

December 9, 2022

**By email**

Public Order Emergency Commission  
90 Sparks Street  
Ottawa, ON K1A 0A3

Dear Commissioner:

**Re: Closing submissions on factual and policy hearings phases of the Public Order Emergency Commission from the Union of British Columbia Indian Chiefs**

**INTRODUCTION**

The Union of British Columbia Indian Chiefs ("UBCIC") is a representative organization of First Nations in British Columbia, dedicated to promoting and supporting the efforts of First Nations in British Columbia to advance their inherent rights and title. The UBCIC acts as an advocacy body to provide a cohesive voice to support and strengthen Indigenous Nations and communities. More than half of the 203 British Columbia First Nations are members in good standing of UBCIC.

The mission of the UBCIC includes, and is not limited to: holding the federal government to its fiduciary obligations and supporting our peoples at regional, national, and international forums. Further, the UBCIC has been deeply involved in advocacy pertaining to the implementation of the *UN Declaration on the Rights of Indigenous Peoples* ("UN Declaration") in BC. In collaboration with the First Nations Summit and the BC Assembly of First Nations as the First Nations Leadership Council, the UBCIC worked with the Province of British Columbia to direct and develop the *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019 ch 44. The UBCIC is mandated by the Chiefs Council through resolutions to carry out continued advocacy required to ensure full implementation of the *UN Declaration* and the elimination of anti-Indigenous discrimination in all areas of law and to ensure that all Indigenous rights are respected.

**CLOSING SUBMISSIONS ON FACT**

The UBCIC has a significant interest in the exercise of emergency powers by the Canadian government generally. In the Inquiry conducted by the Public Order Emergency Commission ("POEC"), the UBCIC has been particularly interested in understanding how emergency powers were used in the Freedom Convoy situation, and whether the use of state emergency powers in this instance reflected proper engagement with and respect for Indigenous rights and jurisdiction.

The UBCIC highlights that the record before the POEC reveals there was limited, if any, consultation and engagement with local First Nations governments of the territory by Public Safety Canada and police services during the events leading up to and including the invocation of the *Emergencies Act*, RSC, 1985, c 22.

This is factually significant to the UBCIC and would be a finding of fact that bears foundational importance to policy recommendations being made by the UBCIC in its written submissions on the policy phase of the Inquiry and to the forward-looking nature of the POEC's recommendations.

## **1. Summary of evidence relating to lack of consultation and engagement with local First Nations governments of the territory**

The federal government, through the Minister of Crown-Indigenous Relations, is documented to have engaged with Indigenous leaders from First Nations, Inuit, and Métis political organizations, specifically regarding blockades:

The Government of Canada also engaged Indigenous leaders regarding the blockages. For example, the Minister of Crown-Indigenous Relations spoke with the National Chief of the Assembly of First Nations, the President of the Inuit Tapiriit Kanatami, the President of the Métis National Council, the Grand Chief of Akwesasne, and the Grand Chief of the Manitoba Southern Chief's Organization.<sup>1</sup>

However, there is no evidence indicating engagement, consultation or consent-seeking efforts were undertaken with First Nations leaders or governments—the title and rights holders—of the territory where the events occurred.

On the subject of consultation and cooperation with Indigenous peoples, two witnesses who had close knowledge of this matter provided testimony: the then Deputy Minister of Public Safety, Robert Stewart, and the Commissioner of the RCMP, Brenda Lucki.

In response to a question from the UBCIC regarding which First Nations governments, representatives, and Indigenous groups were consulted with during the convoy situation broadly, Deputy Minister Stewart testified that he was not aware of any consultation efforts, and he narrowly connected it to matters associated with law enforcement in urban areas or at border points.<sup>2</sup> He also testified that he was not aware (in reference to his own involvement) of efforts on behalf of the Government of Canada or police services to consult with First Nations of the territory.<sup>3</sup>

This was further confirmed in the evidence of Commissioner Lucki. In response to questions from the UBCIC about whether First Nations of the territory were consulted by the RCMP, she noted it definitely did not occur in the Ottawa area, and though she thought consultation may have occurred in British Columbia, Alberta, and Saskatchewan, she was not sure.<sup>4</sup> Commissioner Lucki's evidence suggests that, generally speaking, engagement with Indigenous peoples in these contexts occurs

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<sup>1</sup> Exhibit [SSM.CAN.00000121\_REL.0001] at p. 5; Hearing transcript (Stewart), Vol. 22, 14 November 2022, p. 209, lines 20-28 and p. 210, lines 1-16 [TRN00000022].

<sup>2</sup> Hearing transcript (Stewart), Vol. 22, 14 November 2022, p. 205, lines 26-28 and p. 206, lines 1-5 [TRN00000022].

<sup>3</sup> Hearing transcript (Stewart), Vol. 22, 14 November 2022, p. 206, lines 6-13 and p. 209, lines 20-28 and p. 210, lines 1-16 [TRN00000022].

<sup>4</sup> Hearing transcript (Lucki), Vol. 23, 15 November 2022, p. 246, lines 26-28 and p. 247, lines 1-4 [TRN00000023].

when there is Indigenous involvement or if the event was on Indigenous land, but noted that there are special teams that exist for that purpose.<sup>5</sup>

Deputy Minister Stewart's testimony indicates that from a public safety perspective, it is important for the Government of Canada and police services to consult and cooperate with First Nations of the territory in public order emergency events.<sup>6</sup> The Minister of Public Safety, Hon. Minister Mendicino, also confirmed that it is important for Public Safety Canada and police services to engage with First Nations of the territory<sup>7</sup>, and that it is also important for this to be built into the response to public order emergency events across the government broadly.<sup>8</sup> Hon. Minister Mendicino emphasised that this type of engagement requires relationships to be built with Indigenous leaders so that we can move forward with reforms inspired and governed by the *UN Declaration*.<sup>9</sup>

## 2. Finding of fact important for foundation of POEC's recommendations

The evidence presented in this Inquiry illustrates that there was a lack of recognition of Indigenous jurisdiction in a public order emergency event, and the absence of proper processes to demonstrate that coordination and engagement, specifically the obligation to engage properly with the First Nations governing body that is a representative of the traditional territory or territories in which a public order event occurs.

The *UN Declaration*, which the Government of Canada has affirmed as a universal human rights instrument with application in Canadian law in the *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14 ("*UN Declaration Act*"), at Articles 18 and 19 provide:

Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions; and

Article 19: States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.<sup>10</sup>

The federal government's consultation processes in response to the Freedom Convoy situation, a public order emergency event, were not reflective of the obligations on the state in the *UN Declaration*. The evidentiary record illustrates a lack of recognition and respect of Indigenous rights, specifically the procedural right to be consulted and to participate in decision-making in the decision

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<sup>5</sup> Hearing transcript (Lucki), Vol. 23, 15 November 2022, p. 247, lines 4-6 [TRN00000023].

<sup>6</sup> Hearing transcript (Stewart), Vol. 22, 14 November 2022, p 206, lines 14-19 [TRN00000022].

<sup>7</sup> Hearing transcript (Mendicino), Vol. 28, 22 November 2022, p. 135, lines 16-21 [TRN00000028].

<sup>8</sup> Hearing transcript (Mendicino), Vol. 28, 22 November 2022, p. 139, lines 10-28 and p. 140, lines 1-16 [TRN00000028].

<sup>9</sup> Hearing transcript (Mendicino), Vol. 28, 22 November 2022, p. 139, lines 19-28 and p. 140, lines 1-16 [TRN00000028].

<sup>10</sup> *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14 [BCC00000049].

to declare an emergency and subsequent planning and to be included properly in the response to the emergency event occurring on the traditional territory of First Nations. This is noteworthy and important as the coordination of jurisdiction and authority must include First Nations governments and representative leaders from the territories impacted. This is necessary to respect for public safety, as receiving the views and input of the First Nations representatives of the territory should be a relevant factor evaluated by the Government of Canada in assessing the appropriateness of the use of emergency powers.

## CLOSING SUBMISSIONS ON POLICY

### 1. *United Nations Declaration on the Rights of Indigenous Peoples*

Witnesses in the factual hearings phase of the POEC testified to their understanding of requirement of respecting the rights of Indigenous peoples, including the significance of the federal *UN Declaration Act's* application and implementation within their mandate areas.<sup>11</sup> Specifically in relation to existing legislation, CSIS Director David Vigneault testified that no specific review of the *CSIS Act* had been done for alignment with the *UN Declaration* within the agency, beyond some 'internal discussions', and that no specific legislative amendment has been introduced.<sup>12</sup> When questioned directly on whether there were any plans to ensure alignment of the *CSIS Act* with the *UN Declaration*, pursuant to the *UN Declaration Act*, the Minister of Public Safety did not provide a conclusive answer.<sup>13</sup> Generally, the Minister of Justice reported on the current status of development of the action plan with different Indigenous leadership to determine which laws to change according to Article 5 of the *UN Declaration Act*, and he testified that he suspected the *Emergencies Act* would be one of them.<sup>14</sup>

Experts participating in the roundtable sessions of the POEC's policy phase were attuned to the federal government's obligations pursuant to the *UN Declaration Act*:

- a. In the context of whether a definition of 'national security' is required, in moderating the discussion,<sup>15</sup> Kent Roach clarified that "if there was a legislative definition [,] that might involve consideration of Canada's obligations" under the *UN Declaration*.<sup>16</sup>

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<sup>11</sup> Hearing transcript (Stewart), Vol. 22, 14 November 2022, p. 206, lines 20-28, and p. 207, lines 1-26 [TRN00000022]; Hearing transcript (Lucki), Vol. 23, 15 November 2022, p. 247, lines 20-28, and p. 248, lines 1-28, and p. 249, lines 1-3 and 20-28, and p. 250, line 1 [TRN00000023]; Hearing transcript (Vigneault), Vol. 27, 21 November 2022, p. 131, lines 7-25 and p. 132, lines 15-28, and p. 133, lines 1-28, and p. 134, lines 1-28 [TRN00000027]; Hearing transcript (Mendicino), Vol. 28, 22 November 2022, p. 135, lines 22-28, and p. 136, lines 1-27 [TRN00000028]; Hearing transcript (Lametti), Vol. 29, 23 November 2022, p. 114, lines 12-28, and p. 115, lines 1-8 [TRN00000029].

<sup>12</sup> Hearing transcript (Vigneault), Vol. 27, 21 November 2022, p. 131, lines 26-28 and p. 132, lines 1-14 [TRN00000027].

<sup>13</sup> Hearing transcript (Mendicino), Vol. 28, 22 November 2022, p. 137, lines 24-28 and p. 138, lines 1-13 [TRN00000028].

<sup>14</sup> Hearing transcript (Lametti), Vol. 29, 23 November 2022, p. 112, lines 25-28 and p. 113, lines 1-28, and p. 114, lines 1-28, and p. 115, lines 1-2 [TRN00000029].

<sup>15</sup> Hearing transcript (Roach), Vol. 34, 30 November 2022, p. 81, lines 10-12 [TRN00000034].

<sup>16</sup> Hearing transcript (Roach), Vol. 34, 30 November 2022, p. 82, lines 12-15 [TRN00000034] [comma added in quotation].

- b. Dr. Dwight Newman offered the factual summary that no updates to the *Emergencies Act* have occurred “in light of Section 35 rights” or the *UN Declaration Act* at section 5, which he summarized.<sup>17</sup>
- c. Tribal Chair Judith Sayers, after recommending amendments to federal emergency legislation,<sup>18</sup> noted the *UN Declaration Act's* requirements on the federal government<sup>19</sup> to ensure federal law and policy reflect the *UN Declaration*.<sup>20</sup>

The *Emergencies Act* must in our respectful submissions be aligned with the *UN Declaration*. For example, despite Articles 18 and 19 of the *UN Declaration*, the *Emergencies Act* does not require or provide any mechanisms for consultation and engagement with local First Nations leadership or Indigenous peoples in a public order emergency event. Section 5 of the *UN Declaration Act*, which came into force on June 21, 2021, mandates the Government of Canada to, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that the laws of Canada are consistent with the *UN Declaration*. The *Emergencies Act* is a law of Canada and the measures necessary to satisfy consistency with the *UN Declaration* are incomplete. A review and reform of the *Emergencies Act* to ensure alignment with the *UN Declaration* is a necessary step according to federal law. In what follows, the UBCIC has proposed a series of recommendations relating to the Commission’s mandate, specifically the modernization of emergency-related legislation, which are consistent with the *UN Declaration*.

**The UBCIC recommends** that the POEC’s final report recommendations address the requirement of the *UN Declaration Act* and make observations regarding the omission of efforts to align federal law, policy, and practices with the requirements of implementation of the *UN Declaration*.

## 2. Representation on oversight bodies

Hon. Minister Mendicino testified that, regarding *Bill C-20* (an Act before Parliament that would create a new Public Complaints and Review Commission), the federal government is engaged with First Nations and other Indigenous communities “to ensure representation” on the Commission.<sup>21</sup> It is unclear on the record whether the Minister agreed that representation would extend to participation of such representatives as either decision makers or complaints investigators.<sup>22</sup> Several witnesses during the factual hearings referenced the specific ways that individual and systemic racism, specifically discrimination against Indigenous peoples, is known to be present within their mandated area of influence.<sup>23</sup>

In the policy roundtable relating to *Police-Government Relations*, Dr. Kate Puddister opined that civilian oversight for the RCMP is lacking and out of step with other police services in Canada, and

<sup>17</sup> Hearing transcript (Newman), Vol. 35, 1 December 2022, p. 100, lines 6-13 [TRN00000035].

<sup>18</sup> Hearing transcript (Sayers), Vol. 35, 1 December 2022, p. 104, lines 16-22 [TRN00000035].

<sup>19</sup> Hearing transcript (Sayers), Vol. 35, 1 December 2022, p. 104, lines 23-27 [TRN00000035].

<sup>20</sup> Hearing transcript (Sayers), Vol. 35, 1 December 2022, p. 105, lines 20-22 [TRN00000035].

<sup>21</sup> Hearing transcript (Mendicino), Vol. 28, 22 November 2022, p. 136, lines 19-27 [TRN00000028].

<sup>22</sup> Hearing transcript (Mendicino), Vol. 28, 22 November 2022, p. 137, lines 3-23 [TRN00000028].

<sup>23</sup> Hearing transcript (Lucki), Vol. 23, 15 November 2022, p. 252, lines 21-28, and p. 253, lines 1-28, and p. 254, lines 1-5 [TRN00000023]; Hearing transcript (Vigneault), Vol. 27, 21 November 2022, p. 135, lines 1-28 and p. 136, lines 1-28, and p. 137, lines 1-16 [TRN00000027]; Hearing transcript (Mendicino), Vol. 28, 22 November 2022, p. 138, lines 14-28, and p. 139, lines 1-9 [TRN00000028].

that a version of a police service board for the RCMP could be helpful to transition the RCMP away from being a paramilitary organization, which was a recommendation from the recent House of Commons Standing Committee examining systemic racism in policing.<sup>24</sup> Further, she offered the idea that “appointed members could provide an important opportunity to ensure diversity of representation, especially of groups that have a history of distrust of the police and have experienced over-policing from the RCMP in particular.”<sup>25</sup>

**The UBCIC recommends** that, if the POEC includes findings or observations on civilian oversight bodies in its final report:

- a. specific reference and recommendation be included, that any oversight body for police agencies include appropriate Indigenous civilian representation of First Nations, Inuit, and Métis peoples in capacities that are robust and meaningful.
- b. specific reference and recommendation be included, that accountability be embedded with clear, sanction-backed legislative requirements for police cooperation in investigations and for any oversight bodies and the police to ensure that evidence is safeguarded prior to, during, and after oversight review.

### **3. Indigenous governments and Indigenous jurisdiction in public order events or emergencies**

Policy roundtable experts noted specific areas of legislation and policy that overlap on the UBCIC’s overarching recommendation for the need to consider the *UN Declaration’s* application and implementation, but which specifically relate to the role of Indigenous governments in the invocation and use of emergency powers by other levels of government, or in management and response to emergencies. Specifically:

- a. Professor Boyle recommended that the *National Strategy for Critical Infrastructure*, which currently does not include Indigenous groups as a defined stakeholder within the policy framework,<sup>26</sup> could be improved by such inclusion,<sup>27</sup> outlining that Indigenous groups need to be brought into conversations in a more structural way.<sup>28</sup> With the presumptive premise that Indigenous governments are, alongside municipalities, often the first responders in emergency situations, Professor Boyle agreed that Indigenous governments should play a greater defined role.<sup>29</sup>
- b. Tribal Chair Sayers noted that “neither the *Emergencies Act* or the *Emergency Management Act* mentions First Nations as governments”, leading to the effect that there is “no formal role to play when emergencies arise.”<sup>30</sup> She noted that beyond the potential dangers to individual lives and the risks to First Nations’ lands, resources, and potential infringement of Section 35 rights that this poses, there is a further danger in not acknowledging First Nations’

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<sup>24</sup> Hearing transcript (Puddister), Vol. 35, 1 December 2022, p. 65, lines 12-26 [TRN00000035].

<sup>25</sup> Hearing transcript (Puddister), Vol. 35, 1 December 2022, p. 66, lines 1-4 [TRN00000035].

<sup>26</sup> Hearing transcript (Boyle), Vol. 33, 29 November 2022, p. 105, lines 13-16 and line 28, p. 106 lines 1-7 [TRN00000033].

<sup>27</sup> Hearing transcript (Boyle), Vol. 33, 29 November 2022, p. 106, lines 8-16 [TRN00000033].

<sup>28</sup> Hearing transcript (Boyle), Vol. 33, 29 November 2022, p. 134, lines 9-16 [TRN00000033].

<sup>29</sup> Hearing transcript (Boyle, MacDonnell), Vol. 33, 29 November 2022, p. 135, lines 8-17 [TRN00000033].

<sup>30</sup> Hearing transcript (Sayers), Vol. 35, 1 December 2022, p. 103, line 28 and p. 104, lines 1-6 [TRN00000035].

jurisdiction in such legislation: “[t]he danger [...] is that other governments would assume authority over the lives and lands of First Nations without their consent and without the proper background and knowledge, and usurp the authority of First Nations.”<sup>31</sup> Tribal Chair Sayers proposed that First Nations must be able to assist in defining what an emergency or critical infrastructure and services are.<sup>32</sup> Tribal Chair Sayers also illustrated some of the recent effects of legislative exclusion of First Nations governments in emergencies: from the limitations on decision-making that lack of access to information by First Nations governments causes in emergency readiness, management, and response<sup>33</sup> to impacts on First Nations’ ability to exercise jurisdiction.<sup>34</sup> Tribal Chair Sayers proposed that it is the rights holders whom should be making final decisions.<sup>35</sup>

- c. Dr. Dwight Newman noted that, in addition to the requirements of incorporating respect for Indigenous government authorities and jurisdiction, as also framed above by Tribal Chair Sayers, there is a necessity of updating of the *Emergencies Act* to set out procedural requirements for Indigenous consultation and cooperation to meet existing constitutional obligations on the duty to consult, framing this decades-long exclusion as ‘unjust’ and ‘illegal’.<sup>36</sup> He notes that it is “essential that there be incorporation within the *Act* of appropriate consultation provisions in relation to Indigenous rights-bearing communities or a constitutional standard is not being met [...]”<sup>37</sup> and beyond this, reiterates the call for the *UN Declaration Act*’s implementation in terms of its application to the *Emergencies Act* and consultation with Indigenous nations and peoples,<sup>38</sup> which Tribal Chair Sayers then expanded on, reminding that the consultation requirements post- and under the *UN Declaration* are extended, requiring in some cases consultation and collaboration leading to the free, prior and informed consent of Indigenous peoples,<sup>39</sup> and providing the reminder later on that “the duty to consult goes beyond consultation.”<sup>40</sup>

**UBCIC recommends that** the POEC include in its final report:

- a. a recommendation that the federal government review and amend the *Emergencies Act*, the *Emergency Management Act*,<sup>41</sup> and the *National Strategy for Critical Infrastructure* to include procedures for the engagement with First Nations governments, and do so pursuant to a process that is properly inclusive of all First Nations rights holders, and engages their free, prior, and informed consent as to the role they “will play in emergencies, how they are

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<sup>31</sup> Hearing transcript (Sayers), Vol. 35, 1 December 2022, p. 104, lines 7-15 [TRN00000035].

<sup>32</sup> Hearing transcript (Sayers), Vol. 35, 1 December 2022, p. 105, lines 25-28 [TRN00000035].

<sup>33</sup> Hearing transcript (Sayers), Vol. 35, 1 December 2022, p. 121, lines 9-28 and p. 122 lines 1-3 [TRN00000035].

<sup>34</sup> Hearing transcript (Sayers), Vol. 35, 1 December 2022, p. 122, lines 4-18 [TRN00000035].

<sup>35</sup> Hearing transcript (Sayers), Vol. 35, 1 December 2022, p. 152, lines 24-28 [TRN00000035].

<sup>36</sup> Hearing transcript (Newman), Vol. 35, 1 December 2022, p. 148, lines 2-28 and p. 149, lines 1-12 and 20-28, and p. 150, lines 1-12 [TRN00000035].

<sup>37</sup> Hearing transcript (Newman), Vol. 35, 1 December 2022, p. 151 lines 13-18 [TRN00000035].

<sup>38</sup> Hearing transcript (Newman), Vol. 35, 1 December 2022, p. 151 lines 18-22 [TRN00000035].

<sup>39</sup> Hearing transcript (Sayers), Vol. 35, 1 December 2022, p. 152, lines 9-17 [TRN00000035].

<sup>40</sup> Hearing transcript (Sayers), Vol. 35, 1 December 2022, p. 153, lines 16-17 [TRN00000035].

<sup>41</sup> Hearing transcript (Sayers), Vol. 35, 1 December 2022, p. 104, lines 16-18, as well as p. 106, lines 20-22 [TRN00000035].

involved in decision making, [and] what information they are provided,”<sup>42</sup> as well as capacity-building and funding to allow for implementation.

- b. a recommendation that federal government and policing agencies consult, cooperate, coordinate, and engage with First Nation governments of the territory where a specific emergency is happening,<sup>43</sup> with First Nations’ own chosen representatives, and that consultation and cooperation occur at all points (at the declaration of an emergency, making or amending orders/regulations, and revocation), and that mechanisms for participation in information-sharing and decision-making be strengthened to facilitate such cooperation.
- c. a recommendation that minimum procedural standards for meeting required “consultation” and “cooperation” be defined in emergencies legislation, but that a true definition and assessment of whether consultation and cooperation standards have been met in any case be left with the First Nation rights holders who are being engaged in a specific scenario.
- d. a recommendation that the federal government review and amend the *Emergencies Act* and the *Emergency Management Act* to include minimum standards for mandatory reporting requirements from the federal government to First Nations governments of the territory where events take place.
- e. a recommendation that standing for participation in any existing or recommended accountability mechanisms (such as the mandatory commission of inquiry) under the *Emergencies Act* include a requirement that the participation, if desired, and funding to support participation, of First Nations governments of the territory be supported.
- f. a recommendation that the federal government proactively support protocols between First Nations governments and police agencies, including the RCMP,<sup>44</sup> to address safety steps in times of emergency.

#### **4. Differential response**

In the factual hearings, Hon. Minister Mendicino agreed with the proposition put to him by UBCIC counsel that there should be distinct considerations on CSIS and the RCMP and their ability to monitor and respond with enforcement action against non-violent and unarmed First Nations people who engage in activism pertaining to their lawful and distinct rights, even in situations that might be perceived or profiled as being a public order event.<sup>45</sup>

In the policy roundtables, Dean Robert Leckey asked whether the fundamental freedoms of Indigenous peoples differ from those of others,<sup>46</sup> particularly when they involve social movements seeking to promote recognition and respect for traditional territories, lands, and resources.<sup>47</sup> He

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<sup>42</sup> Hearing transcript (Sayers), Vol. 35, 1 December 2022, p. 104, lines 18-22; also see her recommendation that “government-to-government coordination” needs to be defined in legislation to include First Nations: p. 122, lines 22-26 [TRN00000035].

<sup>43</sup> Hearing transcript (Sayers), Vol. 35, 1 December 2022, p. 153, lines 11-19 [TRN00000035].

<sup>44</sup> Hearing transcript (Sayers), Vol. 35, 1 December 2022, p. 123, lines 22-24 [TRN00000035].

<sup>45</sup> Hearing transcript (Mendicino), Vol. 28, 22 November 2022, p. 138, lines 14-26 [TRN00000028].

<sup>46</sup> Hearing transcript (Leckey), Vol. 32, 28 November 2022, p. 39, lines 26-28 [TRN00000032].

<sup>47</sup> Hearing transcript (Leckey), Vol. 32, 28 November 2022, p. 40, lines 1-3 [TRN00000032].

specified this question further, asking whether the *Charter* protections for assembly and protest be interpreted consistently with the rights of Indigenous peoples and whether section 25 of the *Charter* is any help in this regard, so that limits imposed on those fundamental freedoms do not restrict Indigenous peoples from obtaining redress for historic and ongoing violations and denial of their rights.<sup>48</sup> A response to this question, from Professor Jean-François Gaudreault-Desbiens, referenced that the sensitive 'context-based analysis' present in section 1 caselaw would cover cases involving the fundamental freedoms or claims 'of Aboriginal people' and their rights.<sup>49</sup>

In the context of expressing concern that (because of the circumstances leading up to, and the invocation of the *Emergencies Act*) government concern about critical infrastructure protection will intensify in a manner that will lead to enhanced (or new or revitalized<sup>50</sup>) police powers that will pose a threat to freedom of assembly and protest,<sup>51</sup> Professor Boyle noted that the "protection of critical infrastructure is already part of a justification to strategically suppress protest groups in Canada through pre-emptive intelligence gathering and the strategic incapacitation of protests on the ground"<sup>52</sup> and that this is the "default experience of many Indigenous protest groups [...] who challenge infrastructure projects on traditional Indigenous lands."<sup>53</sup> Professor Boyle ended this submission with the hope that the message is amplified to all levels of government that "new measures to protect critical infrastructure cannot be broad and sweeping, and cannot come at the expense of freedom of assembly and protest".<sup>54</sup>

**UBCIC recommends that** the POEC Include in its final report:

- a. a recommendation that the federal government and police services be required to uphold and implement the *UN Declaration* in public order events, especially when those events involve or are led by Indigenous peoples who are assembling to defend their rights, territories, and resources.
- b. a recommendation that a special set of factors be considered, consistent with the affirmation of rights in the *UN Declaration*, by federal government departments and agencies (such as CSIS, ITAC, Public Safety Canada) and police services, relating to the monitoring, surveillance, intelligence gathering or dissemination, and response to public order events that involve or are led by Indigenous peoples who are assembling to defend their rights, territories, and resources.
- c. a recommendation mandating that the federal government and police services receive training specific to the *UN Declaration* and Indigenous peoples' distinct legal rights, histories, and unique contexts, and that such training is designed and overseen with significant and meaningful participation with First Nations, Métis, and Inuit experts and representatives.

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<sup>48</sup> Hearing transcript (Leckey), Vol. 32, 28 November 2022, p. 40, lines 4-9 [TRN00000032].

<sup>49</sup> Hearing transcript (Gaudreault-Desbiens), Vol. 32, 28 November 2022, 2022, p. 40, lines 15-28 and p 41 lines 1-13 [TRN00000032].

<sup>50</sup> Hearing transcript (Boyle), Vol. 33, 29 November 2022, p. 118, lines 4-10 [TRN00000033].

<sup>51</sup> Hearing transcript (Boyle), Vol. 33, 29 November 2022, p. 116, lines 24-28; p 117 lines 1-2 [TRN00000033].

<sup>52</sup> Hearing transcript (Boyle), Vol. 33, 29 November 2022, p. 117, lines 3-7 [TRN00000033].

<sup>53</sup> Hearing transcript (Boyle), Vol. 33, 29 November 2022, p. 117, lines 8-11 [TRN00000033].

<sup>54</sup> Hearing transcript (Boyle), Vol. 33, 29 November 2022, p. 118, lines 16-22 [TRN00000033].

- d. a recommendation that federal government departments, such as Public Safety Canada, update their policies, strategic plans, and procedures to align these with the *UN Declaration* and conduct set periodic review for any updates, and ensure that any agencies under their mandate do likewise (for example, CSIS, the RCMP) and report both internally and externally on the scope and completion of the review and outcomes of the review.
- e. a recommendation that the *National Framework for Police Preparedness for Demonstrations and Assemblies*,<sup>55</sup> considered to be a best practices document that is created by the Canadian Association of Chiefs of Police,<sup>56</sup> be reviewed and updated in light of the *UN Declaration*, particularly as it is utilized in standardized liaison training for police, including the RCMP, and that it be re-evaluated periodically by external civilian auditors which include First Nations, Métis, and Inuit experts and representatives.
- f. a recommendation, borrowing from recommendation 38 of the Ipperwash Inquiry,<sup>57</sup> that the RCMP conduct a review of the objectives set out therein, and formally apply and expand upon them in light of the *UN Declaration* in all internal and external policies and practices.
- g. a recommendation, borrowing from recommendation 40 of the Ipperwash Inquiry, that the RCMP should commission independent, third-party evaluations of its C-IRG in British Columbia, and any other similar liaison teams, whenever they are used in a public order or protest event that involves or is led by Indigenous peoples who are assembling to defend their rights, territories, and resources. These evaluations should include significant and meaningful participation by First Nations, Métis, and Inuit representatives in their design, oversight, and analysis. These evaluations should be done after any such deployment and not only when use of force triggers review by other oversight bodies. These evaluations should include assessment of adherence to, at minimum, RCMP policy, and whether the actions were compliant with the requirements of the *UN Declaration*.
- h. a recommendation, building on prior recommendation 51 of the Ipperwash Inquiry, that the Federal government and the RCMP should actively promote public education and community information about significant Indigenous led protests where Indigenous peoples have assembled or are assembling to defend their rights, territories, and resources.
- i. a recommendation that public-facing policy on RCMP's receipt of and use of intelligence from private security firms and agents be created, and a reporting requirement that includes reporting of data on such use to oversight bodies, to the public, and to Public Safety Canada.

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<sup>55</sup> Exhibit [COM00000666].

<sup>56</sup> Hearing transcript (Emerson), Vol. 34, 30 November 2022, p. 100, lines 4-10 and p. 102, lines 25-26 [TRN00000034].

<sup>57</sup> Hon. Commissioner S. B. Linden. *Report of the Ipperwash Inquiry* (2007), Vol. 4. Recommendations: Vol. 2.

## 5. Conclusion

In conclusion, the UBCIC submits that the policy hearings framed a key matter for consideration by the Commission, namely the rights and circumstances of Indigenous peoples in public order events and emergencies. Peace, order, and stability require coordination with all governments in this context, and legal requirements of the *UN Declaration* highlight the necessity of proper processes for the statutory decision makers to engage in meaningful consultation and cooperation with First Nations leaders and governments in the territories where events occur, and prior to using emergency powers.

All of which is respectfully submitted,



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