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4-20-2022

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Canada's Emergencies Act: Responding to the Blockade of an International Border

By: Justin Zarka



On February 14, 2022, Canadian Prime Minister Justin Trudeau invoked the Emergencies Act^[1] in response to civil unrest in the country.^[2] The Emergencies Act is a federal law of Canada which provides the government substantial powers in the event of a national emergency.^[3] The Emergencies Act cannot be invoked unless there exists a national emergency as defined in the statute.^[4] The statute 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” or “(b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security, and territorial integrity of Canada.”^[5]

The statute provides for four different types of national emergencies: a public welfare emergency, a public order emergency, an international emergency, and a war emergency. Prime Minister Trudeau declared a national public order emergency on February 14, 2022.^[6] Declaration of a public order emergency provides the federal government with vast powers to address the threats to the security of Canada. While such a declaration is in effect, the federal government may regulate or prohibit “(i) any public assembly that may reasonably be expected to lead to a breach of the peace, (ii) travel to, from, or within any specified area, or (iii) the use of specified property.”^[7]

Prime Minister Trudeau declared a national emergency and invoked the act in response to widespread protests regarding COVID-19 mandates.^[8] Several international border crossings between Canada and the United States were blockaded by those

protestors expressing their political grievances.[9] In his speech to the Canadian people announcing the national emergency, Trudeau stated that “the blockades are harming our economy and endangering public safety.”[10]The Canadian Civil Liberties Association (“CCLA”) denounced the invocation of the act, on the grounds that federal government had not met the necessary threshold to invoke the act.[11] In a press release, the CCLA asserted that the Emergencies Act exists to address “extreme threats to Canada, not to protect the economy.”[12]

The essence of the CCLA’s grievance is that, although the blockades presented a threat to the Canadian economy, they did not rise to the level of a threat to Canadian sovereignty and territorial integrity.[13] In addition, the CCLA does not believe the blockades met the threshold of putting the lives of Canadians at risk.[14] On the other hand, the federal government characterized the threat as one which endangers public safety.[15] This characterization of the threat falls within the definition of national emergency as defined in the Emergencies Act.[16] Therefore, despite the protestations of the CCLA, Prime Minister Trudeau lawfully invoked the Emergencies Act.

The Emergencies Act gives the federal government power to suspend freedom of movement, freedom of expression, and property rights.[17] PM Trudeau insisted that the federal government was not “suspending fundamental rights or overriding the Charter of Rights and Freedoms.”[18] At first glance, it may seem difficult to reconcile Trudeau’s statement that the Charter would not be suspended, while the text of the act expressly allows for the suspension of freedom of movement, freedom of expression, and property rights.[19] However, Section 1 of the Canadian Charter of Rights and Freedoms permits the government to limit the freedoms set forth in the Charter so long as the restrictions are set forth in law and are proportionate to the goal pursued.[20] Therefore, when the federal government invoked the Emergencies Act, it acted pursuant to the provisions of the Charter. The Emergencies Act sets forth the restrictions, and the federal government asserted that such restrictions are necessary and proportionate to achieve the goal of restoring safety to Canadians. In the words of Justin Trudeau, “the scope of these measures will be time-limited, geographically targeted, as well as reasonable and proportionate to the threats they are meant to address.”[21] In conclusion, the Emergencies Act was lawfully invoked by the federal government pursuant to the statutory definition of a national emergency.[22]

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[1] R.S.C. 1985, c. 22 (4th Supp.)

[2] *Trudeau Declares Rare Public Emergency to Quell Protests*, N.Y. Times, <https://www.nytimes.com/2022/02/14/world/americas/justin-trudeau-emergencies-act-canada.html> [https://perma.cc/P4TG-ZA6T] (last updated Feb. 16, 2022).

[3] *Canada’s Emergencies Act*, Dep’t of Just. Can., <https://www.canada.ca/en/department-justice/news/2022/02/canadas-emergencies-act.html> [https://perma.cc/QFY5-7N2V] (last modified Feb. 25, 2022).

[4] *Id.*

[5] R.S.C. 1985, c. 22 (4th Supp.), s. 3.

[6] N.Y. Times, *supra* note 2.

[7] R.S.C. 1985, c. 22 (4th Supp.) s. 19.

[8] N.Y. Times, *supra* note 2.

[9] *Id.*

[10] *Full Text of Justin Trudeau’s Emergencies Act Announcement*, Toronto Star (Feb. 14, 2022), <https://www.thestar.com/news/canada/2022/02/14/full-text-of-justin-trudeaus-emergencies-act-announcement.html> [https://perma.cc/8UAN-7XZX].

[11] *CCLA Statement on the Emergencies Act*, Canadian Civil Liberties Ass’n (Feb. 15, 2022), <https://ccla.org/press-release/ccla-statement-on-the-emergencies-act/> [https://perma.cc/3CZZ-JG99].

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] Toronto Star, *supra* note 10.

[16] R.S.C. 1985, c. 22 (4th Supp.), s. 3.

[17] R.S.C. 1985, c. 22 (4th Supp.) s. 19.

[18] Toronto Star, *supra* note 10.

[19] R.S.C. 1985, c. 22 (4th Supp.) s. 19, at (a)(i)–(iii).

[20] Dep't of Just. Can., *supra* note 3.

[21] Toronto Star, *supra* note 10.

[22] R.S.C. 1985, c. 22 (4th Supp.), s. 3.