

June 15, 2022

*Public Order Emergency Commission*  
Ottawa, Canada

via email to: [info@poec-cedu.gc.ca](mailto:info@poec-cedu.gc.ca)

To all concerned,

**re: Justice Centre for Constitutional Freedoms application for full participatory standing at the Public Inquiry into the 2022 Public Order Emergency**

I am writing on behalf of the Justice Centre for Constitutional Freedoms (the “**Justice Centre**” or the “**JCCF**”) to apply for full participatory standing at the Public Inquiry into the 2022 Public Order Emergency (the “**Inquiry**”). The Justice Centre seeks full standing on all issues before the Public Order Emergency Commission (the “**Commission**”).

We do not seek (nor will we accept) government funding for participation in the Inquiry.

The Justice Centre is an independent, non-partisan charitable organization based in Calgary, Alberta. Founded in 2010 as a voice for freedom in Canada's courtrooms, the Justice Centre defends the constitutional rights of Canadians through education and public interest litigation.

The Justice Centre and its lawyers have intervened or appeared in defence of the rights and freedoms of pro-bono clients in countless constitutional matters before lower and appellate courts across the country, including at the Supreme Court of Canada. JCCF lawyers regularly appear before committees of Parliament and the provincial legislatures on matters that implicate the *Charter of Rights and Freedoms* (the “**Charter**”).

Further information on the Justice Centre and a selection of its representative litigation matters and public interest interventions can be found at **Schedule A** hereto, or on the Justice Centre website at [www.JCCF.ca](http://www.JCCF.ca).

## JCCF's unique perspective on the Ottawa protests

The Freedom Convoy held its first rally in Ottawa on January 29. Two days later, Tamara Lich contacted the JCCF for advice and assistance. Five Justice Centre lawyers arrived in Ottawa on February 2nd to act as legal observers and to offer pro-bono legal advice to protesters exercising their constitutionally protected rights of expression, association and assembly.

Throughout the protests in Ottawa, Justice Centre lawyers advised and represented Tamara Lich, Chris Barber, and other protesters. We negotiated with Ottawa Police, crowdfunding services, financial institutions, and the City of Ottawa on behalf of the Freedom Convoy. Justice Centre lawyers acted as defence counsel in the class action lawsuit brought against the Convoy protesters (*Li et al. v. Barber et al.*), and in the Ontario Attorney General's application to seize funds raised through GiveSendGo. Justice Centre lawyers served as legal counsel to FREEDOM 2022 HUMAN RIGHTS AND FREEDOMS ("**Freedom Corp.**"), the not-for-profit corporation put in place by Convoy fundraisers with the assistance of the JCCF to manage and distribute an unanticipated flood of crowdfunded donations.

JCCF lawyers across the country assisted their colleagues in Ottawa with legal research and consultation, litigation support, drafting of documents, contacting witnesses, collecting evidence, and analysis of the constantly changing legal circumstances including successive declarations of emergency at municipal, provincial and federal levels.

## The test for participatory standing at the Inquiry

The *Terms of Reference* authorize the Commissioner to grant standing to any person who (1) would provide necessary contributions to the Inquiry; and (2) has a substantial and direct interest in the subject matter of the Inquiry.<sup>1</sup> The Commissioner will also consider (3) whether the applicant's participation will contribute to the openness and fairness of the inquiry.<sup>2</sup>

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<sup>1</sup> *POEC Terms of Reference* s. (a)(v)(B); and *POEC Rules of Standing and Funding*, r. 14(a) and (b)

<sup>2</sup> *POEC Rules of Standing and Funding*, r. 14(c)

## 1) JCCF will provide necessary contributions to the Inquiry

Our extensive experience in constitutional matters, our outspoken defence of *Charter* rights and freedoms, and our firsthand experience at the protests in Ottawa uniquely position the Justice Centre to contribute to the Inquiry and assist the Commission in its critically important work.

The JCCF can offer the Commission a unique firsthand perspective on the people and events central to the subject matter of the Inquiry. We know the protesters, we've heard their stories, and we understand their motivations. We were at the table opposite government and police negotiators at critical times, and witnessed to the policing response prior to and after the declaration. We have an in-depth understanding of Convoy finances and donations. We were in the room when Convoy decisions relevant to the Inquiry were made, and we understand the reasoning behind those decisions. Clearly, privilege will preclude direct disclosure of some information, but the JCCF could assist the Commission by exercising its participatory standing rights in a manner informed by its behind-the-scenes knowledge, and our perspective would greatly benefit the Commission's deliberations.

The Justice Centre has earned its reputation as an organization willing to take real and direct action to defend the *Charter* rights and freedoms of Canadians, and we receive a constant stream of requests for assistance from Canadians. Unsurprisingly, many protesters, Convoy donors, and other Canadians concerned about or impacted by the invocation of the Emergencies Act have reached out to the JCCF. As a result, we will be able to identify many potential witnesses who would be of assistance in the Inquiry.

## 2) JCCF has a substantial and direct interest in the Inquiry

Above and beyond the obvious public interest and constitutional implications of the Commission's work, the Justice Centre has a substantial and direct interest in the subject matter of the Inquiry, and in its outcome. The Commission's report has the potential to adversely affect the interests of the JCCF and those of its current and future clients.

The *Proclamation Declaring a Public Order Emergency* (the "**Proclamation**") is not a gentle document. It suggests that the actions of the Freedom Convoy protesters were analogous to terrorism, mirroring the language of s. 2(c) of the *CSIS Act*.

In the Justice Centre's opinion, the Proclamation was an entirely disproportionate unconstitutional and draconian response to what was in essence nothing more than an extremely effective but peaceful protest. We do not make a practice of providing pro-bono legal services to assist or enable people as they commit acts of terrorism.

And yet, one possible outcome of the inquiry is that the Proclamation will be upheld, vastly expanding the definition of s. 2(c) terrorism under the *CSIS Act* to include acts committed by our clients while we were representing them. A perception that we are actively supporting terrorists or encouraging national security crises would cause the Justice Centre immense reputational harm, and seriously impact our donation-based funding. Could it also expose us to CSIS scrutiny or potential criminal liability as supporters of terrorism?

If a peaceful protest can be transmogrified into a national security emergency at the whim of government, the work the Justice Centre regularly does providing legal advice and representation to protest groups would come with immeasurably more risk - not simply to the protesters, but also to our lawyers personally and to us as an organization. If the finances of people and organizations who provide support to protesters can be frozen or seized with the stroke of a pen, that also poses an existential risk to us as an organization and to our lawyers.

Such a finding by the Commission would also cause harm to current and future Justice Centre clients. We have numerous matters before the courts relating to the Ottawa protests, including a challenge to the constitutionality of the Proclamation. A finding upholding the invocation of the Emergencies Act on such questionable grounds would adversely impact Canada and all Canadians, and would significantly erode the rights and freedoms that the Justice Centre has been fighting to uphold for over a decade.

### **3) JCCF participation will enhance openness and fairness of the Inquiry**

If the Commission aims to arrive at a balanced understanding of the evolution, finances, motivations and goals of the convoy, its leadership, its organization and participants, then it must grant participatory standing to the Justice Centre. Many parties to the Inquiry (including, no doubt, all levels of government) will seek to vilify the protesters, and fairness

demands that the Commission include parties sympathetic to protesters peaceably exercising their *Charter* rights of expression and assembly.

## **JCCF should not share a single grant of standing with others**

If the Justice Centre were applying simply in its capacity as an advocate for *Charter* rights, it might be appropriate to require it to share standing with other similar organizations. However, our expertise as lawyers acting in defence of *Charter* rights combined with our on the ground presence in Ottawa makes the Justice Centre a clearly unique applicant for standing.

We are aware that certain individual convoy protesters and related organizations (eg: Freedom Corp.) – some of whom are current or former JCCF clients - intend to apply for standing before the Inquiry. But while they and the Justice Centre may share some common experiences, perspectives, and interests, it would not be appropriate for the Commission to divide a single grant of standing between these disparate parties.

Fairness demands that the protesters have their own seat at the table. An Inquiry that seeks to understand their evolution, goals, leadership, organization, financing, and participants will not be seen as legitimate and will not serve the interests of Canadians if it does not grant standing to the very people it seeks to understand. Their interests will be affected by the outcome of the Inquiry in a uniquely personal way. Some protesters are facing criminal charges. Freedom Corp. donations, intended to go to the truckers, have been seized and frozen by the courts.

The interests of the Justice Centre are different, as are the impacts that the Inquiry may have on our organization. Our first duty as lawyers is to our clients, but as an organization and as a party to this Inquiry, our aim is to uphold *Charter* rights and freedoms. The protesters may share our respect for the *Charter*, but have additional, distinct, and intensely personal reasons for seeking standing.

## **JCCF should be granted full standing on all issues before the Inquiry**

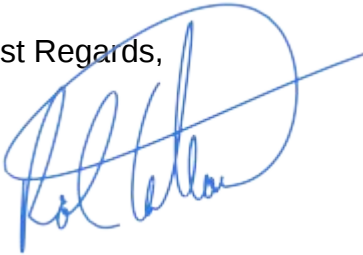
The Justice Centre will have important contributions to make in relation to all of the issues before the inquiry at both the fact finding and the policy review stages. Our

substantial and direct interest in the outcome of the Inquiry, combined with our unique familiarity with events in Ottawa and our *Charter* expertise and experience justifies a grant of standing that allows us to fully participate in all aspects of the Commission's work.

Feel free to get in touch to discuss our application if that would be helpful, and please let me know if we can provide anything further that would assist the Commission in making its decision with regard to our application. I will be happy to provide my CV if that would be of assistance.

We look forward to hearing from you.

Best Regards,



**Rob Kittredge**

*Barrister & Solicitor*

Justice Centre for Constitutional Freedoms

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**SCHEDULE A: Justice Centre for Constitutional Freedoms** – Background & selected litigation matters and interventions

Enclosed: **Public Order Emergency Commission** – Application to participate (Completed form)

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## Schedule A

### *Justice Centre for Constitutional Freedoms* *Background & selected litigation matters and interventions*

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The Justice Centre is an independent, non-religious and non-partisan registered charitable organization based in Calgary, Alberta. The Justice Centre is funded by grants from charitable foundations and by voluntary donations from donors across Canada. In 2021, the Justice Centre received donations from over 12,000 individuals across Canada. The Justice Centre does not seek or accept funding from any level of government.

The Justice Centre's mission is to promote and defend the constitutional freedoms of Canadians through litigation and education. The Justice Centre was established as a non-profit corporation by way of Letters Patent issued in October 2010 under the Canada Corporations Act.

The Justice Centre currently retains 15 lawyers and employs 11 paralegals to work full-time on pro-bono constitutional litigation files across Canada, and we engage other counsel on limited-scope retainers to litigate additional and related matters when required. The Justice Centre also maintains collaborative relationships with lawyers, law professors, other academics, retired judges, and subject matter experts, who can be called upon to assist JCCF lawyers on litigation files.

The Justice Centre's vision is for a free Canada where:

- every Canadian is treated equally by governments and by the courts, regardless of race, ancestry, ethnicity, age, sexuality, gender, beliefs, or other personal characteristics;
- all Canadians are free to peacefully express their thoughts, opinions and beliefs without fear of state persecution or oppression;
- each Canadian is at liberty to control his or her own destiny as a free and responsible member of a free society;
- every Canadian understands their human rights and constitutional freedoms and is determined to recognize, protect and defend those rights and freedoms for themselves and for others; and



- the rights and freedoms of Canadians are recognized, respected and upheld by our governments and the courts.

## ***Selected Litigation Matters***

The Justice Centre has defended its pro-bono clients' *Charter* freedoms in cases involving school boards, professional associations, universities, student unions, human rights commissions, and municipal, federal and provincial governments. Past cases include:

- *Michalski v. McMaster University*, 2022 ONSC 2625: Judicial review of McMaster University student vaccine mandate exemption decisions.
- *Ontario v. Trinity Bible Chapel et al*, 2022 ONSC 1344: *Charter* s. 2 challenge to Ontario's COVID pandemic restrictions on religious gatherings. (Currently under appeal to the ONCA.)
- *The Redeemed Christian Church of God v New Westminster (City)*, 2021 BCSC 1401: the Justice Centre argued that Grace Chapel's section 2 *Charter* rights were infringed by New Westminster.
- *UAlberta Pro-Life et al. v The Governors of the University of Alberta*, 2020 ABCA 1: JCCF argued successfully that the *Charter* protects the freedom of expression of students on campus.
- *BCM International Canada Inc. v Canada (Minister of Employment, Workforce, Development and Labour) and the Attorney General of Canada*, 2021 FC 687: JCCF argued that Canada breached its duty of procedural fairness to BCM and violated section 2(a) and 2(b) and section 15 *Charter* Freedoms by requiring 2018 Canada Summer Jobs (CSJ) grant recipients to accept an ideological attestation.
- *American Freedom Defense Initiative v City of Edmonton*, 2016 ABQB 555: JCCF argued that removal of a transit ad violated *Charter* s. 2(b) freedom of expression.
- *Allen v Alberta*, 2015 ABCA 277: the Justice Centre argued that Alberta's government health care monopoly violated the plaintiff's section 7 *Charter* rights to life and security of the person.
- *Wilson v University of Calgary*, 2014 ABQB 190: JCCF successfully defended seven University of Calgary students who were disciplined for having expressed their opinions on campus.
- *Kisilowsky v Her Majesty the Queen*, 2016 MBQB 224: JCCF argued that Manitoba's revocation of the plaintiff's license to conduct marriages violated his *Charter* s. 2(a) right to freedom of religion.



## Selected Interventions

The Justice Centre is an experienced intervener before lower and appellate courts across Canada. Cases in which the Justice Centre was granted intervener status include:

- *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall*, 2018 SCC 26 – JCCF argued that the *Charter* and the *Alberta Bill of Rights* guarantees the freedom of private, voluntary associations to determine membership criteria and to enforce these membership criteria, immune from judicial review.
- *Trinity Western University v Nova Scotia Barristers' Society*, 2015 NSSC 25 and 2016 NSCA 59, *Trinity Western University v The Law Society of Upper Canada*, 2015 ONSC 4250 and 2016 ONCA 518, *Trinity Western University v The Law Society of British Columbia*, 2016 BCCA 423 and 2015 BCSC 2326, JCCF made submissions on the application of *Charter* section 2(d) freedom of association.
- *BC Civil Liberties Association v University of Victoria*, 2016 BCCA 162 - freedom of expression on a university campus.
- *Christian Medical and Dental Society of Canada v College of Physicians and Surgeons of Ontario*, 2019 ONCA 393 - *Charter* protection for medical practitioners' conscience rights.
- *Oger v Whatcott (No. 7)*, 2019 BCHRT 58, - interpretation and application of *Charter* sections 2(a), 2(b) and 3 to the determination of a complaint under *Code* section 7 and applications for costs under *Code* section 37(4)(a). The Tribunal noted that the Justice Centre's submissions were "helpful" and "the Tribunal has greatly benefited by the submissions made by the interveners JCCF [Justice Centre], West Coast LEAF and the BCTF." See *Oger* at paras 244 and 324.
- *Dichmont Estate v Newfoundland and Labrador (Government Services and Lands)*, 2019 NLSC 25: JCCF intervened in a judicial review of a decision of the Human Rights Board of Inquiry addressing in part whether there was "improper integration and application of *Charter* rights and values [particularly those under section 2 and 15(1)] in the human rights context." The Court held that the Justice Centre can make a useful contribution by providing the Court with submissions with no injustice being imposed on the immediate parties.