

*Public Health, Politics and National Security:  
Covid-19 in Alberta and Canada, 2022*

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Volume 21, Number 3 of *The Journal of Military and Strategic Studies* presented a series of articles focussing, from a very broad security perspective, on COVID-19 in the Canadian province of Alberta. While disease, and a sub-national jurisdiction, are significant departures from a more traditional security-strategic focus, it was argued that not only was disease an important security matter, with both domestic and international implications, but also that events and responses even within a specific sub-national jurisdiction, and even with the specific circumstances of that jurisdiction in mind, could be of larger interest from a security perspective and that, conversely, a broad security-informed perspective could be of interest in considering responses to the pandemic. This author went so far as to adapt Leon Trotsky's well-known dictum, "You may not be interested in war, but war is interested in you," to the case: "You may not be interested in COVID, but COVID is interested in you."<sup>1</sup>

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<sup>1</sup> James F. Keeley, "You May Not be Interested in COVID, but COVID is Interested in You," *Journal of Military and Strategic Studies* 21, 3 (2022), <https://www.jmss.org>.

The timing of the issue was impeccable: it was both reaffirmed in its general direction and overtaken by events even as it was published, much less in the days and weeks that followed. While COVID-19 has continued and may yet have significant effects in its own right, there were also massive shifts on the political levels both federally and in Alberta. This opens up both the possibility and the desirability of a follow-up article reviewing significant aspects of 2022.

Protests against public health measures in response to the pandemic – whether municipal, provincial or federal – had developed before 2022, but that year saw an escalation in their nature. In particular, the “Freedom Convoy” protest in Ottawa, and blockades disrupting or closing border crossings with the United States, developed. The Ottawa protest, border protests, and concerns about the evolving character of the protests led the federal government to invoke the Emergencies Act on 14 February 2022. In Alberta, the handling of the pandemic by the provincial government, along with other points of dissatisfaction, led to a leadership review in the United Conservative Party (UCP), the stepping-down of its then-leader, Jason Kenney, and, as of 6 October 2022, his replacement as both party leader and Premier by Danielle Smith.

On both levels, the full implications of these events have yet to play out, and how COVID-19 develops may yet play a role in this. However, the implications are now increasingly political in nature rather than simply medical. A Commission of Inquiry into the invoking of the Emergencies Act will provide fuel for both supporters and opponents of the Liberal government, with possible effects on the next federal election and any revisions of the Emergencies Act. In Alberta, the new UCP leader rode a wave of right-wing, and particularly rural, opposition to the Kenney-led COVID response. It also pushed to new levels the long-standing conservative tendency in Alberta to exploit dissatisfaction with the federal – especially Liberal – government. The result is better seen as a rebellion against the UCP “establishment” than a mere political pivot by the party. On both levels, the effects will extend beyond simply the protests and the responses to them, to future public health measures (certainly in Alberta) and federal-provincial relations involving Alberta.

This update will deal with four broad areas. First, it will briefly examine the progress of COVID-19 within Alberta. Second, it will look at the political developments within the province, centring on the review of Jason Kenney’s leadership, his resignation,

and the success of Danielle Smith and its possible implications. Third, it will examine the border blockade at Coutts, Alberta, at the Ambassador bridge in Windsor, Ontario, the “Freedom Convoy” protest in Ottawa, and the federal government’s invoking of the Emergencies Act. A final issue is that of national security, particularly within the context of the resort to the Act by the federal government. How these protests were handled, and whether or not the use of the Act was justified, are now issues of political import which could affect the fate of the current federal government.

### **COVID-19 in Alberta, January to December 2022**

The epidemic continued throughout 2022. In Volume 21, Number 3, this author reported data from Alberta Health Services giving the total of confirmed cases as of 9 January 2022 as 412,829, and the total deaths as 3344.<sup>2</sup> As of 9 January 2023, the totals were 625,120 confirmed cases and 5,443 deaths. However, records of daily confirmed cases and deaths paint a more complex story than simply of continued growth in the numbers. Daily confirmed cases peaked in early January 2022 at over 6000, then fell off rapidly to peak again on 20 April at 1224; thereafter, the daily numbers have continued to drop, to triple digits or lower, with a consequent flattening of the curve of cumulative cases. COVID hospitalizations showed a downward trend as well, though more unevenly; ICU hospitalizations, peaking in February, were fairly low and flat by year’s end. Daily COVID-attributed deaths peaked in January-February at 19 on three occasions, again in April at a slightly lower figure, and similarly in late November.<sup>3</sup>

By 9 January 2023, 91 percent of the population aged 12 or over (82.5 percent of the total population) had received one dose of vaccine, 87.6 percent aged 12 or over (78.2 percent of the total population) had received two doses, and 41 percent three doses. Note in this that eligibility was expanded over the course of the year. As well, fourth doses became available and a fifth dose became available in the Fall of 2022. The rate of increase in the percentage of the population having been vaccinated was notably flattening,

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<sup>2</sup> James F. Keeley, “Covid-19 in Alberta,” *Journal of Military and Strategic Studies* 21, 3 (2022): p. 8. <https://www.jmss.org>.

<sup>3</sup> <https://www.alberta.ca/stats/covid-19-alberta-statistics.htm>, accessed 12 January 2023.

however, by the start of 2022. It is also notable that more rural areas had significantly lower vaccination rates.<sup>4</sup>

Thus, by the Fall of 2022, COVID-19 was still with us, shifting towards endemic status, as its effects were becoming less visible and less concerning to the public mind. The total percentage of the population with vaccinations was stabilizing rather than growing, and public health measures were relaxed. Among health officials, however, concern about the future course of the disease – a Fall surge just in time for the flu season, and the inevitable emergence of new strains as the virus mutated – was still apparent.<sup>5</sup> The possibility of new variants evading immunity (and thus to some degree vaccinations, though the vaccinations still seem to help reduce the probability of serious consequences) was a clear concern.

We have moved from the initial onslaught to a condition of a sustained medical arms race, if at a lower level of visibility. On one side are vaccines, improved treatments, better knowledge, a better understanding of efficacious public health measures, and responses in the public health systems. On the other are virus mutations, potential strains on health systems, and the effects of public resistance to health measures. In this context, at least two political questions move front and center: one is the need for an assessment of government responses to the pandemic and strains on health systems; the other is the effects of changes in Alberta's political leadership on the health system.

While official government assessments – internal or public – have yet to appear, others have been willing to provide opinions and studies, either critical or largely defending the measures taken.<sup>6</sup> But some things seem well beyond dispute. One is that

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<sup>4</sup> <https://www.alberta.ca/stats/covid-19-alberta-statistics.htm#vaccinations>.

<sup>5</sup> "Alberta COVID hospitalizations surge with increase of 137 people in 1 week," *CBC News*, 30 September 2022, <https://www.cbc.ca/news>. Adam Miller, "New Omicron strains on the horizon could drive future COVID waves," *CBC News*, 1 October 2022, <https://www.cbc.ca/news>; Sharon Kirkey, "The next COVID Wave is already starting in Canada" *National Post in the Calgary Herald*, 4 October 2022, p. NP3; Dylan Short, "COVID-19 hospitalizations on the rise," *Calgary Herald*, 14 October 2022, p. A1.

<sup>6</sup> Dr. Neil Rau et al., "Opinion: Draconian COVID measures were a mistake, let's not repeat them," *National Post*, 14 September 2022, <https://www.nationalpost.com>; Ryan Tumilty, "Report co-authored by Theresa Tam claims Canada's COVID measures avoided 800,000 deaths," *National Post*, 3 October 2022, <https://www.nationalpost.com>; Nicholas H. Ogden et al. "Counterfactuals of effects of vaccination and public health measures on COVID-19 cases in Canada: What could have happened?" *Canada Communicable Disease Report* 28, 7/8 (July/August 2022): pp. 292-302.

the health systems in Alberta, and elsewhere in Canada, came under great strain. A second is that the strains were not just on medical capacity, but also have taken the form of harassment of medical personnel, including violence, disinformation, protests, etc.<sup>7</sup> The erosion of broad public trust in public institutions has not spared health systems. Third, public health has become politicized, a locus of contestation. It is thus a matter of great consequence how new, or potential, political leaders at both the federal and provincial levels approach the public health system. Fourth, the pandemic has become “normalized” in the public mind. The public is tired of restrictive public health measures, and would likely (at least initially) resist their imposition even in the face of a significant upsurge.

### **Alberta: Rebellion, Replacement, and Health Care**

Volume 21, Number 3 of *The Journal of Military and Strategic Studies* noted the political difficulties which the Kenney government faced while dealing with the pandemic up to the end of 2021. These were both internal and external to the UCP. The party was divided on COVID restrictions, with rural members (the biggest support base for the party) wanting more relaxed measures while its more urban membership could favour even stronger measures. These divisions, among other factors, led the premier to agree in September 2021 to a leadership review for April 2022. A particular sign of Kenney’s difficulties appeared on 12 December 2021 when Brian Jean won a UCP nomination meeting for a by-election on the specific platform of ousting Kenney as leader.<sup>8</sup>

Kenney’s problems continued in early 2022. Jean won the by-election on 15 March 2022. Outside the party, the challenge posed by the New Democratic Party (NDP) continued, though abating somewhat as the province’s financial situation improved with rising oil prices and some problems rose within the NDP caucus. As the leadership review approached, poll after poll indicated that his personal approval rating was very

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<sup>7</sup> Carly Weeks, “As COVID-19 misinformation spreads, threats, burnout take toll,” *The Globe and Mail*, 12 August 2022, pp. A8-9.

<sup>8</sup> Duane Bratt, “‘Open for Summer’: The Political Failure of Alberta’s COVID-19 Response,” *The Journal of Military and Strategic Studies* 21, 3 (2022): pp. 77-83, 86-92; Keeley, “You May Not be Interested in COVID,” pp. 100-105.

low and that he was dragging down the UCP more generally relative to the NDP and its leader, Rachel Notley. Replacing Kenney seemed to have strong support among both the party membership and the general public. The results of the review gave Kenney only 51.4 percent of the vote, of a total of 34,298. He immediately said he would step down as leader but would stay on until the party chose a new leader.<sup>9</sup>

Kenney had ultimately failed to bring the two sides of the UCP – the more moderate, largely urban supporters of the old Progressive Conservatives and the more likely rural and harder right associated with the Wild Rose Party – together into a stable whole. His COVID response was not, to be sure, the sole factor in play here – a dominating leadership style and a sense of ignoring the rural vote (the mainstay of UCP power) were also important factors, among others<sup>10</sup> – but the COVID policies seem to have served as a particular rallying point for his opponents to the right, while also serving as a point of vulnerability for more moderate UCP supporters and for NDP supporters.<sup>11</sup> Kenney himself at one point attributed his problems to extremist elements, including but not limited to “anti-vaxxers” and other opponents of his COVID responses. John Ivison quotes him as saying that the pandemic was “a crisis almost purpose-built to divide a coalition like ours,” and states that “he was obliged to introduce restrictions against his better judgement and the will of many in the governing party.”<sup>12</sup>

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<sup>9</sup> Don Braid, “Jean claims mandate to oust Kenney and save the UCP,” *Calgary Herald*, 17 March 2022, p. A4; Don Braid, “Majority of Albertans want Kenney out: survey,” *Calgary Herald*, 10 March 2022, p. A2; Jason Herring, “Kenney approval below 30% as leadership vote nears, poll shows,” *Calgary Herald*, 6 April 2022, p. A4; Don Braid, “Support for Kenney bleeding ahead of leadership review,” *Calgary Herald*, 6 April 2022, p. A4; Ashley Joannou, “Most think Kenney should lose leadership review, survey says,” *Calgary Herald*, 17 May 2022, p. A2; Brittany Gervais, “Kenney calls it quits,” *Calgary Herald*, 19 May 2022, p. A1.

<sup>10</sup> Dean Bennett, “The gig is up: Kenney set to step down from role,” *Calgary Herald*, 3 October 2022, p. A4.

<sup>11</sup> David Staples, “Will final act of Alberta pandemic politics be the end of Kenney’s political career?” *Edmonton Journal*, 16 March 2022, <https://edmontonjournal.com>. Staples reported an Angus Reid poll finding that 40 percent saw COVID restrictions being lifted too soon, 30 percent saying not soon enough, and 30 percent in support of the timing. Compare this to the April 2021 poll which stated that 45 percent of Albertans thought existing restrictions went too far, 42 percent thought they did not go far enough, and 75 percent thought the Premier was doing a bad job of managing the pandemic. Don Braid, “Premier Kenney’s COVID confusions are catching up with him,” *Calgary Herald*, 13 April 2021.

<sup>12</sup> Ibid.; Elise von Scheel, “Secret recording of meeting with staff shows Kenney considered quitting and his renewed pitch to remain leader,” *CBC News*, 24 March 2022, <https://www.cbc.ca/news>; Alanna Smith and Dean Bennett, “Alberta’s Kenney defends calling UCP opponents ‘lunatics,’” *CTV News Edmonton*, 25 March 2022, <https://edmonton.ctvnews.ca>; David Staples, “No easy answers around the Jason Kenney

Don Braid's 2 June column casts some doubt on the claim that "anti-vaxxers" were a significant factor in the leadership review, but another aspect worth further study is the great upsurge in UCP memberships as the review approached. It was this that led to a switch from in-person voting for the review on 9 April to a mail-in ballot with results to be announced on 18 May. Kenney was particularly vulnerable in the UCP's rural base, where much of the dissatisfaction was concentrated. Of great interest is a claim that a large number of party members were new (not surprising in itself for an intra-party contest, as the various factions would seek to enroll their supporters).<sup>13</sup> Precisely where these new members were coming from on the Alberta political spectrum, as well as geographically, and their attitudes regarding the pandemic and public health measures would be worth further study, especially for its implications for the ensuing leadership contest, as will be noted below.

The prospect of Kenney's departure lifted the fortunes of the UCP relative to the NDP – at least if Brian Jean would become the UCP leader. A March poll showed a possible dead heat between a Jean-led UCP and Rachel Notley's NDP; in early September, this was duplicated by a second poll, though a July poll showed a slim NDP lead. The September poll also found that, among UCP voters, Jean was seen as having the best chance to defeat the NDP (18 percent), although 37 percent said no UCP leadership candidate would defeat the NDP – a finding broadly confirmed in other polls.<sup>14</sup> Jean's lead over the other top contenders in the leadership race was slim, however, and it

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leadership conundrum," 8 April 2022, *Edmonton Journal*, <https://edmontonjournal.com>; Don Braid, "UCP erupts over Kenney's anti-vaxxer claims," *Calgary Herald*, 2 June 2022, p. A1; John Ivison, "The downfall of Jason Kenney will reverberate beyond Alberta," *National Post*, 6 October 2022, <https://nationalpost.com>.

<sup>13</sup> Don Braid, "UCP erupts over Kenney's anti-vaxxer claims," *Calgary Herald*, 2 June 2022, p. A1; Elise von Scheel, "Secret recording of meeting with staff shows Kenney considered quitting and his renewed pitch to remain leader," *CBC News*, 24 March 2022, <https://www.cbc.ca/news>. This article reports that Kenney's campaign estimated that 49 percent of 15,000 people who registered for the leadership review vote before the switch to a mail-in ballot "had bought their first UCP membership in the last four months." Jason Markusoff, "This is where the Albertans deciding Jason Kenney's future live (think small)," 11 May 2022, <https://www.cbc.ca/news>.

<sup>14</sup> Bill Kaufmann, "Jean would do better against NDP than Kenney: poll," *Calgary Herald*, 26 March 2022, p. A2; Dylan Short, "As Kenney steps down, UCP rises," *Calgary Herald*, 27 May 2022, p. A1; Don Braid, "UCO Fortunes up with Kenney exit, but support is fragile," *Calgary Herald*, 27 May 2022, p. A4; Josh Aldrich, "Smith, Jean and Toews lead the pack in UCP race, poll suggests," *Calgary Herald*, 23 July 2022, p. A6; Bill Kaufmann, "UCP leads NDP as Jean gains supporters' favour," *Calgary Herald*, 10 September 2022, p. A3.

diminished steadily over time particularly relative to Danielle Smith. When the leadership vote was held on 6 October, Smith was the winner, but with only 53.77 percent (42,423 votes) after six rounds of voting; she had won the first round at 41.3 percent (34,549 votes). Second was Travis Toews, Kenney's Finance Minister, with 29.4 percent (24,831 votes) in the first round and 46.23 percent (36,480 votes) in the last. Jean, finishing third, was eliminated after the fifth round: he began with 11.1 percent (9,301 votes) in the first round, and finished with 14.8 percent (12,203 votes) in the fifth.<sup>15</sup>

As the leadership vote approached, however, polls also showed the unease of Albertans with any UCP leader. The contest had not helped reassure Albertans about the UCP, and Smith, the eventual winner, had the highest negative numbers as a leader. An Angus Reid pollster suggested that the leadership contest uncovered a "disconnect" between Albertans and the UCP base.<sup>16</sup>

This result – not just Jean's loss but also the slim and drawn-out victory of the leadership candidate with the highest negative rating in the general public – calls for some examination, as it bears particularly not only on the direction of health care (especially public health) in the province and on the possible outcome of the next provincial general election, in May 2023, but also on the future of federal-provincial relations.

What happened? Smith had been the leader of the Wild Rose Party in 2014, before Brian Jean, but had led a disastrous move to unite with the then-Progressive Conservatives before the 2015 election. Only some Wild Rose MLAs followed her, she lost the Progressive Conservative nomination for the 2015 election in her riding, and the

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<sup>15</sup> "2022 United Conservative Party leadership election," *Wikipedia.org*, [https://en.wikipedia.org/wiki/2022\\_United\\_Conservative\\_Party\\_leadership\\_election](https://en.wikipedia.org/wiki/2022_United_Conservative_Party_leadership_election). Accessed 8 October 2022.

<sup>16</sup> Don Braid, "UCP race alienated public and may bring defeat: pollster," *Calgary Herald*, 30 September 2022, p. A4; Alejandro Melgar, "Angus Reid polls Albertans, left with 'terrible' provincial leader options," *Edmonton City News*, 30 September 2022, <https://www.edmonton.citynews.ca>; Angus Reid Institute, "UCP Leadership race leaves Albertans largely uninspired by their options, worried about potential result," 30 September 2022, <https://angusreid.org/ucp-leadership-review-sovereignty-act-danielle-smith-toews-jean/>; Bill Kaufmann, "Albertans uneasy about three UCP front-runners, new poll shows," *Calgary Herald*, 1 October 2022, p. A4; Bill Kaufmann, "Albertans uneasy about three UCP front-runners, new poll shows," *Calgary Herald*, 1 October 2022, p. A4; Bill Kaufmann, "Albertans uneasy about three UCP front-runners, new poll shows," *Calgary Herald*, 1 October 2022, p. A4.



split in the conservative vote led to the NDP victory in 2015. Brian Jean, the new Wild Rose leader, then sought to “unite the right,” but had been defeated by Kenney in an acrimonious struggle to lead the new United Conservative Party. Smith, meanwhile, became a columnist and popular radio talk show host, but in the latter capacity moved away from “mainstream” talk radio to more fringe outlets in 2021, citing “political correctness” as her reason. This gave her access to an audience which could then be used to support her campaigns against Kenney and for the UCP leadership.<sup>17</sup>

Two significant themes developed in Smith’s campaigns against Kenney and especially for the UCP leadership, which resonated particularly with a rural audience, where the UCP has its strongest and most reliable support: opposition to government COVID-19 measures (together with support for “alternative” views on Covid-19, and on other health issues),<sup>18</sup> and Alberta’s grievances against Ottawa. The latter culminated in her platform calling for a “Sovereignty Act” which would permit Alberta to block the application of federal laws seen as opposing the province’s interests. This proposal soon dominated discussion in the race, with widespread and vehement opposition among other candidates and from other politicians in the province, even as many of her rivals advocated tough lines against Ottawa.<sup>19</sup> Alberta has a variety of grievances against the federal government, both historical and – especially where the energy industry is concerned – current. This sense of grievance (whether or not it is fully justified is a separate question) has long been nursed by conservative governments in the province as both a genuine policy matter and as a means of both arousing and attempting to satisfy forces further to its right while undercutting rivals there. Although the COVID measures

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<sup>17</sup> Dylan Short, “Smith’s re-entry could cause waves within UCP, pundits say,” *Calgary Herald*, 2 April 2022, p. A 5; Tyler Dawson, “How Danielle Smith went from political outcast to presumed frontrunner in the UCP leadership race,” *National Post*, 1 October 2022, <https://nationalpost.com>.

<sup>18</sup> Jason Markusoff, “From COVID care to cancer, there’s a pattern to Danielle Smith’s ‘alternative’ medical thoughts,” *CBC News*, 25 July 2022, <https://www.cbc.ca/news>; Jason Markusoff, “In leadership race, UCP heartland runs down these gravel roads and back highways,” *CBC News*, 28 September 2022, <https://www.cbc.ca/news>; Tyler Dawson, “How Danielle Smith went from political outcast to presumed frontrunner in the UCP leadership race,” *National Post*, 1 October 2022, <https://nationalpost.com>; Jen Gerson, “Danielle Smith’s rise has been fuelled by Albertans marginalized by COVID-19 restrictions,” *The Globe and Mail*, 3 October 2022, <https://www.theglobeandmail.com>; Jesse Kline, “Will Danielle Smith winning the UCP leadership lead to an NDP revival?” *National Post*, 5 October 2022, <https://nationalpost.com>.

<sup>19</sup> Jason Markusoff, “All this constitutional chaos, and Danielle Smith hasn’t won anything yet,” *CBC News*, 2 September 2022, <https://www.cbc.ca/news>.

and Alberta's grievances with the federal, especially the federal Liberal, government, are distinct issues and would have a broader appeal beyond simply a rural audience, there seems to be a happy – for Smith – similarity, particularly in their respective rural audiences. Opposition to federal and provincial COVID-19 policies and support for the “Freedom Convoy” and “separatism” or at least a much stronger line *vis-à-vis* Ottawa, seem to overlap significantly and particularly seem associated with the rural population.<sup>20</sup> Smith may have been able to identify and mobilize a set, especially of more rural supporters alienated even from the UCP, and bring them into the contest.<sup>21</sup>

However, the new Premier now faces the familiar problem of the UCP and its conservative predecessors: preserving a unified support base in the face of considerable internal tensions (as indicated by the leadership vote) while at the same time fighting off an NDP that is dominant in Edmonton, possibly tied with the UCP in Calgary, and with a leader substantially more popular. While the UCP's rural base is still strong, the party could thus be vulnerable in the larger population centres. The poll indicating this also suggested considerable skepticism among voters that Smith would be able to improve the situation on a number of issues, especially health care. (At the same time, the poll found a larger percentage of undecided voters, giving some room for possible persuasion.)<sup>22</sup>

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<sup>20</sup> Jared J. Wesley, “Commissioned Paper: Social Cleavage Series: Alberta Separatism and the Freedom Convoy: A New Brand of Western Alienation,” Public Order Emergency Commission, August 2022, <https://publicorderemergencycommission.ca>.

<sup>21</sup> In an interview reported on 6 October, Kenney was quoted as follows: “I will say, though, in the leadership review that we had in May, over half the people who voted in that have never before been members of the United Conservative Party, the Progressive Conservatives or the Wildrose parties. So I think a very substantial number of people voting in the current leadership race, again, have no history in any of the conservative parties in Alberta,” Kelly Cederman, ““God knows, I’m not in politics for the adulation,” *Globe and Mail*, 6 October 2022, p. A6.

<sup>22</sup> Don Braid, “Poll shows Smith has challenge gaining public’s support,” *Calgary Herald*, 14 October 2022, p. A3. Those surveyed disagreed that Smith would be able to accomplish the following: do a better job than Kenney in standing up to Ottawa (32 percent disagree, 29 percent agree); grow the economy (32 percent disagree, 26 percent agree); change the province’s direction “for the better” (39 percent disagree, 25 percent agree); improve the lives of Albertans (93 percent disagree, 23 percent agree); be able to unite the UCP (39 percent disagree, 20 percent agree); and fix problems with the health care system (41 percent disagree, 29 percent agree).

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... and Health Care

Alberta Health Services and the province's response to the pandemic cropped up as issues throughout the leadership review and subsequent leadership contest. Some highlights are the following:

1. In Alberta, as elsewhere in Canada, some public health restrictions began to ease in February 2022. As did other provinces, Alberta denied that the protests developing in late January were linked to this. On 14 June, all restrictions were lifted in Alberta. As one might expect, this met a mixed reception.<sup>23</sup> However, the province's actions only affected municipal rules dependent on the relevant provincial program; other restrictions, such as masking requirements, could still potentially continue. The City of Calgary, for one, complained about a lack of consultation.<sup>24</sup> The province then moved to amend the Municipal Government Act to remove the possibility of municipalities having their own separate restrictions in public health measures, arguing the desirability of avoiding "a patchwork of separate policies across the province [that] could just lead to greater division, confusion, [and] enforcement difficulty with no compelling public health rationale." Premier Kenney said that he feared municipalities would substitute "political science" for science-based rules. The municipalities were not consulted on this move either, and feared it could act as a precedent for other unilateral changes in the Act "when you don't like the direction that a municipality is

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<sup>23</sup> Dylan Short, "Province revokes vaccine passports," *Calgary Herald*, 9 February 2022, p. A1; Bill Kaufmann, "Province eliminating all remaining COVID restrictions by end of today," *Calgary Herald*, 14 June 2022, p. A1; Bill Kaufmann, "Albertans still leery about ditching masks," *Calgary Herald*, 28 March 2022; Meghan Grant, "Lawyers argue Alberta lifted school mask mandate to quell border protests," *CBC News*, 17 August 2022, <https://cbc.ca/news>; Brian Libbay, "Alberta government lawyers reject claim school mask mandate lifted due to 'combustible' border protest," *CBC News*, 18 August 2022, <https://www.cbc.ca/news>.

<sup>24</sup> Don Braid, "Kenney fast-tracks lifting health restrictions, but COVID-19 is in no rush to end its threat," *Calgary Herald*, 9 February 2022, p. A1; Bill Kaufmann, "Province eliminating all remaining COVID restrictions by end of today," *Calgary Herald*, 14 June 2022, p. A1; The Alberta government's 2020 review of its COVID response, conducted by KPMG, had also noted problems in provincial-municipal relations: KPMG, *Review of Alberta's Covid-19 Pandemic Response: March 1 to October 12, 2020: Final Report to the Government of Alberta, January 2021*, <https://health-alberta-covid-19-pandemic-response-review-final-report.pdf>, pp. 8, 84-88.

taking.”<sup>25</sup> While simplicity and general consistency in rules would seem obviously desirable, the change would reduce the ability of local governments in significantly differing situations to respond quickly, appropriately and flexibly. As well, far from removing “political science” from the issue of public health, it would merely ensure it was located only at the provincial government level: there would still be a danger that provincial regulations would be other than required on strictly scientific grounds.

2. A case launched by the Alberta Federation of Labour and certain parents of immunocompromised children regarding the ending of school masking requirements led to the release of some information concerning the process between the Chief Medical Officer of Health (CMOH), Dr. Deena Hinshaw, and the cabinet in that decision. The plaintiffs alleged that Hinshaw had “abdicated” her authority and argued a political motivation in the decision. Documents released during the trial showed that Hinshaw had presented three options on the matter to the cabinet, with some discussion of their implications, but had made no specific recommendation as to a choice. The cabinet broadly accepted one of the recommendations but modified it somewhat. In rejecting an argument for cabinet confidentiality regarding the documents in question, the judge argued:

In this case, the relationship between cabinet decisions and chief medical officer of health decisions is a central issue. The applicants allege improper delegation by the chief medical officer of health to the cabinet, whereas the Crown argues that the Cabinet makes policy decisions and the chief medical officer of health implements those policy decisions through her order.<sup>26</sup>

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<sup>25</sup> “Alberta to force municipalities to lift mask bylaws,” *CBC News*, 1 March 2022, <https://www.cbc.ca/news>; Jason Herring, “Province to forbid city COVID rules,” *Calgary Herald*, 2 March 2022, p. A1; Stephanie Babych, “Councillors worry UCP’s changes to municipal act will set precedent,” *Calgary Herald*, 3 March 2022, p. A6; Stephanie Babych, “Bill requires municipalities to get province’s nod on Covid bylaws,” *Calgary Herald*, 9 March 2022.

<sup>26</sup> Bill Kaufmann, “UCP ignored court order of masking: union boss,” *Calgary Herald*, 3 June 2022, p. A7; Ashley Joannou, “Documents detail COVID decisions,” *Calgary Herald*, 14 July 2022, p. A1; “Documents show recommendations, warnings from Alta. Chief medical officer of health,” *Edmonton CTV News*, 14 July 2022, <https://www.edmonton.ctvnews.ca>; Meghan Grant, “Lawyers argue Alberta lifted school mask

The judicial decision found that the action to lift the school masking restrictions was improper, in that it had been made by the political actors, not by the CMOH, who merely presented options and recommendations and then implemented orders received from the cabinet. This was contrary to the Public Health Act, which did not permit such deference to the political authorities. The decision in this case could be of broader interest if the process followed in this specific instance was the more general pattern of interactions between the CMOH and the provincial political authorities. Of particular interest would be the process of the relaxation of restrictions in the summer of 2021. In a supposed contest between “unaccountable” medical authorities and politically responsible actors, it could be that the Act said one thing, but the practice was another. Ironically, Brian Jean’s leadership platform argued precisely the need for changes to the Public Health Act so that the CMOH would make recommendations to Cabinet, but the Cabinet would make the decisions and then the CMOH would implement its orders.<sup>27</sup> In light of this decision, the question of possible revisions to the Public Health Act, changing the decision process, becomes a matter of interest.

3. Alberta Health Services – a hardy perennial in the province’s politics – and its broad response to the pandemic became one focus in both the leadership review and the later leadership contest. In early April, shortly before the leadership review, the AHS CEO, Dr. Verna Yiu, was dismissed, supposedly in connection with plans to revamp the system. Commentators speculated that there was dissatisfaction with her because she was not fully supportive of the UCP’s plans, that her “tough” position on vaccine mandates had irritated some in the party, and over concerns about the lack of capacity in the system, especially for ICU beds. In September, Kenney would specifically claim that his government had been

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mandate to quell border protests,” *CBC News*, 17 August 2022, <https://cbc.ca/news>; Brian Libbay, “Alberta government lawyers reject claim school mask mandate lifted due to ‘combustible’ border protest,” *CBC News*, 18 August 2022, <https://www.cbc.ca/news>.

<sup>27</sup> For the text of the decision, see Court of King’s Bench of Alberta, *CM v Alberta*, 2022 ABKB 716; Bill Kaufmann, “‘Unreasonable’ to remove masking in schools: judge,” *Calgary Herald*, 28 October 2022, p. A1; <https://www.brianjean.ca>. (Note that at least some of the websites for the various leadership candidates may no longer be available.) Jean was not the only candidate to push for a modification of the Public Health Act to permit “more democratic” input on decisions: Todd Loewen, who entered the contest, made such a proposal in March 2022: Todd Loewen, “Opinion: More Checks and balances needed for future public health emergencies,” *Edmonton Journal*, 16 March 2022, <https://edmontonjournal.com>.

“misinformed” by AHS regarding ICU surge capacity.<sup>28</sup> In the leadership contest, various candidates also proposed a reform of AHS. Don Braid saw it as a familiar pattern, “demonizing” the health care system and proposing major organizational changes.<sup>29</sup>

4. The province’s response to the pandemic was a focus of the leadership contest, with calls for an inquiry. The Kenney government, shortly before its end, announced that a review would be launched, but argued that a public inquiry would cost too much and take too long. The leadership contest saw various candidates distancing themselves from the government’s COVID response, particularly regarding vaccine mandates. Smith, the leading outsider, was most vigorous in this. One Kenney minister, Labour and Immigration Minister Kaycee Madhu, not in the race but declaring support for Smith, went so far as to attack federal COVID policies and to thank the “freedom convoys” for challenging these. Earlier, he had supported Alberta’s policies.<sup>30</sup>

Having won the leadership contest and become Premier, Smith has lost no time in starting to implement elements of her proposals regarding AHS and aspects of the government’s COVID responses. Although she has retained Kenney’s Minister of Health, Jason Copping, in that position, she has made or signalled a number of significant actions.

1. With respect to AHS, she has dismissed its Board, apparently intending to replace it with a single commissioner, to review its operation and to provide a

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<sup>28</sup> Lisa Johnson, “Yiu out as president and CEO of AHS,” *Calgary Herald*, 5 April 2022, p. A5; Don Braid, “Sudden exit of AHS boss signals big changes,” *Calgary Herald*, 5 April 2022, p. A1; Lisa Johnson, “With Yiu out, protesters gather to defend public health system,” *Calgary Herald*, 7 April 2022, p. A5; Rob Breakenridge, “Questions linger following AHS CEO’s dismissal,” *Calgary Herald*, 12 April 2022, p. A7; Don Braid, “Kenney lifts the lid on bitter dispute with AHS,” *Calgary Herald*, 8 September 2022, p. A1.

<sup>29</sup> Lisa Johnson, “UCP leadership candidates pitch AHS overhaul plans,” *Calgary Herald*, September 14, 2022, p. A5. Don Braid, “UCP candidates are demonizing AHS in hopes of collecting party votes,” *Calgary Herald*, September 15, 2022, p. A4.

<sup>30</sup> For example, Jason Herring, “Toews touts budget surplus at Calgary campaign pitch,” *Calgary Herald*, 29 June 2022, p. A5; Jason Herring, “Alberta to launch review into COVID-19 response,” *Calgary Herald*, 16 August 2022, p. A3; See note 25 above for the KPMG report. Herring reports that this was withheld for nearly six months. Carrie Tait, “UCP leadership race in Alberta focuses on COVID-19 grievances and vaccine skepticism,” *The Globe and Mail*, 1 October 2022, <https://theglobeandmail.com>; Omar Sheriff, “Madhu thanks ‘freedom convoys’ for mobilizing against Ottawa’s ‘tyrannical’ pandemic policies,” *CBC News*, 12 September 2022, <https://www.cbc.ca/news>.

new structure. She has strongly criticized the AHS for failing to expand ICU capacity (echoing Kenney’s earlier criticism) and contributing to staffing shortages through its vaccination requirements (about 1650 employees were affected, out of about 125,000).<sup>31</sup>

2. She has removed Dr. Hineshaw, the CMOH, and has indicated that she will draw on “a new team of public-health advisers,” having expressed an interest in getting advice from “a larger number of people” and “doctors who didn’t follow the narrative.” She cited a shift in COVID-19 to an endemic status as one reason for this.<sup>32</sup> The names of the advisors – and whether this group has yet been formed – have not yet been revealed. Of further interest was a statement by Smith that her advisory group would invite a former Trump administration supporter of herd immunity and critic of COVID-19 vaccines and restrictions to speak to it.<sup>33</sup>
3. She directed her Justice Minister (Tyler Shandro, another holdover in that position from the Kenney government) to consider an appeal to the school masking decision noted above. As rates of absenteeism in Alberta schools started to climb, reflecting a confluence of COVID-19, the flu season, and respiratory syncytial virus, the Department of Education instituted a regulation blocking school mask mandates as a condition of attendance and constraining recourse to

<sup>31</sup> Alanna Smith, “Health Services board member resigns over Premier’s reform plans,” *The Globe and Mail*, 19 October 2022, p. A6; Janet French, “Alberta Health Services board member resigns in response to premier’s plan to replace directors,” *CBC News*, 18 October 2022, <https://www.cbc.ca/news>.

<sup>32</sup> Madeline Smith, “Smith signals swift changes to management of AHS,” *Calgary Herald*, 14 October 2022, p. A4; Jason Markusoff, “Danielle Smith in UCP-land: between a rock and a moderate place,” *CBC News*, 24 October 2022, <https://www.cbc.ca/news>; Anita Junker and Lisa Johnson, “Hinshaw replaced with AHS executive,” *Calgary Herald*, 16 November 2022, p. A2. One of the more interesting lawsuits against provincial measures accused the government of attempting to “control the narrative” by referring people only to the Alberta Health Services website, other government websites, and academic websites: Paula Tran, “Alberta lawyer accuses Hinshaw of ‘controlling the narrative’ around COVID-19,” *Global News*, 5 April 2022, <https://www.globalnews.ca>.

<sup>33</sup> Dylan Short, “From Trump medical advisor has been invited to meet with Alberta officials: Premier Smith,” <https://calgaryherald>, November 5, 2022; Dean Bennett, “NDP blasts Smith over invitation to ex-Trump adviser,” *Calgary Herald*, November 9, 2022, p. A6.

online learning. While Smith has stated that parents should be free to mask their children or not, she has not recommended masking.<sup>34</sup>

4. The Justice Minister has also been directed to take legislative or regulatory steps to prevent discrimination on the basis of a person's vaccination status. In her leadership campaign, Smith had talked about putting additional protections into Alberta's human rights legislation concerning this. How that might work out is not clear as yet: a very specific reference to COVID-19 vaccinations would be one thing, while more sweeping protection would have broad implications for public health actions more generally. As of 28 November 2022, however, there were reports that the government would not act immediately on amending the Human Rights Act. Instead, it was contacting organizations (especially, it would seem, those seeking financial support) to invite them to reconsider vaccine mandates "in the light of new evidence," and also encouraging people "to tell their MLAs about businesses and employers with vaccine mandates."<sup>35</sup>
5. In December 2022, Premier Smith announced that a review would be held of the province's response to the pandemic.<sup>36</sup> The terms of reference of the review,

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<sup>34</sup> Nicholas Frew, "Alberta government to try to prohibit COVID-19 mask mandates in schools, Smith says," <https://www.cbc.ca/news>, October 29, 2022; Jason Herring, "Smith vow to prevent future school mask mandates draws criticism," <https://calgaryherald.com>, October 30, 2022; Lisa Johnson, "Smith won't recommend masking," *Calgary Herald*, November 15, 2022, p. A1; Madeline Smith, "Alberta restricts how schools shift to online learning," *Calgary Herald*, 25 November 2022, p. A3. On 24 November, the Department of Education issued a press release noting regulations that would preserve access to in-school learning regardless of a personal decision whether or not to wear a mask. However, it was noted that the Public Health Act would continue to override the Education Act "in a future public health emergency." Alberta, Government News, "Ensuring access to education for all students," 24 November 2022, <https://www.alberta.ca/release.cfm?xID=85047B5c6cc95-B518-EF64-43F7270DD2A4AAC5>.

<sup>35</sup> Dylan Short, "UCP caucus lines up behind Smith," *Calgary Herald*, 8 October 2022, p. A3; Jason Markusoff, "Danielle Smith wants vaccine status to be a human right. Expect a petri dish of problems," *CBC News*, 14 October 2022, <https://www.cbc.ca/news>; Bill Graveland, "Sovereignty act, protecting the unvaccinated on Alberta justice minister's to-do list," *National Post*, 10 November 2022, <https://nationalpost.com>; Michelle Bellefontaine, "Alberta premier pushes organizations to drop mandates, shelves unvaccinated rights bill," *CBC News*, 28 November 2022, p. 8, <https://www.cbc.ca/news>.

<sup>36</sup> Kelly Cryderman, "Premier promises pandemic response review," *The Globe and Mail*, 24 December 2022, p. A6.



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announced on 19 January 2023, are of great interest, as is the selection of Preston Manning as its Chair.

The Public Health Emergencies Governance Review Panel is to “review the legislation and governance practices typically used by the Government of Alberta during the management of public health emergencies...and to recommend changes...” It is directed to consider and balance a variety of factors, including “Effective implementation of emergency measures,” but its principal focus would seem to be elsewhere, on the statutory and legislative aspects of the government’s response including on “protection of rights and freedoms.” It is to present an Interim Report by 30 June 2023, and a Final Report by 15 November 2023.<sup>37</sup> However, it does not seem that the panel would actually review the full provincial government response to the pandemic. Manning himself stated:

The purpose of this panel would not be to review or rehash the entire gamut of the Alberta government’s response to COVID – which would be a vast and time-consuming undertaking. Rather the specific task of the panel would be reviewing the Alberta statutes that informed and authorized the government’s response to COVID-19 and proposing amendments to such legislation that might better prepare the province to address future public health emergencies.<sup>38</sup>

It is thus not clear there will actually be a review of the effectiveness of the provincial government’s response in terms of their impact on such matters as cases, hospitalizations, deaths, and other medical measures.

The choice of Manning is itself interesting. He was the founder and initial leader of the federal Reform Party, which was somewhat to the right of the then federal Progressive Conservatives, and which developed a strong western base (in part by appealing to a sense of “western alienation” from Ottawa). The Reform Party later merged with the Progressive Conservatives to form the current

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<sup>37</sup> Ministerial Order No. 01/2023, appended to “Public Health Emergencies Governance Review Panel,” itself appended to Alberta, Government News, 19 January 2023, “Improving Alberta’s response to public health emergencies.” <https://www.alberta.ca/release.cfm?xID=86404F47300F9-D122-5701-9E14BBC5D4AAFF3E#jumplinks-0>.

<sup>38</sup> Preston Manning, “New pandemic panel to examine amending laws,” *Calgary Herald*, 20 January 2023, p. A10.

Conservative Party of Canada. Following a “Citizens’ Hearing” on 22-24 June 2022, which focussed on persons who were harmed by government responses to the pandemic, Manning created a “National Citizens’ Inquiry” into government responses to the pandemic, particularly flagging the social, health, and economic harms of government measures, and limits on rights and freedoms in its concerns.<sup>39</sup> He has since stepped down from his position in the National Citizens’ Inquiry.

The pandemic and the Alberta government’s response to it thus figured significantly in political developments in the province in 2022, both in general and specifically affecting the healthcare system and public health. They contributed to the replacement of Jason Kenney as UCP leader and Premier by a notable opponent of the public health response to the pandemic. They also contributed to a broader attack on Alberta Health Services and – yet again – another reform effort. The effects of some of Smith’s positions on the public health system and its ability to respond to future pandemics have yet to be fully seen, but there have been some moves that suggest a pattern of constraining public health measures. Whether and how a review of the response to the pandemic is conducted, its content, whether it is made public, and the government response to it, will be significant indicators of the current government’s approach to current and future public health matters.

It would not be accurate to say that COVID-19 was the sole factor in these political developments. Although it played a major role in undermining Kenney’s position in both the general Alberta public and particularly in the more rural and the harder right wing of the UCP, it was not the only factor; however, it did serve as a major rallying point for his opposition in the party to his right. What also must be noted, however, is the ability particularly of Smith, among the leadership contenders, to focus that contest to a great extent on another issue as well: federal-provincial relations. Since becoming leader, Smith’s moves on this front have largely overshadowed questions of public health in the public mind, though the broader state of the healthcare system is sure to continue as a major theme in provincial politics. It would take a significant upsurge in the COVID-19 situation, a similar epidemic, or a major political issue arising from the review of the province’s pandemic response and/or government changes in the public health regime,

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<sup>39</sup> <https://nationalcitizensinquiry.ca>, <https://www.citizenshearing.ca>.

for example, to restore this issue to prominence. In the meantime, the public seems to have “normalized” COVID-19 – to have become tired of the issue regardless of the ongoing effects of the disease in the province. The political lessons of resistance to public health measures will likely take significant events and measures for public health issues to re-emerge or for public resistance to be overcome.

### **Protests and the Emergencies Act**

Writing on the cusp of 2021-2022, this author suggested that resistance to public health restrictions in Alberta was “not on the scale or with the virulence seen elsewhere.”<sup>40</sup> Events quickly brought this complacency into considerable question for both Alberta and Canada as a whole. Protests against COVID-19 public health measures, some legal but some not, began shortly after they were introduced. After vaccines became available and various vaccine “mandates” and related requirements were introduced, the protests included these in their themes, and also included health workers, hospitals and vaccination stations in their targets. Protests continued after the Emergencies Act was invoked and then revoked. A review of these written for the Public Order Emergency Commission,<sup>41</sup> although it does not strive to be complete, could either uphold or challenge the possibility that, as the pandemic continued, they became larger, more organized and more frequent – a matter of interest in the federal government’s justification of its use of the Emergencies Act.

On 20 November 2021, the Canadian government issued an order, to come into effect on 15 January 2022, that “all foreign nationals ... be fully vaccinated to enter Canada.” On 24 November 2021, the United States ordered that as of 22 January 2022, “it

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<sup>40</sup> Keeley, “You may not be Interested in COVID,” pp. 104-105, quoted p. 104.

<sup>41</sup> EA Commission Counsel, “Overview Report: Early Protest Activities and Legal Challenges Relating to Public Health Measures,” Public Order Emergency Commission, COM.OR.00000003, <https://publicorderemergencycommission.ca>. See also EA Commission Counsel, “Overview Report: Timeline of Certain Key Events,” COM.OR.00000004. Other than for its Policy Papers, Commissioned Papers and Closing Submissions, hereinafter material from the Commission’s hearings will be indicated initially by “EA” and the appropriate title and identifying number. There was no Closing Submission from protesters, but there was considerable testimony. It should be noted that protests – including the use of trucks – continued after the invocation of the Act in other cities, but were handled more effectively by local police forces who had quickly learned from the experience in Ottawa

would require all essential foreign travellers into the US to be fully vaccinated.” The Canadian order would deny entry to foreign nationals not fully vaccinated, but “unvaccinated or partially vaccinated Canadians (and some others) ... would be subject to testing and quarantine requirements.”<sup>42</sup> While there had been an effort to organize a trucker protest convoy to Ottawa in the Fall of 2021,<sup>43</sup> it was this order that would lead to a larger effort to organize a similar protest convoy, the core of which would be truckers, to go to Ottawa in January 2022. Other protest convoys would go to various entry points on the Canada-US border, disrupting trade between the two countries.

Significant blockades developed in Ottawa and various border crossings into the United States in late January 2022. The invocation of the Emergencies Act on 14 February 2022, while bringing many, but not all, of the protests in Canada to an end, clearly flagged in its use the issue of national security.<sup>44</sup> This section will cover the convoy protests at Coutts, Alberta, the Ambassador Bridge between Detroit, Michigan and Windsor, Ontario, and the “Freedom Convoy” in Ottawa. Both provincial governments and the federal government were involved in all three cases. The border blockades raised significant economic and political issues. The Ottawa protest, however, was of particular political significance for the federal government. The three convoys will be discussed in the order above, as the first two differed significantly in their handling from the more complicated last, and this order will facilitate some comparisons.

A question arises regarding the actual composition of and motivations for the protests, whether in Ottawa or elsewhere. While “truckers” served as the dominating image and as essential contributors to the blockades, who were these precisely? Were they independent operators or fleet-related drivers? The numbers and mix of vehicles – including trucks, personal vehicles and even farm and other equipment – would vary

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<sup>42</sup> EA, “Overview Report: Early Protest Activities and Legal Challenges Relating to Public Health Measures,” COM.OR.00000003, pp. 26-27. An earlier American order (12 October 2021) had required all inbound foreign nationals, including truckers, to be vaccinated.

<sup>43</sup> *Ibid.*, pp. 19-20.

<sup>44</sup> EA, “Proclamation Declaring a Public Order Emergency,” *Canada Gazette*, Part II, 156, 15 February 2022,” ALB00000384.0001. The Emergencies Act was itself a replacement for the old, outmoded War Measures Act, which was last used by the current Prime Minister’s father, Pierre Trudeau, in the October Crisis of 1970. That use was triggered by the kidnapping by Quebec separatists of a British diplomat, James Cross, and a Quebec provincial cabinet minister, Pierre Laporte. Laporte was murdered by the kidnappers, but Cross was released unharmed.

over time as vehicles came and went. The wide variety of groups and concerns at play in the protests cannot be overlooked, either.

### *The Public Inquiry*

As noted in the Preamble and other provisions within the Emergencies Act, there are mechanisms for oversight and accountability. Specifically, the government must: consult each province before issuing, continuing or amending a declaration of emergency; submit a motion to Parliament (with an explanation and report on the consultations) within seven sitting days; must submit motions to revoke (in whole or in part) to Parliament; and must table all orders and regulations issued under the Act before Parliament within two days. As well, there must be a parliamentary review of the use of the Act and, after its revocation, an inquiry must be initiated within sixty days, to report back to Parliament within a year.<sup>45</sup>

As directed, a Commission of Inquiry was established to report on the circumstances of the declaration of the Act and the measures taken under it. The Commission was also directed to examine issues related to: “the evolution and goals of the convoy and blockades, their leadership, organization and participants;” “the effects of domestic and foreign funding;” the effects and sources of misinformation and disinformation, including through social media; the effects of the blockades (including economic effects); and “the efforts of police and other responders prior to and after the declaration.”<sup>46</sup> The Commission began its public phase in October 2022. The next, policy, phase, focused on “the development of recommendations related to all aspects of the Commission’s mandate, including the use of the Emergencies Act, any necessary modernization to the Act, as well as recommendations on areas for further study or review....”<sup>47</sup> The Commission will release its report in February or March 2023. The necessity of invoking the Act, and whether its specific criteria were met, have been a particular focus of public interest and comment concerning the inquiry, and will likely

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<sup>45</sup> Emergencies Act, Part VI. (R.S.C., 1985, c. 22 (4<sup>th</sup> Supp.)), <https://laws-lois.justice.gc.ca>.

<sup>46</sup> EA, “Order in Council 2022 0392” P.C. 2022-392, 25 April 2022.

<sup>47</sup> <https://publicorderemergencycommission.ca/news/policy-phase-starts-on-november-28-2022>, 24 November 2022. The Policy Papers listed on the Commission’s website indicate at least some areas of interest in this phase. Transcripts of the round table sessions in this phase are also available.

figure largely in the final report and the responses of the federal government, its supporters, the Opposition, and opponents of the proclamation of the Act.

This portion of this update article draws on media reports and especially on documents and testimony before that Inquiry. It has not drawn on the work of the required parliamentary review.<sup>48</sup> Written before the Commission's report was issued, it does not attempt to anticipate, rival or challenge the Commission's analysis or conclusions but is instead a quick examination of some salient points in the circumstances of the three protests noted above, and the responses by relevant authorities. It is, then, a brief and initial cut at these events, subject to correction and based on a quick and somewhat cursory examination of the material. Inevitably, however, its discussion will have implications for questions around the invocation of the Emergencies Act and notions of national security raised in association with the Act.

#### *The Coutts Blockade*<sup>49</sup>

Coutts is a main border point between Alberta and Montana, with roughly \$48 million per day of trade. How much this was affected by the blockade is unclear, as some traffic was rerouted, with consequent time delays, to other border points in Alberta and elsewhere. The other Alberta points were not, however, equipped to handle large volumes of commercial traffic. Livestock shipments were particularly affected, as Coutts was able to deal with these but not the other crossing points in Alberta.<sup>50</sup> The blockade at Coutts began on 29 January, by a group in sympathy with the Ottawa convoy and demanding the end of COVID-19 mandates. The Royal Canadian Mounted Police

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<sup>48</sup> For that review, see <https://www.parl.ca/committees/en/DEDC>.

<sup>49</sup> For basic information on the Coutts blockade, see EA, Commission Counsel, "Overview Report: Timeline of Certain Key Events," COM.OR.00000004. Other useful documents covering developments in Alberta are: EA "Government of Alberta Institutional Report," ALB.IR.00000001, and EA, "Master Timeline of 'Freedom Convoy' Activities within Alberta (v1.0)," ALB00001669.0001. See also EA, "Royal Canadian Mounted Police Institutional Report," DOJ.IR.00000011, pp. 41-45. The Closing Submissions of the various governments involved in the events noted here (Coutts, Windsor and Ottawa) also provide overview information, as do submissions from other parties.

<sup>50</sup> EA, "Canada Border Services Agency Institutional Report," DOJ.IR.00000006, p. 35; EA, "Transport Canada Institutional Report," DOJ.IR.00000005, p. 23. On the livestock matter, see, e.g., EA, "PSIO SITREP - 5 FEB 2002 - Freedom Convoy Solidarity Activity," ALB00000547.0001, p. 7.

(RCMP)<sup>51</sup> negotiated an opening of one lane in each direction on February 2, but a full blockade was re-established on February 8. On February 5, Alberta's Minister of Municipal Affairs wrote to the federal government, requesting assistance in securing Canadian Armed Forces (CAF) tow trucks to remove the blockade. Apparently, local tow truck operators were reluctant to jeopardize relations with truckers, feared threats, or had actually received money not to help. Efforts to obtain assistance from American tow truck operators were similarly unsuccessful.<sup>52</sup> He received no reply until much later (the CAF equipment was apparently not readily available nor, it would seem, particularly suitable), but, in the interim, the provincial government did manage to secure tow trucks. The request was rescinded on 23 March, but the blockade itself ended on 15 February.

The blockade did not (at least initially?) seem to have firm connections with the Ottawa protest, being a relatively spontaneous and local affair, or even with other protests in the province. It seems to have been generally peaceful if not always conducted legally, and not particularly organized though some persons emerged to speak for it with the RCMP. These, however, did not seem to exercise any firm control over the participants, which complicated negotiations. As will be seen in the Windsor and Ottawa cases, low-level negotiations (by local law enforcement or on the municipal level) would be plagued by problems of organization and the ability of protest leaders to reliably commit their fellows to an agreement. Mistrust of the authorities was strong, and communication problems would be important.<sup>53</sup>

One of the Coutts leaders argued that the provincial government had not communicated with the protesters, and that "The Coutts protest could have been dispersed if Government of Alberta officials would have opened lines of communications

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<sup>51</sup> The RCMP serves as a provincial police force in Alberta. It was supplemented by sheriffs and additional municipal police personnel.

<sup>52</sup> EA, "Royal Canadian Mounted Police Institutional Report," DOJ.IR.00000011, p. 43; EA, "CAF Request for Heavy Equipment," PB.NSC.CAN.00001578; EA, "Minister McIver letter to Minister Mendicino and Minister Blair, 5 February 2022, SSM.CAN.00000082; EA, "Tow and Crane Companies contacted," PB.NSC.CAN.00001729\_REL.0001.

<sup>53</sup> EA, "PSIO SITREP – 5 FEB 2002 – Freedom Convoy Solidarity Activity," ALB00000547.0001; EA, "2022 Briefing Notes for Premier Kenney for Trucker Convoy Blockade," PB.NSC.CAN.00001576; EA, "Information to Minister Coutts Border Crossing Blockade – V5," ALB00001225.0001; EA, "Coutts Convoy Blockade – Leadership and Organization Analysis," ALB00001263.0001; EA, "RCMP Update to DLE 1558 31 Jan 2002," ALB00001699.0001; EA, "Statement of Anticipated Evidence: Marco Van Huigenbos," SAE.00000003.

and/or agreed to negotiate and sit down with the spokespersons and participants.”<sup>54</sup> Premier Kenney had called on the various protests to end illegal actions and had condemned various extremist groups participating in the protests while affirming the right to freedom of speech and assembly, but there do not seem to have been any official high-level provincial government responses to any negotiation offers that the protesters might have suggested. The UCP denied a report that some rural MLAs had been negotiating with the blockaders for a temporary end in response to lifting mandates.<sup>55</sup> Higher levels of government in the three cases seem either not to have offered to negotiate, or only on conditions that the protesters rejected.

While the difficulties in securing tow trucks to dismantle the blockade was a significant factor constraining enforcement actions, the crucial factor in the timing of the ending of the blockade, with wider implications, was the arrest on 13-14 February of several persons, including four for conspiracy to murder RCMP members. Prior to this, there had been concern expressed in situation reports regarding the presence of firearms in tractor-trailers and trucks, and some reports of these being brandished,<sup>56</sup> but these arrests were of a different order. The four may have seen themselves as self-appointed guardians of the convoy, prepared to respond with force if the RCMP attempted to use force to remove the blockade. They seem to have been a group of “preppers” concerned about the collapse of society as well as anticipating government challenges to their freedom. In particular, they had expressed interest in changes to the political, medical and judicial systems, removing the “professional political class” (including getting the

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<sup>54</sup> EA, “Statement of Anticipated Evidence: Marco Van Huigenbos,” SAE.00000003.

<sup>55</sup> Lauren Boothby, “Premier condemns hate groups at Saturday protest,” *Edmonton Journal*, 22 February 2022, <https://edmontonjournal.com>; Hannah Kost, “UCP denies report of rural caucus negotiating with blockade protesters after lanes opened in ‘good faith,’” *CBC News*, 2 February 2022, <https://www.cbc.ca/news>; EA, Master Timeline of ‘Freedom Convoy’ Activities within Alberta (v1.0),” ALB00001669.0001, p. 54. The federal government’s Closing Submission, however, would repeat the claim that such talks had occurred in an attempt to open up a lane of traffic: EA, “Government of Canada Closing Submission,” p. 29.

<sup>56</sup> EA, “FW: Sheriffs Branch SITREP (ROUTINE) UPDATE #5 – Feb 1, 2022 \_\_ SHP District 6 – Coutts Border Blockade and Protest,” ALB-00001006.0001; EA, “FW: Security concerns re: Coutts Border protest,” dated 7 February 2022, ALB00001626.0001; EA, “2022 Briefing Notes for Premier Kenney for Trucker Convoy Blockade,” PB.NSC.CAN.00001576.0001, p. 4; EA “Master Timeline of ‘Freedom Convoy’ Activities within Alberta (v1.0),” ALB00001669.0001, p. 31.



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Alberta Premier and the Prime Minister to step down), and challenging the vaccination and other public health measures instituted to deal with the pandemic.<sup>57</sup>

The extent to which the four facing the most serious charges may have been part of a larger network or group, as opposed to merely being “inspired” by social media, is as yet unclear. There are indications of at least an interest in – possibly connections to – the DIAGOLON extremist group. One person arrested – but not for the conspiracy to murder charges – was also present at Ottawa earlier, and a person associated with DIAGOLON collected donations to facilitate travel to Coutts. At the Commission hearings, photos of the DIAGOLON founder with one of those charged with conspiracy to commit murder were shown. While the federal government was concerned about coordination between the various border protests and the convoy in Ottawa, however, an RCMP report on 17 February stated: “To date, there has been no information uncovered to suggest that there is an organized effort between the individuals charged in Alberta and individuals involved in the Ottawa protest.”<sup>58</sup> The precise timing of the federal government’s knowledge of the investigation leading to the arrests, of the arrests themselves, and its knowledge of and response to the possible DIAGOLON connection would be a matter of interest regarding the invocation of the Emergencies Act on 14 February.

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<sup>57</sup> EA, “Fyi – Fwd: Alberta RCMP make arrests at Coutts Border Blockade – Update # 2,” ALB 00001376.0001; Kieran Leavitt, “Father of accused in alleged Coutts blockade murder conspiracy says son was radicalized online, as others dispute RCMP narrative,” *Toronto Star*, 17 February 2022; Kevin Martin, “Texts indicate Coutts protesters wanted to alter political system,” *Calgary Herald*, 1 December 2022, p. A5; Rachel Ward, “Bosses of Alberta men accused in plot to murder Mounties still under investigation, court docs suggest,” *CBC News*, 30 November 2022, <https://www.cbc.ca/news>.

<sup>58</sup> Rachel Ward, “Bosses of Alberta men accused in plot to murder Mounties still under investigation, court docs suggest,” *CBC News*, 30 November 2022, <https://www.cbc.ca/news>; Meghan Grant, “Coutts arrests: new details on the men and women charged in border blockade,” *CBC News*, 17 February 2022, <https://www.cbc.ca/news>; EA, “Diagolon Participation in the Freedom Convoy 2022 and Beyond,” SSM.NSC.CAN.00001575.0001; Christy Somos, “What is the Diagolon extremist group and what does it want?” *CTV News*, 17 February 2022, <https://www.ctvnews.ca>; Catharine Tunney, “Convoy organizer Tamara Lich accused of having a ‘selective’ memory of whether she was told to leave protest,” *CBC News*, 4 November 2022, <https://www.cbc.ca/news>; Alex Boutilier and Mercedes Stephenson, “Canada’s public safety minister draws direct tie between Coutts, Ottawa protests,” *Global News*, 17 February 2022, <https://globalnews.ca>; EA, “Coutts Intell Brief – 2022-02-17,” PB.NSC.CAN.00008508.0001, quoted p. 1.

Immediately following the arrests, convoy members began to leave, local leaders saying they rejected any association with guns and violence. By the next day, the crossing had been cleared.<sup>59</sup>

One feature of the handling of the Coutts blockade was the relatively restrained action by the provincial government. During this period, the Government of Alberta did not make use of its own Emergency Management Act. It also seems to have made very little use of the province's Critical Infrastructure Defence Act. The failure to make use of the Critical Infrastructure Defence Act, which had been deployed against indigenous protesters, excited some comment but Premier Kenney rejected any comparison.<sup>60</sup>

During consultations just prior to the invocation of the Emergencies Act, Premier Kenney was not in favour, arguing that law enforcement already had sufficient resources, that it was disproportionate, would infringe on provincial jurisdictions and was not necessary on a national basis – though he would not “quibble” with using it for the situation in Ontario. He also feared that the move would further inflame the situation (a possibility noted by others, including federal agencies). He later stated that the provincial government would challenge the move in court. In the Fall of 2022, the new premier instructed the Justice Minister to challenge the use of the Emergencies Act and to recommend means of protecting provincial jurisdiction from its future use.<sup>61</sup>

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<sup>59</sup> EA, “20h32 KDiv Update,” PB.NSC.CAN.00003453.0001. Some of the blockade leaders were also arrested. In mid-January 2023, allegations emerged that Premier Smith's office had contacted the Alberta Crown Prosecution Service regarding the handling of cases arising from the blockade. Smith denied making any such approach herself, or any knowledge of such an approach by members of her staff. Matthew Black and Lisa Johnson, “Smith must address reports of influence attempts: NDP,” *Calgary Herald*, 21 January 2023, p. A4.

<sup>60</sup> The one instance found by the author in the Emergencies Act inquiry documentation referred to the arrest on 8 February of a minister, the first such arrest. EA, “RE: CIDA Arrest,” ALB00001637.0001; EA, “Master Timeline of ‘Freedom Convoy’ Activities within Alberta (v1.0),” ALB00001669.0001, p. 21; Rob Breakenridge, “Coutts blockade proves the sham that is Alberta's infrastructure act,” *Calgary Herald*, 15 February 2022, p. A7; Paula Tran, “Comparing Coutts border protest to Indigenous land defenders inaccurate, says Alberta premier,” *Global News*, 9 February 2022, <https://globalnews.ca>; Paula Tran, “Alberta NDP calls on UCP to suspend commercial operators licenses as Coutts protest enters 13<sup>th</sup> day,” *Global News*, 10 February 2022, <https://globalnews.ca>.

<sup>61</sup> EA, “PM Trudeau – Emergencies Act,” ALB00000521.0001. Ryan Tumilty and Christopher Nardi, “Notes reveal Kenney's nuanced views on Emergencies Act, hours before it was invoked,” *National Post*, 10 November 2022, <https://nationalpost.com>; Kylee Pedersen, “Kenney says province will challenge federal Emergencies Act in court,” *CBC News*, 19 February 2022; Bill Graveland, “Sovereignty act,

As for the opinions of Albertans regarding the protests, a national poll reported on 9 February 2022 stated that 58 percent of Albertans were opposed to the Ottawa protest. An online survey taken in April-May, 2022 specifically of Albertans reported general, strong opposition to the various protests' objectives and means. However, 53 percent of respondents outside of Calgary and Edmonton supported the convoys and 56 percent of UCP members supported their objective. The mayor of Coutts later stated that perhaps 70 percent of his community might support the protest there.<sup>62</sup>

*The Ambassador Bridge, Windsor, Ontario*<sup>63</sup>

The Ambassador Bridge between Windsor and Detroit handles \$360 million per day in Canada-US trade – 26 percent of Canadian exports and 33 percent of its imports by road. Transport Canada estimated the cost to the Canadian economy of a shutdown here at roughly \$45 million per day (with mitigation efforts) and up to \$86-161 million per day if other crossings were not available. (Other road crossings in Ontario were also subject to blockades and “slow-rolls” and there were occasional social media suggestions that the Sarnia rail crossing might also be blocked.) The effect would be particularly great on the crucial automotive industry, as well as others dependent on “just-in-time” inventory systems, given the effects of delays even if alternative crossings were available. Indeed, some automotive plants – on both sides of the border – were affected, shutting down or cutting back their activities as a result of the blockade. The trade in other goods would also be affected.<sup>64</sup> Although the Ambassador Bridge was not the only crossing

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protecting the unvaccinated on Alberta justice minister's to-do list,” *National Post*, 10 November 2022, <https://nationalpost.com>.

<sup>62</sup> Josh Aldrich, “RCMP actively working to defuse 11-day Coutts border blockade,” *Calgary Herald*, 9 February 2022, p. A3; Adam Toy, “Majority of Albertans opposed to ‘freedom convoy’ despite vocal minority: survey,” *Global News*, 1 September 2022, <https://globalnews.ca>; Michael Rodriguez, “Coutts mayor says village besieged during protests,” *Calgary Herald*, 22 November 2022, p. A1.

<sup>63</sup> For basic information on the Windsor blockade, see EA Commission Counsel, “Overview Report: Timeline of Certain Key Events,” COM.OR.00000004. Detailed timelines may be found in the following: EA, “City of Windsor Institutional Report – Appendix A,” WIN.IR.00000002; EA, “Ontario Institutional Report,” ONT.IR.00000001.

<sup>64</sup> EA, “Transport Canada Institutional Report,” DOJ.IR.00000005, pp. 20-21, 22. See also the following: EA, “OABA MP Pletter Ambassador Bridge February 10 2022,” ONT00000025; EA, “RE: Convoy Protests – Auto Sector Impacts – Trucker Driving Time,” ONT00000885; EA, “TPIID Sector Impacts Border Blockades – 11 February 2022,” ONT00000887; EA, “RE: FYI Border Issues and OEMs,” ONT00000886.

available at Windsor, it is the main truck crossing and apparently for some trade the only really viable crossing.

The events at Windsor began with “slow-roll” protests on 23 and 29 January; concerns then developed that the bridge would be blocked. The blockade started on February 7, having effects on automotive plants by the next day. On 9 February, Windsor asked for RCMP assistance, and the mayor also contacted the Premier of Ontario, Doug Ford. Although they initially did not accept an offer of assistance from the Ontario Provincial Police (OPP), the Windsor Police Service quickly agreed to accept it, and the OPP took over the lead. The better coordination between police forces in the Coutts and Windsor cases would contrast crucially with the Ottawa case. On 11 February, the Premier declared a provincial state of emergency, with severe penalties for interference with critical infrastructure including significant fines and the possibility of a suspension or cancellation of commercial vehicle certificates and drivers’ licences. Efforts to disperse the blockade began the next day, and the bridge was re-opened on 14 February (before the federal government invoked the Emergencies Act). However, on that same day, Windsor declared a state of emergency, fearing the possible return of the blockade (a suspicious convoy was intercepted by police on 15 February) and to streamline processes to respond. The city’s state of emergency was revoked on 24 February. Normal traffic flow in areas around the bridge was fully restored by 12 March.

The Premier and the OPP Commissioner made clearing the bridge blockade a priority, given the lack of a plan in Ottawa to deal with the protest there, the economic effect of the Windsor blockade, and the strain on OPP resources with other protests going on. As was the case with the Coutts blockade, there seems to have been some difficulty in securing the cooperation of tow truck operators to remove vehicles.<sup>65</sup>

One thing that seems conspicuous by its absence in relation to the bridge protest is the mention of firearms. A theft of a load of firearms (but no ammunition) in

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The economic effects also led to numerous cross-border conversations with US state and federal officials. EA, “Government of Canada Closing Submission,” pp. 43-46.

<sup>65</sup> EA, “Fwd: Readout: PM call with Premier Ford – 9 February 2002,” SSM.CAN.00006068\_\_REL.0001; “Ambassador Bridge blockade a priority, but Windsor police refused initial offers for help: OPP,” *CBC News*, 27 October 2022, <https://www.cbc.ca/news>; EA, “Institutional Report of Windsor Police Service,” WPS.IR.00000001, p. 8.

Peterborough on 13 February caused some initial concern, but there was no information connecting it to the protests and it was later thought to be simply a crime of opportunity. It is not clear, however, if or when the federal government received this assessment relative to the invocation of the Emergencies Act.<sup>66</sup>

As was the case with the Coutts blockade, the protesters do not seem to have been particularly organized and had differing factions. This complicated relations with the police, with negotiations being possible with some parts of the protest (e.g., to clear emergency lanes) but less so or less reliably with others. It was thus difficult to make stable agreements. The protesters varied between being relatively cooperative and more aggressive.<sup>67</sup>

In the announcement of the emergency, the Premier stated that the protesters had been heard, but should go home.<sup>68</sup> On 11 February, one protest leader said that the protesters would leave if they received a letter from the provincial government inviting them to a meeting. In a letter from to the Commissioner of the OPP on the same day, the Ontario Solicitor General proposed a meeting with the protesters to end the Ambassador Bridge blockade, under the conditions that:

To move forward with our offer to schedule a meeting, all protesters must leave the protest site immediately, denounce all unlawful activity and encourage a period of quiet. This means no unlawful, unpeaceful, unsafe protest activity can occur between the time of acceptance of this offer until the meeting takes place.

<sup>66</sup> EA, "Strategic Update – 2002 02 13," ONT00005115; "Strategic Update – 2001 02 16," ONT00005118; EA, "re: RE: Ottawa Protest CIB #955-10-2022-022," ONT00001549; EA, "2022-02-17 Operational Intelligence Assessment – Operation BearHug2.0," OPP00001767, p. 1; EA, "Strategic Update – 2022 02 15," ONT00005117, p. 2.

<sup>67</sup> E.g., EA, "Strategic Update – 2022 02 10," ONT 00005113; Chris Ensing, "Documents detail scramble to protect Ambassador Bridge, Windsor-Detroit tunnel from protests," *CBC News*, 21 October 2022, <https://www.cbc.ca/news>; EA, "Institutional Report of Windsor Police Service," WPS.IR.00000001. Ryan Tumilty and Christopher Nardi, "Windsor mayor told feds Ambassador bridge was clear before invocation of Emergencies Act," *National Post*, 7 November 2022, <https://nationalpost.com>.

<sup>68</sup> EA, "Feb 11 Premier's Remarks \_Final," ONT 00002511. EA, "22–0017 All Chiefs Memo – Emergency Declaration and Critical Infrastructure," ONT 00000952. EA, "Premier's Talking Points," ONT 00000941.001.

...(N)ote that immediate agreement is required. Any time delay in acceptance will negate this offer.<sup>69</sup>

A letter in such terms was given to the protesters, but they refused to leave immediately.

*Ottawa: The "Freedom Convoy"*<sup>70</sup>

While the Ambassador Bridge blockade had the greatest immediate economic impact, as well as presenting major longer-term potential political-economic implications for Canada-US trade relations, the "Freedom Convoy" protest in Ottawa had the most immediate and largest political impact. It was the largest domestic protest and the point of inspiration for others across the country, as well as being an inspiration for similar protests elsewhere in the world and an international embarrassment for the Canadian government.

While the idea had started circulating somewhat earlier, efforts to organize the convoy and protest started on 13 January 2022 as organizers attended a social media conference. A fundraising page was established on GoFundMe on 14 January for "Freedom Convoy 2.0", and an "Adopt-a-Trucker" page was established on GiveSendGo on 18 January. An additional "Freedom Convoy 2.0" page was set up on GiveSendGo on January 31. A non-profit corporation ("Freedom Convoy 2022 Human Rights and Freedoms Non-Profit Corporation") was established on 30 January. Several million dollars were quickly raised. Meanwhile, by 28 January, protesters had begun to reach Ottawa, but additional groups continued to arrive throughout the course of the protest, although the police took steps to try to prevent their access. Downtown Ottawa was

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<sup>69</sup> EA, "POEC – OPP Institutional Report," OPP.IR.00000001, p. 29; EA, "Solicitor General Letter," ONT00000858; "Ambassador Bridge blockade a priority, but Windsor police refused initial offers for help: OPP," *CBC News*, 27 October 2022, <https://www.cbc.ca/news>; EA, "Institutional Report of Windsor Police Service," WPS.IR.00000001, p. 16.

<sup>70</sup> For basic information on the Ottawa protest, see, e.g., the following: EA, "Timeline of Events Relating to the Freedom Convoy Submitted by the City of Ottawa," OTT.IR.00000002; EA, "Overview Report: Timeline of Certain Key Events," COM.OR 00000004; EA, "Overview Report: Early Protest Activities and Legal Challenges Relating to Public Health Measures," COM.OR 00000003; EA, "2022 04 08 – Freedom Convoy 2022 Timeline," OPP00000018. Additional information may also be found in the institutional reports of the RCMP (DOJ.IR.00000011), OPP (OPP.IR.00000001) and the Government of Ontario (ONT.IR.00000001). See also EA, "2022-10-04 Descriptions from Timeline," HRF 00001221.

gridlocked beside the Parliament buildings, the Bytown Market and the Rideau Centre (a downtown shopping complex), and protesters moved into other areas both downtown and in residential areas. On 4 February, GoFundMe terminated its fundraising page (after a pause on 2 February), but protest organizers asked donors to switch to GiveSendGo; on 10 February, access to that source of funding was shut down by the Attorney General of Ontario. Cryptocurrencies and cash donations were also used, in an attempt to bypass these restrictions.

On 3 February, the Cabinet Committee on Safety, Security and Emergencies held a first meeting (others were held on 6 and 8 February). The first meeting of the federal Incident Response Group was held on 10 February (others were held on 12, 13, 16, 17, 18, 19, 20, 21, 22 and 23 February). On 6 February, the City of Ottawa declared a state of emergency, and on 7 February, Ottawa requested 1800 additional officers; an integrated planning team from the RCMP and the Ontario Provincial Police arrived the next day. As already noted, on 11 February the Premier of Ontario declared a state of emergency, but the situation in Windsor appears to have been the province's priority. On 12 February, talks to move protesters from residential streets to Wellington Street (by the Parliament buildings) began; despite reaching an initial agreement, they were ultimately unsuccessful. An Integrated Command Centre was established on 12 February; the Ottawa police chief signed off on a plan on 13 February. The federal government invoked the Emergencies Act on 14 February. The Ottawa police chief resigned the next day. Arrests of protest leaders began on 17 February; efforts to clear the protesters from the downtown area started on 18 February and ended on 21 February. The proclamation of a public emergency was revoked on 23 February by the federal government, as was the provincial declaration of an emergency; Ottawa ended its state of emergency the next day.

The Ottawa protest was probably the best-organized of the many protests in Canada, but nonetheless demonstrated difficulties confronting other such protests. Drawing on participants from across the country, it benefitted significantly from the fact that at least some of its organizers had been involved in earlier convoy-type protests, whether before or in response to public health measures.<sup>71</sup> Using social media extensively

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<sup>71</sup> Two such organizers were Tamara Lich and James Bauder. The former had been involved with a "Yellow Vests" protest in 2019, while the latter (in his organization Canada Unity) had organized a small

both before arriving in Ottawa and while there, the “Freedom Convoy” was able to mobilize a wide array of supporters and encourage parallel actions, including border blockades.<sup>72</sup> Based on their behaviour in Ottawa, the organizers had obviously given prior thought to how they would conduct themselves, including how they would tie up the city in support of their objectives.

Another notable feature of the protest organizers (as, indeed, of others throughout Canada) was their interest in keeping matters peaceful. Internal communications consistently stressed this and warned against violence. For example, one “Official Daily Event and Safety Report” warned that the federal government would

Create an atmosphere or a ‘political space’ whereby those who advocate violence as a distraction will find the opportunity to express it. This violence will express itself from extreme left forces such as Antifa, a variety of political/religious extremist groups or small groups of those who would self identify as anarchists, anarcho-syndicalists or anarcho-environmentalists.<sup>73</sup>

Cooperation with police (both in Ottawa and in other jurisdictions while travelling there) was another theme, though there were obviously tensions with local enforcement as well. “Security” personnel within the protest organization attempted, at times in cooperation with police, to control situations.<sup>74</sup> This did not prevent various incidents of harassment and confrontation from occurring, including but not limited to the very troublesome

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convoy to Ottawa in late 2021 to protest public health measures. See, e.g., EA, “James Bauder, Facebook Post, 13 December 2021,” COM00000858; EA, “Following death-threats to Trudeau, Yellow-Vest Medicine Hat looks to change their name CHAT News Today,” COM00000908; EA, “Master Timeline of ‘Freedom Convoy’ Activities within Alberta (v1.0),” ALB00001669.0001, p. 7. Concerns were raised among governments about the presence of ex-police and ex-military in the convoy, with the possibility that these were advising the organizers on tactics. As well, there would be concerns as the protest continued about leakage to the protesters from police personnel. EA, “How organizers with police and military expertise may be helping Ottawa convoy protest dig in,” OPP00000103.

<sup>72</sup> Government documents vary in their assessments of the degree of coordination or organization of the Ottawa protest with these other various actions. The degree of coordination may have increased over time but should be subject to further study.

<sup>73</sup> See, e.g., EA, “2022.01.28 FC Violence Warning 28 Jan 002,” HRF00000010; See also, e.g., EA, “Truckers – not for further distribution,” SSM.NSC.CAN.00000251\_REL.0001.

<sup>74</sup> See, e.g., the “Security Briefs” of Daniel Bulford on 30 January, (EA, “Notes”, HRF00000550), and 1 February, (EA, “Notes”, HRF00000554), 3 (EA, “Notes”, HRF00000572), 4 (EA, “Notes”, HRF00000568), 12 (EA, “Notes”, HRF00000632), 13 (EA, “Notes”, HRF00000653) and 15 (EA, “Notes”, HRF00000612). See also, more generally, EA, “2022-10-04 Descriptions from Timeline,” HRF 00001221.



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honking of horns at all hours; as well, the development of counter-protests led to concerns (among both the organizers and local police) about clashes. It is notable that a consistent feature in government reports and assessments of the protests – in Ottawa but also elsewhere – was that they were overwhelmingly peaceful (if not always legal) in nature, that the organizers sought to keep them that way and were (at least at times) working with police to do so, and that the most significant threats of violence could arise from fringe groups.<sup>75</sup> On the other hand, social media more generally was marked by inflammatory or violent rhetoric, rumour, speculation, lies, legal misinformation, references to firearms, etc. that would heighten tension on both sides.

The very success of the Ottawa convoy in mobilizing widespread support was, however, also a source of difficulties. As was the case elsewhere, the ability of the main organizers to control all the participants in the protest was limited<sup>76</sup> and damaged the prospect for negotiations even to handle small issues with the police. Beyond this, the protest was, in essence, a composite of groups, individuals, causes and objectives: although the public health measures (on *all* levels of government) were the initial and motivating focus of the protests, both in Ottawa and generally, there were broader tendencies driving the convoy. An “Official Daily Event and Safety Report” for 28 January by the organizers, for example, stated that:

The Freedom Convoy is a unifying force which will not be tolerated by the so-called ‘elites’ or the parasitic class which supports Trudeau at the national and international level. The idea of freedom convoys has already spread to the USA, Australia, and Europe. It will put fear into the hearts of those who support globalism, Build Back Better, the Great Reset and/or progressivism.<sup>77</sup>

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<sup>75</sup> See, e.g., EA, “2022-02-13—Intelligence Overview –Review 0,” OPP00001079.

<sup>76</sup> There were divisions among the organizers, unauthorized activities by protesters, and a struggle for control and use of the funds raised. See e.g., EA, “2022-10-04 Descriptions from Timeline,” HRF 00001221; Andrew Lawton, “The Freedom Convoy’s ‘who’s in charge here?’ problem,” *National Post*, 21 June 2022, <https://nationalpost.com>; Christopher Nardi and Ryan Tumilty, “Freedom Convoy plagued with ‘power struggles,’ competing factions: organizer Chris Barber,” *National Post*, 1 November 2022, <https://nationalpost.com>; Marsha McLeod and Marieke Walsh, “Convoy organizer says other leader’s violent online posts weren’t a concern,” *The Globe and Mail*, 2 November 2022, p. A3; Ryan Tumilty and Christopher Nardi, “‘Trying to get their hands’ on \$10M,” *National Post in the Calgary Herald*, 3 November 2022, p. NP1.

<sup>77</sup> EA, “2022.01.28 FC Violence Warning 28 Jan 002,” HRF00000010.

This wide array of concerns was noted in government reports. For example, one, on 6 February, argues that the protest was driven by multiple grievances, evolving beyond simply public health measures to include “Mandates, Lockdowns, Vaccine passports, Carbon tax, Fuel costs, Globalization, Progressivism, China’s monopoly on manufacturing and supply chain, Social reform, Liberal Government, Immigration.” It went on to suggest that as public health restrictions were relaxed or removed, the focus of protest participants might simply migrate to other concerns. When the Emergencies Act was being considered, the possibility that invoking it would exacerbate anti-government tendencies was a recurring concern. A post-protest assessment by the OPP argues that earlier protests had been widely based, “grassroots” and decentralized; as these failed to achieve their objectives, more coordinated efforts developed with broader concerns associated with themes of government overreach. This would also appeal to groups with broader and potentially more threatening agendas attempting to piggyback on the pandemic-centred protests to recruit and advance their own objectives.<sup>78</sup>

The convoys and the public health measures thus acted as “attractors” for various groups and individuals with different and often far wider concerns and ambitions, motivated by conspiracy theories, anti-government rhetoric and the like. These were the “fringe groups” that government reports saw as the most probable source of violence, though likely on a small (or even individual) scale. The widening of focus even within the main convoy organization is in part illustrated by the so-called “Memorandum of Understanding” developed by one of the protest groups – Canada Unity – in connection with its earlier (December 2021) protest. This called for the replacement of the Trudeau government and earned widespread derision; it was later repudiated by the convoy organizers.<sup>79</sup> However, the strain of anti-government and anti-authority thinking among protesters would become a significant theme in government assessments, making the protests – already a significant short- and long-term economic concern – a broader political issue in themselves. It is also not clear that the protest organizers had any clear

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<sup>78</sup> EA, “Fwd questions,” OPP00001147; “POIB Timeline for Ottawa Occupation and Border Disruptions updates 2022-03-21 CP” OPP00001783. See also, EA, “OSINT SITREP – 18 Feb 22 unclass,” SSM.NSC.CAN.00000231\_REL.0001; and EA, “Special Threat Advisory – Update 8 Freedom Convoy 2022 – Broader Implications,” PB.NSC.CAN.00009305\_REL.0001.

<sup>79</sup> EA, “Canada Unity – Memorandum of Understanding,” COM00000866. The repudiation is noted in EA, “Potential of Violent Threats – COVID-19 – Vaccine Children 5 to 11 yrs old,” OPP00001244, p. 2.

idea of how precisely to achieve their objectives once they reached Ottawa, other than to hunker down, seek negotiations, and wait until the federal government conceded. The affair of the Memorandum of Understanding was an indication both of a lack of coordination within the protest organization and of its apparent lack of planning for this aspect of its endeavour.

The Peterborough firearms theft was noted by the convoy organizers, who feared an attempt to discredit the convoy by planting firearms. They were told by police on February 5 that almost all of the firearms had been recovered. The organizers also noted the Coutts arrests.<sup>80</sup> Concern about the presence of firearms is noted in various reports, but also worthy of note is a partially-redacted intelligence report, dated 21 February, which notes the presence of DIAGOLON members at the protest; it noted that the leader had initially “specifically asked that members attend to peacefully support the convoy,” but also noted an increasingly hostile tone in its messaging as the protest continued.<sup>81</sup>

On the other side, the difficulties facing the three levels of government – municipal, provincial and federal – attempting to deal with it were not only unique but also showed their own points of failure. In this respect, the Ottawa case differs sharply from the Coutts and Windsor cases. One could possibly go so far as to argue that a threat to “national security,” however construed, arose as much from these failures as from the protests as such, at least as far as the Ottawa protests were concerned.

An initial error by the Ottawa police – misunderstanding the nature, tactics and objective of the convoy protest – allowed it to become entrenched in the downtown core and nearby residential areas.<sup>82</sup> Low-level negotiations handled some smaller situations, but the broader police approach that developed, apparently hoping to reduce the numbers of protesters to a harder core (permitting a stronger but smaller enforcement response) resulted in a prolonged protest. Efforts to cut the supply of fuel and other resources, including funding, that supported the protest were, it would seem, only of

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<sup>80</sup> EA, “Notes,” HRF00000615; EA “Notes” HRF00000612

<sup>81</sup> EA, “Diagolon Participation in the Freedom Convoy 2022 and Beyond,” SSM.NSC.CAN.000001571\_REL.0001.

<sup>82</sup> The initial OPS plan treated the protest as being similar to earlier protests and focused primarily on traffic management. EA, “Ottawa Police Service Institutional Report,” OPS.IR.00000001, pp. 11-12.

limited success.<sup>83</sup> Another contributor to this delay was likely that initial efforts to secure adequate tow trucks to remove vehicles were, as was the case elsewhere, largely unsuccessful.<sup>84</sup> Absent tow trucks, the blocking vehicles could not be removed. As noted above, an attempt to move protesters from residential areas to Wellington Street collapsed. As for talks with federal representatives, while some thought was given to this on the government side, the terms that the government might have been willing to offer – immediately ending the protest and denouncing illegal activity, in return for a later meeting – would likely have been rejected, as had been the case in Windsor.<sup>85</sup> Moreover, by the time the matter emerged for top-level consideration, the federal government saw the situation increasingly in larger terms than simply public health measures.

The response on the part of the three levels of government was also complicated by problems within the OPS, jurisdictional issues and coordination problems. The precincts of Parliament themselves were under one protective authority, but Wellington Street, just outside the gates, and the streets of Ottawa more generally, were under the Ottawa Police Service.<sup>86</sup> The OPS would be the lead agency in any initial response, though it would later call on support from the Ontario Provincial Police and the RCMP. However, while the OPS quickly sought additional enforcement support from the OPP and RCMP, it was only on 12 February that an Integrated Command Centre was established, and only on 13 February that the OPS agreed to a plan – a plan which, it seems, did *not* impress the

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<sup>83</sup> E.g., EA, “RE: These are in my talking points...any issues?” PB.NSC.00002028\_REL.0001.

<sup>84</sup> EA, “Ottawa will see pushback if tow trucks are forced to clear blockades, towing industry says,” PB.CAN.00001804\_REL.0001; EA, “RE: Heavy Tows,” OPP00001585.

<sup>85</sup> Near the start of the protest, Prime Minister Trudeau had denounced the protesters and refused to meet with them, *CBC News*, 17 February 2022, <https://www.cbc.ca/news>. See also, e.g., EA, “IRG Minutes 2022-02-12,” SSM.NSC.CAN.00000214\_REL.0001. An earlier meeting of the Incident Response Group (EA, “IRG Minutes 2022-02-10,” SSM.NSC.CAN.00000209\_REL.0001, pp. 6-7) suggested that an offer along such lines could possibly satisfy most protesters. If these were encouraged to leave, only a smaller, hardcore, group would remain. EA, “Interview Summary – Prime Minister Justin Trudeau,” WTS.00000084, p. 7. See also Catharine Levesque, “Federal government would not commit to meeting with protesters to de-escalate convoy, inquiry hears,” *Calgary Herald*, 25 October 2022, <https://calgaryherald.com>.

<sup>86</sup> EA, “Ottawa Police Service Institutional Report,” OPS.IR.00000001, p. 6.

federal government. Up to that point, relations of the OPS with the other services were not easy. In addition, there were significant problems within the OPS itself.<sup>87</sup>

The relationship between the federal government, the Ontario provincial government and the Ottawa municipal government became strained. The municipal government pressed the provincial government to become more active, beyond simply having the OPP provide more officers, as did the federal government; the Ontario government, however, at first declined to get more involved politically, though ultimately it responded more vigorously – to the Windsor blockade.<sup>88</sup> Although the RCMP sent officers to Ottawa, the municipal government argued that these were being used to protect federal assets, rather than more generally assisting the OPS.<sup>89</sup>

A final wrinkle on the federal level was the response of the Conservative Party of Canada (CPC), the Official Opposition. Following his failure to defeat the Liberals in the 2021 election, the CPC's leader, Erin O'Toole, was removed. Adding to this, apparently, was the disappointment of some of his MPs with his changing response to the protests.<sup>90</sup> The Interim Leader, Candice Bergen, initially supported the protests, as did some other

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<sup>87</sup> See, e.g., EA, "RCMP OPP February 15," OPP00000787; EA, "Craig Abrams\_Will Say\_Redacted," OPP00000773. In its Institutional Report (EA, "Ottawa Police Service Institutional Report," OPS.IR.00000001, pp. 17-18), the OPS argued that it had been underfunded and thus understaffed for years, and faced an increase in crime and staffing problems due to the pandemic, both of which further strained its resources. Testimony before the Commission indicated as well strong tensions both within the OPS and between the OPS and other agencies. See, e.g., Christopher Nardi, "Convoy exposed police infighting," *National Post in the Calgary Herald*, 20 October 2022, p. NP1; Catharine Levesque, "Former Ottawa police chief suspected people in Doug Ford's government 'wanted him to fail'," *National Post*, 21 October 2022, <https://nationalpost.com>; Marsha McLeod and Marieke Walsh, "Former police chief testifies in Emergencies Act inquiry," *The Globe and Mail*, 29 October 2022, p. A3.

<sup>88</sup> In a call between the Prime Minister and the Premier on 8 February, Premier Ford seems clearly to have emphasized the Windsor blockade over the protest in Ottawa, and to have resisted giving "political direction" to the OPP. EA, "Fwd: Readout: PM Call with Premier Ford – February 9, 2022," SSM.CAN.00006068\_REL.0001. The provincial government also did not participate in tripartite federal-provincial-municipal meetings. Christopher Nardi and Ryan Tumilty, "Texts show growing anger between City of Ottawa, feds over RCMP help during Freedom Convoy," *National Post*, 17 October 2022, <https://nationalpost.com>. Ultimately, although it submitted an Institutional Report to the Commission, the Ontario government – as opposed to the Ontario Provincial Police – refused to testify before the Commission.

<sup>89</sup> Christopher Nardi and Ryan Tumilty, "Texts show growing anger between City of Ottawa, feds over RCMP help during Freedom Convoy," *National Post*, 17 October 2022, <https://nationalpost.com>.

<sup>90</sup> Campbell Clark, "By trying to please everyone, Erin O'Toole satisfied nobody," *The Globe and Mail*, 3 February 2022, p. A4.

Conservative MPs. Most conspicuous amongst these was Pierre Poilievre, who later won the party's leadership contest. Bergen later called for the protest to end, saying that it had made its point and that the Conservatives would take up their struggle. A few months later, some Conservative MPs were meeting with protest figures. Poilievre, during the leadership contest, introduced a bill to block "vaccine mandates." Donors to the convoy were later determined to have overwhelmingly contributed to his campaign rather than to the other candidates, but these donations were only a small percentage of his totals or those of the various candidates more generally.<sup>91</sup>

With the protest continuing and (at least in the federal government's increasingly frustrated view) little prospect of it ending soon, with the border blockade ongoing, and the possibility of future such blockades, the stage was thus set for the invocation of the Emergencies Act. A series of heavily-redacted minutes of the Cabinet Committee on Safety, Security and Emergencies on 3, 6 and 8 February, and of meetings of the Incident Response Group on 10, 12 and 13 February, and associated material in the Institutional Reports of the Prime Minister's Office and the Privy Council Office (as well as other documents) provides some background.<sup>92</sup> As the situations across the country developed, and as the situation in Ottawa did not show improvement, discussions about a federal response started to centre initially on the use of existing legal authorities, the use of additional authorities outside of the Emergencies Act and, by February 10, on the

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<sup>91</sup> John Paul Tasker, "Federal Conservatives call on anti-vaccine mandate protesters to bring down the barricades," *CBC News*, 11 February 2022, <https://www.cbc.ca/news>; John Paul Tasker, "Conservative Leadership hopeful Pierre Poilievre tables bill to ban COVID-19 vaccine mandates," *CBC News*, 3 June 2022, <https://www.cbc.ca/news>; Rachel Haines and Mackenzie Gray, "Which Conservative MPs attended anti-vaccine presentation from convoy figures?" *CTV News*, 26 June 2022, <https://ctvnews.ca>; Elizabeth Thompson and Christian Paas-Lang, "Convoy donors gave more than \$460K to CPC leadership race – and many were first-time federal donors," *CBC News*, 16 September 2022, <https://cbc.ca/news>.

<sup>92</sup> See: EA, "Minutes," SSM.NSC.CAN.00000292\_REL.0001; EA, "Minutes," SSM.NSC.CAN.00000293\_REL.0001; EA, SSM.NSC.CAN.00000295\_REL.-0001; EA, "IRG Minutes 2022-02-10" SSM.NSC.CAN.00000209\_REL.0001; EA, "IRG Minutes 2022-02-12" SSM.NSC.CAN.00000214\_REL.0001; "Incident Response Group" <https://ccla.org/wp-content/uploads/2022/08/IRG-Minutes-February-13-2022.pdf> (while this document is listed as SSM.NSC.CAN.00000692 in EA, "Privy Council Office Institutional Report," DOJ.IR.00000013, p. 23, it does not appear among the EA's documents); EA, "Prime Minister's Office – Institutional Report," DOJ.IR.00000014, pp. 6-11; EA "Privy Council Office – Institutional Report," DOJ.IR.00000013, pp. 10-16; EA, "Cabinet Minutes 2022-02-13," SSM.NSC.CAN.00000216\_REL.0001; EA, "Minutes" SSM.NSC.CAN.00000292\_REL.0001; EA, "Minutes," SSM.NSC.CAN.00000293\_REL.0001; EA, "Minutes," SSM.NSC.CAN.00000295\_REL.-0001.

possible use of the Emergencies Act. These various differing possibilities continued under consideration until February 13. On February 14, a consultation – required before the Act could be invoked – with provincial and territorial leaders was held. The Prime Minister argued that matters had moved beyond COVID, that the protests were organized, and that situation was escalating. Although he stated that no decision had yet been made to invoke the Emergencies Act, from the records of the call and other documentation it seems clear that considerable preliminary thought had been given to it and that the federal government was ready to act. Ontario was strongly supportive of invoking the Act, but Alberta and Quebec, while recognizing the situation in Ontario, did not want the Act applied in their jurisdictions.<sup>93</sup>

And what of public opinion? Despite some expressions of sympathy for the frustrations felt by the protesters, Canadians overwhelmingly were not in favour of the protests. This attitude seems to have held relatively firm over the next months, and if anything strengthened following the public phase of the Commission of Inquiry's work.<sup>94</sup> (94) At the same time, the public often saw political leaders as partially responsible "because of their condescending attitude towards Canadians who disagree with vaccine mandates and lockdowns."<sup>95</sup>

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<sup>93</sup> EA, "2022 02-14 FMM PM Remarks on delivery," SSM.NSC.CAN.00000100\_REL.0001; EA, "First Ministers' Conference Call – Emergencies Act February 14, 2022," SSM.NSC.CAN.00000625\_REL.0001.

<sup>94</sup> "Almost 2/3rds of Canadians oppose trucker convoy protest, poll suggests," *The Canadian Press*, 8 February 2022, <https://www.cp24.com/news/alomst-2-23rds-of-canadians-oppose-trucker-convoy-protest-polls-suggest-1.5772347>; Christopher Nardi, "Two-thirds back Emergencies Act," *National Post in the Calgary Herald*, 17 February 2022, p. NP1; Warren Kinsella, "Poilievre smart to abandon convoy protesters," *Toronto Sun*, 6 December 2022, <https://torontyosun.com>; Maru Public Opinion, "Trucks and Consequences," *Marygroup.net*, 12 February 2022, <https://www.marygroup.net>; Lawrence Martin, "The PM won't regret using the Emergencies Act," *Globe and Mail*, 24 November 2022, p. A 13, suggests a lack of repercussions in the public is likely. Carson Jerema, more hostile to the Prime Minister, seems to arrive at a similar conclusion, but with greater concern for the implications: Carson Jerema, "Justin Trudeau stands firm against the rule of law," *National Post*, 28 November 2022, <https://nationalpost.com>. However, support for the use of the Act and disgust not only at the protests but also at the problems on the government's side that preceded it are different forms of political fallout.

<sup>95</sup> "Almost 2/3rds of Canadians oppose trucker convoy protest, poll suggests," *The Canadian Press*, 8 February 2022, <https://www.cp24.com/news/alomst-2-23rds-of-canadians-oppose-trucker-convoy-protest-polls-suggest-1.5772347>.

## The Emergencies Act

The Emergencies Act was invoked on 14 February 2022 and proclaimed on 15 February. It was revoked on 23 February.<sup>96</sup> This section will briefly note the crucial sections of the Emergencies Act, including the stated criteria for its invocation, and the federal government's arguments for its use. The legality of the Act's invocation was quickly challenged, not only by protesters and their associates but also by the Canadian Civil Liberties Association.<sup>97</sup> Alberta and other provinces challenged the adequacy of the consultations prior to the invocation of the Act, among other things. Various commentators have also challenged the use of the Act, arguing that its criteria were not met.<sup>98</sup> Documentation provided to the Inquiry notes that the Canadian Security and Intelligence Service often failed to find a national security threat, but in testimony before the Inquiry, both CSIS and other federal officials supported the use of the Act.<sup>99</sup> The government's response has been interesting not only because it argued that it could go beyond those criteria in considering what was a national emergency but also because it argued solicitor-client privilege to avoid revealing a legal opinion it claims justifies this.<sup>100</sup> This section will not attempt to pass legal judgement on this very important issue. Rather, it will briefly note some of the various considerations that seems to have affected the federal government's decision.

The Act authorizes the Governor in Council "to take special temporary measures that may not be appropriate in normal times" but subject to the Canadian Charter of

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<sup>96</sup> EA, "Proclamation" ALB00000384.0001. "Prime Minister announces Public Order Emergency Commission following the invocation of the Emergencies Act," 25 April 2022, <https://pm.gc.ca/en/news/news-releases/2022/04/25/prime-minister-announces-public-order-emergency-commission-following>.

<sup>97</sup> EA, "Canadian Civil Liberties Association Closing Submission."

<sup>98</sup> E.g., Laura Osman, "'Trust us' not enough, says Emergencies Act author," *National Post in the Calgary Herald*, 9 May 2022, p. NP4; Marieke Walsh and Marsha McLeod, "Use of Emergency Act was necessary, CSIS chief testifies," *The Globe and Mail*, 22 November 2022, p. A1; Campbell Clark, "Both a national security threat and not," *The Globe and Mail*, 22 November 2022, p. A4; Leah West and David Schneiderman, "The CSIS Act threshold on 'threat to the security of Canada' must be met," *The Globe and Mail*, 25 November 2022, p. A15.

<sup>99</sup> Bill Curry, Marsha McLeod and Marieke Walsh, "Top public servant advised use of Emergencies Act," *The Globe and Mail*, 19 November 2022, p. A4; Marieke Walsh and Marsha McLeod, "Use of Emergency Act was necessary, CSIS chief testifies," *The Globe and Mail*, 22 November 2022, p. A1.

<sup>100</sup> Some possible indications of the legal opinion might, perhaps, be found in EA, "Government of Canada Closing Submission," pp. 9, 128-139.



Rights and Freedoms, the Canadian Bill of Rights, with regard to the International Covenant on Civil and Political Rights, “particularly with respect to those fundamental rights that are not to be limited or abridged even in a national emergency.”<sup>101</sup> The Act defines a “national emergency” as:

an urgent and critical situation of a temporary nature that

(a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it; or

(b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada

and that cannot be effectively dealt with under any other law of Canada.<sup>102</sup>

The Public Order Emergency that was declared applies to “an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency.” It defines “threats to the security of Canada” under the terms of the Canadian Security Intelligence Service Act.<sup>103</sup> That Act, in turn, defines the phrase as meaning:

1. espionage or sabotage, or activities in support, directed against Canada or its interests;
2. foreign influenced activities (clandestine, deceptive or involving a threat to a person) within or related to Canada detrimental to the interests of Canada;
3. activities within or related to Canada, supporting or directed toward the threat or use 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

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<sup>101</sup> Preamble, Emergencies Act, (R.S.C., 1985, c. 22 (4<sup>th</sup> Supp.)), <https://laws-lois.justice.gc.ca>.

<sup>102</sup> Emergencies Act, p. 3.

<sup>103</sup> Ibid., Part II, p. 16.

4. “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.”<sup>104</sup>

The Proclamation specified various “special temporary measures” that could be taken: to regulate or prohibit public assemblies (“other than lawful advocacy, protest or dissent”) that could lead to breaches of the peace, travel to, from or within specific areas, the use of property with respect to a blockade, and to designate and secure certain places, including critical infrastructure; to authorize or direct persons to provide services, including to remove, tow and store “any vehicle, equipment, structure or other object that is part of a blockade”; to authorize or direct services, including to regulate or prohibit the use of property or funds in support of the blockade; to authorize the use of the Royal Canadian Mounted Police in support of municipal and provincial police forces; to impose fines and other punishments for acts contravening orders or regulations under the Emergencies Act; and other temporary measures not yet known.<sup>105</sup> Among other things, these measures would limit gatherings other than for lawful protest, travel in support of illegal gatherings, and funding and other support actions. They would compel tow truck companies to provide their services (the Ontario declaration of emergency apparently did not do this) and impose fines and other penalties for contravening the measures imposed.<sup>106</sup>

In its “Explanation pursuant to section 58(1)” and in its Closing Submission,<sup>107</sup> the government cited various kinds of reasons for invoking the Act. These included: the continuing blockades and opposition (including the threat or use of force) to their removal, and threats or use of “serious violence” “for the purpose of achieving a political or ideological objective within Canada”; the adverse effects on the Canadian economy, and relations with trade partners, resulting from blockades at border points; breakdowns

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<sup>104</sup> Canadian Intelligence Security Service Act (R.S.C., 1985, c, C-23), p. 2, <https://laws-lois.justice.gc.ca>.

<sup>105</sup> “Proclamation.”

<sup>106</sup> EA, “February 14, 2022 Declaration of Public Order Emergency Explanation pursuant to subsection 58(1) of the Emergencies Act,” ALB00001819.0001.

<sup>107</sup> EA, “February 14, 2022 Declaration of Public Order Emergency Explanation pursuant to subsection 58(1) of the Emergencies Act,” ALB00001819.0001, pp. 4-13; EA, “Government of Canada Closing Submission,” pp. 68-83.

in distribution and supply chains of essential goods and the risk that these would continue; and “the potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians.”

Assessing these justifications thoroughly would require a more detailed survey of the available documentation, testimony and media reports than is possible here. It is very clear, however, that the economic impact of the blockades, both immediately and as a possible longer-term consequence, would be significant, particularly as it might affect not just immediate imports and exports but also longer-term decisions affecting investment decisions in Canada. This could be particularly problematic for the Canadian automotive industry, which had been closely integrated with the much larger American industry since the 1965 Auto Pact; however, it would also be a significant concern for other sectors. The effects of distribution and supply chain disruptions within Canada might also be severe. There were also concerns that, absent action, blockades could recur.

As for the other reasons, on the basis of documents and developments noted above, they reflect a concern that, without government action, things could escalate beyond their current state (already unacceptable as that might be). Recall that the protests were largely reported to be peaceful – if not always legal – and that reports by intelligence and police authorities consistently reflected this; the major concern on this score was with “fringe groups.” Various elements in this could be: a sense that the protests were moving beyond simply public health measures to broader, if less articulate, political matters; online rhetoric, rumour and exhortations, of possible actions and threatening violence; the “Memorandum of Understanding;” the Coutts arrests; a sense that the protest participants in Ottawa were hardening in their attitudes; and perhaps fear that the organizers (such as they were in Ottawa and elsewhere) did not have strong control over the participants. It was not just a decision that the current state of affairs could no longer be tolerated, but also that it could not be allowed to get further out of hand.

### **Public Health, Protests and Security**

That the COVID-19 pandemic has been an issue of national security in the realm of health cannot be doubted. Its effects, however, have extended significantly beyond this non-traditional security realm, into areas of local and national politics and toward more

conventional – if still domestic – areas of security. It helped to bring down a provincial Premier, albeit one already vulnerable to some degree. The report of the Commission of Inquiry may have significant federal political ramifications for the current government, as well as for the Official Opposition, depending on its findings, their reception by the public, by whether or not a federal election follows closely on its heels, or by whether it is supplanted in the public mind by other issues. Regarding the theory and practice of security, this brief and admittedly cursory examination has limited itself to only a few elements of the protests which contributed to the invocation of the Emergencies Act and the official raising of questions of domestic national security. Even so, many observations might be made about the events covered here. However, the remarks offered here, in conclusion, will be confined to aspects of three broad areas: the Emergencies Act itself; the relationship among the public, specific institutions and the state; and some effects of social media.

Regarding the content and use of the Emergencies Act, there are a number of matters which might be raised, although not all might figure in the Inquiry as such. These include the process of declaring a public order emergency, the criteria for doing so, the mechanisms for accountability contained within the Act, the uses made of the specific powers declared, and the deficiencies, particularly in the response to the Ottawa protest. These items may raise a variety of theoretical, legal, political and practical issues.

One element in securitization theory is the speech act – the utterance which raises a matter to the level of security, thereby triggering what is claimed to be an extraordinary process departing from that of normal politics. This highly abstract and simplified sketch has theoretical uses. However, the process outlined here – the several meetings of Cabinet and the Incident Response Group, the consultations and the outline in the federal government’s submission of the process followed by the “Governor in Council” – point to a more complex reality: a declaration of emergency is a formal statement arising from a formal process which may involve several actors.<sup>108</sup> It may, of course, be the case that this process is a sham, but that is not necessarily the case, and thus this theoretical simplification hides a significant empirical question about the nature of the securitizing process.

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<sup>108</sup> EA, “Government of Canada Closing Submission,” pp. 132-135.

The Emergencies Act set out certain criteria for a public order emergency. Whether those criteria were met, whether they specifically had to be met and whether they are adequate or should be revised, are important questions, but the mere existence of criteria is important. They help to shape the process of consideration by providing categories and provide a language of justification which may or may not be adequate or persuasive in a specific case. In the case of the Emergencies Act, whether or not the political decision-makers went beyond the specific CSIS criteria – and properly did so – are important legal, political and process questions. The existence of stated criteria presents a number of problems. To define is to limit, and the specific nature of security challenges cannot always be anticipated. However, too tight, too narrow a set of criteria could be unserviceable, while stretching them too far to meet unanticipated challenges will empty them of meaning. Too broad and too loose a set will be dangerous and subject to abuse. So, for example, if “economic security” is added to the categories, how does one distinguish usefully between those challenges which require a “security” response and those best left to more normal processes?<sup>109</sup> If “security” is, indeed, a sentence which might be written in different ways,<sup>110</sup> the temptations of overreach are obvious.

A third, and crucial, matter of theoretical, political and legal import arises from the various mechanisms of constraint and accountability found within the Emergencies Act itself. This is a counterpoint to a tendency to resort in simplistic fashion to the dictum of the Nazi legal philosopher, Carl Schmitt, that the sovereign is he who makes the exception.<sup>111</sup> The problem is not a new one, nor has it been treated in practice only through the usages of continental European absolutism. Noel Malcolm notes the Ship Money case of 1637, regarding the ability of Charles I of England to claim exceptional powers in exceptional circumstances – and to be the judge of when those circumstances were exceptional. He quotes an English Member of Parliament on the matter in the Short Parliament of 1640:

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<sup>109</sup> The Prime Minister argued in his testimony before the Commission that “economic threats can trigger national security threats,” but also that they were “not always national security threats.” EA, “Interview Summary – Prime Minister Justin Trudeau,” WTS.00000084, p. 8.

<sup>110</sup> Keeley, “Covid-19 in Alberta,” p. 1.

<sup>111</sup> See, e.g., the article on Schmitt in the Stanford Encyclopedia of Philosophy, <https://plato.stanford.edu>.

if the Kinge be judge of the necessitye, we have nothing and are but Tennants at will.<sup>112</sup>

The fate of Charles I and the outcome of the long struggle between the Crown and Parliament should not be ignored. Without anticipating the findings of the Commission of Inquiry, the fates of the various legal challenges to the use of the Act, or the political fallout from either of these yet to be seen, the significance of these mechanisms cannot simply be overlooked in any discussion of security.

A fourth set of questions might arise about the specific regulations created under the Act. Were they actually used, or was their primary effect in the threat of their use? They were intended, it should be noted, to supplement, not replace, existing authorities. For some, at least, their application seems to have been useful. By controlling assemblies, for example, they would prevent the further occurrence or resumption of blockades: it could not simply be assumed that a given blockade, once dispersed, would not be resumed. The travel and funding controls would be useful in breaking up the support offered for the blockades and protests, which helped to sustain them. In particular, the recurring problem of acquiring the necessary tow trucks, at least for the Ottawa protest, was addressed by the regulations. The matter of the tow trucks points to a further point: the mere existence of a legal authority does not necessarily mean that the relevant practical capability to enforce the law is available. It might also be recalled that, although some protests and blockades were clearly targeted by the use of the Act, protests continued in Canada after the Act was invoked, and indeed well after it was revoked: this was not a blanket and indiscriminate act of repression.

The failures on the part of governments and law enforcement particularly in the Ottawa case point to another aspect of the security response: the problems of organizing an effective response to public protests and disorders, especially when multiple jurisdictions are involved. This set of problems in themselves might properly be seen as a security threat in its own right which needs to be addressed. The crucial initial error was to let the “Freedom Convoy” settle in and entrench itself in the streets of Ottawa. Thereafter, dysfunctional relations both within the OPS and with its law enforcement partners, and federal-provincial strains, contributed significantly to the duration of the

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<sup>112</sup> Noel Malcolm, *Aspects of Hobbes* (Oxford: Clarendon Press, 2002), pp. 14-15, quoted p. 15.

protest, A resort to measures of local containment, negotiation with the protesters over lesser issues, attempts to cut off flows of material and financial support, and efforts to erode support among the protesters themselves (to reduce the protest to a more manageable scale and isolate the harder core) would require time to take effect and to resolve the situation if they worked. In the meantime, counter-protests would arise that also created tensions and could give rise to violence. The inability of law enforcement to move towards a faster – if still peaceful – resolution, the unacceptable immediate and potential long-term economic consequences of the protests more generally, and the concern that things could get even more out of hand, gave rise to the invocation of the Emergencies Act.

The author had earlier alluded to the supposed “Clausewitzian trinity” of “people, army and state” and the possibility of its generalization.<sup>113</sup> If anything, the utility of this formula for broader analysis seems confirmed not only by the general observation of a decline in public faith in public institutions but also by the specifics of both the protests in general and the situations of the healthcare system and the public health system in Alberta. On the broadest level, although the three cases covered here did not receive strong or unqualified public support – indeed strong general public condemnation was the more likely response – it is notable that there was at least some sympathy with the frustrations that gave rise to them, and certainly a lack of unqualified support for politicians. In the case particularly of the Ottawa protest, but also visible elsewhere, one sees a compound of grievances which extended well beyond, and in some cases antedated, simply COVID-related measures. Governments were seen as unresponsive to such concerns, and the frustration expressed through the protests thus went beyond simply those related to the pandemic as such. Thus, one finds concerns among authorities about broader “anti-government” and “anti-authority” aspects in the protesters’ statements and objectives. These could indeed reflect religion-based arguments about the relationship between the “laws of God and the laws of Man,” or crackpot “sovereign citizen” or conspiratorial group notions, but the protests did not simply reflect a lunatic or a religious element.

In Alberta, more particularly, the breakdown of public trust in the healthcare system and the public health system, might, it could be argued, reflect something more.

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<sup>113</sup> Keeley, “You May Not be Interested in COVID,” p. 94, note 2.

Healthcare has long been a political issue in Alberta. With all its faults, the system, it must be remembered, is a creation of the provincial government and has been subjected to multiple efforts of reform over many years. It has also been a political football and politically vulnerable, repeatedly subject to attack by the provincial government. In the case specifically of the public health system, the role of resistance to specific measures and their political unpopularity is notable in the fate of Premier Kenney. The tension between medical advice and political control is also evident, as is an occasional attempt to blame the system for aspects of a failing response. As well, one notable feature is the problem of challenges to the “controlling narrative,” as seen both in a lawsuit and in the remarks of the new Alberta premier. In the case of the lawsuit, the government’s referral of people to “only” Alberta Health Services websites, other government websites, and academic websites, was seen as objectionable.<sup>114</sup> This, of course, begs some questions: when should government agencies be mere indiscriminate conduits of “information” from whatever source, when should they exercise a duty to select the information they provide, and by what criteria? Whether or not changes in the healthcare and public health systems by the new regime in Alberta will help or hinder the political acceptability of these or help or hinder their ability to respond adequately to future challenges, is currently unclear, though the current trend to a more politically-driven system of public health might easily be seen.

A final area of interest here is the effects of social media. These could take many forms. Although some reports by government agencies suggested that the protests were, in general, relatively unorganized among themselves, others were notable in their expressed fear of organization across protests, and deliberate coordination among them, e.g. to stretch police resources thin. The role of social media as an organization and coordination vehicle figured in these concerns. It may well be that later protests were more coordinated than earlier; this would surely not be very surprising. However, the ability of social media to connect individuals and groups could also be seen as a substitute, not just a vehicle, for closer organization – a means of coordinating through a stronger demonstration effect, hints, broad suggestions and exhortations, rather than simply a tighter organization as such. On the level of individual protests, social media

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<sup>114</sup> See note 32 above.



could serve well as a mobilization and support tool among different groups coalescing in a quasi-spontaneous manner – “Come join us! Come support us!”

However, while social media may serve as an organizing device, they may also have effects antithetical to strong organization, particularly if a protest is composite and/or quasi-spontaneous in nature. Composite protests may, as was the case in Ottawa, face strong internal strains in any event. The presence and the activities of “fringe groups” - seen by the authorities as the more likely locus of possible violence (as opposed to “mere” harassment or inconveniencing of citizens - or other such possibly illegal behaviour) would be enhanced by social media as well. The lattice-like structure of social media, permitting anyone to communicate with anyone, may well undermine the ability of organizers of protests to provide reliable, central direction and control over actions and behaviour. So we note doubts about the ability of protest leaders actually to lead, to control the actions of their followers, and to be able to commit their followers reliably to any agreements that might be struck with local authorities. This, and greater unpredictability, in turn, would strain relations with those authorities – a problem if these latter were trying to “manage” the protest, rather than simply resort to repression.

A final aspect worthy of note is the simple ability of social media to exacerbate tensions. Misinformation, exhortations, suggestions, hints, rumours, outright lies, violent rhetoric, idle threats and loose talk all create problems for authorities, in monitoring, assessing and responding to possible threats. They may also enhance tensions among protesters regarding the authorities or with each other. In either case, the effect would not be helpful to a peaceful resolution.