

Subject: Update on the Public Order Emergency Commission

File Number: ACS2023-CMR-OCM-0001

Report to Finance and Corporate Services Committee on 7 February 2023

and Council 22 February 2023

Submitted on January 26, 2023 by Wendy Stephanson, Interim City Manager

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Ward: Citywide

Objet : Le point sur la Commission sur l'état d'urgence

Dossier : ACS2023-CMR-OCM-0001

Rapport au : Comité des finances et des services organisationnels

le 7 février 2023

et au Conseil le 22 février 2023

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REPORT RECOMMENDATION(S)

That the Finance and Corporate Services Committee recommend City Council receive the information related to the City of Ottawa's work on the Public Order Emergency Commission, including as follows:

- a. The City of Ottawa's Institutional Report (Document 1);**

- b. The City of Ottawa’s Timeline of Events Relating to the Freedom Convoy (Document 2); and**
- c. Factual Submissions of the City of Ottawa (Document 3).**

RECOMMANDATION(S) DU RAPPORT

Que le Comité des finances et des services organisationnels recommande au Conseil municipal de prendre acte de l’information concernant les travaux de la Ville d’Ottawa en lien avec la Commission sur l’état d’urgence, notamment les documents suivants :

- a. Rapport institutionnel de la Ville d’Ottawa (document 1);**
- b. Fil des événements liés au Convoi de la liberté de la Ville d’Ottawa (document 2);**
- c. Observations factuelles de la Ville d’Ottawa (document 3).**

EXECUTIVE SUMMARY

This report provides an update regarding the City of Ottawa’s response to the Public Order Emergency Commission, which is the mandatory public inquiry called after the federal government invoked the *Emergencies Act* in response to the number of Freedom Convoy protests of early 2022. As the Auditor General is undertaking a full operational review of the City’s actions in support of the Ottawa Police Service (OPS) response to the protest in Ottawa, this report focuses exclusively on the actions of staff undertaken in response to the federal public inquiry and is intended to be the formal City record of these activities.

In the City of Ottawa, self-named Freedom Convoy participants began to arrive on January 28, 2022, and began a prolonged occupation of the downtown core to protest actions taken by the federal government. Other protests took place at various locations across the country, including at the Ambassador Bridge in Windsor, Ontario, and in Coutts, Alberta. On February 14, 2022, the federal government declared a public order emergency under the *Emergencies Act*. In Ottawa, a large public order operation, led by the OPS with support from the Royal Canadian Mounted Police, the Ontario Provincial Police and police from across the country, cleared the downtown occupation between February 18 and 21, 2022. The federal emergency declaration was revoked on February 23, 2022.

On April 25, 2022, the Prime Minister announced the establishment of the Public Order Emergency Commission as the independent federal public inquiry required by and provided for in the statute following the invocation of the *Emergencies Act*. The Commission, led by the Honourable Paul S. Rouleau, is assessing the circumstances that led to the declaration of a public order emergency, and the appropriateness and effectiveness of the measures selected by the government to deal with the situation. The Commission's final report with findings and recommendations must be submitted to the federal government by February 6, 2023. The report must be tabled in the House of Commons and Senate of Canada by February 20, 2023.

The timelines for the Commission were short. In the months after this Commission was established, it received thousands of documents, reports, presentations and other submissions from members of the public, witnesses and relevant parties. Evidence was also provided during public hearings and a policy phase. The public hearings prior to the policy phase were held in Ottawa between October 13, 2022, and November 25, 2022. Testimony was heard from more than 75 witnesses, including protest participants; law enforcement representatives; federal, provincial, and municipal government officials; and people, businesses and organizations affected by the protests.

While the OPS was the lead agency for the response to the convoy protest in Ottawa, the City of Ottawa supported the police-led response efforts and was among more than 20 parties with standing at the Commission. External counsel, Gowling WLG, were engaged by the City Solicitor on June 3, 2022. The Commission issued a summons to the City on June 13, 2022, for production of documents from 10 elected officials and City staff. On September 29, 2022, another summons was issued for appearances at the public hearings by the (now former) Mayor and his Chief of Staff, as well as two (now former) Councillors and the (now former) City Manager. The General Manager of Emergency and Protective Services also provided evidence at the public hearings pursuant to a later request. The City's public inquiry response team, which was already engaged in the response to the provincial Ottawa Light Rail Transit (OLRT) Public Inquiry, undertook the work of responding to the Commission, using a similar structure and led by the Corporate Public Policy Advisor in the City Manager's Office and the City Solicitor.

The City was a willing and engaged participant throughout the proceedings and provided submissions, witnesses and documentation further to the Commission's summonses and other requests. This report focuses on staff's high-level interactions, processes and other activities related to the Commission as the City is largely required to keep its communications and interactions with the Commission confidential and

solely for the purposes of the proceedings, in accordance with the Commission's Rules of Practice and Procedure and related undertakings.

In total, the City provided more than 30,000 records to the Commission through its external legal counsel. The City's external legal counsel also submitted several key documents to the Commission, as summarized below and attached to this report for information:

- **The City of Ottawa's Institutional Report**, which outlines the City's corporate structure, powers and Emergency Plan; the City's approach to demonstrations and to the Freedom Convoy in particular; the City's requests for assistance to the federal or provincial governments; and the impact of the protests on the City, its residents and businesses (Document 1).
- **The City of Ottawa's Timeline of Events Relating to the Freedom Convoy**, which is a timeline prepared on behalf of the City of Ottawa based on a review of documents and the recollection of certain individuals (Document 2).
- **Factual Submissions of the City of Ottawa**, which is the City's closing submission to the Commission, and sets out the City's position on matters being addressed by the Commission (Document 3).

The City's closing submission notes that the City's role during the protests consisted of supporting the police-led response; maintaining, to the extent possible, City services impacted by the Convoy; and convening representatives from other levels of government to assist. The submission notes that since the events of the Freedom Convoy, the City has worked collaboratively with the OPS to exercise authorities to create motor vehicle exclusion zones in planning for subsequent vehicle-based demonstrations. The Commission heard evidence that this approach was successful during the Rolling Thunder protest in April 2022.

To date, the City has spent \$890,840 to participate in the Public Order Emergency Commission, which includes legal fees, database and file transfer services, and minor administrative costs related to document production.

The Commission's proceedings are among various reviews being conducted with respect to the Freedom Convoy and related matters. At the municipal level, as noted, the City's Auditor General is expected to table an audit of the City's response to the convoy protest at Audit Committee in Q1 of 2023. In accordance with the usual audit process, the audit report will include management responses to the Auditor General's

recommendations, which will outline the work to be undertaken by staff with an estimated timeline for completion. The Auditor General is also conducting a separate review relating to the Ottawa Police Service's overall response, in response to a request from the Ottawa Police Services Board (OPSB), and the OPSB will receive the results of that review, in keeping with their governance mandate.

Staff will review the Public Order Emergency Commission's final report following its release. Any findings of the Commission with implications for the City will be assessed and considered in the context of the Auditor General's recommendations and management responses, and staff will provide further updates to Council as necessary. Council's formal receipt of this report ensures there is a formal record of the City's participation in the Public Order Emergency Commission.

RÉSUMÉ

Le présent rapport fait le point sur la réponse de la Ville d'Ottawa à la Commission sur l'état d'urgence, qui est l'enquête publique mandatée après que le gouvernement fédéral eut invoqué la *Loi sur les mesures d'urgence* en réponse au nombre de protestations du Convoi de la liberté au début de 2022. Étant donné que la vérificatrice générale entreprend un examen opérationnel complet des actions de la Ville à l'appui de l'intervention du Service de police d'Ottawa (SPO) aux manifestations à Ottawa, le présent rapport se concentre exclusivement sur les activités du personnel entreprises en réponse à l'enquête publique fédérale et se veut le compte rendu officiel de la Ville sur ces activités.

Dans la ville d'Ottawa, les participants du convoi (qui s'autoproclame « Convoi de la liberté ») commencent à arriver le 28 janvier 2022 et à occuper de façon prolongée le centre-ville pour protester contre les mesures prises par le gouvernement fédéral. D'autres manifestations ont eu lieu à divers endroits au pays, notamment au pont Ambassador à Windsor, en Ontario, et à Coutts, en Alberta. Le 14 février 2022, le gouvernement fédéral déclare l'état d'urgence en vertu de la *Loi sur les mesures d'urgence*. À Ottawa une vaste opération de maintien de l'ordre, menée par le SPO avec le soutien de la Gendarmerie royale du Canada, de la Police provinciale de l'Ontario et d'effectifs policiers de tout le pays, permet de mettre fin à l'occupation du centre-ville entre le 18 et le 21 février 2022. La déclaration d'état d'urgence fédérale est révoquée le 23 février 2022.

Le 25 avril 2022, le premier ministre a annoncé la création de la Commission sur l'état d'urgence, une enquête publique fédérale indépendante requise par la loi suite à

l'invocation de la *Loi sur les mesures d'urgence*. Cette commission, dirigée par l'honorable Paul S. Rouleau, évalue le fondement de la décision du gouvernement fédéral de déclarer l'état d'urgence, les circonstances qui ont donné lieu à la déclaration, ainsi que la pertinence et l'efficacité des mesures prises par le gouvernement dans ce contexte. Le rapport final de la Commission, avec ses conclusions et ses recommandations, doit être soumis au gouvernement fédéral au plus tard le 6 février 2023. Le rapport doit être déposé à la Chambre des communes et au Sénat du Canada au plus tard le 20 février 2023.

Les délais de la Commission étaient courts. Dans les mois qui ont suivi sa création, la Commission a reçu de nombreux documents, rapports, présentations et autres observations de la part de membres du public, de témoins et de parties concernées. Des preuves ont également été fournies lors d'audiences publiques et d'une phase relative aux politiques. Les audiences publiques avant la phase relative aux politiques ont eu lieu à Ottawa entre le 13 octobre 2022 et le 25 novembre 2022. Des témoignages ont été entendus de plus de 75 témoins, dont des participants aux manifestations, des représentants des forces de l'ordre, des représentants des gouvernements fédéral, provinciaux et municipaux, ainsi que des personnes, des entreprises et des organisations touchées par les manifestations.

Bien que le SPO ait été le chef de file de la réponse aux manifestations du convoi à Ottawa, la Ville d'Ottawa a soutenu les efforts d'intervention dirigés par la police et figurait parmi plus de 20 parties ayant qualité pour agir devant la Commission. L'avocat général de la Ville engage un cabinet d'avocat externe, Gowling WLG, le 3 juin 2022. La Commission a délivré une assignation à la Ville le 13 juin 2022, pour la production de documents de la part de 10 élus et employés de la Ville. Le 29 septembre 2022, une autre assignation a été remise pour la comparution aux audiences publiques de l'ancien maire et de son chef de cabinet, ainsi que de deux anciens conseillers et de l'ancien directeur municipal. Le directeur général des Services de protection et d'urgence a également témoigné lors des audiences publiques suite à une demande ultérieure. L'équipe de la Ville chargée de répondre aux demandes de renseignements du commissaire, qui participait déjà à l'enquête publique provinciale sur le réseau de train léger sur rail d'Ottawa (TLRO), a entrepris le travail de réponse à la Commission selon une structure similaire; cette équipe était dirigée par la conseillère en politiques publiques municipales du Bureau du directeur municipal et l'avocat général.

La Ville a participé activement aux procédures et a fourni des observations, des témoins et de la documentation pour donner suite aux assignations et autres demandes de la Commission. Le présent rapport se concentre sur les interactions, les processus et

autres activités générales du personnel en rapport avec la Commission, car la Ville est tenue de préserver la confidentialité de ses communications et interactions avec la Commission et seulement aux fins des procédures, conformément aux règles de pratique et de procédure de la Commission et activités connexes.

Au total, la Ville a fourni plus de 30 000 documents à la Commission par l'intermédiaire de son conseiller juridique externe. Le conseiller juridique externe de la Ville a également soumis plusieurs documents clés à la Commission, énumérés ci-dessous et joints au présent rapport à titre informatif :

- **Rapport institutionnel de la Ville d'Ottawa**, qui décrit : la structure administrative, les pouvoirs et le Plan de mesures d'urgence de la Ville; l'approche de la Ville à l'égard des manifestations et en particulier du Convoi de la liberté; les demandes d'aide de la Ville aux gouvernements fédéral et provincial; les conséquences des manifestations sur la ville, ses résidents et ses entreprises (document 1).
- **Fil des événements liés au Convoi de la liberté de la Ville d'Ottawa**, qui est une chronologie préparée pour la Ville d'Ottawa à partir d'un examen de documents et des souvenirs de certaines personnes (document 2).
- **Observations factuelles de la Ville d'Ottawa**, qui constitue le mémoire final que la Ville a présenté à la Commission, et qui expose la position de la Ville sur les questions abordées par la Commission (document 3).

Le mémoire final de la Ville indique que son rôle pendant les manifestations a consisté à soutenir l'intervention de la police, à maintenir, dans la mesure du possible, les services municipaux touchés par le convoi et à obtenir l'aide de représentants d'autres paliers de gouvernement. Le mémoire indique que depuis les événements du Convoi de la liberté, la Ville a travaillé en collaboration avec le Service de police d'Ottawa afin d'exercer ses pouvoirs en vue de créer des zones d'exclusion des véhicules motorisés en prévision de manifestations ultérieures du même type (convoi). La Commission a pu constater l'efficacité de cette approche lors de la manifestation Rolling Thunder, tenue en avril 2022.

À ce jour, la Ville a dépensé 890 840 \$ pour participer à la Commission sur l'état d'urgence, ce qui comprend des frais juridiques ainsi que des services de base de données et de transfert de fichiers, et des frais minimes pour la production de documents.

Les procédures de la Commission s'inscrivent dans le cadre des divers examens menés à l'égard du Convoi de la liberté et des questions connexes. Au niveau municipal, comme mentionné, la vérificatrice générale de la Ville devrait présenter au Comité de la vérification, au premier trimestre 2023, une vérification de l'intervention de la Ville dans le contexte des manifestations du convoi. Conformément au processus de vérification habituel, le rapport de vérification contiendra les réponses de la direction aux recommandations de la vérificatrice générale et décrira le travail à faire, avec un échéancier approximatif. La vérificatrice générale mène également un examen distinct sur l'intervention globale du Service de police d'Ottawa en réponse à une demande de la Commission de services policiers d'Ottawa, laquelle sera informée des résultats de cet examen, conformément à son mandat de gouvernance.

Le personnel examinera le rapport final de la Commission sur l'état d'urgence après sa publication. Toute conclusion de la Commission ayant des implications pour la Ville sera évaluée et considérée dans le contexte des recommandations de la vérificatrice générale et des réponses de la direction, et le personnel fournira d'autres comptes rendus au Conseil, s'il y a lieu. La réception officielle de ce rapport par le Conseil permet de conserver une trace officielle de la participation de la Ville à la Commission sur l'état d'urgence.

BACKGROUND

The Public Order Emergency Commission

The federal *Emergencies Act* was enacted in 1988. Its preamble notes that "... in order to ensure safety and security during such an emergency, the Governor in Council should be authorized, subject to the supervision of Parliament, to take special temporary measures that may not be appropriate in normal times. ..."

As such, the statute can be invoked when the government reasonably believes there is a "national emergency" as defined in the Act. Section 3 of the *Emergencies Act* provides that a "national emergency" is:

"... 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.”

Specific types of national emergencies under the statute include a public welfare emergency, public order emergency, international emergency, or war emergency.

On February 14, 2022, the federal government declared a public order emergency under the *Emergencies Act* with respect to “continuing blockades by both persons and motor vehicles that is occurring at various locations throughout Canada,” such as the City of Ottawa as well as Windsor, Ontario; Coutts, Alberta; Emerson, Manitoba; and the Pacific Highway border crossing in British Columbia. Under Section 16 of the *Emergencies Act*, a public order emergency is an emergency “that arises from threats to the security of Canada and that is so serious as to be a national emergency.” Once the government declares an emergency, it can make certain orders and regulations that it reasonably believes are necessary for dealing with the emergency.

In Ottawa, a large public order operation, led by the Ottawa Police Service (OPS) with support from the Royal Canadian Mounted Police, the Ontario Provincial Police and police from across the country, cleared the downtown occupation between February 18 and 21, 2022. The federal emergency declaration was revoked on February 23, 2022.

Subsection 63(1) of the *Emergencies Act* provides that a mandatory inquiry must be held following the invocation (and subsequent expiration or revocation) of a declaration of emergency, as follows:

63 (1) The Governor in Council shall, within sixty days after the expiration or revocation of a declaration of emergency, cause an inquiry to be held into the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency.

Under Subsection 63(2) of the statute, a report of the inquiry “shall be laid before each House of Parliament within three hundred and sixty days after the expiration or revocation of the declaration of emergency.”

On April 25, 2022, the Prime Minister announced the establishment of the Public Order Emergency Commission to conduct the mandatory inquiry into the convoy protests. The Prime Minister’s news release stated that the Commission, “will examine the circumstances that led to the declaration being issued and the measures taken in response to the emergency. This includes the evolution of the convoy, the impact of funding and disinformation, the economic impact, and efforts of police and other responders prior to and after the declaration.”

The Honourable Paul S. Rouleau was appointed as Commissioner of the Public Order Emergency Commission, which has both an investigative and policy mandate. Among other things, [Order in Council 2022-392](#), which established the Commission, specifically directed the Commissioner to examine issues with respect to:

- a) the evolution and goals of the convoy and blockades, their leadership, organization and participants;
- b) the impact of domestic and foreign funding, including crowdsourcing platforms;
- c) the impact, role and sources of misinformation and disinformation, including the use of social media;
- d) the impact of the blockades, including their economic impact; and
- e) the efforts of police and other responders prior to and after the declaration.

The Commissioner was directed “to submit to the Governor in Council a final report in both official languages on their findings and recommendations no later than February 6, 2023.” The Order in Council further requires, “that the report of the Public Inquiry into the 2022 Public Order Emergency be laid before each House of Parliament by February 20, 2023.”

In the months after the public inquiry was established, the Commission received thousands of documents, reports, presentations and other submissions from members of the public, witnesses and parties to the proceedings. Evidence was also provided during public hearings and a policy phase. The public hearings prior to the policy phase were held in Ottawa between October 13, 2022, and November 25, 2022. Testimony was heard from more than 75 witnesses, including protest participants; law enforcement representatives; federal, provincial, and municipal government officials; and people, businesses and organizations affected by the protests.

While the OPS was the lead agency for the response to the convoy protest in Ottawa, the City of Ottawa played a supporting role to the police efforts and has participated in various reviews of the convoy protests, including the Public Order Emergency Commission.

The City has been a willing and engaged participant throughout the Commission’s proceedings, and provided submissions, witnesses and documentation as required. As described in the Discussion section of this report, City staff assisted the City’s external legal counsel in responding the Commission’s summonses and other requests. External counsel set out the City’s position and provided other relevant information to the

Commission in the following documents, which are attached to this report for Council's information:

- **The City of Ottawa's Institutional Report**, which outlines the City's corporate structure, powers and Emergency Plan; the City's approach to demonstrations and to the Freedom Convoy in particular; the City's requests for assistance to the federal or provincial governments; and the impact of the protests on the City, its residents and businesses (Document 1).
- **The City of Ottawa's Timeline of Events Relating to the Freedom Convoy**, which is a timeline prepared on behalf of the City of Ottawa based on a review of documents and the recollection of certain individuals (Document 2).
- **Factual Submissions of the City of Ottawa**, which is the City's closing submission to the Commission, and sets out the City's position on matters being addressed by the Commission (Document 3).

DISCUSSION

This report provides City Council with information about the City of Ottawa's response to the Public Order Emergency Commission, and is being provided to Council to ensure there is a formal record of the City's participation in the Commission. Information is set out below regarding staff activities and costs associated with the Commission. This report focuses on staff's high-level interactions, processes and other matters related to the Commission, as the City is largely required to keep its communications and interactions with the Commission confidential and solely for the purposes of the proceedings, in accordance with the Commission's Rules of Practice and Procedure and related undertakings.

It should be noted that the provincial Ottawa Light Rail Transit (OLRT) Public Inquiry into Stage 1 of the City's light rail system was underway when the convoy protests occurred. The OLRT Public Inquiry was announced by the Government of Ontario on November 17, 2021, with the specific mandate set out by the Province in Order in Council 1859/2021, dated December 16, 2021. Proceedings of the OLRT Public Inquiry continued at the same time as much of the Public Order Emergency Commission's proceedings, prior to the release of the OLRT Public Inquiry's final report on November 30, 2022.

Given the work already underway by a small team of City staff established to facilitate the City's response to the OLRT Public Inquiry, the decision was made to have that

team also lead the response for the federal inquiry, using a similar structure. For the purposes of the federal inquiry, the seven member staff public inquiry response team was led by the Corporate Public Policy Advisor in the City Manager's Office and the City Solicitor. The team includes staff from Legal Services, Information Technology Services, the Information Management Branch, Emergency and Protective Services, Economic Development Services, and the Office of the City Clerk.

As this was only the second time the City had been a party to a public inquiry and there was a likely need to prepare for rapid response to new and unforeseen situations, an Advisory Committee composed of the City Solicitor, the City Clerk, the Chief Procurement Officer and the Associate General Manager of Emergency and Protective Services was in place to provide advice and recommendations for such unknowns. An Executive Steering Committee consisting of the City Manager; the Director, City Manager's Office; and the General Manager of Emergency and Protective Services would make final decisions where required, understanding that there would be no discretion with respect to responding to the inquiry and there was expected to be a requirement for strict confidentiality in accordance with the undertakings.

City participation in the Public Order Emergency Commission

Following the federal government's declaration of an emergency under the *Emergencies Act* on February 14, 2022, the City staff team working on the OLRT Public Inquiry response was aware that a mandatory public inquiry was required by the statute and would be called within 60 days of the government revoking the declaration. It was anticipated that the City would be engaged in the federal public inquiry, based on the municipality's supporting role and interest in the proceedings, and therefore immediate efforts were required to collect and retain records and prepare for the process. Given that the staff team, resources and infrastructure were already in place to respond to the OLRT Public Inquiry, the response to the federal inquiry could be achieved through existing resources and managed through established processes that would provide for efficiencies, streamlined processes and implementation of best practices.

Staff understood proceedings for both inquiries would likely overlap due to their timelines and anticipated deadlines. As with the OLRT Public Inquiry, there would be a need to manage quick turnaround times with respect to document production, witness identification/preparation and other requests forthcoming from the federal public inquiry, as well as any other protest-related reviews that required City participation, such as an independent evaluation by the City's Auditor General, as outlined later in this report.

Staff anticipated other similarities between the concurrent provincial and federal public inquiry processes, as well as some differences. Certain procedural differences resulted from the inquiries being undertaken by different levels of government, each of which has different practices and guiding statutes, and other differences were due to the circumstances, scope and subject matters of each inquiry. The pending convoy protest inquiry would relate to a shorter and more recent time period. That said, it involved a larger number of affected parties and a wider range of potential subject matters given that the emergency declaration had an impact on various locations outside the City, and because specific societal issues provided context for the protests.

In addition, the City's response to the convoy protest also presented jurisdictional considerations that were not a factor in the OLRT Public Inquiry. These issues related to the City's limited role with respect to police matters and the additional layer of statutory oversight of the Ottawa Police Service (OPS) through the independent Ottawa Police Services Board (OPSB). As noted above, the OPS was the lead agency for the response to the convoy protest in Ottawa. Further, there is no legal authority for Council, the Mayor or City staff to direct police or the OPSB. In this regard, the OPS and OPSB were considered to be separate entities and any records under their purview were not considered to be City records. Other jurisdictional matters requiring consideration related to the downtown location of the protest in and around the federal Parliamentary Precinct, where several agencies have various oversight responsibilities.

It was also noted that Council had already established a desired approach for receiving lessons learned and recommendations in relation to the City's response to the convoy protest through a motion approved in February 2022 that called for an independent evaluation (which came to be conducted by the City's Auditor General). Therefore, there was a need to ensure that the staff team's efforts in responding to the federal inquiry would not cause a negative impact on any work to be undertaken by the Auditor General.

To these ends, the staff response team began preliminary efforts regarding matters relating to the federal inquiry in early 2022 to understand jurisdictional matters and the overall process, and to collect and preserve anticipated documentation that would be required to respond to the eventual inquiry as well as any work undertaken by the Auditor General. An online repository was established in March 2022 to house relevant documents for review by external legal counsel, once retained, and subsequent production to the Commission/Auditor General as deemed relevant. This mirrored the process and architecture used by City staff and counsel for the OLRT Public Inquiry.

Preliminary document collection began the first week of April 2022. The initial focus of document collection was readily available items that staff understood would be relevant. These included Council and Committee minutes and reports; documents previously released in response to requests under the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA); memoranda and updates to City Council; Emergency Management governance framework and plans; Emergency Operations Centre and Emergency Operations Control Group agendas, minutes, reports, updates and action logs; and all public information materials.

Following the Prime Minister's announcement of the Commission on April 25, 2022, City Council was advised in a memorandum dated April 26, 2022, that the OLRT Public Inquiry response team "has already been working with the General Manager of Emergency and Protective Services and his team to support the work that we expect the Public Order Emergency Commission will require, understanding that the City's actions during the convoy were taken under the direction of the Ottawa Police, who had the jurisdiction to manage that situation." The memorandum also noted that, "As Council is aware, the work of the City's independent Auditor General on the City's response to the demonstration in Ottawa is already underway."

On May 26, 2022, the Commission issued a news release advising it had taken steps to begin its work, including selecting its co-lead Commission counsel. On June 1, 2022, the Commission issued a notice calling on interested parties to submit applications for standing in the public inquiry. The notice set out schedules for the proceedings and noted that, "The Commission has a very broad mandate that must be fulfilled in a very short timeframe. ... While the Commission has not yet finalized its process and procedures, it is evident that time will be of the essence. The Commission will therefore set tight timelines for the collection of materials and information. All parties will be expected to meet the deadlines imposed." The notice further discussed the approach that the Commission would take to fulfill the investigative and policy elements of its mandate. A deadline of June 15, 2022, was provided for applicants to submit standing and funding applications.

To represent and guide the City through the Commission proceedings, the City Solicitor retained Gowling WLG through the City's Standing Offer list on June 3, 2022, with Anne Tardif and Alyssa Tomkins acting as the leads on the file. External counsel was responsible for work such as:

- Establishing processes and protocols with the Commission's counsel;
- Providing document, management, storage, and transfer services;

- Coordinating the City's response to all summonses received by City officials and staff, using the file exchange protocol established by the Commission; and
- Supporting City witnesses called by the Commission, among other things.

On June 15, 2022, the City submitted an application for full standing at the Commission. The Commissioner issued a decision on the applications for standing on June 27, 2022. The decision provided standing to 20 entities, including the cities of Ottawa and Windsor, the Government of Canada, and of the provinces of Alberta, Saskatchewan and Manitoba. Other entities granted standing included groups and individuals associated with policing and law enforcement, including the OPS and former Ottawa Police Chief Peter Sloly; a group of convoy organizers and participants; and a coalition of Ottawa business and community associations. Industry and trade organizations and entities representing non-governmental organizations and civil society also received standing. Additional entities were given standing as the Commission proceeded.

The Commissioner's decision of June 27, 2022, noted that the City of Ottawa had sought full standing with respect to the following issues:

- The circumstances leading to the Proclamation;
- The appropriateness and effectiveness of the Government's measures in bringing the blockade to an end; and
- The lessons learned from the blockade and how they inform policy and legislative recommendations.

The decision stated that, "Ottawa states that it meets the criteria for standing as it was directly impacted by the blockade of Ottawa's downtown core and involved in responding to it and can provide relevant evidence and expertise."

The Auditor General's work, noted above, continued during the City's response to the Public Order Emergency Commission proceedings that followed. In addition, the staff response team also continued its concurrent work with separate external legal counsel to respond to the OLRT Public Inquiry, which held public hearings from June 13 to July 7, 2022.

Document production

On July 5, 2022, the Corporate Public Policy Advisor wrote to all Members of Council and key individuals involved in the planning and response to the Freedom Convoy. The

correspondence noted that the Commission's Draft Rules of Procedure indicated the challenging timelines it had for its work, and therefore document production timelines "will be/are tight." The emails further noted that the City would disclose the documents in the City's possession that were relevant to the Commission's mandate, and that document production would be completed shortly thereafter.

The correspondence also advised that as part of the City's document production obligations, the City would conduct an automated search on identified custodians' Office365 applications, including email, SharePoint, and Teams, to identify any relevant documents, as was done for the OLRT Public Inquiry. For any devices used to conduct City business, whether personal or City-issued, custodians were asked to identify and produce any relevant electronic communications (i.e., WhatsApp conversations, text messages, etc.), and files and images in their cloud storage (i.e., iCloud or Google). Public inquiry response team staff and Information Technology Services staff were available to provide technical support as needed. Physical files provided by custodians were scanned to allow electronic production to the Commission.

The Commission released its Document Management Protocol on July 12, 2022. This protocol outlined the specific technical specifications for digital submission of all documents to the Commission. The City's external legal counsel for the Commission provided document management services in-house, which negated the need to procure a third-party provider. Initial conversations with Commission counsel indicated that document production would be required in PDF format. After further discussion between Commission counsel and counsel for the parties granted standing, it was determined that documents would be produced in native format and that a Relativity database would be used to manage the production of documents, as had been the case for the OLRT public inquiry. Specific metadata fields were required for all documents as identified in the Document Management Protocol.

The City received its first formal summons from the Commission on July 13, 2022, which included a list of custodians identified by the Commission to the City's external legal counsel. The summons required the City to:

"produce the following "documents", which word is intended to have a broad meaning and includes all technical, corporate, financial, economic and legal information and documentation, financial projection and budgets, plans, reports, opinions, models, photographs, recordings, personal training materials, memoranda, notes, data, analysis, minutes, briefing materials, submissions, correspondence, records, sound recordings, videotapes, films, charts, graphs,

maps, surveys, books of account, social media content, or any other notes or communications in writing, and data and information in electronic form, any data and information recorded or stored by means of any device, and specifically includes communications by text message or instant messaging services such as WhatsApp, BBM Enterprise and others for the time period commencing January 1, 2022, and continuing through to March 1, 2022, in the possession, custody or control of the following document custodians,

- *Jim Watson*
- *George Darouze*
- *David White*
- *Kim Ayotte*
- *Steve Kanellakos*
- *Ryan Perrault*
- *Serge Arpin*
- *Carol Anne Meehan*
- *Rawlson King*
- *Diane Deans*

relating to the “Freedom Convoy 2022”, also known as the Trucker Convoy, which arrived in Ottawa on January 28, 2022.”

On July 15, 2022, the Commission issued its Rules of Practice and Procedure, which were subsequently revised as required during the inquiry process and included provisions with respect to document production, witness interviews, public hearings, overview reports, witness evidence, rules of examination and other procedural matters.

On July 19, 2022, the Commission advised the City through legal counsel that it required the City to produce constituency records from Members of Council. External legal counsel had devised searches that they believed would exclude these records and reduce the City’s document review burden significantly. Commission counsel did not accept this suggestion, which required the production of over 13,000 constituency records. This differed from the OLRT Public Inquiry, in which constituency records were deemed out of scope. Under the Rules of Practice and Procedure, the City’s external

legal counsel produced these records with a note identifying personal information covered by MFIPPA that would need to be redacted before it could be produced to the public.

Given the number of records to be produced and the short timelines for production, the City worked with Commission counsel throughout the production period to negotiate deadlines and keep the Commission apprised of progress. Production began on August 2 (10,820 documents) and continued August 12 (18,811 documents), August 17 (135 documents), August 22 (24 documents), August 26 (95 documents), September 22 (165 documents), and October 4 (eight documents). Additional documents were produced at the request of the Commission. A total of 30,061 documents were produced by the City of Ottawa to the Commission.

As indicated above, the City did not act for the OPSB nor the OPS in this matter. These separate entities had their own counsel, so any documents that were in the purview of the OPS/OPSB and were produced by City custodians, or through automated searches, were segregated by the City's lawyers and any production for those records was led by the relevant counsel for the appropriate entity.

Throughout the document production period, external legal counsel received a weekly listing of those City documents the Commission intended to make available to all parties on the "party database." This provided an opportunity to review the items and determine where solicitor-client, litigation or Cabinet privilege could be asserted and therefore withheld or redacted on that basis. Privilege could not be asserted for items relating to public safety. Redactions were also applied in relation to any personal irrelevant information or any information to which MFIPPA applied.

The Office of the Auditor General (OAG) received access to the City's internal document repositories used to coordinate the response to the Commission. Although an audit conducted by the Auditor General is separate and distinct from the Commission, many of the documents produced were relevant to both processes. The proactive sharing of information with the OAG ensured the Auditor General had all information being provided to the Commission, and enhanced efficiency by eliminating the burden on staff to produce the same documents multiple times. It should be noted that the Auditor General received ongoing access to all City documents produced, including documents not provided to the Commission due to privilege.

Institutional reports

The Commission received and prepared various reports and presentations in addition to documentation produced by parties and evidence given during interviews, the public hearings and the policy phase. Reports were generally meant to provide evidence and background for consideration by the Commissioner, as well as a shared understanding of legislation and core facts.

Institutional reports were created by parties at Commission counsel's request. These reports allowed participants to place facts or evidence into the public record if adopted by a representative witness as accurate. The City of Ottawa through its external legal counsel submitted two such reports: the City of Ottawa Institutional Report, dated October 5, 2022 (Document 1), and the Timeline of Events Relating to the Freedom Convoy, dated October 6, 2022 (Document 2).

The City of Ottawa Institutional Report notes that the Commission had requested the City prepare an institutional report addressing the following matters:

- The City of Ottawa's organizational structure as it relates to emergency response and response to demonstrations in general, and its response to the demonstrations in early 2022 in particular;
- The City of Ottawa's statutory authority and decision-making powers as it relates to emergency response and response to demonstrations in general, and its response to the demonstration in early 2022 in particular;
- Any requests for assistance to the federal government or provincial governments and any information it provided to the federal or provincial governments in relation to those requests and/or security concerns more generally;
- The impact of demonstrations in early 2022 on the City of Ottawa or Ottawa's residents; and
- Any other information that the City of Ottawa deemed relevant to the Commission's mandate as set out in Order in Council 2022-392.

Further to the Commission's request, the City's institutional report outlines the City's corporate structure, powers and Emergency Plan; the City's approach to demonstrations and to the Freedom Convoy in particular; the City's requests for assistance to the federal or provincial governments; and the impact of the protests on the City, its residents and businesses.

In addition, the Timeline of Events Relating to the Freedom Convoy was prepared on behalf of the City based on a review of documents and the recollection of certain individuals. The timeline is not intended to be an exhaustive list of all events, meetings, communications, and happenings relating to the Freedom Convoy. That said, it identifies events that appeared most relevant to the inquiry based on the Commission's mandate and questions posed by Commission counsel.

Witness interviews

Information about relevant City employees was provided to the Commission at the outset of its mandate through the City's application for standing. The City's external counsel later worked with Commission counsel to identify key personnel for document production, as described above, and interviews.

The Commission conducted two kinds of interviews. The first were informal interviews with key individuals. The second were direct cross-examinations held as part of the public hearings, as discussed below. For each set of interviews, City witnesses were supported by the City's external legal counsel. This support included document review and preparatory meetings. External counsel was also present at the hearings to ensure the City's privilege was not breached.

The informal interviews took place from early August through to September 2022. Seven City witnesses were interviewed, five of whom are no longer with the City: Former Mayor Jim Watson, former Councillors Catherine McKenney and Mathieu Fleury, former City Manager Steve Kanellakos, and Serge Arpin, the former Mayor's Chief of Staff. Kim Ayotte, the General Manager of Emergency and Protective Services, and David White, the City Solicitor, were also interviewed by Commission counsel during this period. Interview summaries were drafted by Commission counsel for each individual, reviewed and modified as appropriate by City external counsel and then introduced as exhibits throughout the public hearing process.

Public hearings and public input

Public hearings began in Ottawa on October 13, 2022, and continued until November 25, 2022, prior to hearings with respect to the policy phase.

The Commission examined more than 75 witnesses. Six City of Ottawa witnesses appeared, most of them further to a summons issued by the Commission on September 29, 2022. City witnesses included former Councillors McKenney and Fleury (October 14), Mr. Kanellakos and Mr. Arpin (October 17) and former Mayor Watson and Mr.

Ayotte (October 18). Former Councillor Diane Deans also appeared before the Commission (October 19) in her capacity as the former Chair of the OPSB.

Other witnesses included protest participants, law enforcement representatives, federal, provincial, and municipal government officials, and people, businesses and organizations affected by the protests.

The City's external legal counsel was present throughout the public hearings to represent the City and to put questions to witnesses as required. Proceedings were webcast daily on the Commission's website, publicorderemergencycommission.ca. Witness transcripts and webcast recordings of the proceedings can be found at the Commission's website.

The Commission also conducted a public submission process between August 18 and October 31, 2022. Members of the public were invited to provide the Commission with their experiences, views, observations, and ideas regarding the circumstances that led to the declaration of a public order emergency and the measures taken for dealing with the declared emergency.

Policy phase

On November 28, 2022, the Commission began the policy phase of its hearings. The policy phase consisted of a series of roundtable discussions with panels of experts to assist the Commissioner with the development of recommendations related to all aspects of the Commission's mandate, including the use of the *Emergencies Act*, any necessary modernization to the Act, as well as recommendations on areas for further study or review to fulfil this part of the Commission's mandate.

The roundtable discussions were informed by a series of commissioned papers that discussed matters including as follows:

- Fundamental Rights and Freedoms at Stake in Public Protests, and their Limits;
- Financial Governance, Policing, and Intelligence;
- Misinformation, Disinformation, and the Role of Social Media;
- The Protection of Flows of Essential Goods and Services, Critical Infrastructure and Trade Corridors;
- National Security and Public Order Emergencies;
- Policing of Public Protests;
- Police-Government Relations;
- Interjurisdictional Responses to Protests and Emergencies; and

- Thresholds, Powers, and Accountability under the *Emergencies Act*.

External counsel were not permitted to question the panel directly but were permitted to provide comment on the commissioned papers.

The policy phase continued until December 2, 2022, and was webcast daily. Copies of the webcasts and transcripts can be found on the Commission's website.

Closing submission

On December 9, 2022, the City's external counsel provided the Commission with the Factual Submissions of the City of Ottawa (Document 3). The closing submission sets out the City's position on matters being addressed by the Commission, with references to the evidence.

The submission notes that the Freedom Convoy "was an unprecedented, volatile, and fluid event," and that, "There was no debate during the factual phase of the inquiry that the Ottawa Police Service was the lead agency in responding to the Freedom Convoy."

The submission further notes that the City cannot direct police or the OPSB. It states that the City's role during the protests was to support the police-led response; to maintain, as much as possible, impacted City services; and to convene representatives from other levels of government to assist. The submission states: "The evidence at the hearing was that the City fulfilled the above roles. There was no question that the City supported the police-led operation when and as requested, including by advocating for additional police officers to support OPS and by negotiating with some of the protesters. The City was also a key participant at the tripartite meetings, and worked collaboratively with federal and provincial counterparts."

The closing submission notes that since the events of the Freedom Convoy, the City has worked collaboratively with the OPS to exercise authorities to create motor vehicle exclusion zones in planning for subsequent vehicle-based demonstrations. The Commission heard evidence that this approach was successful during the Rolling Thunder event in April 2022. The submission notes that, "These zones have served to protect residents and businesses by preventing another occupation. At the same time, they support lawful protest and peaceful assembly by allowing protesters to park and travel to the protest site on foot or via public transit."

City costs of responding to the Commission

To date, the City has spent \$890,840 to participate in the Public Order Emergency Commission, which includes legal fees, database and file transfer services, and minor administrative costs related to document production.

Other post-protest reviews

Federal Committee reviews

Other reviews regarding matters relating to the Freedom Convoy have occurred at federal Committees around the same time as the Public Order Emergency Commission proceedings, and have heard from City representatives as witnesses. These include as follows:

- The Special Joint Committee on the Declaration of Emergency – As part of Committee hearings relating to a “Review of the Exercise of Powers and the Performance of Duties and Functions Pursuant to the Declaration of Emergency that was in Effect from Monday, February 14, 2022, to Wednesday, February 23, 2022,” former Mayor Watson, former Councillor Fleury, Mr. Kanellakos and Mr. Ayotte appeared before the Committee on October 27, 2022.
- The Standing Committee on Procedure and House Affairs – As part of Committee hearings relating to, “Expanding the Federal Jurisdiction for the Operational Security of the Parliamentary Precinct to include Sections of Wellington St and Sparks St,” former Councillor McKenney appeared before the Committee on May 31, 2022. Mr. Kanellakos and Renée Amilcar, General Manager, Transit Services, appeared before the Committee on June 9, 2022.

To ensure a consistent approach and manage scheduling of appearances and other issues arising from the concurrent processes of the federal Committees and the Public Order Emergency Commission, the City’s external legal counsel for the Commission also provided support with some of the response to the Committee matters. Staff are monitoring these additional reviews should any matters with implications to the City arise in any recommendations.

Audit of the City’s response to the convoy protest

Further to the Auditor General’s work noted above, an audit of the City’s response to the convoy protest is expected to be tabled at Audit Committee in Q1 of 2023. As outlined

below, the audit arises from Council's approval of an independent evaluation of the City's response and a request from the City Manager.

- On February 7, 2022, Council approved Motion No. 69/13, which in part provided that the City “commissions an independent evaluation of the response to the occupation of the City of Ottawa with a view to better overall governmental agencies response to planning, coordination, communications, sharing of resources including deployment ...” The motion further provided that Council request the OPSB take part in the review.
- On March 28, 2022, the OPSB approved a motion, as amended, to “formally extend an invitation to the Auditor General to lead the review of the Ottawa Police Service’s overall response ...” The motion further stated that the OPSB “recommend that City Council also request the Auditor General to conduct the City of Ottawa’s review...”
- On March 29, 2022, the City Manager issued a memorandum to Council advising that he had requested that the Auditor General undertake the independent evaluation of the City’s response as directed by Motion No. 69/13. That same day, the Auditor General issued a memorandum to various recipients, including Members of Council, which outlined the OPSB motion and request from the City Manager, advised of the Auditor General’s duties and powers, and stated that, “Taking these duties and powers into consideration I believe my Office is well suited to perform this engagement.” The memorandum further stated that the Office of the Auditor General “will take the necessary time required to perform a thorough audit.”
- In an update issued June 24, 2022, the Auditor General advised Members of Council and other recipients that her Office had been “coordinating our work for this audit with other agencies performing a similar scope of work, including the Public Order Emergency Commission, to avoid duplication of efforts and ensure appropriate spending of taxpayer dollars.”

Commission’s final report and next steps

As noted above, Council’s formal receipt of this report ensures there is a formal record of the City’s participation in the Public Order Emergency Commission. The Commission is expected to submit its final report to the federal government by February 6, 2023. The Commission’s final report must be tabled in the House of Commons and Senate of Canada by February 20, 2023.

In addition to the Commission's final report, the Auditor General is expected to table an audit of the City's response to the convoy protest at Audit Committee in Q1 of 2023, as described above. In accordance with the usual audit process, the audit report will include management responses to the Auditor General's recommendations, which will outline the work to be undertaken by staff with an estimated timeline for completion.

Staff will review the Public Order Emergency Commission's final report once it is released. Any findings and recommendations of the Commission with implications for the City will be assessed and considered in the context of the Auditor General's recommendations and management responses, and staff will provide further updates to Council as necessary.

FINANCIAL IMPLICATIONS

The total expenses related to the City's cost of the Public Order Emergency Commission review will be reported through the 2022 Disposition of 2022 Tax and Rate Supported Operating Surplus/Deficit in early quarter two of 2023 and any subsequent 2023 cost will be reported through the Quarterly status reports in 2023.

LEGAL IMPLICATIONS

There are no legal impediments to receiving this report for information.

COMMENTS BY THE WARD COUNCILLOR(S)

This is a City-wide report.

ADVISORY COMMITTEE(S) COMMENTS

There are no comments or recommendations from any Advisory Committee(s).

CONSULTATION

As this is a process report, no specific consultation was conducted. That said, staff monitored the public meetings and public hearings conducted by the Public Order Emergency Commission.

ACCESSIBILITY IMPACTS

As noted in Document 1, being the City of Ottawa's Institutional Report, the impact of the Convoy on Ottawa's residents, particularly those who live in the downtown core, was well-documented in the media and in the thousands of emails sent to elected officials at the City during the relevant time. City staff documented common and

persistent impacts to residents, including seemingly never-ending noise from horns, fumes from idling trucks, issues with food security, transportation, safety, and mental health.

For more information about the impact on residents with disabilities, see section 5 of Document 1, being the “Impact of Demonstrations in Early 2022 on the City of Ottawa, its Residents and Businesses.” In particular, several accessibility impacts are described under subsection ii, being “Impact on Health.” This includes impacts on people with disabilities, isolation and mental health challenges, the effects of air pollution, and the impact on health care workers and the healthcare system. Additional information about the City’s supports to people with disabilities are described in subsection i, titled, “Vulnerable People: Human Needs Command Centre and Human Needs Task Force.”

RISK MANAGEMENT IMPLICATIONS

There are no risk implications.

RURAL IMPLICATIONS

There are no specific rural implications associated with this report.

TERM OF COUNCIL PRIORITIES

There are no direct impacts to any term of Council priority in this report.

SUPPORTING DOCUMENTATION

Document 1 – City of Ottawa’s Institutional Report

Document 2 – City of Ottawa’s Timeline of Events Relating to the Freedom Convoy

Document 3 – Factual Submissions of the City of Ottawa

DISPOSITION

Staff will undertake the implementation of any decisions made by Council as a result of this report.