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COVID-19 and the Freedom Convoy: Twin Tests of the Emergencies Act

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COVID-19 AND THE FREEDOM CONVOY:
TWIN TESTS OF THE EMERGENCIES ACT

INTRODUCTION

In 1914, the world was at war when the Canadian Parliament passed and invoked the *War Measures Act* to provide government with the emergency powers required to guide the country through the crisis. It would be invoked again for the Second World War and for a final time in 1970 for the October Crisis. However, dissatisfaction with the invocation of the *War Measures Act* to address the October Crisis drove lawmakers to update Canada's most potent government tool. In 1988, the *Emergencies Act* (hereafter "the *Act*") added peacetime emergencies to the law. It also recognized the young *Canadian Charter of Rights and Freedoms* and installed numerous other safeguards to protect provincial jurisdiction and prevent abuse of the *Act* by government.

For more than three decades, the *Emergencies Act* remained an unused and untested law of last resort. In the last two years, challenging tests of the law emerged in the form of the COVID-19 pandemic and the associated "Freedom Convoy" protests. These unprecedented events allow for an assessment of various aspects of the law, including the criteria for an emergency declaration and the powers available under the *Act* for each type of emergency. Because the *Act* is a law of last resort, the threshold for invocation must be set appropriately and the scope of the powers afforded must be comprehensive. This paper will argue that while the *Act* has largely demonstrated these intended qualities in the face of these tests, deficiencies exist and amendments may be warranted.

BACKGROUND

Parts I-IV of the *Act* provide for four types of national emergency declaration. The "public welfare emergency" and "public order emergency" address domestic and, nominally, peacetime crises. The "international emergency" and "war emergency" cover situations arising from real or potential international armed conflict. In all cases, an invocation of the *Act* requires that the situation be "so serious as to be a national emergency."[1] As it pertains to the *Act*, a "national emergency" is defined 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.[2]

The *Act* is intended as a law of last resort to deal with a national emergency. This implies that there should exist other provincial and federal laws to address emergency situations before an invocation of the *Act* is required. At the same time, the criteria for a declaration of a national emergency should not be so specific or restrictive that the *Act* cannot be invoked when needed. The bar for invocation should be high but not excessively so. Each Part also lists the types of orders and regulations that the government may impose which it "believes on reasonable grounds, are necessary for dealing with the emergency."[3] For the *Act* to be suitable legislation, the powers granted for the various types of emergency need to be sufficient to address the emergency. With the bar for invocation and the powers granted in mind, this paper will first examine the

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[1] Emergencies Act, ss. 5, 6, 27, and 37.
[2] *Ibid.*, s. 3.
[3] *Ibid.*, ss. 8(1), 19(1), 30(1), and 40(1).

COVID-19 pandemic as a potential "public welfare emergency" (PWE) situation.

Second, it will discuss the first ever use of the *Act* to end the "public order emergency"

(POE) created by the "Freedom Convoy" blockade.

PUBLIC WELFARE EMERGENCY: COVID-19 PANDEMIC

The COVID-19 pandemic represented a potential PWE as described by Part I of

the *Act*. The intent of this Part is to empower the federal government to support provinces

overwhelmed by a natural event and defines a PWE as:

> … a real or imminent
> (a) fire, flood, drought, storm, earthquake or other natural phenomenon,
> (b) disease in human beings, animals or plants, or
> (c) accident or pollution and that results or may result in a danger to life or
> property, social disruption or a breakdown in the flow of essential goods,
> services or resources, so serious as to be a national emergency.[4]

While extreme weather events occur with regularity, none have risen to the level

of national emergency. The COVID-19 pandemic presented the first potential PWE that

was of a truly national scope and scale. In the pandemic's early days, Prime Minister

Justin Trudeau said combating the virus would require governmental and civic effort at a

level last seen during the Second World War.[5] There is also evidence that the situation

was, at times, beyond the capacity of the provinces to handle. For example, multiple

provinces had to move patients to hospitals in different jurisdictions due to the exhaustion

of critical care beds.[6] However, the Canadian government did not invoke the *Act* to deal

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[4] *Ibid.*, s. 5.

[5] Maclean's, "Trudeau's daily coronavirus update: 'Canada hasn't seen this type of civic mobilization since the Second World War'," last accessed 9 May 2022, https://www.macleans.ca/news/canada/trudeau-coronavirus-update-april-1-full-transcript/.

[6] Janelle Blakley and Michaela Solomon, "Sask. to send 6 ICU patients to Ont., asks federal government for support," last modified 18 October 2021, https://regina.ctvnews.ca/sask-to-send-6-icu-patients-to-ont-asks-federal-government-for-support-1.5627558; Simon Little, "No room in B.C. hospitals for Alberta COVID-19 patients, says province," last modified 16 September 2021, https://globalnews.ca/news/8197063/bc-alberta-covid-icu-help/.

with the pandemic. One reason for the lack of an emergency declaration is the existence

of other useful legislation and is evidence that the bar is not set too low.

The provinces are empowered through their own emergency and public health

legislation to impose restrictions in the interest of public health.[7] Federal legislation

enabled the government to provide the provinces with critical goods and services and to

impose its own restrictions in federally administered domains. For example, members of

the CAF's Health Services Group were called upon via the *National Defence Act* to

support long-term care facilities in Quebec.[8] The *Quarantine Act* provided the federal

government the ability to screen travellers and have them submit to testing prior to

entering the country.[9] Transport Canada was able to make special regulations around

COVID-19 and air travel through the *Aeronautics Act*.[10] The special powers unlocked by

the *Act* were not necessary due to other extant legislation.

The second reason the *Act* was not invoked was opposition from the provinces.

The premiers wrote a letter stating opposition to use of the *Act* and the resulting

infringement upon provincial jurisdiction.[11] Although the federal government does not

need the permission of the provinces in order to invoke the *Act*, there is a requirement for

"consultation" with any province which would be affected by the emergency

declaration.[12] There is an exception: if the emergency is confined to a single province, the

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[7] Forcese and West, *National Security Law,* Chapter 8, Part II, Section C.
[8] Public Safety Canada, "Government of Canada continues federal support to Quebec COVID-19 response through partnership with Canadian Red Cross," last modified 26 June 2020, https://www.canada.ca/en/public-safety-canada/news/2020/06/goc-continues-fed-supt-to-quebec-covid-19-response-through-partnership-with-canadian-red-cross.html.
[9] Quarantine Act, S.C., c. 20, ss. 12, 19 and 68 (2005).
[10] Aeronautics Act, R.S.C., C. A-2, ss. 4.71 and 4.9 (1985).
[11] The Canadian Press, "Premiers don't want Emergencies Act used during COVID-19 pandemic," last modified 15 April 2020, https://halifax.citynews.ca/national-news/premiers-dont-want-emergencies-act-used-during-covid-19-pandemic-2256279.
[12] Emergencies Act, s. 14(1).

Act may only be invoked if that province signals its incapacity to manage the situation.[13]

Invocation of the *Act* was discussed with the provinces several times, but the Liberal

government repeatedly declined to invoke it. Trudeau told reporters that the provinces

were best suited to manage their unique situations.[14] In order to assess whether the

threshold to invoke the *Act* is too high, a situation in which the COVID-19 pandemic

might have provoked the government to invoke the *Act* will be considered. Such a

situation may have occurred if a province was deemed to be taking insufficient measures

to combat the spread of the disease, prompting the federal government to step in.

Perhaps the most distinguishing characteristic of the pandemic, compared to, for

example, a weather emergency is its politically divisive nature. A national survey found,

other than the 2021 federal election, COVID-19 was the most politically contentious

issue facing Canadians with it often affected relationships between family and friends.[15]

The different provinces took broadly similar but unique approaches to managing the

pandemic through public health measures with the conservative-leaning prairie provinces

generally imposing fewer restrictions.[16] In a July 2021 letter to her Alberta counterpart,

federal health minister Patty Hajdu criticised the province's plan to lift most restrictions

and asked to review the science behind the decision.[17] Premier Jason Kenney responded

[13] *Ibid.*, s. 14(2).

[14] Hana Mae Nassar, "Feds have no plans to take over pandemic response from provinces, Trudeau says," last modified 17 November 2020, https://vancouver.citynews.ca/2020/11/17/feds-pandemic-response-provinces-trudeau/.

[15] Mickey Djuric, "Survey suggests Canadians becoming more divided over COVID-19, politics," last modified 4 April 2022, https://www.cp24.com/news/survey-suggests-canadians-becoming-more-divided-over-covid-19-politics-1.5846875?cache=dvgujsbn.

[16] Bank of Canada, "COVID-19 stringency index," last accessed 6 May 2022, https://www.bankofcanada.ca/markets/market-operations-liquidity-provision/covid-19-actions-support-economy-financial-system/covid-19-stringency-index/.

[17] Janet French, "Federal health minister pens letter to Alberta, asks for science behind plan to lift COVID-19 rules," last modified 5 August 2021, https://www.cbc.ca/news/canada/edmonton/alberta-federal-health-minister-letter-covid-1.6130917.

by accused Hajdu of political posturing.[18] Ultimately, Alberta would reverse course due to a surge in cases fuelled by the Delta variant.[19] This inter-jurisdictional exchange raises an important question around the ability of the federal government to invoke the *Act* if a single province, for political reasons or otherwise, neglects to impose appropriate public health measures to combat the pandemic. In this scenario, the province would undoubtedly refuse to consent to the invocation of the *Act*. The federal government would then need to declare an emergency for multiple provinces to get around the single province exception. However, political pressures may also prevent the federal government from taking such a step. Unfortunately, the cost of this potential stand-off may ultimately be measured in preventable sickness and death. Clearly these political factors were not fully appreciated when the *Act* was developed. The COVID-19 pandemic has revealed a politically divisive aspect of this type of PWE that may not have been apparent during the development of the *Act*.

The list of available powers under the PWE Part of the *Act* also highlights a potential deficiency. Many of the "orders and regulations" that can be imposed under a PWE declaration are highly applicable to a pandemic. They include:

> (a) the regulation or prohibition of travel to, from or within any specified area, where necessary for the protection of the health or safety of individuals;
> (b) the evacuation of persons and the removal of personal property from any specified area and the making of arrangements for the adequate care and protection of the persons and property; . . .
> (e) the regulation of the distribution and availability of essential goods, services and resources; . . .

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[18] Alanna Smith, "Kenney says he won't 'take a lecture' from feds on COVID-19 in Alberta," last modified 7 August 2021, https://globalnews.ca/news/8093162/jason-kenney-wont-take-lecture-from-hajdu-covid-19-alberta/.

[19] Rod Nickel, "Alberta backtracks on COVID-19 curbs as Canadian province's hospitalizations jump," last modified 13 August 2021, https://www.reuters.com/world/americas/alberta-backtracks-covid-19-curbs-canadian-provinces-hospitalizations-jump-2021-08-13/.

(g) the establishment of emergency shelters and hospitals;
(h) the assessment of damage to any works or undertakings and the repair, replacement or restoration thereof;[20]

These provisions could be used to impose public health restrictions that were common during the pandemic such as closing certain types of businesses, limiting the size of public gatherings, and controlling access to rapid antigen tests. However, the ability to impose mask and vaccine mandates is absent. The provinces impose such rules pursuant to public health legislation. For example, British Columbia's *Public Health Act* provides emergency powers to issue orders around preventive measures. These measures may include immunizations and the wearing of personal protective equipment such as masks.[21] The federal government would need to enact new legislation for such measures as it did to provide emergency benefits to and other financial relief measures.[22] While several new laws were passed to address aspects of the pandemic, the slow speed of government action would prevent timely implementation of needed public health restrictions for the province in question.

Although the COVID-19 pandemic was the first of its kind in a century, such events are becoming more likely. A United Nations panel for biodiversity found that pandemics will become more frequent and more deadly, driven by the effects of climate change and globalization, including deforestation and agricultural expansion.[23] This underlines the need to ensure that the all of the necessary powers available to government in a COVID-19-like scenario. Given the resilience of the available federal and provincial

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[20] Emergencies Act, s. 8(1).
[21] Public Health Act, S.B.C. 2008, c. 28, ss. 16 and 56.
[22] COVID-19 Emergency Response Act, S.C. 2020, c.5.
[23] United Nations. Intergovernmental Platform on Biodiversity and Ecosystem Services. *IPBES Workshop on Biodiversity and Pandemics Executive Summary* (Bonn: IPBES Secretariat, 2021), 6.

legislation to deal with COVID-19, the *Act* appears to be partially suitable for this type of PWE. However, the example of a rogue province, and the potential gap in the powers granted for dealing with a pandemic, reveal shortcomings in the *Act* that warrant scrutiny.

PUBLIC ORDER EMERGENCY: FREEDOM CONVOY

In late January 2022, a group of thousands of protestors known as the "Freedom Convoy" used hundreds of long-haul trucks to establish a blockade in several streets near Parliament Hill.[24] Additional blockades were erected at Canada-United States border crossings, including at Ambassador Bridge and near Coutts, Alberta.[25] As local police were unable to make progress in removing the vehicles from downtown Ottawa, Ontario Premier Doug Ford declared a state of emergency on 11 February.[26] On 15 February, the government invoked the *Act* for the first time, declaring a POE.[27]

This type of emergency deals with breaches of the peace. It is defined in Part II of the *Act* as "an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency."[28] The definition of "threats to the security of Canada" is drawn from the *Canadian Security Intelligence Service Act* (the *CSIS Act)*:

"threats to the security of Canada" means

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[24] Josh Pringle and Ted Raymond, "'We need an additional surge of resources:' Ottawa police chief," last modified 6 February 2022, https://ottawa.ctvnews.ca/we-need-an-additional-surge-of-resources-ottawa-police-chief-1.5769085.

[25] Amanda Coletta, Amy Cheng, and Jennifer Hassan, "Canada's capital is jammed, its border crossings are blockaded, and there's no end in sight," last modified 9 February 2022, https://www.washingtonpost.com/world/2022/02/09/canada-freedom-convoy-alberta-ambassador-bridge/.

[26] Ontario, "Report on Ontario's Declared Provincial Emergency from February 11, 2022 to February 23, 2022," last modified, 31 March 2022, https://www.ontario.ca/page/report-ontarios-declared-provincial-emergency-february-11-2022-february-23-2022#section-2.

[27] Public Safety Canada, "Federal Government declares a public order emergency under the Emergencies Act to end disruptions, blockades and the occupation of the city of Ottawa," last modified 15 February 2022, https://www.canada.ca/en/public-safety-canada/news/2022/02/federal-government-declares-a-public-order-emergency-under-the-emergencies-act-to-end-disruptions-blockades-and-the-occupation-of-the-city-of-ottawa.html.

[28] Emergencies Act, s. 16.

(a) espionage or sabotage that is against Canada or is detrimental to the interest of Canada or activities directed toward or in support of such espionage or sabotage,
(b) foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,
(c) activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political objective within Canada or a foreign state, and
(d) 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 of Canada, but does not include lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in paragraphs (a) to (d).[29]

The intent of this Part is to enable the government to bring its resources to bear when a province or provinces are unable to deal with one of the security threats covered in the *CSIS Act*. As with the PWE, the federal government may not invoke the *Act* for an emergency localized in a single province without consent.[30]

Within five days of the emergency declaration, the Ottawa blockade was dismantled with more than one hundred arrests made and dozens of vehicles towed.[31] Invocation of the *Act* brought a swift end to the Ottawa protest, and it appears that the criteria for invocation were set at the appropriate level for last resort legislation. Other federal and provincial law was applicable to address the blockades. For example, the charge of "mischief" found in the Criminal Code was available to local law enforcement and appears to be broadly applicable:

Mischief
430 (1) Every one commits mischief who wilfully

[29] The Canadian Security Intelligence Service Act, S.C. 1984, c. 21, s. 2.
[30] Emergencies Act, s. 25(3).
[31] Aya Al-Hakim, "As it happened: Police push to end trucker convoy blockade in Ottawa," last modified 21 February 2022, https://globalnews.ca/news/8633556/live-coverage-ottawa-police-freedom-convoy-feb-20/.

(a) destroys or damages property;
(b) renders property dangerous, useless, inoperative or ineffective;
(c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property; or
(d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.[32]

Some experts have argued that had local law enforcement taken prompt action under the Criminal Code, the blockade would not have escalated to the point that the *Act* was required.[33] After the provincial declaration of an emergency, Ontario issued Regulation 71/22 pursuant to its *Emergency Management and Civil Protection Act*.[34] This order made it illegal to impede the use of critical infrastructure and *allowed* qualified persons to assist in the removal of vehicles if asked to do so.[35] However, local towing companies were reluctant to assist in removing protestor vehicles for fear of retaliation.[36] Whether or not inaction by local officials was the primary causal factor, the situation became such that ordinary law proved ineffective at clearing the blockade. The federal government then invoked the *Act* to assist the overwhelmed province. The other remaining question regarding invocation the *Act* is whether the Ottawa protests met the "threat to the security of Canada" criterion. If not, the bar for invocation may be set too high.

When declaring the POE, the government cited the third threat type listed in the *CSIS Act*, "activities within or relating to Canada directed toward or in support of the

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[32] Criminal Code, R.S.C., c. C-46, s. 430(1) (1985).
[33] Sarah Plowman, "Is the Emergencies Act necessary? Lawyers disagree," last modified 21 February, 2022, https://atlantic.ctvnews.ca/is-the-emergencies-act-necessary-lawyers-disagree-1.5790516.
[34] Ontario, "Report on Ontario's Declared Provincial Emergency . . .,"
[35] Ontario Regulation 71/22: Critical Infrastructure and Highways, ss. 2 and 5.1(4).
[36] Josh Pringle, "Ottawa towing company threatened into not helping police with trucker convoy: chief," last accessed 7 May 2022, https://ottawa.ctvnews.ca/ottawa-towing-company-threatened-into-not-helping-police-with-trucker-convoy-chief-1.5776591.

threat or use of acts of serious violence against persons or property for the purpose of achieving a political objective within Canada or a foreign state."[37] In the government's view, the blockades of critical infrastructure and the actions of the protestors constituted such activities. The daily loss of millions of dollars due to obstructed international trade certainly lends credence to the government's position.[38] While clearing the border crossing blockade in Coutts, Alberta, police discovered an arsenal of weapons and body armour and made 13 arrests.[39] Charges of conspiracy to commit murder have been brought against four of the individuals.[40] However, the Ambassador Bridge and Coutts blockades were actually cleared the day before the decision to declare an emergency declaration. Moreover, there may be little evidence that the Ottawa protestors threatened or used of acts of serious violence for the purpose of achieving the objective of ending COVID-19 restrictions.

According to some, the "Freedom Convoy" protest in Ottawa did not match any of the four types of threat listed in the *Act* and this raises the question of whether the *Act* can be lawfully invoked for non-violent protests which disrupt critical infrastructure. Wesley Wark, a senior fellow at the Centre for International Governance Innovation, argued that another category of threat should be added: "…the deliberate and reckless

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[37] Canada, "Proclamation Declaring a Public Order Emergency," Canada Gazette Part II 156, no.1. (15 February 2022), 2.

[38] Eamon Barrett, "Pepper spray, tow trucks, and Bitcoin seizures: How Canada finally ended the weeks-long Freedom Convoy protests in Ottawa," last accessed 7 May 2022, https://fortune.com/2022/02/21/canada-ottawa-freedom-convoy-protest-ends-truckers-arrest-covid-vaccine-mandate/.

[39] Caley Gibson, "RCMP arrest 13 people, seize weapons and ammunition near Coutts border blockade", last modified 15 February 2022, https://globalnews.ca/news/8618494/alberta-coutts-border-protest-weapons-ammunition-seized/.

[40] Radio Canada International, "The Coutts 13: New details on the men and women arrested at border blockade," last accessed 17 March 2022, https://ici.radio-canada.ca/rci/en/news/1862953/the-coutts-13-new-details-on-the-men-and-women-arrested-at-border-blockade.

interference with listed critical infrastructure, to include offices of government and the courts, health services and border crossings."[41] This suggestion may be justifiable in the context of the "Freedom Convoy" protests, but may open the door to the violation of the right to peaceful protest.

The *Act* is subject to the *Canadian Charter of Rights and Freedoms* (the *Charter*).[42] The *Charter* guarantees certain rights, including the freedoms of opinion, expression, and peaceful assembly, which are "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."[43] Adding Wark's suggested type of threat to the *CSIS Act* would meet the *Charter's* first requirement of prescription by law. However, the second requirement is much more ambiguous. Interpretation of the terms "deliberate and reckless interference" and "demonstrably justified in a free and democratic society" would determine the ability of the government to invoke the *Act*. Further, if the *Act* were to include the Wark language, a government could attempt to justify the arrest of political dissidents engaging in much less pernicious behaviour. This language may set the bar for invocation too low.

While there are many safeguards contained in the *Act* to prevent abuse, the government will always have at least seven days to act before the first requirement to provide justification. Within a week of an emergency declaration, the government must explain its reasons for the invocation of the *Act* and report on consultations with any provinces.[44] If either House of Parliament votes against the government's motion, the

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[41] Wesley Wark, "Wark: Is it time for the federal Emergencies Act?," last modified 14 February 2022, https://ottawacitizen.com/opinion/wark-is-it-time-for-the-federal-emergencies-act.

[42] Emergencies Act, preamble.

[43] Constitution Act, 1982, s. 1 (1982).

[44] Emergencies Act, s. 58(1).

emergency declaration is revoked.[45] Even if a declaration is subsequently nullified,

giving the government the power to declare an emergency and arrest peaceful protestors

which they deemed to be "recklessly interfering" is not the intent of the *Act*. If and how

the *Act* should address highly disruptive but peaceful protests remains an open question.

The scope of the powers available under the *Act* for situations like the "Freedom

Convoy" also require scrutiny as the tools available to mass protestors have evolved since

1988.

Under the *Act*, the federal government can *direct* (rather than *allow*) persons to

render essential services to address a POE situation.[46] In its emergency declaration, the

government explicitly referenced towing and storage of vehicles as essential services.[47]

This specific power was very effective in helping to end the blockade. However,

technologies used by the "Freedom Convoy" that were not available in 1988 suggest

potential gaps in the breadth of the emergency powers. The advent of the Internet, and in

particular social media, crowdfunding platforms, and digital currencies have enabled the

rapid organization of civil protest groups. The "Arab Spring" movements of 2011

demonstrated social media's utility in assembling a group featuring de-centralized

control.[48] While this was not the case with the "Freedom Convoy," such groups render

the normal government technique of targeting the leader ineffective.[49] Donations,

including those made in digital and virtual currencies and received through crowdfunding

platforms, helped sustain the "Freedom Convoy" and prompted government to use their

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[45] *Ibid.*, s. 58(7).
[46] Emergencies Act, s. 19(1)(d).
[47] Canada, "Proclamation Declaring a Public Order Emergency . . .," 3.
[48] Paul Danahar, "The Collapse of the Old Middle East," in *The New Middle East: The World After the Arab Spring* (London: Bloomsbury, 2013), 24.
[49] *Ibid.*

emergency powers to freeze the protestors' assets.[50] However, the authorities were reportedly unable to seize most of the one million dollars raised in Bitcoin.[51] The tools of social media, crowdfunding, including via digital currencies, could enable a massive group of protestors to assemble and demonstrate, peacefully or otherwise, in numbers that could quickly overwhelm the local authorities. The powers available in a POE should be reviewed through the lens of new technology and expanded as required. However, the transnational nature of the Internet may ultimately limit the government's reach.

In its first ever use, the *Act* proved highly effective in ending a breach of public order though the appropriateness of its invocation has yet to be adjudicated by the mandated inquiry.[52] Regardless of the findings, the "Freedom Convoy" has served to test the *Act* in a way that was likely not anticipated by its authors. Large-scale and peaceful but disruptive protests have been enabled by new technologies which could not have been considered when the *Act* was drafted and must be addressed. However, the addition of language like that suggested by Wark must be carefully considered to avoid political arrests and the abuse of *Charter* freedoms.

CONCLUSION

After collecting dust for more than three decades, the *Emergencies Act* faced a set of unprecedented tests in the early 2020s. The COVID-19 pandemic threatened the safety of all Canadians in a way that no weather event ever has. The *Act* fulfilled its role of a

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[50] Alex Ballingall and Grant LaFleche, "Here's how the so-called Freedom Convoy is still raising 'thousands of dollars' per minute even without GoFundMe," last modified 7 February 2022, https://www.thestar.com/politics/federal/2022/02/05/heres-how-the-so-called-freedom-convoy-is-still-raising-thousands-of-dollars-per-minute-even-without-gofundme.html; Canada, "Proclamation Declaring a Public Order Emergency . . .," 10.

[51] David Fraser, "Digital currency donations for Freedom Convoy evading seizure by authorities," last modified 21 March 2022, https://www.cbc.ca/news/canada/ottawa/freedom-convoy-cryptocurrency-asset-seizure-1.6389601.

[52] Emergencies Act, s. 63.

law of last resort in that other provincial and federal legislation made its invocation unnecessary. However, the single-province exception and the divisive nature of public health restrictions and vaccine mandates could have proven problematic. It is unclear whether the federal government could have invoked the *Act* in the event of a single province failing to take appropriate actions to protect public health. And, even if it were invoked, the *Act* appears to omit certain key powers to mandate preventive measures. The pandemic did not necessitate an emergency declaration but if it had, the *Act* may have proven cumbersome and inadequate.

In the case of the "Freedom Convoy," the *Act was* invoked and served the intended role of bolstering an overwhelmed province. However, the episode may also reveal a gap in the definitions of "threats to the security of Canada" included in the *CSIS Act*. The spectre of large and disruptive, but non-violent, protests may force legislators to trace the fine line between peaceful assembly and criminal act and between liberal democracy and authoritarianism. The emergency powers were highly effective in ending the blockade but the availability of new technology could prove troublesome for the government going forward. Future work in this area could develop amendments to ensure that the most powerful law in Canada is appropriately provisioned for the next time it is needed. The bar for invocation must be set with careful precision and the powers granted must acknowledge technological progress. As events like the COVID-19 pandemic and "Freedom Convoy" may now be more likely to occur, a measure of urgency is warranted.

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