Interjurisdictional Accountability for Interjurisdictional Problems

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ABSTRACT

Emergencies in Canada are necessarily interjurisdictional affairs. They require multiple levels of government to play active roles at all stages of emergency management. The Rouleau Report documented numerous interjurisdictional failures in the 2022 Public Order Emergency, but the mandate and process limited the Commission's investigation of these issues. This commentary examines how past inquiries and long-standing practices in Canadian environmental law could serve as a model to improve interjurisdictional governance and accountability in emergencies. In particular, it recommends amending Section 63 of the *Emergencies Act* to empower the federal government to constitute a joint inquiry with other affected jurisdictions, including Indigenous Nations, to improve oversight, accountability and learning whenever the federal government invokes the *Emergencies Act*.

I. INTRODUCTION

A unique and laudatory feature of the federal *Emergencies Act* is its layered accountability for the declaration of a national emergency and the exercise of emergency powers. With defined roles for parliamentary ratification and revocation, ongoing oversight of emergency measures, and an after-the-fact inquiry, there is ample

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opportunity for the federal government's role in addressing the circumstances of the emergency to be carefully scrutinized from multiple perspectives. This layered accountability was intentional; indeed, it was a dominant theme in the parliamentary debates leading to the enactment of the *Emergencies Act*. These layers of accountability built into federal legislation are a welcome contrast to past federal emergency legislation, current provincial and territorial legislative counterparts, and comparator legislation of countries around the world.[1]

This commentary focuses on one accountability mechanism in particular: the *Emergencies Act* section 63 requirement to hold an Inquiry "into the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency."[2] Neither the Act nor legislative debates delineate the exact purposes of the inquiry. However, extensive Canadian experience with commissions of inquiry suggest that such a requirement promises to inform the public about the events that transpired through rigorous fact finding, to investigate particular and structural causes of the events and to cut through institutional barriers that might otherwise prevent a thorough understanding of the events leading to the use of emergency powers and their implementation.[3] Indeed, MP Blackburn commented in the legislative debates that the inquiry requirement means "Canadians will not be kept in the dark after the emergency is over."[4]

While important criticisms of commissions of inquiry exist and lessons from past inquiries should always be heeded, this commentary builds from the premise that the *Emergencies Act*'s time-bounded and mandatory inquiry is a very good thing.

Aiming to strengthen this important feature of the *Emergencies Act* for future emergencies, I focus on how the mandatory inquiry can reflect the interjurisdictional context in which the federal government's role in emergency management necessarily unfolds. As we saw during the 2022 convoy events and through the inquiry, multiple levels of government

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[1] POEC Final Report, Volume 1, p 188, online: publicorderemergencycommission.ca/files/documents/Final-Report/Vol-1-Report-of-the-Public-Inquiry-into-the-2022-Public-Order-Emergency.pdf ['Final Report Vol 1'].

[2] *Emergencies Act*, RSC 1985, c 22 (4th Supp), s. 63(1).

[3] Michael J. Trebilcock & Lisa Austin, "The Limits of the Full Court Press: Of Blood and Mergers" (1998) 48:1 *UTLJ* 1 at 8; Kim Stanton, *Reconciling Truths: Reimagining Public Inquiries in Canada* (Vancouver: UBC Press, 2022) at 12-13.

[4] House of Commons Debates, 33-2, vol 12 (25 April 1988) at 14768 (Hon Derek Blackburn).

played active roles in attempting to manage the emergency response – acting and reacting to measures exercised and enforced (or not) by other jurisdictions. Moreover, as reflected in the *United Nations Declaration on Indigenous Peoples,* Indigenous peoples have their own self-determined responses to emergencies that interact with those of settler governments when emergencies unfold on Indigenous lands and with Indigenous peoples.[5] As I touch on below, emergency management is inevitably an interjurisdictional phenomenon, which necessitates strong intergovernmental relationships, coordination and accountability.

Interjurisdictional accountability is notoriously tricky. Commentators have long observed how intergovernmental coordination and cooperation effectively evades mechanisms for both legal and political accountability.[6] While there is no easy institutional response to these challenges, in some instances, a joint inquiry may be a desirable and effective response to the simultaneous use of emergency powers by multiple governments. Adapting the inquiry requirement of the *Emergencies Act* to enable a joint inquiry better reflects the interjurisdictional nature of challenges of emergency governance, while staying comfortably within the sphere of federal constitutional authority.

II. Interjurisdictional Challenges and the 2022 Public Order Emergency Commission

The Public Order Emergency Commission (POEC) faced jurisdictional tension: it was a federal commission, constituted under federal legislation and accountable to the Parliament of Canada. As a mechanism of accountability under the federal statute, its work needed to focus on the federal response to convoy events. This was an unprecedented use of the

[5] APTN National News, "Algonquin Nation issues statement saying it 'does not support' ceremony, and truckers convoy actions on traditional territory' (2 Feb 2022), APTN online:<www.aptnnews.ca/national-news/algonquin-nation-truckers-convoy-traditional-territory-ottawa/>; United Nations Declaration on the Rights of Indigenous Peoples, GA Res 295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295 (2007), Articles 4 and 18.

[6] Johanne Poirier, "Intergovernmental Agreements in Canada: At the Crossroads between Law and Politics" in Peter Meekison et al eds, *Reconsidering the Institutions of Canadian Federalism: Canada, the State of the Federation 2002* (Kingston/Montreal: McGill-Queen's University Press, 2004) 425; Janina Boughey, "Executive power in emergencies: Where is the accountability?" (2020) 45:3 Alternative LJ 168, online: journals.sagepub.com/doi/full/10.1177/1037969X20950514.

Emergencies Act. Past lessons from the use of federal emergency powers – in particular, the FLQ crisis and the treatment of Japanese Canadians during and after World War II – underscore the ever-present need to guard against federal executive overreach and human rights abuses. In those historic moments, criticism was directed squarely at the federal government for the excessive use of emergency powers.

A singular jurisdictional focus does not align with the multi-jurisdictional emergency response to the convoy. Three levels of government declared states of emergency and exercised emergency powers under emergency legislation in response to the convoy: the municipalities of Ottawa and Windsor,[7] the province of Ontario, and the federal government. In addition, Nova Scotia and New Brunswick exercised emergency powers in relation to the convoy and blockades under pre-existing declarations of emergency for the pandemic.[8] Municipalities and Indigenous jurisdictions across the country were engaged in policing and emergency management in relation to the convoy and blockades.[9] In short, the POEC was confronted with potential issues of both federal overreach and also municipal, provincial and federal failure to prevent or, at least, adequately curtail the events that led to the federal government's declaration of emergency.[10] Indeed, the failures of multiple governments and agencies dominated the POEC's Final Report, leading Commissioner Rouleau to label the situation "a failure in federalism."[11]

The blending of these accountability issues—federal overreach with multi-jurisdictional mismanagement—created challenges for the POEC. Multiple levels of government were implicated and had relevant information and perspectives essential to an accurate recounting of the

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[7] Jocelyn Stacey, "Commissioned Paper: Governing Emergencies in an Interjurisdictional Context" (2022) Public Order Emergency Commission, online: <publicorderemergencycommission.ca/files/documents/Policy-Papers/Governing-Emergencies-in-an-Interjurisdictional-Context-Stacey.pdf> [Stacey, "Interjurisdictional"].

[8] Public Order Emergency Commission Final Report, Vol 2 p 347, 349-351, online: publicorderemergencycommission.ca/files/documents/Final-Report/Vol-2-Report-of-the-Public-Inquiry-into-the-2022-Public-Order-Emergency.pdf ['Final Report Vol 2'].

[9] *Ibid.* at 332-351. While not a rights and title-holder, the Union of British Columbia Indian Chiefs (an Indigenous leadership organization), called on the federal government to invoke the *Emergencies Act*: Grand Chief Stewart Phillip, "URGENT OPEN LETTER: Call for Immediate Action to End Dangerous Freedom Convoy" (10 Feb 2022) online: www.ubcic.bc.ca/urgent_open_letter_call_for_immediate_action_to_end_dangerous_freedom_convoy.

[10] See, in particular, the Commission's findings on Ontario's lack of engagement on the Ottawa emergency response: POEC Final Report, Vol 1, *supra* note 1 at 174-5.

[11] *Ibid* at 175 (endorsing the phrase used by Professor Leah West).

events, and yet not all participated fully. The federal government fully cooperated with the POEC's investigation,[12] facing significant political stakes if it were seen to avoid scrutiny under its own legislation. But other governments were not in the same political shoes.

Ontario's refusal to fully participate in the POEC's investigation, despite its pivotal role in the events leading up to the invocation of the federal Act, presented particular challenges to the POEC. Ontario did not apply for standing before the POEC – a status that comes with both privileges (for example, notice and comment, cross-examination) and responsibilities (for example, document disclosure). While Ontario did eventually submit documentary evidence to the POEC, Premier Ford and the former Attorney General of Ontario refused to appear as witnesses at the public hearings. They declined to attend voluntarily[13] and they successfully invoked parliamentary privilege when the summoned by the POEC.[14] In the end, the POEC's Final Report noted matter-of-factly, "[t]he Commission would have greatly benefited from the perspective that their [the Premier and solicitor general] testimony could have provided."[15]

Publicly, Premier Ford defended his position by framing this as an issue of jurisdiction: "This is a federal inquiry into the federal government's decision to use the federal *Emergencies Act*. From day one, for Ontario, this was a policing matter; it was not a political matter."[16] The strategy of incomplete participation seems to have worked in part. It hampered Commissioner Rouleau's ability to make pointed recommendations directed at Ontario's high-level involvement in emergency response. While many of the 56 recommendations in the Final Report *are* directed at the Government of Ontario, these are all in relation to policing, likely reflective of Ontario Provincial Police participating in the POEC's work.[17] None of

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[12] The POEC recommended reforms to the *Emergencies Act* to confirm full federal government participation in future *Emergencies Act* commissions, such as requiring the federal government to provide to the Commission all inputs into its decision to invoke the Act (Recommendation 43) and prohibit federal Parliamentarians from relying on Parliamentary privilege (Recommendation 49).

[13] Shantona Chaudhury and Jeff Leon, Letter to Counsel, 24 October 2022, Public Order Emergency Commission, online: *Twitter* <twitter.com/DavidWCochrane/status/1584615291060776960>.

[14] Ontario (Premier) v. Canada (Commissioner of the Public Order Emergency Commission), 2022 FC 1513.

[15] Final Report, Vol 1, *supra* note 1 at 176.

[16] Ontario, Legislative Assembly, Question Period: Public Order Emergency Commission, 43-1, No 20A (26 October 2022) at 869 (Hon Doug Ford).

[17] Final Report, Vol 1, *supra* note 1 at 254-6 (Recommendations 5, 6, 7, 8, 9, 10 and 13).

the recommendations pertain to the gaps and weaknesses in Ontario's use of emergency powers in response to the convoy, evidencing the limitations of the federal scope of the inquiry and Ontario's tactic of incomplete participation. It is also worth noting that the use of emergency powers in New Brunswick and Nova Scotia received no scrutiny at all.[18]

The exercise of emergency powers by municipal, provincial and Indigenous governments prior to federal involvement is not anomalous. Rather, it is a core feature of emergency management in Canada. As stated in Canada's guide to intergovernmental emergency coordination:

> In an emergency, the first response is almost always by the local authorities or at the provincial or territorial level because disasters occur most often locally. Should a provincial or territorial government require resources beyond their capacity to cope in an emergency or disaster, the federal government responds rapidly to any request for assistance by a provincial or territorial government.[19]

Reflecting a "pyramidal"[20] or scaled approach, emergencies are handled first by the government closest to the event, with regional, provincial or territorial support, and then federal support is sought only when capacities to respond are exceeded. Put simply, in nearly any instance in which the federal government invokes the *Emergencies Act,* other levels of government will also be engaged in emergency response.

Indeed, the *Emergencies Act* anticipates the multi-jurisdictional nature of most circumstances that would require the use of the Act. To declare a national emergency under the Act, the situation must (in some instances) "exceed the capacity or authority of a province to deal with it."[21] Accordingly, when the federal government purports to rely on this definition in the Act, an analysis of the provincial role and response is necessary. In addition, the Act requires—for three of four categories of emergency—the federal emergency measures to be implemented in "a manner that will not unduly impair the ability of any province to take measures, under an Act of the legislature of the province, for dealing with

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[18] For Rouleau's description of these powers, see Final Report, Vol 2, *supra* note 8 at 347-351.

[19] Public Safety Canada, An Emergency Management Framework for Canada, 3rd ed (Ottawa: Public Safety Canada, 2017), online <www.publicsafety.gc.ca/cnt/rsrcs/pblctns/2017-mrgnc-mngmnt-frmwrk/2017-mrgnc-mngmnt-frmwrk-en.pdf> at 10.

[20] Luc Juillet & Junichiro Koji, "Policy Change and Constitutional Order: Municipalities, Intergovernmental Relations, and the Recent Evolution of Canadian Emergency Management Policy" in Dan Henstra ed, Multilevel Governance and Emergency Management in Canadian Municipalities (Montreal & Kingston: McGill-Queen's University Press, 2013) 25 at 31-2.

[21] *Emergencies Act*, *supra* note 2, s.3(a).

an emergency in the province" and "with the view of achieving, to the extent possible, concerted action with each province with respect to which the power, duty or function is exercised or performed."[22] Put simply, any assessment of the appropriateness of the federal government's use of the *Emergencies Act* engages a multi-jurisdictional legal and political matrix. Ambiguously, the provision of the Act that mandates the inquiry requires an investigation into the "circumstances that led to the declaration" and does not limit these circumstances to the federal role prior to the invocation of the Act.

As the Final Report describes in some detail, the 2022 events demonstrate the need for stronger and more effective intergovernmental coordination mechanisms for emergency management in this country. Many of the 56 recommendations in the Final Report address the need for improved coordination and cooperation. Moving in this direction only enhances the necessity of interjurisdictional accountability mechanisms that match corresponding interjurisdictional responses. As we will see below, it is possible for Parliament to make constitutionally-permissible reforms to the *Emergencies Act* to enable forms of interjurisdictional accountability.

III. Possibilities for Interjurisdictional Accountability in the *Emergencies Act*

What possibilities exist for reforming the *Emergencies Act* to ensure that future inquiries reflect the multi-jurisdictional nature of emergency governance? We can draw from past experience with joint inquiries and related mechanisms to foster interjurisdictional accountability in the context of emergency powers.

Consider the following possible addition to the *Emergencies Act*:

> 63(1.1) The Governor in Council may enter into an agreement with another jurisdiction that has exercised powers in response to the events leading to the invocation of the *Emergencies Act,* respecting the joint establishment of an inquiry in order to fulfill its obligations under section 63(1).
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> (1.2) Any agreement referred to under section 63(1.1) must comply with the requirements of this Act.
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> (1.3) Any agreement referred to under section 63(1.1) must be made public.

The effect of such a provision would be to empower the federal government to work with other jurisdictions who have been involved in emergency governance – Indigenous, provincial, territorial, municipal – to jointly constitute an independent inquiry which can address the full

[22] *Ibid.* s.8(3) [public welfare emergency], s.19(3) [public order emergency], s.30(2) [international emergency].

interjurisdictional picture of the emergency events. A joint inquiry would work to increase the expectation and public pressure on all governments to fully cooperate in achieving its investigatory aims as well as receive and respond to resulting recommendations.

There are several caveats and limitations to note before giving examples of how joint inquiries and related mechanisms have been effective in other contexts. First, such a reform to the *Emergencies Act* should be in addition to other reforms to strengthen the inquiry requirement (for example, ensuring the inquiry has at least the protections and powers afforded under the *Inquiries Act*).[23] Any joint inquiry must be an option for fulfilling the requirements of the *Emergencies Act*, not derogating from them. Indeed, a joint inquiry should rachet up to the most rigorous standards across participating jurisdictions, rather than sink to the lower standard. Second, a joint inquiry mechanism can only be optional. Parliament can order the federal executive to convene and participate in a commission of inquiry, but it would be a constitutional overstep to attempt to compel another jurisdiction to jointly convene an inquiry.[24] Moreover, it is important that the federal government retain the ability to move ahead unilaterally if the circumstances require. It is entirely foreseeable that one party will lack the motivation or political incentive to come to the table and could undermine the purpose and function of an inquiry, if cooperation were mandated. Third, administrative complexity needs to be worked out in advance as part of the regulatory and policy infrastructure for the *Emergencies Act*. This is to ensure that questions about cost-sharing and approvals of commission requests do not become unnecessary flashpoints and opportunities for partisan grandstanding that undermine the legitimacy of a commission of inquiry and impede its ability to do its work.[25] Finally, the arguments for this reform at the federal level apply with greater strength to provincial and territorial emergency management legislation which currently lack *any* requirements for comprehensive, independent reviews of the use of emergency powers.[26] Equivalent reforms to mandate independent inquiries[27] and enable joint inquiries at the provincial and territorial level are a needed, complementary step toward interjurisdictional accountability.

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[23] Final Report, Vol 1 *supra* note 1 at 262-4 (Recommendations 37-50).

[24] Not to mention a sure-fire way to generate ill-will and resistance.

[25] David M. Grenville, "The Role of the Commission Secretary" (1989-1990) 12:3 Dal L J 51 at 54.

[26] No provincial or territorial legislation contains this as a requirement: Stacey, "Interjurisdictional", *supra* note 7 at 10-11.

[27] Final Report, *supra* note 1 at 262-4 (Recommendations 37-49).

Canada has ample experience with joint inquiries, assessments and hearings that support the case for interjurisdictional accountability for interjurisdictional problems. The fact that an inquiry is jointly constituted does not guarantee a fair and inclusive process nor effective recommendations and reforms. However, despite their imperfections, some prominent joint inquiries have generated transformative governance reforms in areas of shared jurisdiction.

For instance, the Krever Inquiry on the Blood System in Canada, was constituted by the Governments of Canada, Ontario, Prince Edward Island and Saskatchewan. The reason for its joint structure was precisely to ensure that the Commission could inquire into matters spanning beyond federal jurisdiction.[28] Public health — like emergencies — is a multijurisdictional endeavour. Parties to the Commission agreed that past harms and ongoing risks arose from a lack of clarity in the basic governance of the Canadian blood system.[29] The Krever Commission proposed a complete governance overhaul of the Canadian blood system, recommendations adopted and implemented with considerable success.[30]

The Joint Canada-Newfoundland & Labrador Royal Commission into the *Ocean Ranger* Marine Disaster, also generated new reforms – now implemented – that are hard to imagine emerging outside of a cooperative process.[31] In response to the tragic sinking of an offshore drilling unit resulting in the loss of all 84 crew members, the Royal Commission found significant regulatory gaps: three levels of government (Canada, Newfoundland & Labrador, and the United States), each thought the other was responsible for ensuring the safety of the rig.[32] One outcome of the disaster, and the Royal Commission that followed, was the establishment of

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[28] Canada, *Final Report of the Commission of Inquiry on the Blood System in Canada* (Ottawa, 1997) (Chair: Horace Krever) at 1090, online: publications.gc.ca/site/eng/9.698032/publication.html ['Krever Final Report'].

[29] See, e.g., ch 37 and 38 of the Krever Final Report *Ibid.*

[30] Kumanan Wilson, "The Krever Commission — 10 years later" (2007) 177:11 *Can Medical Assoc J* 1387. Wilson also notes that, although the legacy of the Commission has been a positive one for public health, it is also costly and the cost has been a source of ongoing tension with provincial and federal governments: Kumanan Wilson, Jennifer McCrea-Logie & Harvey Lazar, "Understanding the Impact of Intergovernmental Relations on Public Health: Lessons from Reform Initiatives in the Blood System and Health Surveillance" (2004) 30:2 *Can Pub Pol'y* 177 at 186-187.

[31] Canada, *Royal Commission on the 'Ocean Ranger' Marine Disaster* (St. John's, Nfld, 1984) at iii, iv, online: publications.gc.ca/site/eng/9.818922/publication.html

[32] *Ibid.* at 143.

a single regulatory agency, with a clear mandate for ensuring safety: The Canada-Newfoundland and Labrador Offshore Petroleum Board.[33]

Alongside this experience with joint inquiries, stands the well-worn practice of joint impact assessments of major development projects in Canadian environmental law.[34] Environmental impact assessment is a detailed process, required by statute, to investigate and predict the impacts of a major development proposals (for example, a hydroelectric dam or pipeline) and inform the ultimate government decision on whether to approve a proposed project and, if so, on what conditions. Like emergency governance, environmental impacts transcend jurisdictional spheres of authority. Like emergency governance, environmental impact assessment is at once both deeply technical and hugely political.[35]

Joint assessments are designed to fulfill the requirements of each jurisdiction's environmental impact assessment legislation while operating with significant independence of government. According to an expert report conducting a comprehensive review of federal impact assessment, "the best examples of co-operation among jurisdictions have been joint review panels, backed up by general co-operation agreements between Canada and many provinces."[36] The expert report recommended expanding this mode of cooperation in impact assessment.

In principle, joint impact assessments enable a comprehensive review of interlinked environmental, social, health, cultural and economic impacts of development, regardless of whether these impacts fall within provincial or federal spheres of constitutional authority. Even when controversial proposals are ultimately approved for development, these comprehensive and independent assessments have enhanced public education, facilitated judicial review, and generated significant public pressure on government.[37]

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[33] *Canada–Newfoundland and Labrador Atlantic Accord Implementation Act*, SC 1987, c 3. The creation of a new regulatory agency was not a specific recommendation of the Royal Commission. But the Joint Commission helped reinforce the jurisdictional gaps and conflicts and keep up the pressure on Canada and Newfoundland to resolve these conflicts.

[34] I have previously argued that environmental assessments can be understood as public inquiries in miniature: Jocelyn Stacey, "The Deliberative Dimensions of Modern Environmental Assessment Law" (2020) 43:2 Dalhousie LJ 865.

[35] The impact assessments of the Site C and Muskrat Falls hydroelectricity projects and interprovincial oil and gas pipelines are a few notable examples.

[36] Expert Panel Report, *Building Common Ground : A New Vision for Impact Assessment in Canada* (Ottawa: Government of Canada, 2017) at 24-25, online: <www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews/environmental-assessment-processes/building-common-ground.html>.

[37] For example, after a change in government, the Site C Dam eventually underwent an

Commentators have noted the particular importance of these independent panels when governments are seen as interested parties, having pre-emptively endorsed particular outcomes.[38] Even under conditions of poor design and political tension, these joint panels have generated important legal and policy developments – such as standards for sustainability.[39] Moreover, the ongoing practice of joint assessment has provided some measure of a stop-gap when various governments have retreated from robust legal requirements for environmental impact assessment.[40]

Furthermore, recent reforms to Canada's *Impact Assessment Act* recognize First Nations' independent assessments of projects[41] by redefining 'jurisdiction' to include Indigenous governing bodies.[42] This means that joint assessments can now be undertaken — not only between Canada and a province (as has been the past practice) — but also with Indigenous governing bodies as a way of giving more fulsome effect to Indigenous stewardship laws and governance practices. Any reforms to the *Emergencies Act* should similarly identify Indigenous governing bodies as jurisdictions within the meaning of the Act, in line with the *Declaration on the Rights of Indigenous Peoples*.

Experience with joint impact assessment shows that, even in spaces where governments face strong political incentives, joint processes can work effectively to enhance public accountability for government decisions with significant environmental, social and economic stakes. Moreover, growing experience with Indigenous-led assessment in Canada provides important learning on how settler-Indigenous joint accountability can work in practice, as Parliament undertakes to enact Canada's commitment to the *UN*

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economic review, a recommendation of the joint assessment that was initially rejected: Mike Hager, "B.C. NDP asks independent panel to decide fate of Site C dam project" *The Globe and Mail* (2 August 2017) online: <www.theglobeandmail.com/news/british-columbia/bc-asks-utilities-commission-to-review-88-billion-site-c-dam-megaproject/article35870031/>.

[38] Meinhard Doelle, "The Role of EA in Achieving a Sustainable Energy Future in Canada: A Case Study of the Lower Churchill Panel Review" (2012) 25 J Envtl L & Prac 113 at 125.

[39] *Ibid*. at 130.

[40] Meinhard Doelle, "CEAA 2012: The end of Federal EA As We Know It?" (2013) 24 J Envtl L & Prac 1 at 10.

[41] E.g. Aaron Bruce and Emma Hume, "The Squamish Nation Assessment Process: Getting to Consent" (2015), online (pdf): <www.ratcliff.com/wp-content/uploads/2020/10/The-Squamish-Nation-Assessment-Process-Getting-To-Consent-Ratcliff.pdf>; *Tsleil Waututh Nation, Assessment of the Trans Mountain Pipeline and Tanker Expansion Proposal* (Tsleil Waututh Nation, 2015), online: <twnsacredtrust.ca/assessment-report-download/>.

[42] *Impact Assessment Act*, SC 2019, c 28, s 1, s. 2.

Declaration on the Rights of Indigenous Peoples[43] in the context of emergency powers.

IV. CONCLUSION

Emergency governance is an unavoidably inter-jurisdictional endeavour. Effective emergency governance necessitates coordination and cooperation across governments. Finding ways to hold to account emergency responses that are the product of multiple interacting governments, agencies, laws and policies is no easy task. Enabling joint public inquiries under the *Emergencies Act* is one small—but important—reform that gestures toward the overarching goal of cooperative, coordinated government action in the public good.

Commissioner Rouleau observed that "[r]esponding to situations of threat and urgency in a federal system requires governments at all levels, and those who lead them, to rise above politics and collaborate for the common good."[44] While there is no legislative fix that can completely inoculate against bad faith actors and political opportunism, clear and robust legislation provides a framework and signals expectations of public officials. As we have now seen through this first experience of the *Emergencies Act*, the mandatory inquiry is a vital mechanism for holding the exercise of emergency powers to public account. The *Emergencies Act*—with all its attentiveness to layered accountability—should include an accountability mechanism that matches the interjurisdictional nature of the challenge of emergency governance.

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[43] *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14. The POEC Final Report recommends how to start this conversation: *supra* note 1 at 262 (Recommendation 34).

[44] Final Report, Vol 1, *supra* note 1 at 248.