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### OUR PUBLIC LAW PRACTICE

Lenczner Slaght's lawyers help clients navigate complex litigation matters involving all levels of government and the public-sector bureaucracy. Our public law practice includes litigation matters relating to constitutional, human rights, judicial review, municipal, procurement and professional regulation matters.

# Public Law

*“Developments in 2023 reinforced the need for businesses to carefully consider how their strategic and litigation decisions might be impacted by public law considerations.”*

### What was the most interesting development of 2023, and why?

The most interesting public law development in 2023 was the release of the [Public Order Emergency Commission's Report](#). The Commission inquired into the federal government's unprecedented decision to invoke the *Emergencies Act* to deal with the Freedom Convoy demonstrations in 2022.

The Commission concluded that the use of the *Emergencies Act* was appropriate and that the federal Cabinet had grounds to resort to it. The Report examines not only the protests and the government's response, but the right to protest in Canada and the limits placed on that right.

Lenczner Slaght represented Ottawa's former Chief of Police, Peter Sloy, during the Commission's 31-day hearing.



### What's the primary takeaway for businesses from the past year?

Developments in 2023 reinforced the need for businesses to carefully consider how their strategic and litigation decisions might be impacted by public law considerations.

Anti-SLAPP case law continues to develop, with a decision by the Court of Appeal for Ontario in [Boyer v Callidus](#). The Court dismissed Callidus Capital Corporation's \$150 million counterclaim against a former employee for breach of fiduciary duty on the grounds that the employee's statements about how the company conducted business rose to the level of a “matter of public interest” under the Anti-SLAPP legislation. Lenczner Slaght represented the former employer.

Other public law developments impacted businesses in a wide range of sectors:

- **Lobbying** – The third edition of the federal *Lobbyists' Code of Conduct* took effect in July, which imposes new obligations on consultant lobbyists, in-house lobbyists, and their employers.
- **Manufacturers and Distributors** – The *Fighting Against Forced Labour and Child Labour in Supply Chains Act* now requires certain businesses to file public annual reports about preventing forced or child labour. The Act creates offences for not reporting, among other things, and imposes personal liability on directors and officers. The government has released [guidance](#) on the Act.
- **Natural Resources** – The [Supreme Court of Canada](#) held that large parts of the federal *Impact Assessment Act* are unconstitutional.

The government has said that it will amend the impact assessment regime in response, so companies pursuing natural resource projects will need to keep an eye out for how their projects will be assessed going forward. In the meantime, the government has [released guidance](#) on the interim administration of impact assessments.

### What's one trend you are expecting in 2024?

Looking forward, 2024 will see the first major test of the Supreme Court of Canada's clarification of the law of *de facto* expropriation (or “constructive taking”) laid down in [Annapolis v Halifax Regional Municipality](#). The Annapolis case, in which a Halifax landowner alleges that the City *de facto* expropriated its land to use as a Regional Park, will proceed to trial over the Spring. Lenczner Slaght represents the landowner.

Public law litigation about the Freedom Convoy will also continue and be closely watched. On January 23, 2024, the Federal Court held that the decision to invoke the *Emergencies Act* was unreasonable. The decision arose from four applications for judicial review of the Federal government's decision, two brought by public interest litigants, the Canadian Civil Liberties Association, and the Canadian Constitution Foundation. The Federal government has announced its intention to appeal, so we will await the Federal Court of Appeal's, and potentially the Supreme Court's, decision.

The scope of *Charter* protections afforded to homeless encampments will likely be clarified in 2024 as well. Occupants of an encampment in Kingston have appealed a [Superior Court decision](#) limiting the right to shelter in parks to the nighttime. Lenczner Slaght acts for the City of Kingston.