
Rebecca Jones
416-865-3055
rjones@litigate.com


Jennah Khaled
416-798-5951
jkhaled@litigate.com

January 22, 2026

Freedom Convoy: Federal Court of Appeal Upholds Finding of No Emergency

In *Canada (Attorney General) v Canadian Civil Liberties Association*, the Federal Court of Appeal upheld the Federal Court's findings that the Canadian government's use of the *Emergencies Act* in response to the "Freedom Convoy" was not justified.

Background

In 2022, hundreds of Canadian truckers and their supporters converged in Ottawa to protest Canada's public health response to the COVID-19 pandemic, including new vaccination requirements for cross-border trucking. Protesters also established border blockades in Alberta and Ontario.

Government Response & Measures

In response, the Governor-in-Council (GIC) determined it had reasonable grounds to believe a public order emergency existed under subsection 17(1) of the *Emergencies Act*. The *Proclamation Declaring a Public Order Emergency* was followed by the *Emergency Measures Regulations* and an *Emergency Economic Measures Order.* Together, they specified temporary measures to deal with the emergency, including

- prohibiting certain forms of public assembly
- mandating the removal, towing, and storage of trucks and other objects related to the blockade
- requiring banks and other institutions to freeze the assets of designated persons and to disclose their assets and proposed transactions to the RCMP or CSIS
- imposing fines and imprisonment for contravention of the orders and regulations made under the *Emergencies Act*

Statutory Thresholds Not Met

Several parties brought applications for judicial review challenging the government's invocation of the *Emergencies Act.* The Federal Court of Appeal has now upheld the Federal Court's finding that declaring a public order emergency did not satisfy the *Emergencies Act* and was therefore unreasonable

and *ultra vires* because:

- there were no threats to the security of Canada within the meaning of section 2 of the *CSIS Act*
- there was no national emergency that exceeded provincial capacity or authority and that could not be effectively dealt with under any other law of Canada, as required by the section 3 definition in the *Emergencies Act*

Where Deference Comes into Play

The Federal Court of Appeal rejected the government's argument that because the GIC is "at the apex of the Canadian executive" the Court should have adopted a highly deferential attitude with respect to its interpretation of the *Act* and its assessment of the existence of a public order emergency. The Court held that this argument missed the crucial distinction between the ultimate decision to invoke the *Act* and the prerequisites that must be met before that decision is made. While the GIC has discretion in making the ultimate decision to invoke the *Act*, that discretion comes into play only once the objective criteria under subsection 17(1) of the *Act* are met.

Here, the Federal Court of Appeal was not satisfied that the GIC had reasonable grounds to believe there was an objective basis, anchored in compelling and credible information, for the GIC's belief in the existence of a "threat or use of acts of serious violence against persons or property," as required by subsection 17(1).

Province Retained Capacity & Authority

The Federal Court of Appeal was also not satisfied that the evidence established that the situation exceeded "the capacity or authority of the province to deal with it." RCMP and other policing evidence indicated law enforcement had "not yet exhausted their toolkit" to manage the protests when the *Proclamation* was made.

While no party challenged the constitutionality of the *Act* on division of powers grounds, the Court held that since the *Act* authorizes the government to intrude into core areas of provincial responsibility, it must be interpreted as being intended to be used sparingly and only as a last resort. Where a situation does not exceed a Province's ability to manage it under existing law like the *Criminal Code,* provinces should be left to determine for themselves how best to deal with it. The Court underscored that section 25 of the *Act* sets out the requirements for consultation with the provinces and notes these requirements are "not mere rhetoric" but "essential."

Charter Infringements

The Federal Court of Appeal also upheld the Federal Court's findings that some of the temporary measures adopted to deal with the protests infringed section 8 and paragraph 2(b) of the *Charter* and were not justified under section 1.

Limits on public assembly and travel were overly broad and captured peaceful protestors, violating section 2(b) of the *Charter*. The information-sharing provisions of the *Economic Order* amounted to a warrantless search, which is presumptively unreasonable. There was no system of prior authorization by a neutral arbiter for searches conducted under the *Economic Order*, nor was there a requirement that designated persons be given any advance notice that their personal financial information would be shared with the RCMP or CSIS. Though these financial institutions and other entities are not state actors, they were "effectively deputized by the *Economic Order* to act as agents of the RCMP."

Section 1 of the *Charter* did not save these measures because they were not proportionate or minimally impairing.

Why the Decision Matters

The Federal Court of Appeal's decision dealt with the first-ever use of the *Emergencies Act* and addressed a wide range of interesting issues related to procedure, judicial review, statutory interpretation, the division of powers, and the *Charter*. The decision clarifies the *Act*'s objective thresholds, confirms that courts will not defer to the GIC's interpretation of whether the objective thresholds have been met, and emphasizes that provinces must be unable to manage the situation under existing law before the federal government can invoke emergency powers. It also underscores that any associated measures will be subject to close scrutiny under the *Charter*.