

# Canadian government secretly arrogated new powers to invoke the anti-democratic Emergencies Act

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One year ago this week, the Justin Trudeau-led Liberal government invoked the never before used Emergencies Act to disperse the far-right “Freedom” Convoy, which had menacingly occupied downtown Ottawa and parliament’s environs for weeks. Presented by Trudeau as a defence of “democracy,” the intervening twelve months have conclusively demonstrated that the resort to emergency powers has accelerated the already far-advanced collapse of bourgeois-democratic forms of rule in Canada.

If the Convoy, led by a motley crew of fascist activists with next to no support among the population, could dominate political life for the better part of a month beginning in late January 2022, it was because powerful sections of the ruling class and the capitalist state supported and encouraged its emergence as an extra-parliamentary challenge to the elected government. These included the Conservative Party official opposition, the hard-right premiers of Alberta, Saskatchewan, and Ontario, much of the corporate media, and important elements within the police and national-security apparatus.

They built up the Convoy as a means to bulldoze over public opposition to the elimination of all remaining anti-COVID public health measures, destabilize and if possible bring down the minority federal Liberal government, and push official politics far to the right.

When the Trudeau government invoked the Emergencies Act on February 14, 2022, it claimed to be acting to defend democracy. This claim—which was amplified by the trade unions and the social democrats of the NDP, who provided the votes needed for parliamentary approval of the declaration of a public order emergency—was a lie.

In assuming authoritarian powers, the Trudeau government was ruthlessly upholding the core economic, geostrategic and political interests of Canadian capital. The Biden administration and big business were adamant that the Convoy-incited blockades of border crossings, which were crippling Canada-US trade, had to be stomped out forthwith. There were also growing concerns within the ruling class that the Convoy’s systematic flouting of the law with the all too apparent indifference, if not open support, of the police was undermining the legitimacy and authority of the capitalist state.

No sooner had the Liberal government dispersed the Convoy and restored political “stability” and the “rule of law” than it greenlighted the provinces’ dismantling of anti-COVID measures—implementing a key element in the Convoy’s anti-democratic program. And just three days after the police operation against the occupation of downtown Ottawa had concluded, the NDP-backed Liberal government joined hands with the pro-Convoy Conservatives to extend full support to the US-led NATO war on Russia—a war Canadian imperialism had helped prepare and instigate.

The *World Socialist Web Site* emphatically opposed the Liberal

government’s resort to authoritarian emergency powers. We warned that while the political taboo on their use was being broken with the immediate aim of dispersing a far-right mob, history has shown the working class cannot and must not rely on the capitalist state to defend its democratic rights. Repressive laws and emergency powers adopted in the name of suppressing the fascists will invariably be deployed, and far more systematically and ruthlessly, against the working class and the left.

Moreover, the very institutions charged by crisis-ridden, democratically elected governments like Trudeau’s with applying emergency powers—the police, intelligence agencies and military—are themselves among the most important breeding grounds for the far-right and anti-democratic conspiracies.

The validity and prescience of these warnings have been underscored by the government’s admissions and actions before the public inquiry it had to call, under the terms of the Emergencies Act, into its deployment of emergency powers.

Testimony at the just-concluded inquiry brought to light high-level support for the Convoy within Canada’s police and intelligence agencies.

However, the most important revelations were:

First, that the Liberal government secretly rewrote the Emergencies Act so as to lower the so-called legal threshold at which the government could invoke emergency powers.

And second, that the government is determined to keep secret from the Canadian public how it has rewritten the law meant to regulate when it can adopt quasi-dictatorial powers.

Spuriously invoking the principle of solicitor-client privilege, the government refused to provide even the Public Order Emergency Commission (POEC) with a copy of the Justice Department document that “reinterpreted” the more than three-decade-old act. This reinterpretation allowed Trudeau and his cabinet to “legally” suspend basic civil liberties and order private individuals and institutions to do the government’s bidding.

All of this makes a mockery of Trudeau’s claims of last February that the government would be fully transparent about its use of emergency powers, and any actions it took would be limited by the Charter of Rights and Freedoms and subject to the scrutiny of parliament and a public inquiry.

Even more importantly, it sets a chilling precedent.

As the Canadian Civil Liberties Association noted in its closing statement before the POEC, the government’s legal authority for invoking the Emergencies Act “is important not only for what it says about the events of January and February (2022), but also because of what it signals to future governments about when extraordinary powers can be used and parliamentary process can be bypassed to allow the government to rule by executive order.”

## Redefining threats to Canada’s “economic security” as “national security threats”

The Emergencies Act was adopted by parliament in 1988 as a replacement for the War Measures Act. The latter legislation had been popularly discredited by its use in 1970 by the Liberal government of the day, led by Justin Trudeau’s father, Pierre Elliott Trudeau. Claiming two *Front de Libération du Québec* kidnappings constituted “an apprehended insurrection,” the Pierre Trudeau Liberal government deployed the army to Quebec and gave police free rein to detain without charge hundreds of leftists and militant workers in no way connected with the FLQ.

At its adoption, much was made of the Emergencies Act’s supposedly exacting threshold for any government recourse to emergency powers.

Yet the current Liberal government secretly modified that threshold on the basis of a novel interpretation of the law; an interpretation that in the over three decades since the Emergencies Act was passed into law none of Canada’s governments nor any legal scholar had so much as suggested prior to last February.

Whereas the Emergencies Act explicitly states that the determination of a “public order emergency” is based on Section 2 of the Canadian Security Intelligence Service (CSIS) Act, the government secretly “reinterpreted” this on the basis of the transparently contrived and disingenuous claim that the CSIS threshold in the Emergencies Act means something different, broader and less demanding than it does in the CSIS Act.

In so doing, the government acted extra-legally, “reinterpreting”—in reality rewriting—the Emergencies Act to arrogate authoritarian powers. It did so on the basis of a secret legal opinion that even the Clerk of the Privy Council cautioned was “vulnerable to challenge.”

For more than ten months, the supposedly “progressive” trade union and NDP-supported Liberal government kept this all hidden from the Canadian people and even parliament. When the House of Commons held hearings on the invocation of emergency powers last spring, the government made no mention of its “reinterpretation” of the conditions under which it could invoke the Emergencies Act.

The first Canadians learned of this was in late November, when Canadian Security Intelligence Service Director David Vigneault, and the most senior government officials, including Justice Minister David Lametti, Finance Minister Chrystia Freeland, and Prime Minister Justin Trudeau testified before the POEC.

But this admission was coupled with the assertion, in the face of pleas from the Commission’s lawyer for “greater transparency,” that the government has the right to continue to keep secret how the law has been rewritten.

In the face of this intransigence, the Commission quickly relented. Citing time constraints, it announced that it would not turn to the courts to challenge the government’s misuse of solicitor-client privilege to keep Canadians in the dark about the greater latitude it has arrogated for invoking emergency powers. Historically, the legal principle of solicitor-client privilege has been associated with the struggle to defend citizens’ rights to legal counsel free of state surveillance and a fair trial. But the government in true Orwellian style has turned this on its head to shield the actions of the state from public scrutiny.

After Trudeau completed his testimony on Nov. 25, POEC head Justice Paul Rouleau went even further in bowing to the government. He effectively signaled his support for the government’s authoritarian secret rewriting of the law, declaring he had all the information he needed to determine the legality of the government’s actions.

Needless to say, very little was said in the POEC hearings about how the Trudeau cabinet rewrote the law. But the testimony of Lametti, Freeland and Trudeau did make clear that an important element in the government’s “reinterpretation” was to identify threats to Canada’s “economic security” as “national security threats.”

This has direct and ominous implications for working people. It would provide a ready legal justification for the government invoking emergency powers against a general strike, or even a strike that paralyzed the railways or other key economic sector, especially if workers were defying—as Ontario education workers did in November—a draconian anti-strike law.

## A lurch towards authoritarian forms of rule

There is no constituency for the protection of democratic rights within the capitalist ruling class and among its political representatives. Any concerns about the federal government’s secret assumption of repressive powers have been either perfunctory or contradictory, accompanied by appeals for more repressive government powers, or attempts to cover up the fascistic nature of the Convoy.

Thus, none of the press commentary noted that while the Trudeau government’s secret rewriting of the Emergencies Act is especially egregious, it is far from unique. In recent years, and particularly since the outbreak of the COVID-19 pandemic, the government has used secret orders-in-council to adopt laws whose contents, stipulations and purpose are hidden from the public and parliament.

Not surprisingly, the current and several former CSIS Directors were quick to second the government’s reinterpretation of the Emergencies Act. At the same time, they used the POEC as a platform to advocate for increased powers for the national security agencies.

The *Globe and Mail* has systematically downplayed the threat the Convoy posed to Canadians’ democratic rights—above all, the readiness of much of the ruling class and political establishment to support and build up a far-right extra-parliamentary movement to impose a “let it rip” pandemic policy and push politics far to the right.

None of this detracts, however, from the validity of the *Globe’s* assertion at the conclusion of a Dec. 10 editorial that allowing the government to keep secret the legal rationale for its invocation of the Emergencies Act imperils Canadians’ democratic rights. Answering the government’s claim that to waive solicitor-client privilege would be dangerous the *Globe* wrote, “The truly dangerous precedent would be to allow the government to assert that it has a basis for invoking the Emergencies Act, while using solicitor-client privilege to shield it from scrutiny. If the Liberals succeed in that attempt, it clears a path for a future administration to invoke emergency measures for reasons—secret reasons—of their choosing.”

The NDP made a pro forma call for Trudeau to waive solicitor-client privilege and release the legal opinion, then obligingly dropped the issue. This is hardly surprising. It supported the invocation of the act—indeed it declared its readiness to support its invocation even before Trudeau had announced his government would do so—and declared before the commission began its hearing that its conclusions would not impact on its deal to prop up the minority Liberal government through June 2025.

Meanwhile, the Conservatives, who consorted with and sought to use the far-right convoy to destabilize, if not unseat, the elected government are exploiting the political opening provided to them by the NDP and the trade unions to posture as defenders of civil liberties against the “authoritarian” Trudeau government.

The invocation of the Emergencies Act on a secret basis and the ensuing

public inquiry into these events mark a new stage in the breakdown of democratic rule in Canada. But this phenomenon can only be understood as one facet of global developments. Democratic norms are being abandoned across the world, with governments adopting ever more draconian anti-strike laws. The United States remains on a political knife edge, two years after Trump's attempted coup. In Germany in December 2022, a massive police raid uncovered an extensive right-wing network, extending into the fascist AFD, the second largest opposition party in the Bundestag, and the security services, to overthrow the German state and establish a right-wing dictatorship.



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