memorial.

(hereinafter the “**Applicants**”)

13. The Respondent, the Governor in Council, is the Governor General of Canada acting by and with the advice of, or by and with the advice and consent of, or in conjunction with the Queen’s Privy Council for Canada pursuant to s.35(1) of the *Interpretation Act* RSC 1985, c I-21 (hereinafter the “**GIC**”).

14. The Respondent, Her Majesty the Queen in Right of Canada, is the Crown referred to in the preamble of the *Constitution Act*, 1867, the common law, and s.2 of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 (hereinafter the “**Crown**”).

15. The Respondent, the Attorney General of Canada, is the officer and nominee of the Crown which proceedings against the Crown may be taken in the name of, pursuant to s.23(1) of the *Crown Liability and Proceedings Act* (hereinafter the “**AG**”).

16. The Respondent, the Minister of Public Safety and Emergency Preparedness, is the officer and nominee of the Crown which proceedings against the Crown may be taken in the name of, pursuant to s.23(1) of the *Crown Liability and Proceedings Act* (hereinafter the “**Minister**”). The Minister is the Minister responsible for the *Emergencies Act*.

a. The Valentine’s Day Declaration

17. Under provisions of the *Emergencies Act*, the GIC is authorized to take special temporary measures that may not be appropriate in normal times, where safety and security of the individual, the protection of the values of the body politic and the preservation of the sovereignty, security and territorial integrity is seriously threatened by a national emergency. In particular, under s.17 of the *Emergencies Act*, the GIC may by proclamation declare that a “*public order emergency exists*”, but only when the GIC believes on reasonable grounds:

- (a) That a public order emergency exists; and
- (b) That a public order emergency necessitates the taking of special temporary measures for dealing with the emergency.

18. Pursuant to s.16 of the *Emergencies Act*, a “public order emergency” means an emergency that arises from:

(a) “threats to the security of Canada” as defined in s.2 of the *Canadian Security Intelligence Service Act* R.S.C., 1985, c. C-23 and are limited to:

- i. 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,
- ii. 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,
- iii. 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
- iv. 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 (i) to (iv); and

(b) that is so serious as to be a national emergency.

19. On February 14, 2022 the GIC passed the Valentine’s Day Declaration under s.17(1) of the *Emergencies Act*. As per s.17(2) of the *Emergencies Act*, the Valentine’s Day Declaration is required to specify:

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

20. The Valentine's Day Declaration cites the state of affairs constituting the emergency as follows:

- (a) the continuing blockades by both persons and motor vehicles that is occurring at various locations throughout Canada and the continuing threats to oppose measures to remove the blockades, including by force, which blockades are being carried on in conjunction with activities that are directed toward or in support of the threat or use of acts of serious violence against persons or property, including critical infrastructure, for the purpose of achieving a political or ideological objective within Canada,
- (b) the adverse effects on the Canadian economy — recovering from the impact of the pandemic known as the coronavirus disease 2019 (COVID-19) — and threats to its economic security resulting from the impacts of blockades of critical infrastructure, including trade corridors and international border crossings,
- (c) the adverse effects resulting from the impacts of the blockades on Canada's relationship with its trading partners, including the United States, that are detrimental to the interests of Canada,
- (d) the breakdown in the distribution chain and availability of essential goods, services and resources caused by the existing blockades and the risk that this breakdown will continue as blockades continue and increase in number, and
- (e) the potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians;

21. The Valentine's Day Declaration specifies special temporary measures that the GIC anticipates may be necessary for dealing with the emergency the issuing Orders pursuant to section 19(1) of the *Emergencies Act*, including the following:

- (i) measures to regulate or prohibit any public assembly — other than lawful advocacy, protest or dissent — that may reasonably be expected to lead to a breach of the peace,

or the travel to, from or within any specified area, to regulate or prohibit the use of specified property, including goods to be used with respect to a blockade, and to designate and secure protected places, including critical infrastructure,

(ii) measures to authorize or direct any person to render essential services of a type that the person is competent to provide, including services related to removal, towing and storage of any vehicle, equipment, structure or other object that is part of a blockade anywhere in Canada, to relieve the impacts of the blockades on Canada's public and economic safety, including measures to identify those essential services and the persons competent to render them and to provide reasonable compensation in respect of services so rendered,

(iii) measures to authorize or direct any person to render essential services to relieve the impacts of the blockade, including measures to regulate or prohibit the use of property to fund or support the blockade, to require any crowdfunding platform and payment processor to report certain transactions to the Financial Transactions and Reports Analysis Centre of Canada and to require any financial service provider to determine whether they have in their possession or control property that belongs to a person who participates in the blockade,

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

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

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

(hereinafter collectively referred to as "**Anticipated Measures**" or individually referred to as "**Anticipates Measures (i)**" through **Anticipated Measures (vi)**)

22. The Valentine's Day Declaration specifies that the effects of the emergency extend to the whole of Canada, specifically it states a public order emergency exists throughout Canada and necessitates the taking of special temporary measures for dealing with the emergency.

23. The Applicants state, and the fact is, the Valentine's Day Declaration is aimed at "blockades"—a term that is not specifically defined, but which are comprised of persons and their property carrying out advocacy, protest or dissent.

24. The Applicants state, and the fact is, that the Valentine's Day Declaration was issued by the GIC without reasonable grounds that public order emergency exists, therefore the Valentine's Day Declaration is *ultra vires* s.17(1) of the *Emergencies Act*. Particularly:

- (a) There are no reasonable grounds that blockades are 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;
- (b) Adverse effects on the Canadian economy are not "threats to the security of Canada" as defined in s.2 of the *Canadian Security Intelligence Service Act*;
- (c) Adverse effects resulting from the impacts of the blockades on Canada's relationship with its trading partners, including the United States, that are detrimental to the interests of Canada are not "threats to the security of Canada" as defined in s.2 of the *Canadian Security Intelligence Service Act*;
- (d) The breakdown in the distribution chain and availability of essential goods, services and resources caused by the existing blockades and the risk that this breakdown will continue are not "threats to the security of Canada" as defined in s.2 of the *Canadian Security Intelligence Service Act*; and
- (e) The potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians are not "threats to the security of Canada" as defined in s.2 of the *Canadian Security Intelligence Service Act*; and
- (f) There are no reasonable grounds the blockades are "threats to the security of Canada" as defined in s.2 of the *Canadian Security Intelligence Service Act*.

25. Further, and in the alternative, there are no reasonable grounds the blockades are so serious as to be a national emergency. The Applicants state, and the fact is, in order for there to be a national emergency to issue the Valentine's Day Declaration, it requires there to be reasonable grounds that it can be said to be an urgent and critical situation adversely affecting all Canadians and being of such proportions as to transcend the authority vested in the Legislatures of the Provinces. The Applicants state, and the fact is, there are not reasonable grounds that the blockades are adversely affecting all Canadians and being of such proportions as to transcend the authority vested in the Legislatures of the Provinces.

26. The Applicants state, and the fact is, there are no reasonable grounds that the general laws under the *Criminal Code* R.S.C., 1985, c. C-46, and other federal, provincial, and municipal laws are inadequate to address the blockades.

27. In particular, the *Criminal Code* contains offence provisions that permit obtaining of orders from courts of criminal jurisdiction, and arresting subjects, where there are reasonable grounds to believe a person is committing or attempting to commit offences in relation to mischief, treason, sabotage, sedition, riot, unlawful assembly, kidnapping and murder. Further, the *Criminal Code* offences can result in arrest without warrant where there are reasonable grounds. Furthermore, each Province has trespass legislation and emergency management legislation. Furthermore, each municipality have numerous municipal bylaws to deal with blockades, and unlawful demonstrations. The Applicants states, and the fact is, there is simply no reasonable grounds that the *Criminal Code*, and other federal, provincial and municipal laws are or were inadequate to address the blockades.

28. Further, the Applicants state, and the fact is, there are no reasonable and probable grounds that the purported "public order emergency" extends to Canada as a whole. In particular, the blockades have occurred in five geographical finite areas. Particularly, two border crossings between Canada and the United States in Alberta and Ontario respectively, saw blockades spanning several days of duration. The blockade near the Ambassador Bridge in Windsor, Ontario was cleared by provincial and municipal police prior to the issue of the Valentine's Day Declaration. The blockade near Coutts, Alberta was voluntarily ceased by the participants shortly after the Valentine's Day Declaration was issued. Two smaller protests in the vicinity of border crossings near Surrey, British Columbia and Emerson, Manitoba, were resolved after a much shorter duration. The only enduring protest was in the Capital Region

(Ottawa). The Applicants state, and the fact is, there are no reasonable grounds of a national emergency based on same.

29. Further, the Applicants state, and the fact is, that the passing of the Valentine's Day Declaration based on the facts and circumstances herein, deprived the liberty and security interests of the Applicants, and all Canadians, in a vague, arbitrary, overbroad and grossly disproportionate manner not in conformity with the principles of fundamental justice, and therefore violated s.7 of the *Charter*.

30. The Applicants state, and the fact is, the the Anticipated Measures listed in the Valentine's Day Declaration require the GIC to have reasonable and probable grounds those Anticipated Measures may be necessary for dealing with the public order emergency. The Applicants states, and the fact is, there is no such reasonable and probable grounds. Further, the Applicants state the Anticipated Measures are unlawful or unconstitutional. In particular, but not limited to:

(a) Anticipated Measure (i) has no reasonable and probable grounds for the same reasons as plead regarding the Valentine's Day Declaration itself. Further, and in the alternative, it violates s.2(b), s.2(c), s.2(d), s.6, s.7, s.8, s.9, s.12 and s.15 of the *Charter* as interpreted in accordance with Articles 2, 4,5, 9, 10(1), 12(1),16, 19, 22(1) and 26 of the *International Covenant of Civil and Political Rights*; Articles 2(2) and 5 of the *International Covenant of Economic and Social Rights*, constitutional principles and international law obligations; and s.1 of the *Canadian Bill of Rights*.

(b) Anticipated Measure (ii) to authorize or direct any person to render essential services of a type that the person is competent to provide, including services related to removal, towing and storage of any vehicle, equipment, structure or other object that is part of a blockade anywhere in Canada, to relieve the impacts of the blockades on Canada's public and economic safety, including measures to identify those essential services and the persons competent to render them and to provide reasonable compensation in respect of services so rendered is not a statutorily authorized special measure. Further, in the alternative, it violates s.7 of the *Charter* right to liberty by authorising the compulsion of a person to provide a service against their will in a vague,

arbitrary, overbroad and grossly disproportionate manner not in conformity with the principles of fundamental justice. Further, and in the alternative, it violates s.2(b) of the *Charter* right to freedom of expression by compelling a person to engage in activity which will convey, and be understood to convey, a message which is not that person's voluntarily chosen expression. Further, in the alternative, it violates Articles 1(2), 4, 5, 8, 9, and 10(1) of the *International Covenant of Civil and Political Rights* in that it forces a person to carry out work against their will. Furthermore, it infringes of the heads of power of the Provinces in 92(10), 92(13), and 92(16) of the *Constitution Act, 1867*.

- (c) Anticipated Measure (iii) to authorize or direct any person to render essential services to relieve the impacts of the blockade, including measures to regulate or prohibit the use of property to fund or support the blockade, to require any crowdfunding platform and payment processor to report certain transactions to the Financial Transactions and Reports Analysis Centre of Canada and to require any financial service provider to determine whether they have in their possession or control property that belongs to a person who participates in the blockade is not a statutory authorized special measure. Further, there was no reasonable grounds for this special measure. Further, it violates s.7 of the *Charter* right to liberty by authorising the compulsion of a person to provide a service against their will in a vague, arbitrary, overbroad and grossly disproportionate manner not in conformity with the principles of fundamental justice. Furthermore, it violates s.8 of the *Charter* by authorising extra-judicial searches and seizures of bank accounts. Further, an in the alternative, it violates Articles 1(2), 4, 5, 8, 9, 10(1) 16, 17 and 47 of the *International Covenant on Civil and Political Rights* and Articles 1(2), 2(2), 3, 4, 5, 6(1), 11(1) and 25 of the *International Covenant on Economic, Social and Cultural Rights*.
- (d) Anticipated measure (iv) to authorize the Royal Canadian Mounted Police to enforce municipal and provincial laws by means of incorporation by reference infringes on the heads of power of the Provinces in 92(10), 92(13), and 92(16) of the *Constitution Act, 1867*.

(e) Anticipated measure (v) to authorize the imposition of fines or imprisonment for contravention of any order or regulation made under s.19 of the *Emergencies Act* violates s.7 and s.9 of the Charter. Further it violates Articles 9 of the *International Covenant on Civil and Political Rights*. Furthermore, it violates s.1 of the *Canadian Bill of Rights*. In the alternative, it violates international law obligations.

31. Further, the Applicants state, and the fact is, that the Valentine's Day Declaration is passed as a mechanism to violate s.2(b), s.2(c), s.2(d), s.6, s.7, s.8, s.9, and s.12 of the *Charter*.

32. Further, the statutory process for confirming the Valentine's Day Declaration pursuant to s. 58(1) and s.58(6) of the *Emergencies Act*, has been violated. The Valentine's Day Declaration must be confirmed by Parliament within seven sitting days after it has been issued and debated without interruption. The suspension of Parliament on February 19, 2022 is an abuse of process, contrary to the *Emergencies Act* provisions and *ultra vires*, and the Valentine's Day Declaration as confirmed by Parliament on February 21, 2022 is *void ab initio*.

b. February 15 Regulations

33. Pursuant to the Valentine's Day Declaration and s.19(1) of the *Emergencies Act* and on the recommendation of the Minister, the GIC annexed the February 15 Regulations on the belief that there were reasonable grounds that the regulation or prohibition of public assemblies was necessary.

34. Sections 2 to 5 of the February 15 Regulations outlines the 'prohibited activities' associated with public assembly for which any peace officer may take necessary measures to ensure compliance and allow for the prosecution for failure to comply.

35. Section 2(1) prohibits participation in a public assembly that may be reasonably expected to lead to a breach of the peace by:

(a) the serious disruption of the movement of persons or goods or the serious interference with trade;

(b) the interference with the functioning of critical infrastructure; or

(c) the support of the threat or use of acts of serious violence against persons or property.

(hereinafter “**s.2 public assembly**”)

36. Section 2(2) prohibits causing a minor to participate in a s.2 public assembly.

37. Section 3 prohibits a foreign national from entering Canada with the intent to participate in a s.2 public assembly.

38. ‘Foreign National’ has the same meaning as in subsection 2(1) of the *Immigration and Refugee Protection Act* “means a person who is not a Canadian citizen or a permanent resident and includes a stateless person.”

39. Section 4(1) prohibits travel of anyone to or within an area where a s.2 public assembly is taking place.

40. Section 4(2) prohibits causing a minor to travel to or within 500 meters of an area where a s.2 public assembly is taking place.

41. Section 5 prohibits anyone from directly or indirectly providing property to facilitate or participate in a s.2 public assembly for the purpose of benefiting any person who is facilitating or participating in such a public assembly. This provision extends to anyone using, collecting, providing, making available or inviting any person for same.

42. Section 6 authorizes the designation of places to be protected and secured. These places are public places and range from the Parliament Hill, any government building, monuments, cemeteries, airports, railway stations, bus stations, ports, hospitals, trade corridors and international border crossings, to ‘any other place’ the Minister designates as protected.

43. Section 6 does not provide reasons for why places are to be designed as protected and to be secured. It reads as generally prohibiting access of areas from anyone on a vague and arbitrary basis.

44. Sections 7 and 8 authorize the Minister, the Commissioner of the Royal Canadian Mounted Police or any person acting on their behalf to compel anyone on a written request and to immediately on a request to remove, tow and store any vehicle, equipment, structure or object that is part of a "blockade".

45. Section 9(2) provides that anyone that suffers loss, injury or damage as a result of anything done under the February 15 Regulations may make an application for compensation in accordance with Part V of the *Emergencies Act*. At s.47(1) of Part V of the *Emergencies Act* it prevents action and proceedings for damages against a Minister, servant or agent of the Crown and any person providing services pursuant to orders and regulations made pursuant to s.19(1) of the *Emergencies Act*. Furthermore, s.48(2) includes a waiver of liability in that no compensation shall be paid to anyone unless they sign a release of any right of action.

46. Section 10 creates penalties for failure to comply with the February 15 Regulations and provides powers to peace officers to the extent that any police officer, police constable, constable, or other person employed for the preservation and maintenance of the public peace which can include the Royal Canadian Military Police, may take any necessary measures to ensure compliance with the February 15 Regulations and with any provincial or municipal laws and allows for the prosecution for the failure to comply. The penalties as per s.10(2) include:

- (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."

47. The Applicants state, and the fact is, that the passing of the February 15 Regulations based on the facts and circumstances herein, deprived the liberty and security interests of the Applicants, and all Canadians, in a vague, arbitrary, overbroad and grossly disproportionate manner not in conformity with the principles of fundamental justice, and therefore violated s.7 of the *Charter*.

48. The Applicants state, and the fact is, the regulation and prohibition of public assemblies in the areas referred to in the February 15 Regulations require the GIC to have reasonable and probable grounds the provisions in the February 15 Regulations are necessary for dealing with the public order emergency. In particular, but not limited to:

- (a) There are no reasonable grounds for the Prohibited Activities in sections 2 to 5 of the February 15 Regulations for the same reasons as plead regarding the Valentine's Day Declaration itself. Further, in the alternative, they violate s.2(b), s.2(c), s.2(d), s.6, s.7, s.8 and s.15 of the *Charter*; s.1 of the *Canadian Bill of Rights*; Articles 2, 4, 5, 8, 19, 10(1), 12(1), 16, 17, 19, 22(1) and 26 of the *International Covenant of Civil and Political Rights*; Articles 1(2), 2(2), 3, 4, 5, 11(1) and 25 of the *International Covenant of Economic and Social Rights*; constitutional principles and international law obligations.
- (b) The Designation of Protected Places as per section 6 of the February 15 Regulations is an abuse of state powers to secure and restrict access to public locations by using force, peace officers including Royal Canadian Mounted Police, police dogs, and intimidation tactics. Further, in the alternative, it violates s.7 of the *Charter* right to liberty and personal security by authorising the designation of any area as protected and to secure those areas by force in a vague, arbitrary, overbroad and grossly disproportionate manner not in conformity with the principles of fundamental justice. Furthermore, it violates Articles 9, 10(1), 12 (1) and 18 of the *International Covenant on Civil and Political Rights* by depriving anyone from the conditions for every human being to enjoy civil and political freedom and freedom from fear.
- (c) The Directions on Essential Goods and Services outlined in sections 7 and 8 of the February 15 Regulations directing any person to render essential services to relieve the impacts of the blockade, including measures to regulate or to authorize or direct any person to render essential services of a type that the person is competent to provide, including services related to removal, towing and storage of any vehicle, equipment, structure or other object that is part of a blockade anywhere in Canada, is not a statutory authorized special

measure and is *ultra vires*. Further, in the alternative, it violates s.7 of the *Charter* right to liberty by authorising the compulsion of a person to provide a service against their will in a vague, arbitrary, overbroad and grossly disproportionate manner not in conformity with the principles of fundamental justice. Further, in the alternative, it violates s.2 of the *Charter* right to freedom of expression by compelling a person to engage in activity which will convey, and be understood to convey, a message which is not that person's voluntarily chosen expression. Further, in the alternative, it violates Articles 1(2), 2, 4, 5, 8, 9, 10(1), 12(1), 16, 17, 19 and 47 of the *International Covenant of Civil and Political Rights* in that it forces a person to carry out work against their will with criminal penalties for non-compliance. Further, in the alternative, it violates Articles 1(2), 2(2), 3, 4, 5, 6(1), 11(1) and 25 of the *International Covenant on Economic, Social and Cultural Rights*.

- (d) The powers granted to peace officers in s.10 of the February 15 Regulations, including authorising the Royal Canadian Mounted Police to enforce compliance with the February 15 Regulations and with any municipal and provincial laws and allow for the prosecution of failure to comply infringes of the heads of power of the Provinces in 92(10), 92(13), and 92(16) of the *Constitution Act, 1867* and constitutional principles. Furthermore, the penalties for failure to comply with vague and arbitrary provisions in the February 15 Regulations violates s.9 and s.12 of the *Charter*; s.1 of the *Canadian Bill of Rights*; Articles 7, 9, and 10(1) of the *International Covenant of Civil and Political Rights*; and international law obligations.

49. Further, the Applicants state, and the fact is, that the February 15 Regulations is passed as a mechanism to violate s.2(b), s.2(c), s.2(d), s.6, s.7, s.8, s.9, s.12 and s.15 of the *Charter*.

50. Further, the February 15 Regulations are *ultra vires* s. 91 of the *Constitution Act, 1867*, and the constitutional principles underlying written provisions of the Constitution of Canada.

c. February 15 Economic Order

51. Pursuant to the Valentine's Day Declaration and s.19(1) of the *Emergencies Act* and on the recommendation of the Minister, the GIC annexed the February 15 Economic Order on the belief that there were reasonable grounds that measures regarding property referred to therein are necessary. The February 15 Economic Order contains provisions that are tied to the February 15 Regulations.

52. The February 15 Economic Order applies to any individual or entity, including a corporation, trust, partnership, fund, unincorporated association or organization, or foreign state, that is engaged directly or indirectly in a s.2 public assembly.

53. The February 15 Economic Order force stops the provision of any financial services, insurance coverage, access to capital assets, digital assets, donations, and fundraising platform funds to anyone or entity indirectly or directly involved in a s.2 public assembly and any of the prohibited activities listed in sections 2 to 5 of the February 15 Regulations.

54. Section 2(1) requires that the following entities freeze accounts and access to assets belonging to anyone that owns, holds, or controls on behalf of anyone or entity directly or indirectly involved in any of the prohibited activities in relation to a s.2 public assembly: banks, including foreign banks as per the *Bank Act*; cooperative credit societies, savings and credit unions and caisses populaires regulated by a provincial Act and associations regulated by the *Cooperative Credit Associations Act*; insurance companies, including foreign insurance companies as per the *Insurance Companies Act* and other insurance companies regulated by a provincial Act; trust and fund companies as regulated the *Trust and Loan Companies Act* or as regulated by a provincial Act; loan companies as regulated by a provincial Act; entities that fall under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*; securities companies, portfolio management, investment and counselling services companies as per provincial legislation; fundraising platforms; virtual currency platforms; and electronic payment companies (hereinafter "**financial services entities**").

55. Furthermore, s.2(1) compels the financial services entities from February 15, 2022 to continuously monitor all financial activities of every customer in order to determine whether

any transaction or asset is tied to a person or entity directly or indirectly involved in a prohibited activity in relation to a s.2 public assembly.

56. Section 4(1) compels all financial services entities not regulated by the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, specifically fundraising platforms, virtual currency platforms and electronic payment companies (hereinafter the “**unregulated financial sector**”) to register with the Financial Transactions and Reports Analysis Centre of Canada (hereinafter “**FINTRAC**”) if they are in possession or control of property that is owned, held or controlled by or on behalf of a person or entity that is directly or indirectly involved in a prohibited activity in relation to a s.2 public assembly. Furthermore, s.4(2) compels the unregulated financial sector to report to FINTRAC, any suspicious transaction on reasonable grounds and linked to any person or entity directly or indirectly involved in a prohibited activity in relation to a s.2 public assembly. A suspicious transaction means a transaction related to a money laundering offence or a terrorist activity financing offence.

57. Section 4(3) further extends the breadth of reporting obligations for the unregulated financial sector by compelling sharing information with FINTRAC pursuant to s.30(1) and s.33(1) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*.

58. Section 30(1) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* set out reporting requirements for ‘money services business and foreign money services business’ for transactions of \$10,000 or more. Section 33(1) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* has been repealed and replaced with s.28 which refers to securities dealers that they must keep a virtual currency transaction record for any transaction of \$10,000 or more in virtual currency.

59. Section 5 compels all financial services entities, including the unregulated financial sector, to immediately disclose to the Commissioner of the Royal Canadian Mounted Police or to the Director of the Canadian Security Intelligence Service any information with regards to transactions and property owned, held or controlled by or on behalf of a person or entity directly or indirectly involved in a prohibited activity in relation to a s.2 public assembly and any information regarding related transactions. Similarly, s.6 authorizes any exchange information from the Government of Canada, provincial or territorial.

60. Section 6 provides full immunity of all financial services entities against civil proceedings or any proceedings under the *Emergencies Act*. This in fact means that there is full impunity from legal action and no recourse to remedies pursuant to Part V of the *Emergencies Act*.

61. The Applicants state, and the fact is, that the passing of the February 15 Economic Order based on the facts and circumstances herein, deprived the liberty and security interests of the Applicants, and all Canadians, in a vague, arbitrary, overbroad and grossly disproportionate manner not in conformity with the principles of fundamental justice, and therefore violated s.7 of the *Charter*.

62. The Applicants state, and the fact is, the measures regarding property referred to in the February 15 Economic Order require the GIC to have reasonable and probable grounds that the measures are necessary for dealing with the public order emergency. In particular, but not limited to:

- (a) Interferences with personal property pursuant to s. 2 of the February 15 Economic Order have no reasonable and probable grounds for the same reasons as plead regarding the Valentine's Day Declaration itself. Further, in the alternative, they violate s. 8 of the *Charter* and cannot be demonstrably justified in a free and democratic society, pursuant to s.1 of the *Charter*. Further, they violate s.1 of the *Canadian Bill of Rights* in that every person has the right to enjoyment of property and the right not to be deprived thereof except by due process of the law. Further, they violate Articles 1(2), 4, 5, 16, 17, 26 and 47 of the *International Covenant of Civil and Political Rights* and Articles 1(2), 3, 4, 5, 6(1), 11(1) and 25 of the *International Covenant of Economic and Social Rights* in that the freezing and removal of access to personal property *inter alia* personal bank account, funds, capital, capital assets and digital assets is unlawful interference with a person's right to privacy and violates the inherent right of all peoples to enjoy and utilize fully and freely their wealth and resources. Furthermore, it violates *International Covenant on Civil and Political Rights* by depriving anyone from the conditions for every human being to enjoy civil and political freedom and freedom from fear. Further, these interferences

are inconsistent with constitutional principles, specifically rule of law and contractual expectations and international law obligations.

(b) Compelling the unregulated financial sector to register with FINTRAC and report suspicious transaction and share information in the same manner as regulated financial services do per the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* pursuant to s.4 of the February 15 Economic Order unlawfully delegates the powers of the Parliament to legislate to the Executive and violates s.91 of the *Constitution Act, 1987* and the *Statutory Instruments Act* R.S.C., 1985, c. S-22 by infringing on the jurisdiction of Parliament stated herein. Further the delegation of Parliament's jurisdiction is inconsistent with constitutional principles, namely parliamentary sovereignty, separation of powers, and rule of law.

(c) Compelling all financial services entities to disclose information to the Royal Canadian Mounted Police and the Canadian Security Intelligence Service goes beyond the scope of the *Emergencies Act* and undermines the principle of constitutionalism.

63. Further, the Applicants state, and the fact is, that the February 15 Economic Order is passed as a mechanism to violate s.8 of the *Charter* and s.1 of the *Canadian Bill of Rights*.

64. Further, the February 15 Economic Order deprived the Applicants, and all Canadians, of their fundamental rights to not be limited or abridged even in a national emergency is not in conformity of the preamble in the *Emergencies Act*, and therefore violated the *Canadian Bill of Rights*, the *International Covenant on Civil and Political Rights* and international law obligations.

65. Further, the February 15 Economic Order is *ultra vires* the *Emergencies Act* and violates the *Personal Information Protection and Electronic Documents Act* S.C. 2000, c. 5.

d. Emergencies Act

66. The invocation of the *Emergencies Act* for the first time in Canadian history has demonstrated that it is not fit for purpose in a parliamentary democracy and has failed the test for compliance with the *Canadian Constitution Act, 1982*, the *Canadian Constitution Act, 1982* and the *Charter*.

67. The Applicants state, and the fact is, the *Emergencies Act's* purpose was to prevent the abuses of civil liberties that had taken place under the *War Measures Act*. The Applicants state that the term "temporary special measures" throughout the *Emergencies Act* is void for vagueness under s.7 of the *Charter*.

The Applicants rely on the following statutory provisions, rules and principles:

68. *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982*, c 11.

69. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982*, c 11.

70. *Constitution Act, 1867*, 30 & 31 Vict, c 3.

71. *Canadian Bill of Rights S.C. 1960*, c. 44.

72. UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

73. UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

74. *Interpretation Act RSC 1985*, c I-21.

75. *Statutory Instruments Act R.S.C.*, 1985, c. S-22.

76. *Personal Information Protection and Electronic Documents Act S.C. 2000*, c. 5.

77. *Federal Courts Act*, R.S.C. 1985, c. F-7, s. 18.1.

78. *Federal Courts Rules*. SOR/98-106.

This Application will be supported by the following material:

79. Affidavit of Jeremiah Jost, to be filed;

80. Affidavit of Edward Cornell, to be filed;

81. Affidavit of Vincent Gircys, to be filed;

82. Affidavit of Harold Ristau, to be filed; and

83. Such further and other affidavits and material as counsel may advise and this Honourable Court permits.

Pursuant to Rule 317 of the *Federal Courts Rules*, the Applicants request that the Respondents send the following material that is not in the possession of the Applicants but is in the Respondent's possession, to the Applicants and to the Registry:

84. The record of all documents and other materials before the GIC informing the Decision.

85. Such further and other material that may be in the possession, power or control of the Respondents and which may be relevant to these proceedings.

Date: February 23, 2022



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