

Report of the Public Inquiry into the 2022 Public Order Emergency



Volume 3: Analysis (Part 2)
and Recommendations

The Honourable Paul S. Rouleau, Commissioner

February 2023



**PUBLIC ORDER
EMERGENCY
COMMISSION**



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EMERGENCY
COMMISSION**

**COMMISSION
SUR L'ÉTAT
D'URGENCE**

Volume 3: Analysis (Part 2) and Recommendations

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Chapter 14

Invoking the *Emergencies Act*



Invoking the *Emergencies Act*

1. Introduction

The decision to invoke the *Emergencies Act* took place at the pinnacle of federal decision making. It was the culmination of multiple streams of information working their way through the complex machinery of the government. A wide range of federal actors were obtaining, assessing, and passing on information, along with their own views and opinions, during a period characterized by imperfect information, uncertainty, high stakes, and an evolving situation on the ground. These individuals worked with one another and with counterparts at the provincial and municipal levels. In previous chapters, I chronicle the events that led to the decision to invoke the *Emergencies Act*. The purpose of this chapter is to describe the decision-making process that resulted in the declaration of a Public Order Emergency on February 14, 2022.

To understand that decision, it is important to appreciate both the structure of the federal government, and the perspective of the federal officials whose input informed the prime minister's ultimate decision to invoke the Act. I begin this chapter by reviewing the relevant federal departments, agencies, committees, and individuals who played key roles in the decision to proclaim an emergency. I follow this by putting federal decision making in context by describing a set of background issues and events that help to explain how important decision makers thought about the events surrounding the Freedom Convoy. I then discuss the Federal Government's early engagement with the Freedom Convoy protests, including its own initial intelligence assessments, as well as a range of interactions that it had with provincial and municipal governments. Next, I turn to many of the same events that I discuss in previous chapters, recounting them from the perspective of the Federal Government. Finally, I turn to the critical few

days in which the use of the *Emergencies Act* was explicitly discussed, considered, and ultimately used.

2. The structure of the federal government

2.1 The governor in council

Section 17(1) of the *Emergencies Act* gives the governor in council (GIC) the authority to declare the existence of a Public Order Emergency. While the governor general formally exercises this authority, decisions of the GIC are effectively made by Cabinet. They are put forward in Orders in Council.

The GIC issued four Orders in Council in the context of the Public Order Emergency. The first, made on February 14, 2022, directed that a proclamation be issued pursuant to section 17(1) of the *Emergencies Act* declaring that a Public Order Emergency existed throughout Canada. That proclamation was issued on February 15, 2022. The same day, the GIC made two Orders in Council that contained the measures taken under the Act: the *Emergency Measures Regulations (EMR)* and the *Emergency Economic Measures Order (EEMO)*. On February 23, the GIC made an Order in Council revoking the declaration of a Public Order Emergency.

2.2 The Cabinet

The federal government is led by Cabinet, which is made up of ministers. The full Cabinet is a political decision-making body that is chaired by the prime minister, who also sets its agenda. It is a forum for ministers to discuss which policies the government should pursue and how its priorities should be advanced. While Cabinet members put forward advice and feedback on the issues before them, the ultimate decision maker is the prime minister.

2.2.1 Cabinet solidarity and Cabinet confidentiality

The Cabinet operates under two intertwined conventions: Cabinet solidarity and Cabinet confidentiality.

Cabinet solidarity means that ministers must support both the decisions made by ministers collectively and the actions taken by ministers individually. Ministers may disagree, debate, and dissent during Cabinet discussions, but once a decision has been made, ministers must support it. If a minister feels that they cannot publicly support a decision taken by their government, they are expected to resign.

The convention of Cabinet confidentiality requires that ministers and any officials attending Cabinet meetings not disclose the content of the process used to debate policy questions or decisions made. Without the guarantee that what is said during Cabinet discussions will remain private, it would be difficult to ensure candid discussion.

Cabinet confidentiality is protected by the common law and by federal legislation. The main statutory provision is section 39 of the *Canada Evidence Act (CEA)*, though numerous other statutes also protect Cabinet confidences. Under section 39 of the *CEA*, a minister or the clerk of the Privy Council may object to the disclosure of information constituting a “confidence of the [King’s] Privy Council.” That phrase is defined as including various classes of documents, such as Cabinet memoranda and records reflecting communications or discussions between ministers on matters relating to government decisions or government policy.

Section 39 does not operate as an absolute bar to the disclosure of Cabinet confidences. Rather, it gives the clerk or a minister the power to object to their disclosure when their production is demanded. Prime ministers may authorize the disclosure of any Cabinet confidences that were created while they were in office. That power was exercised in the context of this Commission. On June 28, 2022, the Federal Government announced that it would authorize a partial disclosure of Cabinet confidences, giving the Commission access to all of the “inputs” that were before

Cabinet when it decided to declare the Public Order Emergency. The deliberations between ministers remain protected by Cabinet confidence.

2.2.2 Cabinet committees

In addition to the full Cabinet, there are several Cabinet committees. These committees are given mandates to deal with certain broad policy issues or operational matters. The prime minister appoints specific ministers as members of each committee and designates who will chair or co-chair them. In most cases, these committees do not make decisions. Rather, their role is usually to formulate recommendations for consideration and decision by the full Cabinet. Committees that are chaired by the prime minister, however, do have decision-making powers.

Two Cabinet committees played a role in the management of the events that led to the proclamation of a Public Order Emergency: the Cabinet Committee on Safety, Security, and Emergencies (SSE) and the Incident Response Group (IRG).

The SSE is a standing committee with a mandate to consider threats and risks to the safety of Canadians, to manage ongoing emergencies, and to ensure leadership for emergency management. The SSE met several times during the months of January and February 2022, and the topic of the convoy formally appeared on its agenda at three meetings in early February. At the time, the SSE was chaired by Minister of Emergency Preparedness Bill Blair.

The IRG is not a standing committee; it is a special emergency committee convened when there is a national crisis or an incident that has major implications for Canada. Its task is to develop and coordinate a prompt federal response to the incident that led to its convening. The IRG is chaired by the prime minister and therefore has decision-making power.

The IRG does not have a set membership or term. Its membership is dependent upon the nature of the event that caused it to be convened. It continues to meet

and to consider a matter until the prime minister decides that its involvement in the management of the matter is no longer required.

Unlike other Cabinet committees or the full Cabinet, IRG meetings have a less formal structure and involve direct participation by senior members of the public service as well as ministers. Senior officials sit at the table and lead the discussion, providing direct reports to other participants. Participants can speak and intervene when they think it is important to do so.

The IRG was first convened with respect to the Freedom Convoy on February 10, 2022, and met 11 times. Its last meeting took place on February 23, 2022, the day that the Public Order Emergency proclamation was revoked.

2.3 The Privy Council Office

The Privy Council Office (PCO) is the central coordinating agency in the federal public administration. It supports the development and implementation of the Federal Government's policy and legislative agendas; coordinates responses to issues facing the government and the country; and supports the operation of Cabinet. The PCO fulfills these functions from a non-partisan perspective.

2.3.1 The clerk of the Privy Council

The PCO is led by the clerk of the Privy Council, who has three main roles. The clerk acts as the deputy minister to the prime minister, the secretary to the Cabinet, and the head of the federal Public Service. Janice Charette was the interim clerk in January and February 2022.

As the highest-ranking public servant in Canada, Clerk Charette provided and channelled advice to the prime minister on the issue of the convoy and protests. As secretary to the Cabinet, she was responsible for the organization of Cabinet meetings and for ensuring that the decisions of Cabinet were faithfully recorded and

implemented by the federal public service. Clerk Charette was supported in her duties by Deputy Clerk of the Privy Council Nathalie Drouin. Deputy Clerk Drouin played a key role in the management and coordination of the federal response to the Freedom Convoy.

The clerk and the deputy clerk are the only officials with the authority to provide formal recommendations to the prime minister, whether in a written document or by a verbal briefing. Clerk Charette provided formal Decision Notes to the prime minister on the invocation and revocation of the Act. Clerk Charette also oversaw the drafting of two reports that were tabled in Parliament as part of the process of reviewing the declaration of an emergency: the Section 58 Report (which, as required by s. 58 of the *Emergencies Act*, formally sets out the Government's reasons for declaring a Public Order Emergency) and the Consultation Report (which, as required by s. 25 of the *Emergencies Act*, summarizes the various federal – provincial – territorial consultations that occurred).

The Clerk and the Deputy Clerk provided regular verbal briefings to the Prime Minister regarding the convoy. In addition, the Clerk attended every meeting of the IRG. The Deputy Clerk attended all but the last IRG meeting.

2.3.2 The office of the National Security and Intelligence Advisor

The PCO consists of several secretariats, including the office of the National Security and Intelligence Advisor to the Prime Minister (NSIA). In January and February 2022, the NSIA was Jody Thomas. NSIA Thomas provided information and advice on issues relating to national security, foreign and defence policy, and emergency preparedness. NSIA Thomas provided regular briefings on the convoy to the prime minister, Cabinet, the clerk and other senior federal officials. These briefings took place before and during meetings of the SSE, the IRG, and Cabinet. NSIA Thomas oversaw the provision of intelligence assessments to the prime minister and other ministers throughout the relevant period. She also engaged with several external

stakeholders, including officials from the City of Ottawa and the U.S. government, in coordinating the federal response to the convoy.

The position of the NSIA was created after the September 11, 2001, terrorist attacks in the United States. The NSIA is not based in statute and has no legal powers. Its role is to coordinate and bring structure to the federal national security community. The NSIA performs a convening function by calling relevant federal departments and agencies to meetings, as well as a challenge function by questioning them on their respective policies and positions. One of the NSIA's key roles during the relevant period was to ensure that organizations worked effectively together so that the Government's response to the convoy and blockades was seamlessly developed and implemented.

The NSIA oversees four secretariats within the PCO. Three of those were involved in the management of the convoy and the blockades: Security and Intelligence, Intelligence Assessment, and Emergency Preparedness and COVID Recovery.

The office of the NSIA does not engage in surveillance, monitoring, or intelligence collection of any kind. Instead, the NSIA receives raw intelligence from federal agencies and incorporates it into intelligence assessment products prepared by the Intelligence Assessment Secretariat (IAS). These are circulated to relevant federal departments and agencies. The IAS also ordinarily produces a daily and weekly foreign intelligence brief for the prime minister, and custom-made pieces on security incidents or emerging trends for circulation within the federal government. There is no domestic intelligence unit within the office of the NSIA or PCO generally.

2.3.3 The Emergency Preparedness and COVID Recovery Secretariat

The Emergency Preparedness and COVID Recovery Secretariat (EPCRS) was also involved in the coordination of the federal response, primarily by supporting the chair of the SSE. The EPCRS was created within the PCO in October 2021 to support the new, dedicated role of the minister of Emergency Preparedness. The EPCRS was led

by Deputy Secretary to Cabinet (DSC) Jacqueline Bogden. She was supported by Assistant Secretary to Cabinet Jeffery Hutchinson.

2.3.4 The Intergovernmental Affairs Secretariat

The Intergovernmental Affairs Secretariat (IGA Secretariat) advises and assists the minister of Intergovernmental Affairs, the Quebec lieutenant,¹ and the prime minister in the overall management of federal – provincial – territorial (FPT) relations. In January and February 2022, Dominic LeBlanc was minister of Intergovernmental Affairs.

The IGA Secretariat is housed within the PCO and supports various ministers and departments to ensure that federal officials are effectively maintaining contact with their provincial and territorial counterparts. Importantly, however, not all FPT communications are coordinated by or go through the IGA Secretariat; federal officials frequently engage with their counterparts without the involvement of the IGA Secretariat.

Throughout the convoy protests, the deputy minister and assistant deputy minister of Intergovernmental Affairs dealt with provincial and territorial counterparts to ensure that conversations were occurring between the key federal and provincial departments where substantive FPT work was being done.

Minister LeBlanc engaged with his counterparts throughout this period. He described his role as minister of Intergovernmental Affairs as being the prime minister's "principal representative, in terms of [the prime minister's] ongoing relationships with provinces and territories," noting that he is usually present whenever the prime minister meets with other first ministers.² In almost every province and territory, Minister LeBlanc's counterpart is the premier, except in Quebec where a specific minister is given responsibility for federal – provincial relations. At the time, that portfolio had been

¹ Minister Dominic LeBlanc explained that the Quebec lieutenant plays an IGA-type role, but with a focus on Quebec, Minister LeBlanc Interview Summary, WTS.00000073, p. 8.

² Evidence of Minister D. LeBlanc, Transcript, November 22, 2022, p. 233.

assigned to Minister Sonia LeBel. In January and February 2022, Minister LeBlanc’s primary contacts were with Ontario, Manitoba, and Alberta.

2.4 The Prime Minister’s Office

The Prime Minister’s Office (PMO) is the political office that supports the prime minister in the exercise of his duties. It has approximately 100 employees. The PMO does not have a decision-making function within the federal government. PMO staff are not public servants; they are referred to as “exempt staff.” This means that they are not subject to the strict neutrality and impartiality rules that apply to public servants.

The PMO and the PCO form what might be described as separate arms of the same structure. PCO officials are the institutional, non-partisan, permanent public service counterparts to the political staff within the PMO. The two offices work closely together to provide coordinated advice to the prime minister and the deputy prime minister — but they do so from different perspectives.

Members of PMO teams coordinate with their PCO counterparts. For example, throughout January and February 2022, the deputy chief of staff, who heads the PMO’s Issues Management and Parliamentary Affairs team, had frequent contact with the office of the NSIA, in the PCO. During this period, other PMO officials also received regular updates about the protests through briefings provided by NSIA Thomas and her team.

As the Chief of Staff to the Prime Minister, Katie Telford liaised frequently with the Clerk of the Privy Council at regular bilateral meetings with the Prime Minister (and sometimes the Deputy Prime Minister), and at informal, issue-based meetings and discussions. Chief of Staff Telford and Clerk Charette also each had separate meetings with Prime Minister Justin Trudeau on a regular basis.

2.5 Federal departments and agencies

The day-to-day operations of federal departments are carried out by public servants and led by a deputy minister. Deputy ministers are accountable to their ministers and to the clerk for the implementation of whole-of-government initiatives. Deputy ministers are the most senior members of the professional, non-partisan public service. They are appointed (and may be removed) by the governor in council, on the recommendation of the prime minister. In addition to departments, there are within the federal government numerous non-departmental agencies that go by a variety of names. The heads of such agencies are appointed in the same manner as deputy ministers and usually report directly to a minister.

2.5.1 The Department of Public Safety and Emergency

Preparedness

The Department of Public Safety and Emergency Preparedness (Public Safety or PS) is responsible for matters of public safety, national security, and emergency management. The minister of Public Safety is Marco Mendicino. He oversees the five agencies that fall within his portfolio, three of which were involved in the Federal Government's response to the Freedom Convoy: the Canada Border Services Agency (CBSA), the Royal Canadian Mounted Police (RCMP), and the Canadian Security Intelligence Service (CSIS). Minister Mendicino is accountable for the law enforcement side of these agencies.

Bill Blair, the Minister of Emergency Preparedness, is also the President of the King's Privy Council for Canada. His primary responsibility is advancing Public Safety's emergency preparedness mandate. Along with overseeing the EPCRS, he chairs the SSE. He also plays a significant role in the management of requests for federal assistance from the provinces and territories.

Public Safety supports both Minister Mendicino and Minister Blair, albeit in different ways. Public Safety officials advise Minister Mendicino on national security and law

enforcement matters, and they advise Minister Blair on emergency preparedness matters.

At the time of the Freedom Convoy, the deputy minister of Public Safety was Rob Stewart. He monitored developments, provided advice on law enforcement and national security, and engaged with various stakeholders and key players within and outside the government.

2.5.2 The Canada Border Services Agency

The CBSA is an independent agency that falls within Public Safety's portfolio. It is responsible for administering both immigration and customs laws, and for providing integrated border services. As I discuss in Chapter 11, the CBSA manages Canada's 117 land border crossings and has a permanent presence at 13 international airports.

2.5.3 The Royal Canadian Mounted Police

The RCMP is Canada's national law enforcement agency. It employs more than 19,000 police officers and 11,000 civilian employees, and maintains more than 700 detachments. It comprises 13 provincial and territorial divisions, which deliver policing services within their geographic areas of responsibility, as well as a national division and a training division.

The RCMP is responsible for providing federal policing services across the country. This includes investigating national security offences; providing protective services to designated persons, places, and events; and enforcing federal statutes. The RCMP also gathers intelligence in support of its federal policing mandate and provides front-line policing services pursuant to contracts with various provinces, territories, municipalities, and Indigenous communities. In the areas where it provides contract policing, the RCMP is the police of jurisdiction.

The head of the RCMP is Commissioner Brenda Lucki. She provided regular briefings and situational awareness updates to senior officials, ministers, and the Prime Minister, including during meetings of the Deputy Ministers' Committee on Operational Coordination (DMOC), the SSE, and the IRG. She also liaised with her counterparts in the Ottawa Police Service (OPS) and the Ontario Provincial Police (OPP) throughout the convoy. The RCMP was the police of jurisdiction in many of the areas affected by border disruptions. The RCMP was not the police of jurisdiction in Ottawa or Windsor, though it did contribute resources to the policing response in both locations.

2.5.4 The Canadian Security Intelligence Service

CSIS is Canada's civilian security intelligence service. Its core mandate is to investigate threats to the security of Canada, and to report to and advise the federal government on the existence of such threats. The *CSIS Act* specifies the activities CSIS may investigate, the thresholds required for triggering its investigations, and the use of its powers.

CSIS discharges its mandate by collecting information, analyzing it, and disseminating its assessments to the government. CSIS may investigate the activities of an individual, a group of persons, or an organization, or a discrete event or issue in conjunction with these three kinds of targets.

Before CSIS can open an investigation, it must reasonably suspect that there is a threat to the security of Canada. This is defined under section 2 of the *CSIS Act* to mean: a) espionage and sabotage; b) foreign-influenced activities or foreign interference; c) terrorism and violent extremism; and d) subversion. CSIS may not investigate lawful protest unless it is carried out in conjunction with one of these activities.

CSIS is led by a director who operates at arm's length from the Department of Public Safety. This position was held by David Vigneault at the time of the protests. Director Vigneault maintained a close working relationship with both the minister of Public Safety as well as the PCO through the NSIA.

CSIS began assessing the convoy in early January 2022, in the broader context of the anti-public health measure movements. Throughout the convoy, CSIS focused on activities of its pre-existing targets in relation to their planned or actual participation in the protests, as well as monitoring streams of intelligence for new or unknown threat actors related to the convoy. CSIS's investigations into these pre-existing targets were initiated based on the targets' activities relating to ideologically motivated violent extremism (IMVE).

2.5.5 The Integrated Terrorism Assessment Centre

The Integrated Terrorism Assessment Centre (ITAC) is a specialized intelligence assessment agency whose mandate is to recommend the national terrorism threat level for Canada to CSIS. ITAC also reports on terrorism-related event trends globally and assesses the terrorism threat level for Canadian interests worldwide. It shares a close operational relationship with CSIS and operates under the authorities and limitations of the *CSIS Act*. The executive director of ITAC works under the authority of the director of CSIS, in consultation with the NSIA.

ITAC does not collect intelligence. It assesses intelligence collected by domestic and international partners and reports on terrorism-related risks. ITAC prepares products called intelligence assessment briefs or threat assessment briefs. Classified ITAC assessments are distributed among federal agencies, and unclassified versions are shared with external partners, including some law enforcement agencies. ITAC produced several threat assessments on the convoy, which were shared with law enforcement and federal government agencies, in particular through the Assistant Deputy Ministers' National Security Operations Committee (ADM NS Ops), discussed later in this chapter. The executive director of ITAC attended ADM NS Ops meetings.

ITAC is autonomous from CSIS and has the authority to oversee its own operations. The director of ITAC and the NSIA have regular bilateral meetings to discuss ITAC assessments and priorities. In drafting intelligence assessments, ITAC uses

intelligence received from Canada's international partners, including the intelligence alliance comprising Australia, New Zealand, the United Kingdom, the United States, and Canada (known as the Five Eyes countries), through CSIS, as well as open-source information from academia, think tanks, and other civil society organizations. Nonetheless, the terrorism threat level as assessed by ITAC remains a distinct and independent concept from the determination of a threat to national security under section 2 of the *CSIS Act*.

2.5.6 Transport Canada

Transport Canada develops and oversees all federal government transportation policies and programs. During the relevant period, the department was led by Minister Omar Alhabra and Deputy Minister Michael Keenan.

The department's mandate extends to airports, marine ports, international and interprovincial railways and bridges, and the transportation of dangerous goods. Intraprovincial road transportation falls under provincial jurisdiction. Many of the federal regulations relating to interprovincial trucking are delegated to provincial authorities to enforce. Transport Canada leads several intergovernmental coordination tables.

Minister Alhabra and his deputy minister were heavily involved in intergovernmental engagement during the convoy, including with provincial, municipal, and foreign counterparts. They were also in contact with industry representatives before and during the Freedom Convoy.

Transport Canada provided an economic assessment on the potential impact of the protests and blockades on the trade and transportation system and provided operational support to local law enforcement agencies, such as by closing air space over affected areas.

2.5.7 The Department of Finance

The Department of Finance is responsible for developing and implementing economic, fiscal, tax, social, international, and financial sector policies and programs. There are several dimensions to that work, including developing tax and fiscal policy for the government, managing the financial and fiscal dimensions of federal – provincial relations, developing international economic policy, and managing the spending side of economic development and social policy across the government. In January and February 2022, Chrystia Freeland was the minister of Finance and deputy prime minister of Canada, and Michael Sabia was the deputy minister of Finance.

The Department of Finance has 11 branches, each of which is led by an assistant deputy minister who reports to Deputy Minister Sabia. Two of these branches were especially involved during the convoy events: the Financial Sector Policy Branch and the Economic Policy Branch.

The Financial Sector Policy Branch is responsible for developing financial policy on a range of matters. During the convoy events, it worked on identifying tools under existing federal legislation that could be used to respond to the situation, and later worked on developing tools that could be enacted under the *Emergencies Act*.

The Economic Policy Branch is responsible for economic analysis, forecasting, and policy analysis. This branch conducted analyses of the impact of the border blockades on the Canadian economy. Those analyses were shared with Minister Freeland and the IRG.

2.5.8 The Financial Transactions and Reports Analysis Centre of Canada

The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) is a federal agency created under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)* and falls within the Department of Finance portfolio. As

Canada's financial intelligence unit, FINTRAC collects, analyzes, and discloses information to assist in the detection, prevention, and deterrence of money laundering and the financing of terrorist activities.

The *PCMLTFA* imposes obligations on individuals and entities, including (but not limited to) financial institutions, money services businesses, and insurance companies. These “reporting entities” (REs) must verify the identities of their clients, keep records, and report certain financial transactions to FINTRAC. They must report to FINTRAC in a number of circumstances, including when they detect suspicious transactions or are engaged in transactions involving large sums of money, including cryptocurrencies. FINTRAC also receives voluntary reports of information from law enforcement, the public, and others.

When specific legal thresholds set out in the *PCMLTFA* are met, FINTRAC's Intelligence Sector is required to make “disclosures” of intelligence to law enforcement and other government entities.³ Disclosures are meant to provide operational support to law enforcement and other recipients.

FINTRAC has no investigative powers, nor can it monitor financial transactions in real time, directly access financial transactions, freeze bank accounts or seize funds, ask any entity to freeze or seize funds, or cancel or delay financial transactions. In preparing disclosures, it relies primarily on the reports made to it. Apart from the circumstances in which it is required to make a disclosure, FINTRAC is prohibited by statute from disclosing the information it receives to anyone — including the Department of Finance, other government departments, and this Commission.

As I elaborate later in this chapter and in Chapter 16, FINTRAC began monitoring the Freedom Convoy events in late January as part of its situational awareness. As

³ Specifically, the RCMP, municipal and provincial police forces, CSIS, the Canada Revenue Agency, CBSA, the Communications Security Establishment, provincial securities regulators, the Department of National Defence / Canadian Armed Forces, the Competition Bureau, and Revenu Québec.

time went on, the Department of Finance identified what it considered to be a gap in the *PCMLTFA* and FINTRAC's authority: crowdfunding services and some payment service providers were not subject to the obligations under the *PCMLTFA* regime. This was of concern to the Department of Finance given media reports that convoy participants were using crowdfunding services and payment service providers to fund their activities.

2.5.9 Global Affairs Canada

Global Affairs Canada (GAC) is responsible for advancing Canada's international relations, including by developing and implementing foreign policy, providing consular services for Canadians abroad, supporting foreign embassies and consulates in Canada, and providing international humanitarian, development, and peace and security assistance.

GAC was engaged in the Government's response to the convoy events primarily by reason of the role it plays in managing the Canada – U.S. relationship and providing support to foreign embassies and missions in Ottawa. Canadian diplomats in the United States engaged directly with several American politicians and business leaders who raised concerns about border closures, especially the Ambassador Bridge, which connects Windsor, Ontario and Detroit, Michigan. The Office of Protocol, which is responsible for providing services to and assuring the security of missions in Canada, dealt with concerns and complaints raised by foreign embassies and missions in Ottawa.

2.5.10 The Department of National Defence

The Department of National Defence (DND) supports the Canadian Armed Forces (CAF) in defending Canadian national interests. The *National Defence Act (NDA)* establishes both the DND and the CAF as two separate and distinct entities. During the relevant period, the DND was led by Minister Anita Anand.

The DND had peripheral involvement in the response to the convoy, limited mostly to receiving requests for CAF assistance. The CAF responded to two requests for federal assistance and provided administrative and logistical support only. The DND and the CAF also prepared contingency plans in case deployment of military personnel became necessary following the invocation of the *Emergencies Act*.

2.5.11 The Department of Public Services and Procurement Canada

The Department of Public Services and Procurement Canada (PSPC) is a major landowner for the federal government and is the custodian of many buildings across the country, including more than 200 buildings and parcels of land in the National Capital Region. The PSPC is the steward of the Parliamentary Precinct, the Judicial Precinct, the Royal Alexandra Interprovincial Bridge, the Chaudière Crossing, and the Macdonald-Cartier Bridge. The PSPC is also the procurement authority for other federal departments, acting as their central purchasing agent.

PSPC officials had some involvement in the Federal Government's response to the convoy. For instance, they received and actioned requests from other federal departments and policing partners for jersey barriers and crowd control fencing in the National Capital Region. They also collaborated with Transport Canada to prepare what came to be known as the "Tow Truck Strategy." The PSPC was not, however, asked to provide input on the decision to invoke the *Emergencies Act*.

2.5.12 The National Capital Commission

The National Capital Commission (NCC) is the main federal urban planner and the largest landowner in the National Capital Region. It owns and manages various parks, scenic parkways, and official government residences.

The NCC worked with policing partners to deal with the protesters and vehicles that were occupying parks and parkways, and with the PSPC to install jersey barriers and

concrete planters for crowd control. The NCC worked with the OPS specifically to address the issue of the vehicles that parked on major parkways and the issue of the protesters who were present in Ottawa's Confederation Park.

2.6 Senior civil servant committees convened by the National Security and Intelligence Advisor

The office of the NSIA ordinarily convenes two weekly standing committees of senior civil servants: the Assistant Deputy Ministers' National Security Operations Committee (ADM NS Ops) and the Deputy Ministers' Committee on Operational Coordination (DMOC). Special meetings of both the ADM NS Ops and the DMOC were held throughout January and February 2022.

2.6.1 The Assistant Deputy Ministers' National Security Operations Committee

The role of the ADM NS Ops was to coordinate actions among national security agencies and to ensure situational awareness across the federal government. Representatives from the PCO, Public Safety, CSIS, the Communications Security Establishment (CSE), ITAC, the DND, the CAF, the CBSA, Transport Canada, GAC, FINTRAC, and the RCMP attended meetings of the ADM NS Ops. They exchanged information, shared intelligence and assessments, and discussed plans and strategies to address the situation. Participants subsequently briefed their respective deputy ministers or agency heads.

2.6.2 The Deputy Ministers' Committee on Operational Coordination

The DMOC was convened and chaired by the NSIA. The DMOC consisted of deputy ministers or their equivalents from all federal national security agencies, including Public Safety, CSIS, the CSE, the DND, the CAF, the CBSA, Transport Canada, GAC, and the RCMP. DMOC participants provided intelligence and situational updates and,

in the case of the RCMP, general updates about the activities of law enforcement agencies involved in dealing with the convoy and the demonstrations across the country. Deputy ministers would then typically brief their ministers to ensure that they had the proper level of situational awareness, seek their views or directions on possible courses of action, and discuss messaging.

3. Context and concurrent events

The events of the Freedom Convoy did not occur in a vacuum. Several of the witnesses from the Federal Government testified that the impact of the convoy and border disruptions, and the Government's response to them, could only be understood in the context of other significant events that were occurring in January and February 2022. In particular, they emphasized that the Canadian economy was under considerable strain due to the COVID-19 pandemic; that Canada was in the midst of negotiating with the United States to avoid the consequences of the proposed protectionist "Build Back Better" legislation; and that the threat to international and national security posed by Russia's anticipated invasion of Ukraine loomed large. These factors weighed on the Federal Government and helped explain the thinking of officials as they worked to respond to the protests in Ottawa and elsewhere in Canada.

3.1 COVID-19 recovery, supply chain fragility, and vulnerability of the auto industry

At the start of 2022, federal officials viewed the Canadian economy as fragile. The economy was only starting to emerge from various COVID-19-related health measures and, as Deputy Minister of Finance Sabia testified, federal officials were concerned about the pace at which the Canadian economy would recover. Three factors were of particular concern to the Government. First, the global pandemic had placed a significant strain on supply chains, which impacted access to essential goods and services, and threatened to slow the pace of the post-pandemic economic recovery. Labour shortages in the trucking industry contributed to this problem. Second, inflation

had already begun to rise sharply, a trend that would continue well into 2022. Third, the chronic issue of business investment in Canada was particularly acute at the time. The border blockades that began in late January took these pre-existing concerns and, from the perspective of federal decision makers, made them worse.

The automotive industry is particularly vulnerable to cross-border supply chain disruptions because it relies on “just-in-time delivery” — a model in which producers hold only a couple of days’ worth of inventory on site at any given time, such that parts come in literally just in time to be used in the production process. The practical effect of this delivery model is that auto manufacturers move parts across the Canada – U.S. border so frequently that any disruptions are felt quickly. On average, an auto part crosses the border six to seven times before it finally forms part of a completed car. Given the degree of integration between the Canadian and American auto sectors, even a short disruption to the flow of parts can be problematic. Assistant Deputy Minister for Economic Policy at the Department of Finance Rhys Mendes testified that disruptions of even a few hours can cause substantial issues, particularly if they result in truck drivers “timing out” from their maximum allowable hours of operation.

Assistant Deputy Minister Mendes also testified that the automotive industry had been adversely affected by supply chain issues prior to 2022 due to a shortage in semi-conductors available for use in cars. As a result, the industry was already producing fewer vehicles than it normally would, which affected the market.

Deputy Prime Minister and Minister of Finance Chrystia Freeland noted that the Government’s anxiety about the state of the Canadian economy was further heightened by the fact that the events of the Freedom Convoy occurred just as the Department of Finance was preparing the 2022 budget. She observed that budget preparation is always an intense process involving multiple consultations between Department of Finance officials, the Prime Minister’s Office, Cabinet colleagues, and others. The 2022 budget was a particularly significant one, as it was intended to steer Canada through its recovery from the pandemic while addressing elevated inflation and supply

chain challenges. In her words, the 2022 budget needed to “achieve a soft landing for the Canadian economy after the trauma of COVID, the COVID lockdowns, the COVID recession, the economic trauma.”⁴ Deputy Minister Sabia noted that budgets are based on economic and fiscal outlooks, and those outlooks were being affected by the protest and blockade activity.

3.2 “Build Back Better” and increasing U.S. protectionism

The events of the Freedom Convoy also occurred against a backdrop of increasing concern within the Federal Government about American protectionism. The focus of this concern was the United States’ proposed “Build Back Better” economic recovery legislation. An important aspect of this legislation was its support for the electric vehicle sector. As originally drafted, the legislation provided for credits for electric vehicles, but only if they were manufactured wholly in the United States. Cars built outside the United States, including in Canada, would not qualify. The Canadian Government was concerned that such a provision would remove any incentive for a car company to build an electric vehicle plant anywhere outside the United States. Indeed, it appeared that the clear intent of this provision was to drive all electric car manufacturing to the United States. Given that electric vehicles are the future of the automotive industry, federal officials were concerned that these credits would have been devastating for the Canadian automotive sector and — given its importance — to the economy as a whole. Deputy Prime Minister Freeland noted that the electric vehicle legislation was of such concern to Canada that the Government was preparing significant retaliatory tariff measures in case negotiations failed.

Throughout the summer and fall of 2021, Deputy Prime Minister Freeland and Canadian Finance officials held ongoing negotiations with officials in the U.S. Treasury Department, and Brian Deese, Director of the U.S. National Economic Council. Minister Freeland’s objective was to persuade her counterparts to include an exemption to the “made in the U.S.” provisions for Canada. A key part of her argument was that the

⁴ Evidence of Minister Chrystia Freeland, Transcript, November 24, 2022, p. 4.

United States needed Canada as much as Canada needed the United States. She emphasized that Canada was a reliable trading partner, and that the Canada – U.S. relationship was one that the Americans could depend on.

The border blockades that took place in early 2022 undermined Canada’s arguments in this respect. Both Minister Freeland and Deputy Minister Sabia testified about their concerns regarding how the blockades would be perceived by American officials. They feared that Canada’s status as a reliable trading partner was being undermined, a view that was reinforced by the concerns expressed by senior U.S. government officials, including President Joe Biden. Deputy Minister Sabia asserted that the border blockades and disruptions imperilled Canada’s ability to obtain the concessions it needed to protect the Canadian auto industry.

He also testified that the potential erosion of trust in Canada as a trading partner presented problems that went well beyond the Build Back Better negotiations. The proposed legislation was illustrative of major changes to trading patterns caused by increased American protectionism. From his vantage point, if Canada were to no longer be considered a reliable trading partner, it would have severe long-term consequences that would go beyond the auto industry.

A consistent theme in the evidence before me was that the longer the events in Ottawa and along the Canada – U.S. border went on, the more damage would be done to the Canada – U.S. relationship and to Canada’s economic prospects. If the border disruptions could be resolved quickly, officials believed that it would be possible to avoid serious direct economic impacts, and to manage the Canada – U.S. trading relationship. However, if disruptions continued, the harm to the economy and the trading relationship would be both “significant” and “durable.” As I discuss later in this chapter, the view that the longer the disruption lasted, the more severe the consequences for Canada would be, weighed heavily in Government decision making. The Federal Government believed that it was necessary to act quickly to curb

the protests, and that the *Emergencies Act* provided them with a tool that could meet this need.

Ultimately, Canada did achieve a positive outcome on the issue of electric vehicle credits: the tax credit in the Build Back Better legislation now applies to all North American manufacturing, including Canada. It also now includes a provision requiring that critical minerals and metals for use in vehicles be produced by a U.S. trading partner such as Canada. Minister Freeland described this as a “huge economic boost” for Canada.

3.3 The Russian invasion of Ukraine

Finally, several witnesses noted that there were two major crises unfolding simultaneously in late January and February 2022: domestically, the Freedom Convoy; and internationally, Russia’s impending invasion of Ukraine. Several Cabinet ministers, including Minister Freeland, Foreign Affairs Minister Mélanie Joly, and Defence Minister Anand, were heavily involved in the Ukraine file at the time the convoy events were unfolding. Minister Freeland, in particular, was closely engaged with Ukraine in her role as deputy prime minister and because, as the minister of Finance, she worked closely with counterparts at the G7 on sanctions that could be imposed on Russia in the event of a war.

While Russia’s illegal invasion of Ukraine did not commence until February 24, 2022, the federal government received intelligence as early as December 2021 suggesting that it could occur. By the beginning of January 2022, Minister Freeland was briefed that an invasion was a real possibility. She viewed this anticipated invasion as the biggest challenge to Canada’s national security since World War II — as an attack not only on Ukraine, but also on western democracies and the rules-based international order itself. Minister Freeland suggested that one of Russian President Vladimir Putin’s objectives was “to show that dictatorships work, and democracies don’t”

and that he aims “to weaken Western democracies writ large, including our own.”⁵ She believed that if Canada’s capital had been occupied by the Freedom Convoy protesters when the invasion commenced, this would have played right into President Putin’s narrative, significantly discrediting Canada as an ally and hampering its ability to support Ukraine. This consideration put additional pressures on the Government to find a swift resolution to the protests in Ottawa and at other locations throughout Canada.

4. Federal intelligence activities respecting the convoy

In Chapter 7, I discuss the intelligence-gathering activities undertaken by provincial and municipal police forces prior to the arrival of the convoy in Ottawa. Significant intelligence activities also took place at the federal level.

Federal departments and agencies engage in different types of intelligence- and information-gathering activities, depending on their respective mandates. Within the federal government, there are collectors, assessors, and consumers of intelligence. Collectors of intelligence, such as the RCMP and CSIS, have the legal mandate to collect information themselves or to receive it from partner agencies on matters such as national security or criminality. Assessors of intelligence, like ITAC and the PCO, pull different threads of intelligence together to weave a holistic picture to better inform potential decisions. Finally, consumers of intelligence use the intelligence that has been collected and assessed to develop plans and strategies and to inform their decision-making processes. Federal agencies may engage in one, two, or all three of these activities.

In the weeks leading up to the invocation of the *Emergencies Act*, federal officials received information, intelligence, and assessments from various departments and law enforcement agencies. The management and coordination of the flow of this

⁵ Evidence of C. Freeland, Transcript, November 24, 2022, p. 11.

information throughout the federal government was complex, particularly due to the sheer volume produced and the number of departments and agencies involved.

4.1 The Privy Council Office and the National Security and Intelligence Advisor

The PCO, specifically the NSIA, played a key role in coordinating the monitoring and assessment of the convoy, beginning around January 24, 2022. As I discuss later in this chapter, agencies like the CBSA, the RCMP, CSIS, ITAC, and FINTRAC, and departments such as Public Safety and Transport Canada monitored the convoy under their respective intelligence mandates. It was up to the ADM NS Ops, the DMOC and, ultimately, the NSIA to integrate that work. Starting on January 25, the ADM NS Ops began meeting regularly. DMOC meetings on the convoy began on January 31.

Notwithstanding that there are many federal entities involved in intelligence-related activities, there was a sense that there were “gaps” in collection. Notably, the PCO identified an “intelligence gap” related to the collection of open-source information from social media. While police collected open-source social media information for law enforcement purposes, such as through Project Hendon, CSIS was more limited in what it could investigate under the *CSIS Act*, and other federal entities lacked either the mandate or the tools to conduct aggregate tracking of open-source information. The federal government does not have a clear legislative framework, the necessary technological tools, or appropriate policies to collect this information and ensure that it is done in a manner that respects privacy rights.

This gap was also noted by witnesses, including other officials from the PCO and Public Safety, and the Prime Minister. The Clerk of the Privy Council noted that political staff knew more about what was happening on social media than the public service did. The Prime Minister made a similar observation. The NSIA testified that the inability to assess social media made it difficult to distinguish between credible and incredible threats online, particularly given the enormous amount of online hate directed at

public officials. Deputy Secretary to Cabinet Bogden noted that this intelligence gap hampered the government's ability to understand, anticipate, and respond to the situation, and to reconcile conflicting information such as contradictory reports about the size of the convoy. She also noted that during the convoy, many protesters were using platforms that were public, but encrypted. NSIA Thomas testified that filling this gap would require data processing tools such as algorithms that can scrape social media platforms for keywords at a much faster rate than possible for human data analysts. She further testified that the inability to identify online users is problematic, given the increased need to differentiate chatter and rhetoric from posts with credible threats of violence.

NSIA Thomas also described an information-sharing gap between law enforcement and government. Assistant Secretary to the Cabinet, Security and Intelligence, Michael MacDonald recalled a significant delay in receiving updates from the RCMP, due to the RCMP's obligation to consult with each intelligence agency that has provided the RCMP with information prior to sharing that information further (known as the "third party rule"). The NSIA's office did not receive situation reports, project reports, or other forms of information, such as Project Hendon reports, that the RCMP obtained from other law enforcement agencies. Prior to the events of the convoy, the NSIA was not aware of Project Hendon.

NSIA Thomas further stated that it was sometimes difficult to know how to interact with law enforcement agencies. She recognized that government must not interfere in operational matters, but thought that there was nonetheless useful information that could have been provided to decision makers without encroaching upon police independence. However, senior officials were uncertain how to obtain that information, and were concerned about "crossing the line" both in requesting information and in discussing solutions. NSIA Thomas remarked that had the PCO received an indication of the information the RCMP was receiving, which was primarily open source, this would have reduced the pressure on the RCMP to answer questions continuously, as the PCO would have been able to respond to questions from Cabinet.

NSIA Thomas was not alone in expressing these views about social media monitoring and the difficulties encountered in interacting with the police. The issues of social media monitoring, information sharing between law enforcement and government, and the operational independence of police raise important questions, and I return to them in Chapter 18 to propose ways in which they might be addressed.

4.2 The Canadian Border Services Agency

The CBSA had various intelligence teams undertake assessments that focus on threats at or near ports of entry (POEs). Its assessments are based on the intelligence that the agency collects (primarily open-source intelligence) as well as intelligence it receives from partner agencies.

The CBSA's Border Operations Centre (BOC) is a 24/7 global monitoring centre for events and issues that may impact the border. It produces standardized reports to keep officials up to date on the CBSA's operations throughout Canada. During the protests, those reports were widely distributed multiple times per day, and much of the intelligence they contained was provided to the ADM NS Ops, the DMOC, the SSE, the IRG, and Cabinet. The first intelligence alert generated by the CBSA appears to have been sent on January 25, 2022, in relation to the planning of the protest at Coutts, Alberta.

CBSA reports were circulated hourly and contained updates from POEs affected by, or at risk from, protests. The BOC produced additional *ad hoc* reports in response to blockades of POEs, which I discuss in Chapter 11.

4.3 The Royal Canadian Mounted Police

The RCMP has broad authority to collect information for the purpose of carrying out its law enforcement duties. Several RCMP units were involved in the collection and assessment of information during the convoy. RCMP intelligence personnel received the Hendon reports, which I discuss in Chapter 7. They constituted a useful source of

information for RCMP intelligence units, though it appears that the reports themselves were not always shared with senior leadership.

I discuss the RCMP's Ideologically Motivated Criminal Intelligence Team (IMCIT) in Chapter 5. This is a unit within Federal Policing National Intelligence that has a mandate to gather intelligence and information on ideologically motivated actors and networks that may pose a criminal threat to public order and public safety. IMCIT gathers intelligence from other law enforcement sources and by conducting open-source scans of traditional media, social media, and other online platforms. Between January 25 and February 23, IMCIT produced nine special threat advisories about the Freedom Convoy. These detailed advisories reported matters such as convoy routes and logistics, crowdfunding, the goals and motivations of protesters, the presence of ideologically motivated elements in Ottawa, threats of violence, and the participation of former law enforcement and military personnel in the Freedom Convoy. These reports were disseminated broadly within the RCMP and various federal departments and agencies.

The RCMP's Protective Intelligence Unit (PIU) produces operational, tactical, and strategic intelligence reports to assist investigations and operations relating to the RCMP's federal protective policing mandate. This mandate includes ensuring the safety of designated major events, foreign missions, and protected persons such as the prime minister, the governor general, ministers, Supreme Court judges, internationally protected persons, and others. It also includes protecting various federal properties in the National Capital Region (NCR) and enforcing traffic on a small number of federal roadways in the NCR. When activated, the PIU also provides intelligence support to the National Capital Region Command Centre (NCRCC), which I discuss in Chapter 8. Starting in late January, the PIU led the Combined Intelligence Group (CIG),⁶ a body that was created to facilitate information sharing between NCRCC stakeholders, which

⁶ The CIG is also sometimes referred to as the Joint Intelligence Group (JIG). I mention the CIG / JIG in Chapter 7.

included CSIS, the CBSA, the Parliamentary Protective Service (PPS), the OPS, the OPP, and others.

While the CIG was in operation, the PIU produced regular intelligence updates containing information sourced from within the RCMP, CIG and NCRCC partners, and publicly available sources such as social media. They included information about the movement of persons of interest and comprehensive open-source intelligence reporting. The bulletins were distributed to RCMP units and other law enforcement agencies on a need-to-know basis. The CIG also prepared situation reports for the RCMP commissioner.

The Joint Intelligence Group (JIG) was established on February 12 to coordinate the collection and dissemination of intelligence within the RCMP. Between February 14 and February 27, the JIG produced situational reports on protest activity, nationwide. RCMP divisions were required to contribute specific information to these reports, including data relating to the number of arrests and active investigations; planned enforcement activities; and the threat environment and emerging trends. After the invocation of the *Emergencies Act*, divisions were also asked to report any actions they took that relied in whole or in part on powers granted under the Act.

4.4 Canadian Security Intelligence Service and the Integrated Terrorism Assessment Centre

In 2018, CSIS adopted a new framework in which to address ideologically motivated violent extremism (IMVE). CSIS's aim was to identify actors that promote serious violence to achieve their ideological objectives and that may constitute a threat to the security of Canada. CSIS uses three criteria to determine when an individual, group, or organization constitutes an IMVE threat: (a) an ideological motivation; (b) a desire to effect societal change; and (c) an intention to use or promote serious violence. According to CSIS, the COVID-19 pandemic led to a rise in violent online rhetoric and exacerbated anti-authority narratives. CSIS does not monitor online rhetoric unless

it detects threats to use serious violence to accomplish an ideological, religious, or political objective.

CSIS was aware of several protests in 2021 and 2022 that focused on public health measures. In January 2022, it learned that some of its pre-existing targets were planning on attending or supporting the convoy protests. At that point, it began assessing the convoy in the broader context of anti-public health measure movements. Its focus was on investigating its existing subjects, but it also monitored the protests insofar as it could to determine whether other individuals were mobilizing toward serious violence. CSIS's view was that the convoy provided an opportunity for those with disparate grievances to unify against a perceived common foe. It also viewed the presence of existing targets at these protests as providing an opportunity for IMVE actors to recruit and radicalize new members.

CSIS received input about the convoy from police and other agencies that it relied on when generating its assessments. This included a variety of reports from the OPP, including the Hendon reports. CSIS and ITAC also communicated regularly with members of INTERSECT, a multi-jurisdictional emergency preparedness program within the NCR. Most of the information that CSIS received from the OPS, the OPP, and the RCMP was related to potential criminal activity and did not affect its determination of the threat level posed by the convoy.

CSIS assessed that the Freedom Convoy and related protests did not constitute a threat to the security of Canada. This judgment was the result of multiple assessments throughout the relevant period, which were approved at higher levels before they were disseminated. CSIS Director Vigneault testified that the assessment process involved an ongoing, dynamic consideration of new intelligence as it came in. CSIS's assessments were relayed in real time to the relevant officials.

CSIS and ITAC also assessed the terrorism threat level to be at "medium" before, during, and after the convoy, though ITAC's executive director testified that there was

a minor fluctuation within the “medium” range during the convoy. Notably, the threat level was based, in part, on the security mitigation measures put in place by law enforcement to respond to the convoy.

Senior members of CSIS and ITAC communicated their assessments orally and in writing to federal officials at the ADM NS Ops and the DMOC. Their views were also conveyed to the SSE and the IRG. CSIS and ITAC also shared their information and assessments with law enforcement agencies in accordance with CSIS’s information-sharing protocol with the RCMP, known as the OneVision Framework. CSIS and ITAC provided unclassified versions of all threat assessments to INTERSECT. CSIS also shared its ongoing assessment that there was no threat to the security of Canada at the CIG, without disclosing its intelligence sources.

CSIS also collected intelligence on foreign IMVE support for the convoy. It assessed intelligence from foreign and domestic agencies to maintain awareness of whether any foreign-based IMVE supporters were attempting to enter Canada. CSIS continually assessed that there was no indication of foreign state interference occurring throughout the duration of the protests, including through funding or disinformation.

4.5 Public Safety

Public Safety (PS) consumes intelligence it receives from the CBSA, the RCMP, CSIS, and others in order to maintain situational and informational awareness and to inform policy and operational decisions. PS disseminates reports on specific major events through the Government Operations Centre (GOC). The GOC disseminates information through two newspaper-type documents: the Daily Operations Briefs, and the Key Points on Critical Infrastructure Reports. The briefs are based on unclassified, primarily open-source information. The reports are circulated when an event occurs that has the potential to affect critical infrastructure.

The GOC started monitoring the convoy on January 19, 2022, and began including information about it in its Key Points Reports around January 20. The GOC’s reporting

quickly evolved to the point where it circulated three reports every day containing updates about the convoy: one Daily Operations Brief in the morning, one Key Points Report midday, and another Key Points Report in the evening. Those were circulated to a wide array of government officials, including ministers and senior public servants.

It is worth noting that on January 25, 2022, senior officials from the office of the NSIA approached the GOC to express concerns that their reports contained a “gap” because they did not include RCMP threat assessments. Though the GOC reports do not normally contain intelligence-driven content like threat assessments, it was the NSIA’s view that, in the circumstances, the GOC should include RCMP threat assessments in the GOC’s daily reporting on the convoy. All GOC reports from that point on included unclassified assessments derived from information available on open sources.

PS officials echoed the concerns expressed by the NSIA and others regarding the flow of information from law enforcement to government. In his interview with Commission counsel, Deputy Minister Stewart noted that the convoy highlighted this problem. Specifically, he stated that the flow of information, as it pertains to threats, is not particularly coherent when there are no direct and identifiable threats to national security. For example, when the threats arise from IMVE online rhetoric, PS and its agencies feel substantially underequipped and underprepared to gather and share intelligence about those threats and to respond to them.

4.6 The Financial Transactions and Reports Analysis Centre of Canada

FINTRAC was also engaged in the early days of the convoy, albeit in a different way from the agencies I have just reviewed. As reports emerged about a convoy heading to Ottawa, FINTRAC’s Strategic Intelligence, Research, and Analytics Unit (SIRA) started to review open-source information, including reports about financial transactions and the use of crowdfunding, with a view to exploring the risks of terrorist

financing. The convoy was of interest to FINTRAC in part because of the potential that IMVE-related financing was occurring. FINTRAC was aware that simply donating to a protest does not amount to IMVE financing, and that IMVE-related financing does not always amount to terrorism financing. That said, FINTRAC knows that extremist elements can use a non-violent group or activity for its own extremist agenda and considers this in its work.

On January 26, SIRA produced a document entitled “Key Points: Freedom Rally.” This document contained observations about the convoy’s GoFundMe campaign as well as other types of fundraising. It noted that FINTRAC had already observed IMVE threat actors using crowdfunding to raise funds, though not specifically in respect to the convoy’s fundraiser. The report did point to examples of online posts encouraging convoy participants to use violence and re-create the events of the January 6 U.S. Capitol riots. However, FINTRAC assessed the risk of the GoFundMe campaign being used to support violence as unlikely at the time. It ultimately assessed the risk that the funds would be diverted to terrorist activity as low, given that federal partners and open-source intelligence assessed that the extremist presence within the protests was limited.

FINTRAC also monitored developments of the GoFundMe and GiveSendGo campaigns, as well as cryptocurrency fundraisers, reported in open-source materials. This included monitoring cryptocurrency transactions as part of FINTRAC’s general research into the methods and services used by the convoy to finance the movement.

On February 2, an analyst at SIRA produced a document called “Terrorist Financing Risks of the Freedom Convoy.” The stated purpose of this document was to provide background on the potential terrorist activity financing risks associated with the funding of the Freedom Convoy. The report noted some risk of terrorist financing in the context of the Ottawa protests, and concluded that it was critical to continue the research and analysis on the convoy and its crowdfunding efforts for the development of strategic financial intelligence from a terrorist financing perspective. I note that the document

is explicitly labelled as a draft and that it was not circulated to other departments or agencies.

5. Early intra-federal engagement

Federal public servants and elected officials engaged in meetings, briefings, and information sharing throughout the events of January and February 2022. Some of these engagements took place through existing structures, while others were *ad hoc*. From January 26 to February 8, engagements between public servants and elected officials were mostly geared toward ensuring situational awareness and facilitating the exchange of information. It was only later that federal officials began to discuss potential federal action to resolve the protests.

On January 21, 2022, the PCO provided the PMO with a written summary of the various protests and convoys that were underway or in the process of being organized. At that time, the PCO was primarily concerned with areas of federal responsibility: the security of Cabinet ministers; access to and from Parliament Hill; and the safety and security of federal employees. The PMO had already been monitoring reports about the convoy on social media. Senior PMO officials alerted the Prime Minister about the convoy on January 24 and briefed him daily thereafter. On January 28, the PMO prepared the first memorandum for the Prime Minister to brief him on the convoy in advance of the first weekend of protests in Ottawa.

The first recorded formal meeting of public servants in which the convoy was discussed was the regular January 25 meeting of the ADM NS Ops. At that meeting, members decided to meet daily to discuss potential threat activity and issues related to the convoy. Special ADM NS Ops meetings were convened every day from January 26 until February 12, as well as on February 16 and 17.

For its part, the DMOC began to hold *ad hoc* meetings on January 31. Two additional *ad hoc* DMOC meetings were convened on February 1 and 2. It met daily after that.

The early meetings were mostly for situational awareness. Later, they became a forum for deputy ministers and heads of agencies to discuss what tools the Federal Government had to respond to the protests. Eventually, the focus shifted to identify what new tools might be needed and how they could be acquired.

On January 26, RCMP Commissioner Lucki briefed ministers Mendicino and LeBlanc about the convoy. She told them that information indicated that the organizers were planning a peaceful event, but that social media posts suggested that participants might attempt to disrupt government buildings and cause further disturbances throughout the city. While it was unknown how long the protesters planned on staying in Ottawa, RCMP intelligence indicated that some might stay downtown until January 31.

Briefings continued every day, and sometimes up to three or four times a day. Those briefings were coordinated by the PCO. The attendees at these meetings varied, but generally included ministers Blair, LeBlanc, and Mendicino, and representatives from the PCO, the PMO, the RCMP, CSIS, Transport Canada, the CBSA, and the Department of Justice. Commissioner Lucki remained the principal briefer on law enforcement issues, given the RCMP's direct relationships with the OPS and the OPP as well as its role as police of jurisdiction in locations experiencing protests such as Coutts, Alberta; Emerson, Manitoba; and Surrey, British Columbia. As time went on, in addition to RCMP updates, participants discussed possible options that could be used to respond to the protests. They also considered ways to get officials from the Government of Ontario to provide more assistance.

On Sunday, January 30, 2022, officials within the Emergency Preparedness and COVID Recovery Secretariat watched the press conference held by convoy organizers, which I describe in Chapter 9. As a result of the press conference, the PCO realized that the protesters were not leaving Ottawa. That same day, the Prime Minister was given his first formal briefing on the convoy by the Clerk of the Privy Council.

Three meetings of the SSE Cabinet Committee were convened in the early days of the convoy, on February 3, 6, and 8. Situational updates were provided about Ottawa and affected POEs. On February 8, CSIS Director Vigneault stated that, while there was still no evidence of violence, there was an increase in online activity focused on anti-enforcement rhetoric and invitations to participate in blockades at border crossings. After this meeting of the SSE, the Prime Minister decided, on the recommendation of the Clerk, to transfer the management of the file to the IRG.

6. Early federal, provincial, territorial, and municipal interactions

Interactions between the federal, provincial, territorial, and municipal governments throughout the convoy varied in terms of their purposes and formality. Federal government officials liaised continually with their provincial, territorial, and municipal counterparts, in a variety of forums. These included expert tables of public servants and engagements between elected officials.

While officials in different levels of government were in frequent communication, the relationship between governments was not always collaborative. For example, as I discuss in Chapter 11 in relation to the Coutts border protest, the relationship between the governments of Canada and Alberta became strained over the question of tow trucks and the invocation of the *Emergencies Act*. Another issue that emerged in the evidence before me related to the perceived lack of engagement on the part of the Ontario Government. Officials with the Federal Government and the City of Ottawa felt that the Province of Ontario was reluctant to engage and assist with the Ottawa protests because it viewed the protests to be targeting the Federal Government and Ottawa, and was therefore a federal responsibility.

The City of Ottawa's concerns were not limited to Ontario's level of engagement. Municipal officials and the OPS believed the Federal Government also lacked the commitment to provide sufficient policing resources to clear the protest. These issues

were clearly linked. Ontario's reluctance to engage contributed to confusion regarding the number of policing resources that were being provided to the OPS. It also impacted the Federal Government's willingness to provide the level of police resources to the OPS, because it felt that the OPP should be called on first to fulfill such requests before the RCMP was called to assist. Though the Federal Government expressed support for the OPS and the City early on, the evidence suggests that, beyond the resources initially provided, it was waiting for Ontario to come to the table before fully committing.

6.1 The Ontario Government and the tripartite meetings

In late January and early February, there was a great deal of confusion and disagreement about how many OPP and RCMP officers had been provided to assist the OPS and how many more were available. For example, Ottawa Mayor Jim Watson's understanding was that although the RCMP maintained that it had provided around 250 officers by early February, most of them were assigned to federal duties, and only about 100 were under OPS command. The RCMP's position was that 250 officers had been sworn in, and that pool of 250 met both its commitment to provide the OPS with 50 officers per day, and to respond to the increased needs under its federal protective policing mandate. There was also a disagreement about how many OPP officers had been deployed. A media release by the Ontario solicitor general stated that more than 1,500 OPP officers had been on the ground in Ottawa from the beginning of the protest. In reality, the OPP had contributed a cumulative 1,500 OPP officer shifts since the start of the protests.

It was in this context that Minister Blair suggested that federal, provincial, and Ottawa officials come together for regular meetings to discuss and resolve issues at the leadership level. The purpose of such meetings was to coordinate an integrated response to the protests. These meetings took place at both the staff and ministerial levels. Ministerial meetings, which were held on February 7, 8, and 10, became known as the "tripartite meetings." Ministers Blair and Mendicino, as well as Deputy Minister

of Public Safety Rob Stewart, Mayor Watson, Ottawa City Manager Steve Kanellakos, and OPS Chief Peter Sloly, each participated in at least one of these meetings. I also discuss these meetings in Chapter 9.

Government of Ontario representatives remained absent. Though Premier Doug Ford and Solicitor General Sylvia Jones were invited to participate, they declined to do so. This was a source of frustration for the other participants, as well as for the Prime Minister.

At the first tripartite meeting, on February 7, Mayor Watson said that the Province of Ontario was reluctant to participate in the meetings. Ministers Blair and Mendicino indicated that they would continue to encourage Ontario to attend.

During a February 8 call between Mayor Watson and Prime Minister Trudeau, the Mayor referred to the tripartite meeting set for later that day and noted that “[Premier] Ford is just staying away from this, but I want to bring him into the tent.” Prime Minister Trudeau said that “Doug Ford has been hiding from his responsibility on it for political reasons.”⁷ In his testimony before me, the Prime Minister said that he believed the OPP was engaged behind the scenes with the OPS, but that at the political level, there was probably a decision to “stay back a little bit and let us wear it.”⁸

At the February 8 tripartite meeting, Mayor Watson again asked why Ontario was absent. Minister Blair said that in his view, Ontario was worried about being visible. Representatives from the Province of Ontario would not attend the February 10 tripartite meeting either.

According to Mayor Watson, Premier Ford was adamant that it would not be useful to have three levels of politicians sitting around a table — the meetings, in the premier’s view, were a waste of time. Similarly, in a text message exchange between federal

⁷ Read out of Prime Minister Justin Trudeau’s call with Ottawa Mayor Jim Watson, February 8, 2022, SSM.CAN.NSC.00002837.

⁸ Evidence of Prime Minister Trudeau, Transcript, November 25, 2022, pp. 29 and 30.

officials, Solicitor General Jones was reported to have stated, during a phone call with Mayor Watson, that she had no interest in being part of a political roundtable.

In his testimony before the Commission, Ontario Deputy Solicitor General Mario Di Tommaso testified that he had forwarded the request for Ontario to be present at these meetings to Solicitor General Jones. He was aware that neither Solicitor General Jones nor Premier Ford attended the meetings but said that he did not know why.

6.2 Engagement by Transport Canada with the Government of Ontario

Transport Canada played a major role in the development of the federal response to the protests due to its impact on Canada's international and interprovincial transportation networks. However, officials at Transport Canada realized early on that very few of its existing authorities could be brought to bear on the disruptions at the ports of entry or in Ottawa, because the protests were not actually taking place on federal infrastructure, such as an international bridge or tunnel. Transport Canada officials instead focused on developing two strategic options: the Strategic Enforcement Strategy, and the Tow Truck and Vehicle Removal Strategy, both of which I discuss in more detail later in this chapter. These strategies required the co-operation of provinces, territories, and municipalities in order to be successful. Transport Canada therefore consulted representatives of provincial and territorial governments in early February. I heard evidence from federal officials that Ontario showed reluctance to commit to using existing provincial authorities to resolve the protests in Ottawa and Windsor.

On February 6, the deputy minister of Public Safety convened a meeting with the deputy minister of Transport, the City of Ottawa, OPS Chief Sloly, and various province of Ontario and federal government officials. The federal deputy minister of Transport presented various options to the attendees that would in time evolve into the two Transport Canada strategies referred to earlier in this chapter. The discussion included

the use of insurance and licensing consequences for those who participated illegally in the protests. Ontario Deputy Minister of Transportation Laurie LeBlanc expressed the view that Ontario’s licensing legislation would not be useful in this context, as it was based on a demerit point system that could not produce immediate effects. Ontario officials also noted that using licensing legislation would not be particularly useful since most trucker participants in the protests were from out of province. According to Ontario Assistant Deputy Minister of Transportation Ian Freeman, the Province had no way of imposing penalties on out-of-province carriers.

On February 7, senior Transport Canada officials participated in the meeting of the Federal, Provincial, and Territorial Crime Prevention and Policing Committee (FPT CPPC). At the meeting, Deputy Minister Michael Keenan presented an early version of the Strategic Enforcement Strategy, which at that time was referred to as the “Maximum Enforcement Strategy.” Alberta and Ontario provided mixed feedback. Ontario proposed issuing a “statement of support for police” and suggested that the focus should be on “[c]ollective enforcement rather than maximum enforcement.”⁹ Deputy Minister Keenan felt that Ontario’s response was “slightly cooler” than the other provinces.

On February 8, Deputy Minister Keenan received a letter from Deputy Minister Laurie LeBlanc, which sought to provide clarity on Ontario’s position on the use of provincial transportation and licensing legislation as a tool to respond to protests. She reiterated that, while police could use the various provisions of the *Highway Traffic Act* as they saw fit, the driver’s licence and commercial operator’s registration schemes would not be effective tools. Both relied on a system of progressive penalties, required drivers to be given notice and an opportunity to respond before action could be taken, and in the case of a decision to cancel or suspend a Commercial Vehicle Operator’s Registration (CVOR) certificate, the right to appeal to a tribunal. In Ontario’s view,

⁹ Notes of Federal/Provincial/Territorial Discussions, February 7, 2022, SSM.CAN.00000363.

these due process rules would make these regimes ineffective at having a prompt deterrent effect on protesters.

Deputy Minister Keenan described the letter as collaborative and collegial in tone, but negative and disappointing in substance. He interpreted the letter as a polite but firm “no” to Transport Canada’s strategy. Federal Transport Minister Alghabra described the letter as a pivotal moment for him, as it represented an outright refusal by Ontario to enforce regulations against protesters.

From February 7 to 8, Minister Alghabra made efforts to set up a meeting with Ontario Minister of Transportation Caroline Mulroney. The Chief of Staff for Federal Intergovernmental Affairs Minister Dominic LeBlanc also tried to set up a call. However, Minister Alghabra’s efforts were rebuffed until February 9. Deputy Minister Keenan testified that it was unusual for one minister to take so long to arrange a meeting with another minister.

When ministers Mulroney and Alghabra did speak on February 9, Minister Alghabra’s staff understood Ontario’s message to be that the protests were targeting federal trade corridors and that the Federal Government should take the lead. Minister Mulroney indicated that Transport Canada’s strategy was unworkable. Minister Alghabra’s staff reported that the tone of the conversation was “difficult” and that the Province of Ontario was trying to shift responsibility to the Federal Government.

6.3 Summonses issued

In order to obtain information concerning Ontario’s approach to the management of the convoy and the demonstrations, I issued summonses to both Premier Ford and Solicitor General Jones, following numerous unsuccessful attempts by Commission counsel to interview them voluntarily. In response, Premier Ford and Solicitor General Jones applied to the Federal Court to have the summonses quashed. The court refused to quash the summonses, but found that under the doctrine of Parliamentary

privilege, the summonses were not enforceable given that the Legislative Assembly of Ontario was in session.¹⁰

6.4 Other notable engagements

The multi-jurisdictional engagements that occurred throughout the convoy events were not all challenging; I heard evidence that government officials at various levels, including public servants from Ontario, worked together effectively in many ways. For example, multiple meetings that were referred to as “Situation in the National Capital Region” meetings occurred throughout the convoy. Regular attendees included the deputy minister of Public Safety and the NSIA, CSIS, the OPS, the OPP, the RCMP, City Manager Kanellakos, and Deputy Solicitor General Di Tommaso. I note that Federal Deputy Minister of Public Safety Stewart and Deputy Solicitor General Di Tommaso agreed that they had an open line of communication throughout the events.

Further, the FPT CPPC was convened on several occasions throughout February 2022, including two meetings at the assistant deputy minister level on February 1 and 11, and one at the deputy minister level on February 7. The meetings included representatives of the federal government and all provinces and territories. Committee members shared information regarding the ongoing demonstrations and discussed the various federal, provincial, and territorial perspectives. They also shared best practices and discussed strategies and approaches to address protests and blockades. The FPT CPPC seems to have been a forum that worked well.

6.5 Requests for assistance

In Chapter 2, I discuss the framework for emergency management in Canada, including the federal *Emergency Management Act*. That statute sets up a mechanism to allow the federal government to provide a range of financial and non-financial

¹⁰ *Ford et al. v. Commissioner of the Public Order Emergency Commission*, 2022 FC 1513.

assistance to provinces in response to emergencies. The formal process whereby provinces seek such assistance is known as a Request for Federal Assistance.

During the course of the protests, there were four main requests for federal assistance from provincial and municipal governments: requests from the City of Ottawa and the City of Windsor for policing resources, and requests from the Province of Ontario and the Province of Alberta for other federal resources. I discuss the requests made by Ottawa and Windsor authorities for policing resources in Chapters 9 and 10, and Alberta's request for tow trucks in Chapter 11.

Ontario's request for assistance was uncontentious. It originated with the OPS, which, in preparation for the arrival of the Freedom Convoy protesters in Ottawa, identified the Cartier Square Drill Hall parking lot, which is part of a military training facility located in downtown Ottawa, as a suitable staging area for public order units. The OPS made an "assistance to law enforcement" request to the solicitor general of Ontario to utilize the space from January 29 to 30. The solicitor general wrote on behalf of the OPS to Minister Blair and Minister Mendicino outlining the request. It was approved the same day.

7. Early international engagement

Global Affairs Canada (GAC) had early involvement in responding to the protests due to its responsibility to ensure security and access for diplomatic missions in Ottawa.

Canada has obligations toward foreign diplomatic missions and their staff under the *Vienna Convention on Diplomatic Relations*. These include ensuring the safety and security of diplomatic missions and their staff, and ensuring that they can access their facilities unimpeded. There are approximately 50 diplomatic properties in downtown Ottawa. As protest activity intensified, GAC's Office of Protocol began to receive formal complaints from diplomatic missions located in the downtown core. Additional informal complaints were also lodged by foreign countries that chose to contact GAC

headquarters in Ottawa directly. The complaints related to noise stemming from constant honking, difficulty accessing premises, fumes, illegally parked vehicles, and concerns about the danger of fire or explosions from refueling procedures occurring close to diplomatic premises.

The Office of Protocol sent notices to foreign missions on January 28, February 4, and February 9. The first two advised missions to avoid unnecessary travel in the downtown core and to contact 911 for emergencies and the RCMP for protective policing services. The third notice expanded on those messages and added that the RCMP had advised the Office of Protocol that it had no specific concerns for diplomatic missions in connection with the protests from a protective policing perspective. By this, it meant that the protests were not targeting foreign missions themselves. Rather, the missions were experiencing the same negative impacts as the general public.

When asked if she believed Canada was unable to fulfill its obligations during this period, Associate Deputy Minister of Foreign Affairs Cindy Termorshuizen testified that GAC was concerned that it would be unable to fulfill its responsibilities. She added that “as the convoy went on longer, and there were more and more stories about assaults on the street, about unlawful conduct, an unwillingness to comply with injunctions and so on, that concern just continued to rise over time.”¹¹

8. Mounting pressure: economic impacts and the Canada – U.S. relationship

On February 7, the protests in Ottawa entered their second full week, and protesters in Windsor began their blockade of the Ambassador Bridge. The next day, the situation in Coutts, Alberta, deteriorated as protesters re-established a full blockade of Highway 4, effectively shutting down Alberta’s largest POE. With these developments came increasing pressure on the Federal Government to do something to intervene

¹¹ Evidence of Cindy Termorshuizen, Transcript, November 14, 2022, pp. 260 and 261.

and resolve the protests. This pressure came from both internal and external sources. Internally, the voices of many domestic industries, spurred by the events in Windsor, began to join those of public officials in Ottawa seeking federal intervention. Externally, foreign industry and government actors expressed increasing concern about Canada – U.S. bilateral relations, as did allies from farther afield. Economic analysis conducted by the federal government itself, led by Transport Canada and the Department of Finance, reinforced these concerns. These new pressures added to the sense of urgency experienced by federal officials, and had a significant impact on how Cabinet understood the need for federal action and the inadequacies of existing legal tools outside of the *Emergencies Act*.

8.1 Concerns raised by Canadian industry

The blockade of the Ambassador Bridge on February 7 caused an immediate outpouring of concern from impacted industries. Much of this concern was directed at federal officials. On February 8, Minister Alghabra met with the Retail Council of Canada, which advised that there was not enough inventory available to avoid material and product shortages if the blockades persisted.

Between February 8 and 10, Minister Alghabra met with various groups connected to the automotive industry. On February 8, he met with the Automotive Parts Manufacturing Association (APMA), which communicated the potential need to shut down plants if the blockade reached a critical point, as well as concerns about items backing up on the U.S. side. On February 9, the minister met with Canadian Manufacturers & Exporters, which included representatives from Proctor & Gamble, Toyota, Dofasco, 3M, Stellantis, and Ford Motor Company. They discussed auto plant shutdowns as well as concerns about the supply chain for health and medical supplies. On February 10, the minister met with Global Automakers, which reported that plant shutdowns had started to occur.

On February 9, the APMA’s president texted Minister Freeland, calling the situation at the Ambassador Bridge “embarrassing.” On February 10, Minister Freeland received a letter from FedEx expressing concern about the ongoing blockade of the Canada – U.S. border and urging the Government to do all it could to reopen it. On February 11, Alan Kestenbaum, Executive Chairman and CEO of Stelco, texted Minister Freeland to emphasize the challenges posed by the Ambassador Bridge blockade and his concern about the long-term consequences of shutting down auto plants because of a lack of Canadian parts. Mr. Kestenbaum was one of many industry leaders to warn Minister Freeland that the blockade risked causing U.S. industry to cut Canada’s industrial sector out of their supply chains. These concerns resonated with the concerns the Department of Finance had been dealing with in negotiating over the U.S. Build Back Better legislation.

Outside of the manufacturing and retail industries, Canadian officials were also hearing concerns from the financial sector. As I discuss in more detail later in this chapter, both Finance Minister Freeland and Deputy Minister Sabia were in communication with the CEOs of Canada’s big banks, as well as other financial institutions. The banks, in particular, reported receiving negative messages from international investors.

8.2 Concerns raised by U.S. politicians and industry

Canada was also receiving negative messages directly from foreign actors, including both industry and politicians, which is why GAC became increasingly engaged in the Government’s response to the protests. Whereas it was previously dealing with the local diplomatic community in Ottawa, GAC was now at the receiving end of a barrage of expressions of concern from foreign partners. Several U.S. officials emphasized that the Ambassador Bridge had to reopen quickly. Others began to use the blockade to support arguments to shift manufacturing out of Canada entirely.

Several witnesses before the Commission referred to a February 10 series of tweets by Elissa Slotkin, a Michigan representative in the U.S. House of Representatives, as being emblematic of arguments being made in U.S. political circles. Representative Slotkin tied concerns about the Ambassador Bridge blockade to broader grievances respecting outsourcing and the loss of manufacturing jobs in America, and advocating for the U.S. government to bring American manufacturing “back home.” This type of sentiment directly challenged many years of work by Canadian officials to present Canada as a reliable trading and investment partner and to win access to American markets and auto supply chains.

Representative Slotkin was not the only U.S. politician to take a concerning stance in response to the blockade. Joseph Comartin, Consul General of Canada in Detroit, testified that he heard a great deal of concern about Windsor from other members of the House of Representatives, as well as U.S. senators. They emphasized the effect on the supply chain and asked why Canada was not doing more to resolve the situation, observing that the three levels of government did not appear to have a coordinated plan. He also heard from auto manufacturers as early as February 7 — the day the Windsor blockade began — about the problems they were experiencing.

Shortly after the Ambassador Bridge blockade began, U.S. government officials began reaching out directly to Canadian officials. On February 9, officials from the U.S. Department of Homeland Security (DHS) requested meetings with Public Safety to gain better situational awareness, including on whether extremist elements were involved in the protests.

The NSIA also spoke with Elizabeth Sherwood-Randall, Homeland Security Adviser to the U.S. President, who reached out to the NSIA on February 9 and 10 to express concern and ask whether the United States could assist.

February 10 and 11 saw a marked increase in communications from the United States. On February 10, Michigan Governor Gretchen Whitmer issued a statement calling on

Canada to reopen traffic on the Ambassador Bridge. The same day, Minister Alghabra spoke with U.S. Secretary of Transportation Pete Buttigieg. The call was at Secretary Buttigieg's request, which was an unusual and notable step that indicated the gravity of the situation from the American perspective. Secretary Buttigieg shared his extreme level of concern during the call. Minister Alghabra explained that Canada's system of government is much more decentralized than the U.S. system; the federal government had to allow provincial governments the chance to exercise their authorities first. He assured the secretary that "if the bridge is not clear within the next few hours, the PM has asked the attorney general for legal options where we can get involved and clear the blockade."¹²

Also, on February 10, Canadian officials in the Embassy of Canada to the United States in Washington, D.C. spoke to U.S. Congressman Dan Kildee, who expressed similar concern about the ongoing events. Congressman Kildee had been a strong proponent of making tax credits available only to U.S. electric vehicle manufacturers, and Canada had been working to gain his support on extending the credits to Canadian manufacturers.

However, the most significant discussion that took place on February 10 was between Minister Freeland and U.S. National Economic Council Director Brian Deese. Mr. Deese was described as President Biden's most important economic advisor. Minister Freeland had spoken to Mr. Deese various times in relation to the Build Back Better legislation. She noted that he is a difficult person to reach; as a result, it was striking to her that he reached out to discuss the blockades. She sent the following email to her staff after the call:

¹² Read out of call between Minister Omar Alghabra and Secretary Pete Buttigieg, February 10, 2022, SSM.NSC.CAN.00000256, p. 3.

He called me.

They are very, very, very worried. If this is not sorted out in the next 12 hours, all of their north eastern car plants will shut down.

He said that he supposed this proved the point we had made previously to them about how closely integrated our economies are. (He did not seem to see this as a positive.)¹³

Minister Freeland testified that the fact that Mr. Deese commented negatively on the integration of the two economies was, in her view, a “dangerous moment for Canada,” given the push in the United States to insulate their supply chains and adopt more protectionist policies. At this point, she had serious concern that the blockades may be causing “long-term and possibly irreparable harm to our trading relationship with the United States” and could imperil Canada’s attractiveness as a destination for all foreign investments.¹⁴

On February 11, Consul General Comartin spoke to U.S. Congresswoman Brenda Lawrence, whose district included the Ambassador Bridge. He heard similar concerns about the impact the blockade was having on the automotive sector. Consul General Comartin also spoke to U.S. Congresswoman Debbie Dingell on February 11 following her appearance on *CBC’s As It Happens*, where she made protectionist comments. Consul General Comartin was surprised by her comments, based on his existing strong working relationship with her. He emphasized steps that were being taken, including Ontario’s declaration of a State of Emergency and the injunction obtained in Windsor.

Consul General Comartin also communicated with the Detroit Regional Chamber on February 10 and with the Original Equipment Suppliers Association and the Motor & Equipment Manufacturers Association on February 11. These groups were upset with

¹³ Email from C. Freeland to L. Church, February 10, 2022, SSM.CAN.00001255.

¹⁴ Evidence of C. Freeland, Transcript, November 24, 2022, pp. 21 and 22.

the situation and spoke forcefully about the need to take action. The president of the Original Equipment Suppliers Association asked whether emergency legislation was on the table. Consul General Comartin responded that he did not believe it was an option, which was his understanding at the time.

While most of the concerns expressed by U.S. industry and politicians related to the Ambassador Bridge blockade, GAC received at least three complaints from businesses whose shipments were being affected by the disruptions at Emerson, Manitoba.

On February 11, Minister Mendicino spoke with U.S. Secretary of Homeland Security Alejandro Mayorkas to discuss the disruption of cross-border trade. Secretary Mayorkas stated that the United States was worried that if swift and strong action was not taken, it was more likely that the convoy would spread. Minister Mendicino responded that he was taking the protests very seriously and that they were prepared to act on both sides. He reassured Secretary Mayorkas that they were using “every tool in the toolbox.”

The various discussions on February 10 and 11 culminated in a call between Prime Minister Trudeau and U.S. President Joe Biden, which was set up with the assistance of Mr. Deese. Such calls usually take weeks or months to organize. The fact that a call between the Prime Minister and the President occurred a day after Minister Freeland’s call with Mr. Deese was seen as significant and a clear sign of the degree of concern the United States had.

The Prime Minister had two goals going into the call: first, to reassure the U.S. president that Canada was going to resolve the situation and continue to be a reliable partner for trade and a safe neighbour, and second, to talk about American influence. On the latter point, he noted a recent flooding of Ottawa’s 911 call centre by American callers, American funding and support for the activities, and the amplification of misinformation in U.S. media and television networks like *Fox News*. The readout

from the White House also stated that the Prime Minister promised quick action in enforcing the law.

On February 13, Ralph Goodale, High Commissioner for Canada in the United Kingdom, shared with GAC officials two themes that he had heard from the broader international community: disbelief that Canada of all places had been experiencing this type of protest, and concern about Canada exporting the protests elsewhere. In his view, Canada should be concerned about the negative economic and reputational impact from trade disruptions, and the possible impression that Canadian police, security, and intelligence systems were incapable of responding effectively to blatant, large-scale, illegal conduct.

In addition to the various communications I have just discussed, GAC also monitored various “copycat” protests that were occurring in the United States and internationally, some of which I discuss in Chapter 12. These were problematic for Canada from a reputational standpoint, and GAC was concerned that the Canadian “model” was being exported and that the Canadian flag was being used as a symbol to fuel protests in capitals around the world. As a trade- and investment-dependent economy, Canada’s reputation as a safe and reliable place to invest was viewed as important by government officials. The defiance of the law that was seen in Ottawa and at POEs had a negative reputational impact.

8.3 Transport Canada analysis

Within days of the Ambassador Bridge blockade starting, Canadian officials began to assess its economic impacts. Transport Canada’s Economic Analysis Division was the first to produce an assessment, on February 10.¹⁵ The analysis considered three possible scenarios for how the blockades would impact Canada’s Gross Domestic Product (GDP), each with an increasing level of severity.

¹⁵ Backgrounder on the Impact of a Road Blockade at the Ambassador Bridge, PB.CAN.00000840.

Scenario 1 assumed the shutdown of the auto sector due to the disruption of the supply chain, while other sectors would continue to operate by rerouting traffic through alternative POEs. In this scenario, Transport Canada estimated the loss to the economy to be \$45 million per day. Scenario 2 assumed a broader shutdown of the manufacturing sector, such as machinery and primary metals manufacturing. The estimated cost for this scenario was \$86 million per day. Scenario 3 was the most serious and assumed a widespread shutdown across the economy at a cost of \$161 million per day.

Transport Canada's view was that scenario 1 was the most likely. Relying on CBSA data, the analysis noted that from February 7 to 10, the net cumulative effect on traffic was only a decrease of seven percent, because most traffic could be diverted to nearby ports of entry. This rerouting would likely reduce economic impacts, but not eliminate them. Rerouting traffic to other ports of entry was inefficient because it eroded the number of hours truckers could drive due to safety regulations and added significant costs.

In an email exchange on February 14, officials at the Department of Finance commented on Transport Canada's analysis. They agreed that scenario 1 presented a reasonable assessment of the economic impact from the Ambassador Bridge blockade. However, they considered that the cost to Canada's GDP was likely transient; if the blockade was lifted, production would likely catch up in the following weeks. They therefore considered the \$45 million per day figure to be a reasonable upper limit for the daily cost of the blockade, and opined that half of that would be made up in the following four weeks.

It is important to read this analysis from the Department of Finance in context. By February 14, the Ambassador Bridge blockade had been resolved. Based on that fact, Department of Finance officials could more easily exclude scenarios 2 and 3, and had a better sense of the ability of production to catch up with the now-ended disruption to supply chains.

8.4 Preliminary Department of Finance analysis

The Department of Finance's Economic Policy Branch, led by Assistant Deputy Minister Rhys Mendes, produced two economic analyses during the convoy events: an initial analysis on February 10 and an updated version on February 22.¹⁶ These were shared with Minister Freeland and, through her, with her Cabinet colleagues.

The Department of Finance's February 10 analysis relied on Transport Canada's scenario 1 of \$45 million in affected trade per day, but differed from Transport Canada's analysis in two important ways. Whereas Transport Canada's analysis focused on the Ambassador Bridge blockade, the Department of Finance modelled the Coutts and Emerson blockades as well.¹⁷ Further, Transport Canada's analysis was focused on a single point in time, while the Department of Finance was considering impacts over time, including whether losses could be recouped.

The February 10 analysis did not attempt to quantify the economic impact of the blockades, but rather focused on the amount of trade that was at risk. Assistant Deputy Minister Mendes explained that the reason for this was that the situation was fluid, and quantifications would have been "what-if" scenarios at that point. Further, quantification would not, in his view, convey the larger point, which was that if the blockades spread or they persisted, there would be a highly significant impact on economic activity, and that there was a growing reputational impact. The Department of Finance's updated February 22 analysis, which I discuss in Chapter 16, did attempt to quantify the economic impacts.

¹⁶ Blockades – Recent Developments and Summary of Economic Disruptions, SSM.CAN.00000177 and SSM.CAN.00007571, respectively.

¹⁷ Though the Department of Finance did not undertake a detailed analysis of the economic impacts of the Emerson and Coutts blockades, I note that I received evidence from the president of the CBSA and the regional director general for Emerson and Coutts that traffic was almost entirely successfully diverted to neighbouring ports of entry and so the blockades had minimal impact on the flow of goods in those provinces: Evidence of John Ossowski, Transcript, November 16, 2022, pp. 21 and 22.

The February 10 analysis noted that the disruptions were occurring at a time when the supply chain was already under significant stress from the pandemic. It predicted that, in the near term, most manufacturers could find alternative shipping routes or continue production through inventory management, and that if the disruption were to end soon, most losses could be recouped. The Department of Finance assessed, however, that the longer the disruptions continued, the greater the economic impacts could be. With a short disruption, manufacturers might be able to recoup a significant amount of lost production in subsequent weeks. With a longer disruption, the amount of loss accumulates, and it becomes more and more difficult to make up production.

The analysis also highlighted that each industry would be affected differently. The automotive sector was at the most risk of immediate disruption. In contrast, other industries that kept more inventory on hand would be able to weather the events longer.

9. The Government of Ontario increases its engagement

Just as the economic impact of the Ambassador Bridge blockade was raising concern among U.S. politicians and business stakeholders, it also caused concern for the Government of Ontario. Premier Ford and other members of his Government started to become more engaged with their federal counterparts and to consider taking action by using the Province’s own emergency legislation.

On February 9, Prime Minister Trudeau spoke with Premier Ford. At the beginning of the call, Premier Ford expressed frustration with how the Ottawa police chief and Mayor Watson had mismanaged the situation in Ottawa, but noted that the “bigger” issue for Ontario was the Ambassador Bridge. He was concerned that protests could spread to other ports of entry, and highlighted that the Ambassador Bridge blockade was costing hundreds of millions of dollars in trade per day. He indicated that he had asked Ontario Attorney General Doug Downey to look at legal options to give police

more tools and exhaust legal remedies. He also characterized the police as “a little shy” and indicated that, as premier, he could not direct them.

The Prime Minister replied that it was not a legal protest and that Ontario already had legal tools it could be using. By this, he meant that the protesters did not have a permit to protest, were illegally parked, and were engaged in any number of municipal and provincial by-law infractions.

Prime Minister Trudeau told Premier Ford that although the Federal Government had responsibility over the bridge and border, the protest was occurring on municipal land, and police needed to do their job. At the end of the call, Prime Minister Trudeau asked Premier Ford what the plan was and whether the OPP understood the urgency. Premier Ford said he would be briefed by Ontario’s solicitor general the next day and would keep the Prime Minister updated.

On February 10, Minister LeBlanc spoke to Premier Ford. Minister LeBlanc had been asked to talk to the premier about provincial transportation issues, but the discussion moved in a different direction when Premier Ford said that Ontario would be invoking its emergency legislation the next day, outlining a variety of economic and regulatory measures that the Province would be using. Premier Ford told him about his conversations with the Governor of Michigan, chief executives of big auto companies, and representatives of big unions, and shared his frustration with how law enforcement had dealt with the situations in Ottawa and Windsor.

On February 11, Ontario declared a province-wide emergency pursuant to the *Emergency Management and Civil Protection Act*. The same day, the Ontario Superior Court of Justice granted an injunction prohibiting persons from impeding access to the Ambassador Bridge. On February 12, the Windsor Police Service (WPS) and the OPP began clearing the blockade with the assistance of other law enforcement agencies, including the RCMP and the London Police Service. The blockade was cleared on

February 13, and the Ambassador Bridge reopened in the early morning hours of February 14. I discuss these developments in more detail in Chapter 10.

10. The decision to convene the Incident Response Group

Between February 7 and 10, the Clerk of the Privy Council had been hearing a rapidly increasing level of concern from ministers, Parliamentarians, and public servants about the ongoing situation. On February 9, the Clerk called a DMOC meeting where she instructed participants to examine all available federal powers, authorities, and resources to ensure that the full power of the Federal Government was brought to help those on the front lines of the situation. A second DMOC meeting took place that afternoon. Officials within the PCO EPCRS prepared a document¹⁸ that brought together all potential options to address the convoy and emailed it to the Clerk and Deputy Clerk that night.

The document identified four areas for possible federal action: enforcement operations in Ottawa and at ports of entry; engagement in the form of direct negotiation with protesters in Ottawa; continued engagement with the Province of Ontario; and use of financial authorities to stop the funding of the protests.

After reviewing this document on the morning of February 10, the Clerk concluded that it was appropriate for the Prime Minister to convene the Incident Response Group (IRG), and for the Federal Government to seriously consider intervening to resolve the protests. An in-person meeting of the IRG was convened that same afternoon.

At the February 10 IRG meeting, the Prime Minister heard first from a variety of senior officials and ministers about their views of the situation, including a threat assessment from the NSIA. The IRG meeting concluded with a discussion of additional “taskings”

¹⁸ PB.NSC.CAN.00002419.

for senior officials and the PCO, and two “tracks” of work were identified. Under Track 1, deputies were to examine all options under existing authorities available to their departments and agencies, even if the use of some powers or functions required additional resourcing. Under Track 2, deputies and ministers were to consider whether new legal authorities were needed and, if so, whether they should be secured through the adoption of new legislation or through the invocation of the *Emergencies Act*.

Deputy ministers and assistant deputy ministers completed this work on February 11 during meetings of the DMOC and the ADM NS Ops. Various departments and agencies were identified as the leads in particular areas, such as resolving blockades (Public Safety) or strategic enforcement (Transport Canada). The results of the work done over the day was collated into a single document called the “IRG Tracker,” which incorporated situation reports, maps, trade and economic impact assessments, and proposals. The IRG Tracker was meant to structure the deliberations of the IRG and record the work done by all participants.

11. Existing authorities considered by the Incident Response Group

The February 12 IRG meeting began with updates from senior federal officials who described the work done by their departments, identified gaps and challenges faced by their departments, and answered questions from the Prime Minister and other ministers. The IRG considered five main categories of options under Track 1.

11.1 The Strategic Enforcement Strategy

As I discuss earlier in this chapter, Transport Canada had been developing a Strategic Enforcement Strategy since February 4, 2022. Transport Canada recognized early on that it did not have adequate enforcement authorities itself, but that provinces, municipalities, and law enforcement agencies had enforcement options available to them. The Strategic Enforcement Strategy was meant to coordinate between these

different levels of government and bring to bear the maximum number of existing authorities to incentivize persons to stop participating in unlawful blockades and protests. It had two parts: communication and enforcement.

The communication component was a response to the fact that many individuals involved in the protests did not believe that they were doing anything illegal. The strategy called for consistent communication to protesters about the illegal nature of their conduct, the impact of those activities, and the legal consequences that could follow if they continued. To the extent that some protesters did not believe they were doing anything illegal, education about consequences could inspire some vehicle owners to leave.

The enforcement component of the strategy involved identifying the spectrum of enforcement authorities available to police, provincial transportation authorities, and others where commercial trucks or other vehicles were involved as part of an allegedly unlawful protest or demonstration. This included examples of possible infractions under typical municipal by-laws, provincial highway legislation, and the *Criminal Code*, as well as special rules relevant to truck drivers and operators who rely on specific licences or commercial vehicle operator's registration. The strategy advocated that police issue tickets or lay charges; tow, impound, or seize vehicles; and gather plate numbers and driver information to pass on to provincial authorities so that licences could be suspended or cancelled. The strategy also called on provinces to adopt emergency measures that would create additional offences for illegal blockades similar to those found in Alberta's *Critical Infrastructure Defence Act*.

As I discuss earlier in this chapter, the Strategic Enforcement Strategy had already proven to be controversial with Ontario and Alberta. Alberta expressed concern about directing operational decision making of law enforcement agencies. Ontario expressed concern about using vehicle safety programs, like CVOR, for purposes for which they were not intended. Transport Canada also received feedback from Ontario

to the effect that the *Highway Traffic Act* lacked instantaneous sanctions, which would limit its applicability in addressing a protest situation.

The emergency measures adopted by Ontario on February 11 were consistent with the Strategic Enforcement Strategy. Ontario adopted measures that prohibited blockades of critical infrastructure and accelerated the escalation of penalties for the owners or operators of vehicles engaged in such blockades. Transport Canada viewed this as a positive step and believed that Ontario's emergency measures had a significant positive effect in responding to the Ambassador Bridge blockade. Nonetheless, Transport Canada was concerned that the Strategic Enforcement Strategy could not provide a complete solution to the continuing protests and would take time to implement in the face of potentially escalating economic damage.

11.2 The Tow Truck Strategy

In early February, Transport Canada also began developing a Tow Truck Strategy, in response to feedback from law enforcement, municipalities, and provinces about their lack of towing capacity. The purpose of the strategy was to examine the feasibility of a wide range of escalating options to support the removal of vehicles from blockades. The strategy proposed five options for police of jurisdiction, ranging from directing owners to move their vehicles to pushing vehicles off roadways. The strategy included the possibility of the federal government contracting tow services, providing qualified drivers, and/or providing support for vehicle storage.

11.3 Financial measures

The Department of Finance considered measures that could be put in place under existing federal legislation both to dissuade people from being involved in the protests and blockades and to develop an approach that would persuade people to leave without anyone getting hurt. The Department of Finance's contributions to the Track 1 discussions originated from a February 9 memo from Deputy Minister Sabia outlining

options under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)* and the *Bank Act*.

The memo noted that the *PCMLTFA* did not apply to crowdfunding platforms and payment service providers, and that the risk that they might be misused for money laundering or terrorist financing had recently been assessed as high and medium, respectively. Bringing these platforms under the *PCMLTFA* regime would, according to the memo, “help mitigate risks that these platforms receive illicit funds, increase the quality / quantity of intelligence received by [FINTRAC], and make more information available to support investigations by law enforcement.”¹⁹ Such a change could be done by way of regulations, rather than amending the Act itself.

After considering what could be done under authorities contained in the *Bank Act*, officials concluded that there were no useful tools under that statute as it stood. This led them to consider legislative amendments that could be introduced. The memo articulated a possible amendment that would enable Cabinet to issue directives to banks, where necessary, to maintain the strength and security of the national economy or to protect national security or the safety of Canadians. Under this proposal, directives could require banks to freeze the accounts of specific persons, or alternatively require banks to review their business relationships to temporarily suspend accounts being used to further illegal activities that threatened the economy.

The Department of Finance’s view, which was shared by Minister Freeland, was that there were significant limitations with both the *PCMLTFA* and *Bank Act* options. The *Bank Act* measures could only apply to federally regulated financial institutions, and not provincially regulated entities like credit unions. This was significant given the ease with which money can be moved between institutions. It also raised a fairness issue in the sense that measures would apply to some financial institutions but not others.

¹⁹ Memorandum to the deputy prime minister and minister of Finance, SSM.CAN.00003764, p. 2.

Another concern was the amount of time it would take to make legislative amendments. The Department of Finance's view was that action needed to be taken immediately, and the fact that these options would require legislative (or at least regulatory) amendment was a significant impediment in the minds of those considering this action.

The Department of Finance also noted that the type of asset freezing that was being considered could raise concerns, given that Canadians usually expect to have access to their funds except in rare circumstances, such as when a court orders a freeze on an account. That concern arose again when the Government ultimately implemented a freezing regime under the *Emergencies Act*.

11.4 The direct engagement proposal

Public Safety developed a proposal for direct engagement between protesters in Ottawa and a representative of the Federal Government following a February 10 meeting with Inspector Marcel Beaudin, the OPP's Provincial Liaison Team (PLT) lead in Ottawa. In Inspector Beaudin's view, a face-to-face meeting between protest leaders and federal officials had the potential to help to reduce the protest footprint and thus hopefully facilitate subsequent enforcement operations. A meeting would give the protesters a "win" and allow them to leave the protest feeling that they had accomplished something. The OPS had identified six individuals who were leaders of a sort within the protest, whom they believed they could approach about engagement. Deputy Minister Stewart prepared a proposal that contemplated the PLT offering to arrange a meeting with a representative of the Federal Government if the leaders agreed to leave the protest and publicly denounce unlawful activity and blockades. He appended a series of considerations, developed by Inspector Beaudin under the heading "Police Advice." Inspector Beaudin testified that he also consulted OPS Acting Deputy Chief Patricia Ferguson and an RCMP liaison specialist.

However, it appears that RCMP Commissioner Lucki harboured doubts about the proposal. In her interview with Commission counsel, Commissioner Lucki stated that she felt the proposal was premature since engagement with a federal representative

was the “end game,” and in her view it was unwise to jump to the end game at the outset of a negotiation. In addition, Deputy Minister Stewart stated that Commissioner Lucki was reluctant to move forward with the proposal because she believed the RCMP could handle the protests without it.

That said, Commissioner Lucki’s speaking points for the IRG meeting that day reflect support, though it is unclear whether she actually articulated this position at the meeting.

The proposal was placed on the formal agenda for the February 12 IRG meeting. The IRG ultimately chose not to pursue it. Minister Mendicino explained that this was because there were unanswered questions about which convoy organizers were in charge, and whether those organizers had the authority or ability to get the protesters to leave. Minister Mendicino stated that there were also concerns about the safety and security of the federal representative who would engage with the protesters, and concerns that negotiations were more appropriate within the mandate of law enforcement. NSIA Thomas testified that she did not view the engagement proposal as a workable plan because there was no clear leadership among the protesters in Ottawa, no clear option for who could serve as a representative of the Federal Government, and because a similar plan for direct negotiation with protesters in Windsor had failed in the days prior. The Prime Minister echoed these concerns, and further testified that he was concerned about the possibility that direct engagement with the protesters could set a bad precedent. He noted that opposition leader Candice Bergen had voiced the same concern in their call on February 3.

11.5 Customs / Immigration authorities

The Federal Government considered some additional options already present under existing authorities. For example, the CBSA identified various sanctions that could be imposed on truckers to deter them from participating in the protests, such as denying them access to programs like NEXUS, which facilitate cross-border travel. The CBSA

also presented the option of expanding the “customs-controlled area” concept to designate a highway or other area as a “designated international trade corridor,” the idea being to provide law enforcement with specific authorities to ensure the safe and unrestricted flow of international goods. For example, law enforcement could have removed customs bonds (a designation for highway carriers) or imposed other sanctions on vehicles that were impeding the flow of goods.

Ultimately, none of those options were exercised.

12. Gaps in authorities and other obstacles identified by the Incident Response Group

In the process of identifying existing authorities and how those could be used to assist in resolving the protests, federal departments and agencies also identified “gaps” in those existing authorities and other obstacles that stood in the way of an effective federal response. These gaps and obstacles were important considerations for the Government in choosing to invoke the *Emergencies Act* and informed the development of the emergency measures that were eventually implemented.

12.1 Appointment of RCMP officers as special constables

As I discuss in Chapter 8, RCMP officers are not authorized to enforce municipal or provincial laws in Ontario unless they are appointed as special constables by a police services board or the commissioner of the OPP.

Acting Deputy Chief Ferguson testified that getting RCMP members sworn in was something the OPS struggled with throughout the convoy.

The swearing-in process typically takes several days to complete. That said, Ottawa Police Services Board (OPSB) Chair Diane Deans testified that the OPS, the OPSB, and the solicitor general of Ontario developed a streamlined process, whereby the

OPSB and solicitor general approved the appointment of lists of officers in batches, and the OPS administered the oaths or affirmations to those officers during virtual ceremonies held at the start of shifts at 9 a.m. and 9 p.m. each day. According to Chair Deans, the information she received was that the total time between approving a list of officers and administering the oaths was less than a day.

Nevertheless, officials in Public Safety noted that it was difficult to get the process moving, and the Ontario solicitor general was sometimes slow to approve the lists of appointments. PS also reported that the RCMP felt it would be helpful to eliminate this administrative requirement.

OPS Interim Chief Steve Bell had a similar view, noting that even if swearing-in could be done in 24 hours, it would still be an impediment to getting operationally ready boots on the ground in Ottawa.

RCMP officers deployed to Windsor were not sworn in as special constables. According to Superintendent Dana Earley, the OPP's Critical Incident Commander in Windsor, there was significant confusion around the swearing-in process, including who was responsible for it and whether it could be done remotely. Working through these issues caused significant delay. Ultimately, Superintendent Earley paired each RCMP officer with a partner from the OPP or the WPS, so the full range of authorities under provincial and municipal legislation could be used.

12.2 Jurisdictional challenges

Jurisdictional challenges with respect to the location of protests presented themselves throughout the convoy. In Ottawa, for example, the protesters became entrenched on Wellington Street, which falls within municipal jurisdiction, and parks and other places that fall within federal jurisdiction. Where protesters formed blockades near POEs, they were on both municipal and provincial roads. Small differences in physical location had substantial legal consequences. For example, the federal *International Bridges and Tunnels Act* contained broad, injunction-like legal authorities that might

have been useful, but they could not be used in Windsor because protesters had blocked the Ambassador Bridge without getting on the bridge.

12.3 The compellability of tow truck drivers

One issue that I heard extensive evidence about was the inability of police officers in Ottawa, Coutts, and at the Ambassador Bridge to procure heavy tow trucks to move vehicles. As I discuss in previous chapters dealing with protests in these locations, police and government authorities encountered difficulties getting towing companies to voluntarily provide their services to help remove protesters' vehicles. As a result, officials looked for existing authorities that could compel tow truck drivers to cooperate. In Ontario, it appeared that there were none, as Ontario's emergencies legislation does not permit measures compelling individuals to provide services.

12.4 The *Immigration and Refugee Protection Act* gap

The CBSA identified a legislative gap regarding the ability of border services officers to prevent foreign nationals from entering the country simply to join a protest. The CBSA had no authority to turn away individuals otherwise admissible to Canada solely because they intended to join the Freedom Convoy protests. However, the CBSA could (and did) turn away individuals looking to enter Canada to join protests for other reasons — such as failure to meet COVID-19 vaccination requirements.

13. The state of protest activity on February 12

Leading into the third weekend of the protests, the Federal Government's view was that the situation was deteriorating, and it might have to intervene. During the February 12 IRG meeting, participants had detailed discussions on the state of protest activity in Windsor, Ottawa, and across the country, in addition to the discussions on powers and gaps noted earlier.

13.1 The situation in Windsor

NSIA Thomas noted that law enforcement had begun to take action in Windsor, but that the situation remained fluid. She discussed the latest tactic used by some protesters, which was to bring children on site to prevent police intervention. Minister Mendicino added that police had to stall enforcement when the arrival of additional protesters led to the police being outnumbered. He noted, however, that police had begun enforcement nonetheless.

RCMP Commissioner Lucki reported that the OPP had delivered a letter signed by the Ontario Government proposing to meet with the protesters for constructive dialogue if they agreed to end their demonstrations. Protesters had apparently not accepted this offer. In fact, as I discuss in Chapter 10, some protesters did leave after receiving a copy of this letter. However, the IRG's understanding of the situation was not far off. Ontario's letter had relatively little impact.

13.2 The situation in Ottawa

Both the NSIA and the RCMP reported a worsening of protest activity in Ottawa. The NSIA remarked that the boldness of protesters in Ottawa was escalating significantly. Commissioner Lucki added that the mood on the ground had become more hostile toward police and that several additional convoys were reportedly travelling to Ottawa from Quebec.

Minister Blair noted that the Deputy Mayor of Ottawa was drafting a motion to ask the Attorney General of Ontario to request military assistance under the *National Defence Act*.

The reports on the state of police planning in Ottawa were somewhat inconsistent. Minister Mendicino indicated that a plan seemed to be lacking in Ottawa, with OPS Chief Sloly having yet to approve the plan that was developed with the RCMP and the OPP. The minutes of the February 12 IRG meeting indicate, however, that during the

session, the RCMP received confirmation that Chief Sloly had accepted the plan, and Commissioner Lucki said she would be able to provide additional details on the plan at the next call. That said, she added that there were continued challenges working with the OPS, including in communicating with Chief Sloly. Overall, the impression left regarding the state of police plans at that point was a suggestion of progress, tinged with continued uncertainty.

13.3 The situation across Canada

Turning to the state of protests across the country, the NSIA reported that “slow roll” activities by protesters had proven to be an effective tactic and that multiple POEs were experiencing blockages. Commissioner Lucki described the situation as “evolving hour by hour.”²⁰ Protests were occurring in various locations in Ontario, including Thunder Bay, the Greater Toronto Area, and Cornwall. In Coutts, Alberta, the number of vehicles had decreased, but the situation continued to evolve, and the CBSA suspended commercial activity as of 1 p.m. that day. Commissioner Lucki noted that the situation in Coutts was “unique” and involved heightened safety risks because of indications of weapons on site. On the positive side, the POE at Emerson, Manitoba, remained open, and the situation at other POEs, including British Columbia and Nova Scotia, appeared to be under control.

In her interview with Commission counsel, NSIA Thomas and officials from her office elaborated on these concerns. They noted that every time they were briefed, they received reports of something else that was happening, from additional real and anticipated blockades at the border crossings in various locations across the country, to additional blockades along highways and rail corridors, copycat protests, and pop-up protests. They described it, as did many Government witnesses, as being similar to a game of “whack-a-mole.”

²⁰ February 12 IRG Minutes, SSM.NSC.CAN.00000214, p. 6.

Minister of Intergovernmental Affairs Dominic LeBlanc testified during the hearings about the Government's cross-country concerns. From their perspective, the national situation was becoming more and more alarming. They were concerned about the potential for blockades and demonstrations in various locations across the country, including Toronto, Québec City, and a number of other provincial capitals, as well as border crossings in British Columbia and the Atlantic provinces. Prompted by these cross-country concerns, Minister LeBlanc reached out to a number of premiers on February 12 and 13, including those of Newfoundland and Labrador, New Brunswick, Nova Scotia, and British Columbia, to offer any support they thought would be useful. None of the premiers requested specific assistance at that time.

Adding to the level of concern, Deputy Minister of Transport Keenan testified that the Federal Government was worried that the next blockade might affect railways, and that the combination of rail and border blockades would be economically devastating for the country.

At the conclusion of the February 12 IRG meeting, the Prime Minister called another IRG meeting for 4 p.m. the following day.

14. Meetings and deliberations on February 13, 2022

Sunday, February 13 was one of the most critical days in the Federal Government's decision-making process. The key Government ministers and officials spent much of the day preparing for this meeting. Given the significance of the events of that day, I discuss them in some detail.

14.1 Minister Freeland's meeting with bank CEOs

Minister Freeland spent the early part of Sunday afternoon on a call with all of the CEOs of Canada's largest banks. She had already had one-on-one conversations earlier that weekend with the CEOs of the Bank of Montreal and Toronto-Dominion

Bank, at their request. The two CEOs advised Minister Freeland that there had been an immediate economic hit caused by border blockades, and that they were hearing from their international investors that confidence in Canada was dissipating by the hour. The group call with all CEOs followed. In her testimony to the Commission, Minister Freeland noted that the mere fact that the CEOs of Canada's biggest banks met on a few hours' notice on a Sunday afternoon reflected the depth of their concern about the situation.

The CEOs were acutely alarmed about the ramifications of the protests, the impact on the Canadian economy, and the possible loss of future foreign investment. One CEO recounted a U.S. investor telling him that Canada was a “banana republic” in which he would never “invest another red cent.” Minister Freeland described this as a “heart-stopping quote” and “a spur to action” that drove home for her both the gravity of the situation and her responsibility. She explained that “a lack of business investment ultimately translates into Canadians not having jobs and Canadians not having jobs that pay well enough to maintain a good standard of living.”²¹

One CEO raised a concern about the reputational harm the banks were experiencing as a result of the actions they had started taking on their own to prevent funding from flowing to the protests. He said that there had been considerable backlash on social media and that *Fox News* was apparently urging people to withdraw their money from the banks.

Much of the discussion on the call revolved around the inadequacies of the existing legal framework in terms of preventing financial support for continued protests, including gaps that had already been identified by the Department of Finance. One CEO noted that obtaining court orders to freeze assets was not a solution because by the time one was obtained, money could already have been moved. Minister Freeland remarked in her testimony that it was striking that the bank CEOs were asking for

²¹ Evidence of C. Freeland, Transcript, November 24, 2022, pp. 39 and 40.

more Government intervention. This was not something the financial industry would normally do.

14.2 The February 13 DMOC meeting and subsequent briefings to ministers

The DMOC met at around noon on February 13. At this meeting, Commissioner Lucki provided another detailed situational update on the state of protest activity across the country. With respect to the Ambassador Bridge, she noted that progress had been made over the last 24 hours, but that the situation was dynamic, and that it would only take a few more vehicles to shut down the bridge again.

Commissioner Lucki also provided an update on the state of police planning in Ottawa. She indicated that there was a new plan with the RCMP, the OPP, and the OPS that had been approved, but not signed off yet by the OPS. She stated that the plan involved reducing the footprint of the protests through communications, with messaging becoming stronger each day. Depending on how successful this was, enforcement action could take place. In her comments, she indicated that these actions should have been taken earlier.

Commissioner Lucki appears to have been referring to the plan developed by the Integrated Planning Cell, which I discuss in Chapter 9. Her comments also reflect the continuing confusion that existed at this time as to whether Chief Sloy's approval was required to implement the plan, and if so, whether he had given it.

The deputy ministers discussed a range of topics during the DMOC meeting, including current gaps in authorities, Ottawa's upcoming injunction application, the potential impact of the emergency measures implemented by Ontario, the continued need to support law enforcement, and the need to plan for worst-case scenarios. They reviewed the pros and cons of using the *Emergencies Act*, including whether invoking it might do more harm than good by inflaming protesters who were reacting to perceived Government overreach.

The DMOC meeting was followed by a briefing to ministers Blair, Mendicino, Alghabra, and LeBlanc prior to the IRG meeting that afternoon.

RCMP Commissioner Lucki called Minister Mendicino to update him on the situation in Coutts. The call was private because the RCMP had undercover personnel deployed in the field and they were concerned about an information leak. Commissioner Lucki told Minister Mendicino that Coutts involved “a hardened cell” of individuals, armed with firearms, who were willing to “go down” for their cause. Minister Mendicino testified that this was the most serious and urgent moment in the blockade so far. He told Commissioner Lucki that he could not keep the information entirely to himself; he had to at least inform the Prime Minister. After the call, he reached out to Katie Telford, Chief of Staff to the Prime Minister, and told her what he had learned from Commissioner Lucki.

14.3 The February 13 Incident Response Group Meeting

The IRG met at 4 p.m. on February 13.²² Though a good portion of the meeting minutes are redacted for reasons of Cabinet confidence and solicitor – client privilege, the un-redacted portions and the witness testimony paint a picture of what occurred and what ultimately resulted from the IRG process.

The meeting began with a discussion and deliberation of “Progress on Federal Actions,” followed by a targeted situational update regarding key developments over the past 24 hours, and updates on new key communications.

²² The minutes of the February 13 IRG meeting indicate that it ended at 5:30 p.m.; see February 13 IRG Minutes, SSM.CAN.00000095, p. 4. However, messages exchanged by RCMP members during the meeting suggest that the discussion of the first agenda item continued until 5:27 p.m., and that discussion of the last item began at 5:54 p.m.; see PB.NSC.CAN.00008041, pp. 20 and 21.

14.3.1 Update on policing and enforcement

Minister Mendicino informed the IRG that “great progress had been made in clearing and securing the Ambassador Bridge, but that there was no definitive timeline for reopening.”²³ He noted that enforcement actions were occurring at other ports of entry, including Coutts and Emerson. He further reported that an Integrated Central Command had been established in Ottawa to coordinate the RCMP, the OPP, and the OPS, which he described as a significant and concrete action.

Commissioner Lucki did not provide an update at the February 13 IRG meeting. Although she initially testified that she had done so, this was based on the fact that speaking notes had been prepared for her, rather than a specific recollection. When taken to documents suggesting that she did not provide the update contained in her speaking notes, Commissioner Lucki had no difficulty accepting this. Those speaking notes included details on the Ottawa police plan, similar to the update she had delivered to the DMOC earlier in the day.

In his testimony before the Commission, Prime Minister Trudeau expressed the view that the police plan for Ottawa was not fully developed by February 13 and that he did not have confidence that the police had the situation under control. He noted that throughout the protests, the police had been saying that they had a plan, none of which had produced results. He did not see the February 13 plan himself, but formed his view based on briefings he had received. He understood from those briefings that Ottawa did not have a full operational plan at that point.

At the hearing, the NSIA explained what kind of evidence she would have expected to see in order to be assured that there was a plan:

We would expect some level of assurance from the RCMP that the people were in place, it was executable. We don't expect to see details.

²³ February 13 IRG Minutes, SSM.CAN.00000095, p. 5.

That's policing. But we needed a level of assurance that yes, finally, the officers needed, the equipment needed, the executable, strategic, and tactical plan was there. The same thing that had been asked for several days. We didn't have any evidence or assurance that that was in fact the -- where we were.²⁴

The NSIA was asked whether this was symptomatic of the information-sharing gap between law enforcement and the government that she had referred to earlier in her evidence. She agreed that it was, but added that in her view, the plans were also not firm enough.

When RCMP Commissioner Lucki was asked at the hearing whether she ought to have provided an update on the Ottawa plan at the February 13 IRG meeting, she did not agree that this was significant, pointing out that she had reported on the plan at the previous day's IRG meeting. Thus, the IRG was aware of the existence of a plan, and of the creation of an Integrated Planning Cell. She further remarked that the police were still having difficulty getting sign-off on the plan.

The evidence as to the RCMP's understanding of the status of the plan on February 13 is unclear. In her interview, Commissioner Lucki stated that on February 13, she understood that the plan was going to be presented to Chief Sloy for his approval, and she assumed that this would happen. She learned on February 14 that Chief Sloy had not, in fact, approved the plan. She spoke to him that day and told him that his failure to sign off on the plan was frustrating its implementation. He responded that he did not need to sign off on the plan and would look into why it was not being actioned. RCMP Deputy Commissioner Michael Duheme agreed that the plan had not been signed off on February 13. At the hearing, Commissioner Lucki repeated that she wasn't sure if the plan was signed off that day, and emphasized that regardless of approval, they did not know when or how the plan could be implemented. Deputy Commissioner Duheme testified that the plan was not fully signed off until later in

²⁴ Evidence of Jody Thomas, Transcript, November 17, 2022, p. 207.

the week, as they were moving closer to enforcement. Chief Sloly's evidence was that he told Commissioner Lucki on February 13 that the plan was "fully approved." Commissioner Lucki's evidence was that she heard differently from others at the OPS.

There seems to have been some confusion within the RCMP about the plan's approval at the time and, in any event, uncertainty as to when and how it would be executed. It appears that Commissioner Lucki and others were not confident about the status of the plan and its implementation until February 15. The overall impression left at the February 13 IRG meeting was that while a plan was in the works, the crystallization of the plan and the clearing of the Ottawa protest remained in doubt.

14.3.2 Information on economic impacts

After Minister Mendicino's policing update to the IRG, Minister Freeland provided an update on the economic impacts of border blockades. She cited "ongoing economic losses of 0.1 – 0.2% of gross domestic product for every week the blockades continue."²⁵ Minister Freeland acknowledged having obtained this figure from a Bloomberg economic analysis, and not her departmental officials, adding in her testimony that she had also heard those figures mentioned in her call with the bank CEOs earlier that day. Her objective was to succinctly convey that the blockades represented a source of significant and large-scale impacts on the Canadian economy. At this time, the Department of Finance had not yet provided figures relating to the economic impact of the blockades. I note that the department eventually arrived at a similar figure in its February 22 analysis, which I discuss in Chapter 16.

The Department of Finance's ultimate view, once its analysis had been done, was that the Bloomberg analysis was too simplistic, and therefore possibly an underestimate. It depicted the marginal economic impact of every week of blockades as being the same, failing to consider that as the blockades went on, their impact on the Canadian economy would increase exponentially. This underscored to the department, and to

²⁵ February 13 IRG Minutes, SSM.CAN.00000095, p. 6.

Minister Freeland, the importance of resolving the protests quickly. Minister Freeland conveyed to her Cabinet colleagues that the main concern was not the daily trade impact, but the fundamental and long-term harm that would occur if the blockades continued.

14.3.3 CSIS assessments

Director Vigneault told the IRG that CSIS had not identified a threat to the security of Canada as defined by CSIS's legal mandate. However, at the end of the February 13 IRG meeting, he was asked by the Prime Minister whether he believed it was necessary for the Federal Government to invoke the *Emergencies Act*. He responded that, in his view, it was. Director Vigneault explained that this answer reflected his opinion of the circumstances and his understanding, based on legal advice provided by the Department of Justice, that the definition of threat to the security of Canada was broader for the purposes of the *Emergencies Act* than it was for the *CSIS Act*.

Director Vigneault explained that he first realized that the definition of a Public Order Emergency in the *Emergencies Act* referred to section 2 of the *CSIS Act* on February 10, when the IRG first began to seriously consider invoking the Act. Upon realizing this, he asked for a legal interpretation. He was advised that the term had a broader meaning when used in the *Emergencies Act* than what he was familiar with under the *CSIS Act*.

CSIS provided a written threat assessment at the February 13 IRG meeting on the risks associated with invoking the *Emergencies Act*. This was a formal encapsulation of the verbal assessments that Director Vigneault had provided at the February 10 and 12 IRG meetings. It noted that some individuals holding accelerationist or anti-government views would view the invocation of the Act as confirmation of their core beliefs. CSIS assessed that invoking the Act would likely galvanize anti-government narratives within the Freedom Convoy and, as with CSIS subjects of investigation, further the radicalization of some individuals toward violence. While it would likely

disperse the Freedom Convoy in Ottawa and elsewhere, it would also likely increase the number of Canadians holding extreme anti-government views and might radicalize some of them toward violence.²⁶

14.3.4 Conclusion of the Incident Response Group

The prevailing view at the IRG was that the protest in Ottawa had become an entrenched illegal occupation, and that the situation across the country was dangerous, complex, and volatile. Although the situation at the Ambassador Bridge had improved, they were concerned about the amount of resources and length of time it had taken for the police operation to bring that blockade under control. Clerk Charette emphasized in her testimony that they did not know how long that control would be sustained, and that there was a concern that another border crossing protest could flare up again.

The IRG considered the risks and threats of violence posed by the protests, including the weaponization of vehicles, the use of children as “human shields” in Ottawa and Windsor, the presence of firearms in unknown quantities at Coutts, reports that stolen guns in Peterborough were related to the protests, and the fact that police were meeting resistance when trying to enforce laws, including by being swarmed by protesters. They also considered the risk of serious violence posed by growing counter-protest activity, which they viewed as an increasingly likely possibility. The IRG concluded that the information available to it disclosed real threats of serious violence not only in existing protest sites like Ottawa, but also at a range of other locations where new protests might erupt. As the Prime Minister testified, although plans to bring individual sites under control might have been moving forward, in the bigger picture, they saw matters escalating rather than coming under control.

Prime Minister Trudeau testified that the IRG looked carefully at the proposed measures and tools that could be brought in using the *Emergencies Act*, in particular

²⁶ Possible Implications of *Emergencies Act* (formerly *War Measures Act*) Across the IMVE Space, TS.NSC.CAN.001.00000172_REL.

options relating to tow trucks, the designation of secure zones, and bank measures. They considered whether measures could be brought in through new legislation, rather than the *Emergencies Act*, and whether the legislative process could be accelerated. They also discussed whether it would be possible to encourage provinces to take measures themselves. The Prime Minister emphasized that they were concerned not only about ending existing protests, but also preventing new ones from emerging for long enough to allow the situation to calm down across the country.

By the end of the February 13 IRG meeting, there was consensus around the table that the *Emergencies Act* was necessary. Prime Minister Trudeau noted that although consensus was not necessary, it was significant:

[A]s we went around the table ... my expectation is always if you have significant disagreements, this is the time to speak up. There was no voice saying, “Hold it. We don’t think you should do this,” or “I don’t think you should do this,” which does happen from time to time in Cabinet meetings and in IRGs. And if someone had come up and said, “Okay. ... [We] at Transport Canada ... don’t think that you should invoke a public order emergency,” I would have said “Thank you,” I would have taken that into account, but I didn’t need unanimity or full consensus in order to make the determination ... And in this case, there was consensus around that table that invoking the *Emergencies Act* was what we needed to do.²⁷

The conclusion coming out of the IRG meeting was that the Prime Minister should call a meeting of the full Cabinet to discuss the possibility of invoking the *Emergencies Act*. The meeting was scheduled for 8:30 p.m. that evening.

²⁷ Evidence of Prime Minister Trudeau, Transcript, November 25, 2022, p. 57.

14.4 The February 13 Cabinet meeting

The Prime Minister provided opening remarks at the February 13 meeting of Cabinet. He reported that the Federal Government had engaged with other orders of government to offer resources and support. He explained that over the previous few days, there had been three meetings of the IRG to discuss the tools available to police in Windsor and Ottawa and those available to the RCMP in border locations across the country. He stated that the IRG had explored measures to enhance the powers of law enforcement agents on the ground to better respond to the protests.

14.4.1 Situational update

NSIA Thomas then provided Cabinet with an integrated briefing on the situation across Canada that took into account the inputs and information that had been provided to her by the various departments and agencies. She reported that multiple POEs continued to experience blockages, and that slow roll activity had proven to be an effective tactic. She noted that the threat picture with respect to IMVE remained stable and unchanged, and that CSIS continued to watch persons of interest. She reported that there had been recent and important law enforcement gains in Windsor, that there was potential for a breakthrough in Ottawa, and that the RCMP was taking enforcement action in Coutts. NSIA Thomas testified that when she spoke of a “breakthrough,” she was referring to the reports of a negotiation between the mayor and convoy organizers.

RCMP Commissioner Lucki did not speak at the Cabinet meeting, and so did not provide Cabinet with an update on the police plan for Ottawa. Cabinet meetings are a tightly structured, highly formal setting where only ministers speak. Officials may speak, but only if specifically called on by the prime minister. Commissioner Lucki would instead be expected to advise the NSIA or the minister of Public Safety of any information that she believed should be conveyed to Cabinet.

Clerk Charette testified that Cabinet was generally aware that the RCMP, the OPP, and the OPS were working together to develop an operational plan, as the RCMP commissioner had provided consistent, albeit general, updates about it in the previous weeks. Cabinet was not provided with any detailed information about the contents of that plan, or how and when it was going to be approved and implemented.

14.4.2 Discussion of thresholds and tools

After the situational update, Cabinet discussed the invocation of the *Emergencies Act*. Cabinet was provided with a verbal briefing by Attorney General David Lametti on the threshold for declaring a Public Order Emergency and the definition of threats to the security of Canada.

When asked whether Cabinet was aware that CSIS had assessed that there was no threat to the security of Canada under the *CSIS Act*, Clerk Charette and Deputy Clerk Drouin confirmed that Cabinet had been advised of this. When asked again on cross-examination, they could not recall whether this had been said to the full Cabinet as well as to the IRG. When Director Vigneault subsequently testified, he confirmed that Cabinet was aware of this assessment. I note that the NSIA's speaking notes for the Cabinet meeting include the notation "CSIS/CSE: No concerns at this time."²⁸

The Cabinet meeting also involved a long discussion of the measures that could be put in place if the *Emergencies Act* was invoked.

A question that arose during the Commission's hearings was whether Cabinet was advised of Commissioner Lucki's view that not all existing tools had yet been exhausted in Ottawa. Less than an hour before the Cabinet meeting began, Commissioner Lucki responded to an email request from Minister Mendicino's Chief of Staff, Mike Jones, for a list of emergency measures that might assist law enforcement in bringing the

²⁸ NSIA Remarks – Full Cabinet, February 13, 2022, SSM.NSC.CAN.00000298, p. 5.

protests under control.²⁹ Commissioner Lucki suggested a number of tools but added that in her view, all of the tools available through existing legislation had not yet been exhausted. She noted that there were instances where charges could be laid under the *Criminal Code*, and that Ontario's recent declaration of emergency would also help in providing additional tools.

Mr. Jones forwarded Commissioner Lucki's email to Minister Mendicino and Deputy Minister Stewart half an hour before the Cabinet meeting began. The comment about the sufficiency of existing tools was not incorporated into the speaking notes that Commissioner Lucki sent to Minister Mendicino and the NSIA a few minutes before the start of the meeting.³⁰

Commissioner Lucki's comment was not conveyed to Cabinet. NSIA Thomas testified that it was not included in her speaking notes, which are built from the information she receives from the various departments and agencies. She noted that Commissioner Lucki had not voiced this view at either the DMOC meeting or the IRG meeting held earlier in the day, which she would have been expected to do had there been something she viewed as useful or critical. Minister Mendicino was not sure whether he had read Commissioner Lucki's email before Cabinet. He noted that this was not a view that she had expressed to him directly. He also asserted that Commissioner Lucki's comment regarding existing authorities would not have substantially changed his views on the situation. In addition, he indicated that the interactions he had with Commissioner Lucki that day pointed in the opposite direction: she was conveying her heightened concerns regarding the presence of ideological extremists in possession of lethal firearms at Coutts.

Clerk Charette and Deputy Clerk Drouin noted that although Commissioner Lucki's comment was not reported to Cabinet, Cabinet was aware that there were tools and authorities in the hands of organizations, including the RCMP, that had not been fully

²⁹ Email from Brenda Lucki to Mike Jones, February 13, 2022, PB.NSC.CAN.00003256.

³⁰ B. Lucki Speaking Notes February 13, 2022, PB.NSC.CAN.00003245

deployed. That was the entire point of the “Track 1” discussions at the IRG meeting. The question for Cabinet, Clerk Charette explained, was whether those authorities would be adequate to deal with the entire situation.

14.4.3 Conclusion of the Cabinet Meeting

Prime Minister Trudeau testified that, as with the IRG meeting, the Cabinet meeting ended with consensus around the table. The decision of Cabinet was that the Prime Minister should convene a meeting with first ministers to consider the invocation of the *Emergencies Act*, brief them on the situation, and consider any other measures necessary to deal with the totality of the situation facing the country. Minister LeBlanc noted that the Prime Minister told ministers clearly that he had not made a decision about invoking the *Emergencies Act*, but that he would be hearing from premiers the following day. The actual decision on invocation was left *ad referendum* to the Prime Minister following his consultation with the provinces and territories, meaning that the final decision was left to the Prime Minister.

In his interview with Commission counsel, Prime Minister Trudeau stated that a big part of the Government’s decision making was a judgment call about timing. If the Government had sought to invoke the *Emergencies Act* after the first weekend, it would have been too soon. The first weekend of the protests caught police by surprise. By the second weekend though, the protests were ongoing despite police attempts to end them. And by the end of the third weekend, with existing tools and resources, the situation still had not been resolved. That’s when he, and Cabinet, decided that the time was right.

The Cabinet meeting concluded at roughly 10 p.m., and invitations for a First Ministers’ Meeting (FMM) were sent shortly after.



15. Events preceding the February 14, 2022 invocation

15.1 The Prime Minister's caucus call

The Prime Minister held a call with his caucus on the morning of February 14, to let them know that he was considering invoking the *Emergencies Act*. Given that they would be part of a Government that would be invoking the Act, he thought it appropriate that they should hear about it before the premiers did. The Prime Minister noted that the response from his caucus was very positive, though there was not a lot of feedback.

15.2 The First Ministers' Meeting

Section 25 of the *Emergencies Act* requires that, before the governor in council can issue, continue, or amend a declaration of a Public Order Emergency, it must, subject to a limited exception in section 25(2), consult the lieutenant governor in council of each province (i.e. the provincial Cabinet) in which the effects of the emergency occur. In the case of the protests associated with the Freedom Convoy, the Federal Government took the position that there was an emergency throughout the entire country, and so was required to consult with every province. The Government extended that consultation to every territory as well.

15.2.1 Organization of the First Ministers' Meeting

Following the February 13 Cabinet meeting, provincial and territorial premiers received an invitation for a First Ministers' Meeting to be held the next morning. This was unusually short notice. No agenda or briefing material was provided in advance, and the premiers were not advised of the subject of the call. The decision not to disclose the subject of the meeting was deliberate, as the Federal Government was concerned about a leak. As Deputy Clerk Drouin and Intergovernmental Affairs Minister LeBlanc explained, the Government had concerns for public safety in light of

the CSIS assessment that invocation of the *Emergencies Act* could trigger a reaction from protesters.

Prime Minister Trudeau testified that none of the premiers seemed surprised about the topic or seemed ill-prepared to discuss the Act once the meeting began. Deputy Clerk Drouin had a similar view. It is also worth noting that Minister Blair had told the media on February 13 that everything was on the table, including the *Emergencies Act*.

15.2.2 Provincial and territorial “engagement” versus “consultation”

Before turning to the First Ministers’ Meeting itself, it is useful to set the stage with reference to other federal – provincial – territorial interactions that pre-dated it. These are laid out in the *Report to the Houses of Parliament: Emergencies Act Consultations* (“Consultation Report”), which was tabled as part of the motion to confirm the declaration of a Public Order Emergency. This document is contained as an appendix to Volume 4 of my Report.

The report is divided into two broad sections: “Engagement” and “Consultations on the Emergencies Act with First Ministers.” The first section sets out a detailed list of multi- and bilateral meetings, phone calls, and other communication between federal ministers and officials on the one hand, and provincial, territorial, and municipal counterparts on the other. The list of engagements also details communication between federal and law enforcement representatives, as well as between federal representatives and Indigenous leaders. The “Consultations on the Emergencies Act with First Ministers” section describes the First Ministers’ Meeting, as well as some interactions between provincial and federal officials that occurred between the First Ministers’ Meeting and the invocation of the Act.

The evidence I heard from multiple witnesses confirmed that the *Emergencies Act* was not a topic of discussion during any of the “engagements” listed in the report. When

asked about the difference between “engagement” and “consultation,” officials in the Intergovernmental Affairs Secretariat stated that the distinction was not necessarily a clear one. The objective of the “Engagement” section of the Consultation Report was to provide context for the First Ministers’ Meeting and to show that significant interjurisdictional work had been done to address the protests. Minister LeBlanc noted that the initial discussions were important “inputs” to Cabinet’s decision-making process, and informed their view that existing provincial and municipal authorities were going to be inadequate to bring the protests to a safe and quick end.

However, no one took the position before me that these “engagements” constituted the consultation that was required under section 25 of the *Emergencies Act*.

15.2.3 Views expressed at the First Ministers’ Meeting

The First Ministers’ Meeting was attended by Prime Minister Trudeau and the premiers of all provinces and territories; ministers Mendicino, Lametti, and LeBlanc; and several senior federal, provincial, and territorial officials. The meeting lasted about one hour, though the Prime Minister testified that there was no time limit for the call.

Prime Minister Trudeau began by discussing the situation in Ottawa and elsewhere. He stated that while the government would always defend the right of freedom of expression and peaceful protest, the protests had gone well beyond peaceful protest; they were organized events, which were spreading across Canada and were supported by money and organizers from outside Canada. He added that critical infrastructure was being targeted, ports of entry were experiencing blockages, significant economic disruptions were occurring, and Canada’s international reputation was being harmed.

The Prime Minister advised the premiers that the meeting had been called to consult with them on whether the Federal Government should declare a Public Order Emergency pursuant to the *Emergencies Act*. He told them that no decision had yet

been made and that, if the Act were invoked, emergency measures would supplement provincial and territorial measures, not displace them. He further noted that invocation of the Act would not involve using the military.

Minister Lametti explained the threshold for declaring a Public Order Emergency in the *Emergencies Act*, the safeguards that exist in the Act, and the consultation requirement. He then outlined the six measures that the Government was contemplating.

When asked whether he discussed the requirement in the *Emergencies Act* that there be a “threat to the security of Canada,” Minister Lametti stated that he did not make specific reference to the definition in the *CSIS Act* but that he conveyed the seriousness of the situation in the affected provinces and territories. He said that the tenor of the discussion was about serious threats to the security of Canada, and he believed that the *CSIS Act* definition was either discussed expressly or otherwise understood in the discussion.

Minister LeBlanc spoke about ongoing collaboration with provincial and municipal governments, again emphasizing that the proposed measures would not displace provincial efforts. Prime Minister Trudeau then opened the discussion to the premiers, who expressed a range of views on the matter.

British Columbia Premier John Horgan supported the use of the Act, observing that the approach sounded measured and practical. He noted that although British Columbia was not as pressed as other jurisdictions, they were as susceptible as anyone across the country. He expressed concern about RCMP resources in British Columbia being stretched and about the emboldening protesters.

Yukon Premier Sandy Silver fully supported the use of the Act and asked some questions about the Parliamentary process.

The Premier of the Northwest Territories, Caroline Cochrane, supported invoking the Act, but noted that she would ask for further consultation if a decision was made to bring in the army.

Alberta Premier Jason Kenney suggested that the Federal Government was using the Coutts blockade and Alberta's prior requests for assistance as a pretext for invoking the Act. He reported that the RCMP had become aware of "a hard core, potentially violent cell within the Coutts group that are prepared to die for their cause and are heavily armed." He observed that "folks at the core of this movement are not rational" and that invoking the *Emergencies Act* could be seen as "serious provocation." Premier Kenney asserted that the Federal Government should lift the vaccine mandates for truckers. He also said that he was "as frustrated as you are," that it "looks at times as a failure of the state," and that he did not "quibble using the *Emergencies Act*, but there are other ways to reduce passions of people."³¹

Saskatchewan Premier Scott Moe discussed protests that were occurring in that province, and expressed his view that police were able to deal with the protesters there with existing tools. Premier Moe suggested that governments should lift public health measures.

Manitoba Premier Heather Stefanson also raised the concern that emergency measures might inflame the situation. She stated that Manitoba already had the appropriate tools in place and echoed Premier Moe's suggestion that governments should lay out a plan to reduce COVID-19 restrictions.

Prime Minister Trudeau responded that while he heard consistent points from the three Prairie provinces about lifting public health measures, the blockades going on were about more than just COVID-19: "this is a public order and public safety context, not strictly a negotiation about vaccine mandates."³²

³¹ Summary of February 14, 2022 FMM Conference Call, SSM.NSC.CAN.00000625, p. 3; Alberta Institutional Report, ALB.IR.00000001, paras 96 and 97.

³² Summary of February 14, 2022 FMM Conference Call, SSM.NSC.CAN.00000625, p. 5.

Nunavut Premier P.J. Akeeagok said that Nunavut had not been directly impacted, but noted the importance of ensuring the delivery of food supplies.

Ontario Premier Doug Ford supported the invocation of the *Emergencies Act*. He noted that the only way they managed to de-escalate the Ambassador Bridge blockade was by throwing all their resources at it. He said it had cost \$700 million in trade every day and asserted that they could not “allow the few to affect the many” across the province. He described the situation at the Ambassador Bridge and in Ottawa as “anarchy” and concluded by saying that he supported the prime minister 100%.³³

Quebec Premier François Legault said that Quebec was preoccupied by the situation in Ottawa, acknowledged that it was unacceptable, remarked that one has “to do what needs to be done,” and indicated that he “support[ed] Ford 100%.” However, he said that in Quebec, police were managing to control the situation so far, and that the *Emergencies Act* should not apply to Quebec if it were invoked.³⁴

New Brunswick Premier Blaine Higgs commented that while the situation in Ottawa had become entrenched, protests in his province had been well managed by police. He indicated that the *Emergencies Act* authorities could be used in Ottawa, but they were not needed in New Brunswick.

Prince Edward Island Premier Dennis King confirmed that he would like to see the disruptions end but echoed the concern about inflaming the situation. He indicated that Prince Edward Island would be there to do its part but expressed caution on next steps.

Nova Scotia Premier Tim Houston referred to the situation in Ottawa as “completely disgusting” and acknowledged that it had to be resolved. However, he opined that

³³ Summary of February 14, 2022 FMM Conference Call, SSM.NSC.CAN.00000625, pp. 5 and 6; Saskatchewan Institutional Report, SAS.IR.00000001, para 39.

³⁴ Saskatchewan Institutional Report, SAS.IR.00000001, para 40; Summary of February 14, 2022 FMM Conference Call, SSM.NSC.CAN.00000625, pp. 6 and 7.

Nova Scotia had the resources it needed, that he was concerned that the *Emergencies Act* would inflame tensions, and that he was not sure that a broad brush across the nation was appropriate.

Newfoundland and Labrador Premier Andrew Furey supported the use of the *Emergencies Act*. In his view, the protests were not about vaccine mandates, but general anger about the state on a national front. He noted that as an island, Newfoundland was vulnerable in terms of supply chains and wanted firm and decisive action to protect it.

Prime Minister Trudeau concluded the meeting by saying that the consultation would help him in formulating his decision and that he would be sending each premier a letter. He added that the perspective he had heard from the premiers was that if a decision to move forward were made, it had to be done cautiously.

The Prime Minister was asked at the hearing what it would have taken to convince him not to invoke the *Emergencies Act*. He said that he would have had to hear from the premiers that they had a solution that would not require use of the Act, and that he did not hear this.

15.3 Consultation with Indigenous Peoples

An important topic addressed during the hearings was the extent to which Indigenous Peoples were consulted prior to the Federal Government's invocation of the *Emergencies Act*. There is no formal requirement in the Act for Indigenous Peoples to be consulted, an omission I address later in this Report.

Public Safety Deputy Minister Stewart was asked directly by counsel for the Union of British Columbia Indian Chiefs if any consultation occurred with First Nations governments, representatives, members, or Indigenous groups during the Freedom Convoy events. He candidly responded that he was not aware that there had been consultations with First Nations on law enforcement in urban areas or at border

points. He agreed that from a public safety perspective, it is important for the federal government and police services to co-operate with First Nations during a public order event. He added that Public Safety is currently engaging with First Nations, in light of the *United Nations Declaration on the Rights of Indigenous Peoples Act*, to ensure that First Nations are the beneficiaries of policing services on an equal basis to other parts of the country.

Minister Mendicino was asked similar questions by counsel for the Union of British Columbia Indian Chiefs. He responded that he has had broad and ongoing conversations with representatives and leadership within First Nations and Indigenous communities in his role as minister of Public Safety. He added that in the lead-up to the invocation, several ministers, including the ministers of Crown – Indigenous Relations and Indigenous Services, were in routine contact with First Nations and Indigenous Peoples. He did not, however, refer to any specific conversations that he or his fellow ministers had with Indigenous Peoples about the decision to invoke the *Emergencies Act*.

Minister Lametti confirmed that the minister of Crown – Indigenous Relations reached out informally to the heads of three national Indigenous organizations during this time.

15.4 Events following the First Ministers' Meeting and the decision to invoke

Following the First Ministers' Meeting, Prime Minister Trudeau reached out to opposition leaders to tell them that the Government was thinking of invoking the *Emergencies Act* and to ask for their support.

Minister Dominic LeBlanc had further conversations with some provincial and territorial counterparts that day, including his Quebec counterpart, Minister Sonia LeBel. Minister LeBel and Premier Legault were particularly concerned that the RCMP would supplant provincial or municipal authorities under a declaration of emergency. Minister LeBlanc believed that the invocation of the *War Measures Act* in 1970 contributed to

these concerns. During the call, Minister LeBlanc reassured Minister LeBel that the Federal Government would not be supplanting Quebec’s provincial authorities. He explained that the Act needed to be applied nationally because the financial measures the Government was considering had to apply across Canada to prevent financial institutions in certain provinces from becoming safe havens for bank accounts funding the convoy. He also stressed that the situation was dynamic and fluid in the sense that even if the Ambassador Bridge was cleared, it was possible that the individuals would come back or show up elsewhere.

Minister LeBlanc recalled that Minister LeBel found the rationale of avoiding safe havens for financial institutions persuasive and said that it would be helpful if Minister Lametti spoke to his Quebec counterpart, Minister Simon Jolin-Barrette. This call subsequently took place.

On the officials’ side, work continued. The deputy ministers held a DMOC meeting in the early afternoon. The NSIA reported on the previous evening’s Cabinet meeting. The deputy minister of Intergovernmental Affairs reported on the diversity of views expressed at the First Ministers’ Meeting, noting that there was unanimity on one point, which was that the situation in Ottawa needed to be brought under control. Looking to the future, the NSIA and the director of CSIS highlighted the importance of better understanding where and how the convoys grew into something that was not peaceful.

During the DMOC meeting, the commissioner of the RCMP provided a situation report of protest activity across the country. She noted that enforcement had been successful in Windsor and that the Ambassador Bridge was open but queried “how will we keep the infrastructure secure?” She reported that the Emerson POE was still blocked, but that an operational plan was in place. She reported on the Coutts raid, advising that the situation had been “very volatile,” with several arrests made and weapons seized. In British Columbia, the highway was open, but traffic was being diverted because of safety concerns. In Ottawa, she reported that there had been confrontations over

the weekend between protesters and counter protesters, and that trucks were being moved to Wellington Street as per the mayor's agreement. She reported that the law enforcement plan had been endorsed and was being implemented, and that there was a need to maximize reduction of the footprint of the protests.

The responsibility of providing advice to the Prime Minister on the invocation of the Act fell to the Clerk of the Privy Council. The PCO had begun preparing a Decision Note from the Clerk to the Prime Minister after the Cabinet meeting on February 13. The Decision Note was sent to the Prime Minister at 3:41 p.m. on February 14. It provided a summary of the information and assessments that the Government had received to date and stated that the legal thresholds for invoking the *Emergencies Act* had been met. The Decision Note also reviewed the different views expressed by the premiers at the First Ministers' Meeting and stated that the consultation requirement in section 25 of the Act was met by this meeting. Ultimately, Clerk Charette recommended that the Governor in Council declare the existence of a Public Order Emergency, taking a proportional approach with time-limited measures that would supplement the provinces' authority to direct their police forces, while respecting the *Charter* at all times.

The Decision Note begins with an overview of the information relevant to the decision that was sought from the Prime Minister, known as the "Decision Box." The Decision Box summarizes the threats posed by the protests as follows:

While the demonstrations have started out relatively peaceful, they have grown more complex and expanded into multiple locations in the country. The movement is considered to be highly organized, well financed, and is feeding a general sense of public unrest that could continue to escalate with severe risks to public security, economic stability and international relations. The economic impact to date is estimated at approximately 0.1 per cent of Canada's gross domestic product (GDP) per week, however the impact on important trade corridors and the risk

to the reputation of Canada as a stable, predictable and reliable location for investment may be jeopardized if this continues.³⁵

The Decision Note indicated that a more detailed threat assessment was being provided to the Prime Minister under separate cover. Clerk Charette testified that the intention was that the office of the NSIA would prepare this assessment for inclusion with the Decision Note. The NSIA had sent an email to senior officials at CSIS and the RCMP, and to the PCO on February 14 at 11:45 a.m. asking for the assessment to be prepared:

I need an assessment for Janice [Charette] about the threat of these blockades. The characters involved. The weapons. The motivation. Clearly this isn't just COVID and is a threat to democracy and the rule of law. Could I get an assessment please. David [Vigneault], is this you? It's a very short fuse. Please call if you have questions.³⁶

The written assessment was intended to be a collection of all of the verbal threat assessments from the implicated federal agencies that had been provided at the IRG meetings. The NSIA confirmed that ultimately, the more detailed threat assessment fell through the cracks and was never prepared.

The core of the Clerk's opinion on whether the criteria for declaring a Public Order Emergency were met is contained in a section called "PCO Comment":

PCO is of the view that the examples of evidence collected to date [redaction for solicitor-client privilege] support a determination that the two criteria required to declare a public order emergency pursuant to the EA have been met.

³⁵ Memorandum for the Prime Minister, Invoking the *Emergencies Act* to End Nation-Wide Protests and Blockades, SSM.NSC.CAN.00003224, p. 2.

³⁶ Email from J. Thomas, February 14, 2022, PB.NSC.CAN.00008485.

Specifically, PCO is of the view that while municipal and provincial authorities have taken decisive action in key affected areas, such as law enforcement activity at the Ambassador Bridge in Windsor, considerable effort was necessary to restore access to the site and will be required to maintain access. The situation across the country remains concerning, volatile and unpredictable. While there is no current evidence of significant implications by extremist groups or international sponsors, PCO notes that the disturbance and public unrest is being felt across the country and beyond Canadian borders, which may provide further momentum to the movement and lead to irremediable harms – including to social cohesion, national unity, and Canada’s international reputation. In PCO’s view, this fits with the statutory parameters defining threats to the security of Canada, though this conclusion may be vulnerable to challenge.³⁷

In their testimony before me, Clerk Charette and Deputy Clerk Drouin elaborated on the reasons that led them to conclude that the legal threshold for declaring a Public Order Emergency had been met. The Clerk remarked that the protest in Ottawa had evolved into an illegal occupation. She also noted that the Coutts raid and discovery of a large cache of firearms in the early hours of February 14 confirmed her view that there was a risk of serious violence and that invoking the *Emergencies Act* was necessary. Further, although there was no holistic movement or central coordination of the protests going on across the country, there was evidence of some degree of organization and coordination between different cells of protest activity. To the extent that they were able to follow social media, the government could see some of this communication happening.

Prime Minister Trudeau testified that he was not surprised by the content of the Note; it was consistent with the information he had received and the consensus around

³⁷ Memorandum for the Prime Minister, Invoking the *Emergencies Act* to End Nation-Wide Protests and Blockades, SSM.NSC.CAN.00003224, pp. 7 and 8.

the table at the IRG meeting the day before.³⁸ Upon receiving and reviewing the Decision Note, he made the decision to invoke the Act.³⁹ As a result, the Governor in Council directed that a proclamation of a Public Order Emergency be issued under the *Emergencies Act*. The proclamation was issued on February 14, 2022. The next day, the Governor in Council made two emergency measures, which I describe in Chapter 15.

Prime Minister Trudeau testified that after reviewing the Decision Note, he thought about whether he should wait a few days to see if it was really necessary to invoke the *Emergencies Act*. He then thought, “What if when I had an opportunity to do something I had waited, and we had the unthinkable happen over the coming days even though there was all this warning that it was possibly coming?” Considering the collective advice of Cabinet and the public service, and his own views, he was comfortable that invoking the *Emergencies Act* was the right thing to do. He believed that it would keep Canadians safe.⁴⁰

At 4:30 p.m. EST, Prime Minister Trudeau held a news conference with Minister Freeland and ministers Blair, Mendicino, and Lametti in which he announced that the Federal Government was invoking the *Emergencies Act*.

A full Cabinet meeting was held on February 15 at 10 a.m. during which Cabinet discussed the invocation of the *Emergencies Act* as well as the measures adopted. A situational update from NSIA Thomas indicated that there was an ongoing assessment regarding increased mobilization toward violence as a result of the invocation. NSIA Thomas also told Cabinet that a coordinated plan had been approved by law enforcement agencies and that efforts were being made to address protest financing, including donations from abroad.

³⁸ Evidence of Prime Minister Trudeau, Transcript, November 25, 2022, p. 67.

³⁹ Evidence of Prime Minister Trudeau, Transcript, November 25, 2022, pp. 66 – 69.

⁴⁰ Evidence of Prime Minister Trudeau, Transcript, November 25, 2022, p. 68.

Also, on February 15, Prime Minister Trudeau sent a letter to premiers outlining the reasons for which he had invoked the *Emergencies Act*. The letter reiterated many of the comments that the Prime Minister had made during the First Ministers' Meeting. It also stated that the views expressed by the premiers during the First Ministers' Meeting were taken into account and would inform the Consultation Report that the government would be tabling in Parliament. It promised further briefings and discussions in the coming days.

Chapter 15

Measures Taken under the *Emergencies Act*



Measures Taken under the *Emergencies Act*

1. Introduction

With the proclamation of a Public Order Emergency under the *Emergencies Act*, the federal Cabinet gained the authority to respond to the emergency through a range of regulations and orders. Ultimately, the Government enacted two measures under the Act: the *Emergency Measures Regulations* and the *Emergency Economic Measures Order*. In this chapter, I discuss the substance of these measures. In the next chapter, I discuss how these measures were used.

2. The *Emergency Measures Regulations*

2.1 Prohibitions

The *Emergency Measures Regulations (EMR)* contained four sets of prohibitions that, in varying ways, targeted the types of protests that had been taking place in Ottawa and at ports of entry across Canada. The first and most direct provision was an outright ban on participating in three kinds of public assemblies that “may reasonably be expected to lead to a breach of the peace.”¹

The first kind of assembly captured by this prohibition was that which could reasonably be expected to lead to a breach of the peace by interfering with the functioning of

¹ *Emergency Measures Regulations*, S.O.R./2022-21, s. 2(1) (*EMR*).

“critical infrastructure.”² Critical infrastructure meant a wide range of places and facilities significant to the movement of people and goods. The definition contained in the *EMR* included airports, railway stations, and ports of entry, as well as places like customs offices, warehouses, bus stations, and lighthouses. The definition also covered power generation and transmission, utilities, and hospitals or other places where COVID-19 vaccines were administered. The definition did not cover the Parliamentary Precinct. At first glance, this may have appeared to be an odd omission, given that much of the protest activity centred on that location. However, as I discuss later in this chapter, the Parliamentary Precinct was given special treatment elsewhere in the *EMR*.

The second kind of assembly captured by the first set of prohibitions in the *EMR* was that which could reasonably be expected to lead to a breach of the peace by causing serious disruption to the movement of persons or goods or by seriously interfering with trade.³ Whereas the ban on assemblies that interfered with critical infrastructure focused on the place being interfered with, this second ban focused on the effect of the protest itself. If an assembly seriously interfered with the movement of people or goods, it was prohibited whether or not it was at or near a facility that met the legal definition of “critical infrastructure.” Conversely, a protest that interfered with the functionality of critical infrastructure was prohibited whether or not it actually resulted in any disruption to the movement of persons or goods.

The third type of captured assembly was that which could reasonably be expected to lead to a breach of the peace by supporting the threat or use of acts of serious violence against persons or property. Assemblies that promoted threats or the use of serious violence were prohibited, regardless of their location or their actual impact on the flow of people or goods.

Participation in any of these three types of assembly was prohibited by the *EMR*. The *EMR* also specifically banned people from causing children to participate in such an

² *EMR*, s. 2(1)(b).

³ *EMR*, s. 2(1)(a).

assembly.⁴ This was included to address the fact that many families were participating in the protests in Ottawa and at ports of entry. Under this rule, parents who brought their minor children with them to a protest were required to remove the children from the protest, whether or not the parents themselves were protesting.

These provisions appeared to target not only the types of protests that were occurring in Ottawa and at various ports of entry from the United States, but also other types of protests that the Federal Government was concerned might arise if measures were not taken. When the *Emergencies Act* was invoked, there were no protests at seaports, for example. However, it is apparent that the Government was concerned that blockades at land-based infrastructure might inspire similar protests at major ports. For example, on February 12, 2022, the Canada Border Services Agency (CBSA) reported that a blockade at the Port of Halifax could take place.

The second set of prohibitions under the *EMR* banned foreign nationals from entering Canada to participate in any public assembly that was prohibited by the *EMR*, or to facilitate such an assembly. Section 3(1) of the *EMR* contained a general prohibition against such individuals entering Canada. There were several exceptions to these prohibitions, most of which applied to individuals or groups with some form of special right or entitlement to enter Canada. This included persons registered as an “Indian” under the *Indian Act*, as well as people seeking refugee protection, for whom Canada owed particular obligations under both domestic and international law. This provision was introduced out of concern by the Federal Government that foreign nationals were entering Canada to join protests and that this would continue unless addressed at the border.

The third prohibition contained in the *EMR* was a broadly framed rule against travelling “to or within an area” where a banned public assembly was taking place.⁵ There was also a rule against causing children to travel in the area of a prohibited assembly, or

⁴ *EMR*, s. 2(2).

⁵ *EMR*, s. 4(1).

anywhere within 500 metres of such a location.⁶ However, on its face, this prohibition did not differentiate between people who were participating in the prohibited assembly and residents of Ottawa, whose daily travel may have taken them into areas that were sites of prohibited protests. To address this, the *EMR* provided four exemptions.⁷ The main one allowed people to move to or through an area where a prohibited assembly was taking place if they lived or worked in that area, or if they were otherwise “moving through that area for reasons other than to participate in or facilitate the assembly.” Exemptions also applied to peace officers; employees or agents of Canada or a province, acting in the course of their duties; or any other person present with the permission of a peace officer or the minister of Public Safety and Emergency Preparedness. These three latter exemptions were designed to capture people such as police officers, by-law officers, border services officers, and other public officials who might have to be present at a prohibited assembly in order to respond to it.

The fourth and final set of prohibitions under the *EMR* targeted individuals who, while not engaged in prohibited assemblies themselves, supported those who were. These rules banned people from using, collecting, providing, making available, or inviting a person to provide property to any person in order to facilitate participation in a prohibited assembly or to benefit anyone who participated in or facilitated such an assembly.⁸ In simpler terms, the *EMR* banned anyone from providing any form of material support to either help or reward persons who were involved in prohibited assemblies. This had the effect of banning donations of money, food, fuel, or other goods to protesters. As I discuss in more detail later in this chapter, this ban on providing support was closely integrated with the system of asset freezing that was imposed pursuant to the *Emergency Economic Measures Order*.

⁶ *EMR*, s. 4(2).

⁷ *EMR*, s. 4(3).

⁸ *EMR*, s. 5.

2.2 Enforcement

The *EMR* contained enforcement mechanisms. The first one was a broad grant of authority to peace officers, such as the police. Where there was a failure to comply with the *EMR*, peace officers were empowered to “take the necessary measures to ensure compliance” with the *EMR*, as well as any provincial or municipal laws.⁹ The reference to provincial and municipal laws outside of the *EMR* offered an additional path to grant Royal Canadian Mounted Police (RCMP) members jurisdiction to enforce federal and provincial laws in Ontario. Instead of having to swear in RCMP members as special constables under the Ontario *Police Services Act* — a process that was otherwise necessary to give RCMP officers authority in this area — the *EMR* directly authorized all peace officers, including the RCMP, who were responding to a failure to comply with the *EMR*, to take steps to ensure compliance with provincial and municipal laws. Importantly, this would include violations of provisions of the *Highway Traffic Act*, as well as municipal by-laws related to idling, obstructing roadways, and fire safety.

The *EMR* also contained offence provisions that were aimed at ensuring compliance with its prohibitions. Any contravention of a rule in the *EMR*, such as participating in a prohibited assembly, constituted an offence. Those found guilty could, in the most serious cases, face five years of imprisonment.¹⁰ Less serious violations were subject to a maximum CAD\$500 fine or six months in jail.¹¹

The second type of enforcement power created by the *EMR* related to a category of locations called “protected places,” which could be secured by public officials. The *EMR* designated five categories of places as protected: 1) all critical infrastructure; 2) Parliament Hill and the surrounding Parliamentary Precinct; 3) official residences; 4) government and defence buildings; and 5) war memorials. In addition, the minister of Public Safety and Emergency Preparedness was authorized to designate any

⁹ *EMR*, s. 10.

¹⁰ *EMR*, s. 10(2)(b).

¹¹ *EMR*, s. 10(2)(a).

other location as a protected place. The *EMR* provided that designated protected places “may be secured.”¹² This somewhat vague language meant that, in practice, peace officers could create “exclusion zones” around a protected place and exclude members of the public from entering. I return to this power in the next chapter when I discuss how the Federal Government exercised its powers under the *Emergencies Act*. However, for now, I will simply note that it was debatable whether the police already had such an authority and, if they did, what its scope was.

Finally, the *EMR* contained a power for the Government to require a person to render “essential goods and services” to the government for the removal, towing, and storage of any vehicle, equipment, structure, or object that was part of a blockade.¹³ While this power was broader in theory, its practical goal was to apply to assemblies prohibited by the *EMR*. When employing this authority, the government was required to provide reasonable compensation to the tow truck operators.¹⁴ I address if and how this power was actually used in the next chapter of this Report.

3. The *Emergency Economic Measures Order*

If the purpose of the *Emergency Measures Regulations (EMR)* was to directly prohibit certain types of public assemblies, the *Emergency Economic Measures Order (EEMO)* sought to dissuade people from joining these assemblies and to make it more difficult for those already involved. These measures, developed by the Department of Finance, were responses to the well-publicized online fundraisers that had raised millions of dollars in support of protesters, as well as less public-facing fundraising involving email money transfers, cryptocurrencies, and cash. The intent of the *EEMO* was to cut off these financial supports and to impose financial costs (or the threat of financial costs) on protest supporters in the hope that it would convince them to abandon their activities. The *EEMO* was composed of two main parts: a set of rules that required

¹² *EMR*, s. 6.

¹³ *EMR*, s. 7(1).

¹⁴ *EMR*, s. 9(1).

financial institutions to effectively freeze the assets of those participating in prohibited assemblies and their supporters, and a set of rules that required crowdfunding platforms and payment service providers — both of which were central to fundraising efforts for protesters — to comply with certain financial reporting rules. I address each of these aspects of the *EEMO* in this section.

3.1 Asset freezing

The *EEMO* required a range of financial institutions to freeze the assets of people involved in public assemblies that violated the *EMR*. It accomplished this by describing which financial institutions were subject to the *EEMO*; defining the types of persons whose assets had to be frozen; setting out the specific obligations that financial institutions had to comply with; and facilitating the exchange of information between financial institutions and law enforcement so that the regime could be implemented and monitored.

The *EEMO* applied to various types of financial institutions. In addition to banks and credit unions, the *EEMO* also applied to more specialized businesses such as insurance companies, trust and loan companies, foreign exchange dealers, securities dealers and portfolio managers, cryptocurrency exchanges, and payment processors.¹⁵ The list was notable for including a wide range of provincially regulated entities. Normally, the Federal Government has limited power to impose rules on provincially regulated financial institutions. When officials within the Department of Finance considered tools that could be used to respond to protests before the *Emergencies Act* became the subject of discussion, this jurisdictional limit was viewed as a significant issue. Even if the Federal Government could require banks — which are federally regulated — to freeze the bank accounts of protesters, it could not do so with respect to most credit unions, nearly all of which are under provincial jurisdiction. Similarly, most of the securities and insurance industries were beyond the reach of this type of direction from the Federal Government. The *Emergencies Act*, however, was viewed as giving the

¹⁵ *Emergency Economic Measures Order*, S.O.R./2022-22, ss. 2 and 3 (*EEMO*).

Federal Government a unique tool that could be used to impose obligations directly on provincial financial institutions. The Federal Government took advantage of this fact under the *EEMO*.

Under the *EEMO*, covered financial institutions had certain obligations with respect to “designated persons.”¹⁶ A designated person was simply anyone who was directly or indirectly involved in an activity that was prohibited by the *EMR*. In other words, designated persons were those who participated in a prohibited assembly; who entered Canada to join such an assembly; or who provided money, property, or other support to participants in such an assembly.

At the core of the *EEMO* were the two duties that it imposed on covered financial institutions in relation to designated persons: the duty to determine and the duty to cease dealings. The duty to determine required financial institutions to determine whether they were in possession or control of any property that belonged to or was controlled, directly or indirectly, by a designated person.¹⁷ Property, in this context, would encompass assets like money and securities, but the *EEMO* also applied to physical property such as vehicles. The *EEMO* did not specify how financial institutions were to discharge their duty to determine, but it did make it clear that it was a continuing obligation. As long as the *EEMO* was in effect, financial institutions were required to continually review the information available to them to determine if they were dealing with a designated person’s property.

The second duty imposed on financial institutions was the duty to cease dealings with designated persons.¹⁸ This meant that financial institutions were not permitted to deal in any property owned or controlled by a designated person, could not facilitate any transactions related to a designated person’s property, could not make available any property to anyone for the benefit of a designated person, and could not provide any

¹⁶ *EEMO*, s. 1; *EMR*, ss. 2 – 5.

¹⁷ *EEMO*, s. 3.

¹⁸ *EEMO*, s. 2(1).

financial or related services to a designated person. In practical terms, this meant that financial institutions were required to entirely cut off designated persons from the financial system. Financial institutions were to freeze all accounts of designated persons, including Registered Retirement Savings Plans (RRSPs), mortgage accounts, trading accounts, lines of credit, and credit cards. Online payment processors could not facilitate any purchase or sale involving a designated person. Cryptocurrency exchanges could not permit designated persons to access any currency held by the exchange or allow them to convert cryptocurrency into ordinary money. The only exception to these requirements applied to the insurance industry, which was only required to cancel insurance policies related to vehicles being used in a prohibited public assembly.¹⁹

Technically, the duty to cease dealings did not apply solely to individuals actively participating in the prohibited assemblies. The definition of a “designated person” was broad enough to capture people who were violating any of the *EMR*’s prohibitions, including the one against giving property to others to support their protest activities. This meant that individuals who donated to a fundraiser in support of protesters would be designated persons, and all financial institutions would be under a duty to cease dealings with them. Officials within the Department of Finance stated, however, that the Government’s intention was that financial institutions should only freeze the assets of protester leadership or major supporters. They did not wish for *EMR* prohibitions to apply, for example, to people who made small-dollar donations to an online fundraiser or who bought protesters coffee when it got cold outside. The RCMP later issued a press release stating that it had not provided names of donors to financial institutions.

The disconnect between the legal and desired scope of the *EEMO* reflected something of a dual purpose. On the one hand, the duty to cease dealings was intended to cut off major financial support flowing to protesters, such as the millions of dollars that had been raised online. On the other hand, the Federal Government wanted to use

¹⁹ *EEMO*, s. 2(2).

the threat of asset freezing to convince rank and file protesters to leave Ottawa and ports of entry. It appears that the Government drafted the *EEMO* in this broad way to cause the majority of protesters to be concerned about their financial accounts, even if its expectation was that only the major players would be targeted. I consider the appropriateness of this scope in Chapter 17.

One of the more controversial aspects of the *EEMO* from the perspective of financial institutions was that it placed the duty on them, and not the Federal Government, to determine who was a designated person. The *EEMO* did not indicate how financial institutions were to do this, and witnesses from the Canadian Bankers Association and the Canadian Credit Union Association indicated to the Commission that many institutions did not feel prepared to discharge this duty. To provide assistance in this area, the *EEMO* authorized federal, provincial, and territorial governments to disclose information to financial institutions that would help them to properly apply the *EEMO*.²⁰ Without this provision, a variety of statutes, such as the federal *Privacy Act*, would have limited the ability of government agencies to share information with financial institutions. Pursuant to this authority, the RCMP took the lead in disclosing lists of persons that it identified as being involved in activities that violated the *EMR*. Early versions of these lists contained the names of major convoy organizers who were already well known due to media reports. Subsequent versions of these lists were based on additional information obtained by the police, including social media monitoring and direct surveillance of protest sites. While legally it was the duty of financial institutions to determine who was and was not a designated person, in practice, institutions relied heavily on these RCMP lists.

The *EEMO* also required information to flow back from financial institutions to law enforcement. Financial institutions had to report the existence of any property in their possession or control that was owned or controlled by a designated person, as well as any transaction or proposed transaction involving such property.²¹ The

²⁰ *EEMO*, s. 6.

²¹ *EEMO*, s. 5.

EEMO directed financial institutions to send their reports to either the RCMP or to the Canadian Security Intelligence Service (CSIS). When the *EEMO* was drafted, the Federal Government had not yet decided whether the collection of these reports was a law enforcement matter or an intelligence matter. Given the urgency with which the *EEMO* was drafted, both options were left available, pending a final decision on how the *EEMO* would be implemented. Ultimately, it was the RCMP that collected this information from financial institutions. The Department of Finance also established a parallel, voluntary process to obtain information on the number and value of accounts frozen by financial institutions. The Department of Finance received reports from the Canadian Bankers Association containing aggregate numbers of accounts that were frozen by its members (that is, not identifying particular individuals but instead the total number of accounts frozen on a given day). These information disclosures occurred entirely outside of the *EEMO*'s information-sharing provisions. I discuss these reports further in Chapter 16.

3.2 Transaction reporting

Along with requiring financial institutions to make reports to the RCMP about the assets of designated persons, the *EEMO* contained an additional, narrower set of reporting rules patterned on Canada's laws regarding money laundering and terrorism finance reporting.

Canada's primary anti-money laundering and counter terrorist financing legislation is the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)* and its associated regulations. Under that legislation, various individuals and entities, known as "reporting entities," are required to make reports to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). Reporting entities include financial institutions (such as banks and credit unions); insurance companies; securities dealers; money services businesses; accountants and accounting firms; real estate brokers, sales representatives and developers; casinos; and dealers in precious metals and precious stones.

Reporting entities are required to make a number of different kinds of reports to FINTRAC. Of most relevance to the Commission’s work are suspicious transaction reports, which are submitted when a reporting entity has reasonable grounds to suspect that a financial transaction or attempted transaction is related to the commission or attempted commission of a money laundering or terrorist activity financing offence. An important part of FINTRAC’s mandate involves producing and disseminating tactical intelligence — that is, intelligence relating to specific individuals and entities and associated financial transactions. FINTRAC’s intelligence sector analyzes the reports it receives from reporting entities alongside other information, such as open-source information, to determine if sufficient legal thresholds in the *PCMLTFA* are met to make a “disclosure” of tactical intelligence to law enforcement or other specified entities. FINTRAC must make such disclosures when it determines that there are reasonable grounds to suspect that a report has information that would be relevant to investigating or prosecuting a money laundering or terrorist activity financing offence.

In February 2022, crowdfunding platforms, such as GoFundMe and GiveSendGo, and payment processors, like Stripe, were not required to make reports under the *PCMLTFA*. The *EEMO* required these types of entities to register with FINTRAC, but only if they were in possession or control of money or property belonging to a designated person.²² Once registered, these entities were then required to make reports with FINTRAC, but only when there were reasonable grounds to suspect that the transaction was both related to the commission or attempted commission of a money laundering or terrorist activity financing offence and that a designated person was committing the suspected offence.²³ The *EEMO* did not require payment processors or crowdfunding platforms to make reports for transactions unrelated to designated persons, nor did it require them to make reports of transactions involving designated persons absent reasonable grounds to suspect a connection to terrorist financing or money laundering.

²² *EEMO*, s. 4(1).

²³ *EEMO*, s. 4(2).

The registration process with FINTRAC is complex and can take several weeks to complete. To expedite the process, FINTRAC began to accept the “pre-registration” of crowdfunding platforms and payment processors, which allowed these entities to begin making reports to FINTRAC, pending full registration. While none of the entities required to register under the *EEMO* achieved full registration status before the Order was revoked, they did have the ability to make reports during the period when it was in operation.

The provisions in the *EEMO* brought crowdfunding services and payment service providers under the *PCMLTFA* regime — but only temporarily. Once the *EEMO* was revoked, they ceased to be reporting entities. However, the Federal Government made this permanent in April 2022 through amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*.²⁴ While the Government’s decision to make crowdfunding platforms and payment processors permanent reporting entities is beyond the scope of my mandate, I do note that the Government indicated that its experience under the *EEMO* did serve to justify its decision. I consider the appropriateness and effectiveness of this aspect of the *EEMO* in Chapter 17.

²⁴ See Canada Gazette Part II, Vol. 156, No. 9, p. 1166.

Chapter 16

The End of the Public Order Emergency



The End of the Public Order Emergency

1. Introduction

Mid-February was a critical time during the Freedom Convoy protests and the occupation of the city of Ottawa. Between February 13 and 15, Freedom Convoy organizers and the City of Ottawa reached an agreement to move trucks out of residential neighbourhoods, only to see it fall apart. Also during that time, the Ottawa Police Service (OPS) and the Integrated Planning Cell (the Cell) developed an integrated operational plan and command system to clear the protests; an operation led by the Ontario Provincial Police (OPP) cleared the blockade of the Ambassador Bridge in Windsor; a Royal Canadian Mounted Police (RCMP) operation resulted in multiple arrests in Coutts, Alberta; and Cabinet decided to invoke the *Emergencies Act*, which granted law enforcement a range of new powers and imposed additional obligations on various private-sector entities.

These events culminated in a large-scale police operation that finally cleared the protesters in Ottawa. Demonstrations in other locations began to die down, and the new protests that many government officials feared would erupt either did not come to pass or were of a more “ordinary” kind. A little more than a week after the Public Order Emergency was declared, it was over.

2. Changes in Ottawa Police Service and Ottawa Police Services Board leadership

At nearly the same time that the Federal Government invoked the *Emergencies Act*, OPS Chief Peter Sloly resigned from his position. This had a significant impact on the OPS and the operation it undertook to end the protests in Ottawa. However, it was not only the leadership of the OPS that changed in mid-February. Shortly after Chief Sloly's resignation, the Ottawa Police Services Board (OPSB) also saw a dramatic change in its composition and leadership.

2.1 Chief Sloly's resignation

OPSB Chair Diane Deans testified that, sometime during the week of February 7, Chief Sloly said to her “just cut me a cheque, and I'll be out of here.”¹ Chair Deans did not know whether he was serious. The question became more than hypothetical later that week, when Chair Deans learned that during the next City Council meeting, a motion would likely be proposed to ask for Chief Sloly's resignation.

On February 14, Chair Deans learned that the media outlet *CBC / Radio-Canada* would soon be releasing a highly critical piece about Chief Sloly. She believed that it was being produced because of the infighting occurring at the OPS at the time. Anticipating this story, the OPSB discussed Chief Sloly's leadership and sought advice regarding its powers under the *Police Services Act (PSA)*. The OPSB believed that it did not have the authority to dismiss the chief of police but could only suspend him, and even then, only in cases of suspected misconduct. It is not clear why the OPSB believed this, and I make no finding on the correctness of its view.

Chair Deans called Chief Sloly that evening to discuss the anticipated media piece. She asked Chief Sloly whether he had a serious interest in resigning. He responded by saying that he wanted to see the operation through. Chair Deans encouraged him

¹ Evidence of Diane Deans, Transcript, October 19, 2022, p. 78.

to think about it and to let her know if he changed his mind. Chief Sloly interpreted this as the OPSB chair pressuring him to resign. The next morning, at 8:30 a.m., Chief Sloly advised Chair Deans that he had decided to resign. The resignation would be effective at the end of the day.

Chief Sloly explained that his primary reason for resigning was his concern that decreasing public confidence in both him and the OPS were endangering public safety. Comments made by public officials and reported in the media, which cast doubt on the OPS's commitment to ending the demonstration, contributed to this lack of confidence. Chief Sloly was increasingly concerned that this erosion in trust was impacting the speed at which resources were being sent to the OPS, and he hoped that his resignation would resolve the situation.

Chief Sloly was of the view that the OPSB, and Chair Deans specifically, had lost confidence in him. This contributed to the pressure he felt to resign. Chair Deans acknowledged that there had been a growing sense among the public that Chief Sloly was somehow responsible for the deficiencies in the OPS's response to the protests. This concerned the OPSB.

At a more general level, Chief Sloly felt that his efforts to carry out the mandate to address issues of systemic racism, misogyny, and lack of community trust that brought him to lead the OPS in 2019 had been undermined throughout his tenure by a small but very influential element within the OPS. Chair Deans agreed that Chief Sloly, a Jamaican-born Canadian who came to the OPS after 27 years with the Toronto Police Service, experienced challenges in fulfilling his mandate. These challenges included anti-Black racism, his perceived status as an outsider, a lack of support from local police associations, and difficulties in forming relationships with local partners.

2.2 The search for a new chief

The OPSB held an *in-camera* meeting shortly after Chief Sloly announced his resignation. Chair Deans recommended hiring Matthew Torigian, an external

candidate, as interim chief effective February 24. According to Chair Deans, the OPSB preferred not to give Deputy Chief Steve Bell the role because they believed it would negatively impact his ability to compete for the permanent position of chief. They were also concerned that the ranks of the OPS's Senior Command were already depleted, and making Deputy Chief Bell interim chief would further diminish them. Finally, the OPSB did not yet have a clear sense of what role, if any, Deputy Chief Bell had played in the OPS's internal conflicts.

The OPSB did not appear to have a plan to ensure that the service would have an interim chief by the time Chief Sloly's resignation came into effect at the end of that day, which was legally required. The OPSB's Police Services Advisor Graham Wight raised this issue with the Board to avoid non-compliance with the *Police Services Act (PSA)*. While the meeting was still taking place, Mr. Wight reported these events to his superiors within Ontario's Ministry of the Solicitor General so they could be aware of the Board's potential non-compliance with the *PSA*.

Ultimately, the OPSB agreed to ask Deputy Chief Bell to act as an immediate and temporary interim chief while it completed the hiring process for an external interim chief. The Board then devised a short-list of potential external candidates, who were contacted to determine their availability. The Board gave Chair Deans the delegated authority to enter into a contract with an interim chief.

At 2:30 p.m. on February 15, the OPSB held a public meeting where a "mutually agreed upon separation" with Chief Sloly was announced. Deputy Chief Bell would serve as interim chief until further notice, with a new interim chief to follow.²

During the same meeting, the OPSB was briefed regarding the establishment of an integrated command with the OPP and the RCMP. Interim Chief Bell noted that there

² Ottawa Police Services Board Minutes 53, February 15, 2022, OPB00001278, p. 2.

was now a plan to end the protests, and the OPS had achieved its desired staffing level. He described the police response as being at a “turning point.”³

The OPS began to communicate more openly with the City of Ottawa after Chief Sloly’s resignation, and the OPSB began to see more details regarding the OPS’s plan. That said, I recognize that any change in communication as of February 15 also coincides with the arrival of additional policing resources in Ottawa and a completed plan to bring the protests to an end within the coming days. I also note that Chief Sloly had arranged for the OPSB to be briefed on February 15 regarding the February 13 plan as well as OPP intelligence about the Ottawa protests. Due to his resignation, that briefing did not occur.

2.3 Pressure on the OPSB to retain Deputy Chief Bell as interim chief

Mr. Wight reported to his superiors at the Ministry of the Solicitor General that Chair Deans had been given authority to hire an external interim chief and, while the OPSB *in-camera* meeting was still in process, the deputy solicitor general of Ontario advised OPP Commissioner Thomas Carrique that Chief Sloly had resigned and that an external interim chief would be hired.

It appears that Commissioner Carrique communicated this information to RCMP Commissioner Brenda Lucki, and at 6:30 a.m. on February 16, the two agreed that they needed to ensure that Deputy Chief Steve Bell remained interim chief. Commissioner Lucki asked Deputy Minister of Public Safety Canada Rob Stewart to speak to Ottawa City Manager Steve Kanellakos about this issue and to emphasize the importance of continuity in the police command structure. Deputy Minister Stewart did so. While the mayor’s office had existing concerns about hiring an external interim chief, the communication from Deputy Minister Stewart no doubt put further pressure on the mayor’s office to take action.

³ Ottawa Police Services Board Minutes 53, February 15, 2022, OPB00001278, pp. 2 and 3.

Ottawa City Mayor Jim Watson, Chief of Staff to the Mayor Serge Arpin, and Chair Deans spoke on the morning of February 16. This phone call was recorded by staff in Chair Deans' office without the knowledge of Mayor Watson or Mr. Arpin. Chair Deans said that the OPSB had chosen Mr. Torigian to be interim chief and would be signing a contract with him that afternoon. Mayor Watson expressed his strong disagreement with that decision, stating that having three police chiefs in the span of three days would destabilize the OPS. He was also concerned about the absence of a public process in the hiring decision.

Chair Deans responded to these concerns, but it appears that the two sides had different understandings of the discussion. After the meeting, both Mayor Watson and Mr. Arpin understood that Chair Deans had agreed not to sign Mr. Torigian's contract without the mayor's consent, which he had not given. Chair Deans, however, believed that she told them she would not sign the contract if the mayor directed her not to do so, which she felt he had not directed. Having listened to the recording of the conversation, I conclude that the discussion around this specific point was not clear, and it was possible for the mayor and Chair Deans to have understood the outcome of the call differently.

During that call, Mayor Watson told Chair Deans that he had not yet decided whether he had lost confidence in her. While Mayor Watson acknowledged in his testimony that hiring a chief of police lies within the exclusive jurisdiction of the OPSB, he clearly implied, during the phone call, that his continued confidence in Chair Deans depended on the Board changing course regarding the hiring of the interim chief of police.

Despite the implied consequences, Chair Deans signed a contract with Mr. Torigian later that day. Mayor Watson, understanding this to be contrary to the assurances Chair Deans had provided earlier in the day, concluded that he had lost confidence in her.

2.4 Changes in the OPSB

City Council was scheduled to meet later in the day on February 16. Before the Council meeting, Mr. Arpin informed Chair Deans that a motion would be brought to remove her as chair of the OPSB and offered her an opportunity to step down. She declined.

During the City Council meeting that followed, Council adopted a motion to replace Chair Deans. The motion also sought to remove Councillor Carol Anne Meehan from the OPSB. This part of the motion failed but Councillor Meehan, along with the two other City appointees, resigned from the OPSB in protest. Ultimately, Mr. Torigian rescinded his acceptance of the role of interim chief, and Deputy Chief Bell stayed on as interim chief through to the end of the demonstrations.

Four out of seven members of the OPSB were replaced in the middle of the protests, only days before police enforcement action started. It is ironic that the mayor's actions, in trying to ensure stability, resulted in even more instability at the police governance level. Chair Deans' view is that Mayor Watson used the hiring issue as a pretext to remove her. Both Mayor Watson and Chair Deans acknowledge a longstanding political rivalry. I have no need to opine on the motive for Chair Deans' removal. What I do observe is that the mayor's office, City Council, and the OPSB were unable to effectively collaborate at this critical point in time, which only undermined the OPSB's ability to provide oversight of the OPS during an unprecedented event.

3. Implementation of federal emergency measures

At the same time as it issued the proclamation declaring the Public Order Emergency, the Governor in Council passed two instruments adopting measures under the Act: the *Emergency Measures Regulations (EMR)* and the *Emergency Economic Measures Order (EEMO)*. In Chapter 15, I describe in detail the nature and the extent of the measures contained in the *EMR* and the *EEMO*. In this chapter, I focus on their use and their implementation.

3.1 The creation of exclusion zones

The *EMR* created two mechanisms by which protesters could be excluded from a location in which an unlawful protest was taking place. First, section 4 of the *EMR* prohibited any person from travelling to or within an area where an unlawful assembly was taking place. Second, section 6 provided that certain designated protected places such as critical infrastructures and Parliament Hill could be secured. Section 6 of the *EMR* also enabled the minister of Public Safety to designate any other location as a protected place that may be secured.

The OPS consulted Federal Public Safety Minister Marco Mendicino's office about issuing a section 6 designation over the secured zone in Ottawa. Ultimately, Minister Mendicino concluded, and the OPS agreed, that it would be preferable for police to rely on the more flexible powers under section 4 of the *EMR* to create an exclusion zone, which would permit the police to expand or contract the exclusion zone as required, without the need for a ministerial designation.

I note that certain police officers who testified before me believed that they had the power at common law to establish an exclusion zone, even without the *Emergencies Act*. I return to this question in Chapter 17.

3.2 Prohibiting entry by foreign nationals

The *EMR* provided that foreign nationals could be denied entry into Canada if they intended to participate in or to facilitate assemblies that were prohibited by the Regulations. As I discuss in Chapter 14, border services officers do not have the authority to deny entry to foreign nationals who meet all admissibility requirements because they intend to protest. Section 3(1) of the *EMR* therefore provided explicit authority to deny entry to foreign nationals who intended to participate in prohibited assemblies, with some exceptions.

This provision was only used once while the *Emergencies Act* was in effect. On February 19, two foreign nationals were turned away at the Prescott port of entry in Ontario. As I note in Chapter 14, most foreign nationals trying to enter Canada to join the protests were turned away on other grounds, such as failing to show proof of vaccination.

3.3 Directions to render essential goods and services

In response to concerns about obtaining towing capacity, the *EMR* provided that any person had to make available and render the essential goods and services requested by the minister of Public Safety and Emergency Preparedness, the commissioner of the RCMP, or a person acting on their behalf, for the removal, towing, and storage of any vehicle, equipment, structure, or object that was part of a blockade.

On February 17, RCMP Commissioner Lucki delegated her authority under section 7 of the *EMR* to OPP Commissioner Carrique. Commissioner Carrique sent a letter to the relevant towing companies in the Ottawa area expressly invoking the authority under section 7, and stating that the OPP was “now requiring the companies to make available and render the essential goods and services required for the removal, towing, and storage of any vehicle, equipment, structure, or object that is part of the blockades in Ottawa or critical infrastructure in the province.”⁴

Prior to the declaration of emergency, the Integrated Planning Cell had tasked the OPP with sourcing heavy tow trucks. By February 13, the OPP had identified seven tow truck companies willing to provide a total of 34 tow trucks. However, no agreements were concluded with these companies, and Commissioner Carrique testified that there was no guarantee that they would follow through in providing services. That said, the OPP had contingency plans in place in the event that towing companies did not render services. Commissioner Carrique was assured by his team that, with or

⁴ Letter from Thomas Carrique to towing companies, February 17, 2022, PB.NSC. CAN.00007378, p. 5.

without the co-operation of towing companies, the police would be able to “get the job done.”⁵

Commissioner Carrique identified four issues that the OPP had encountered in attempting to secure tow trucks without the *Emergencies Act*. First, the operators were reluctant to assist the police. Second, they required an unusually broad and high-risk indemnification from the Province of Ontario, including for any retaliation they might face from protesters in the future, which the OPP could not provide without the approval of the Ontario minister of Finance. Third, the operators were also insisting on a confidentiality agreement, which the OPP could not provide because of access to information and disclosure requirements before a court or commission of inquiry. Finally, there was not enough time to conclude individual agreements with each vendor.

According to Commissioner Carrique, the OPP relied on the *EMR* as an appropriate way to have tow truck services quickly available while providing compensation and indemnification to the vendors. In his interview with Commission counsel, Commissioner Carrique asserted that the tow truck operators had not been “compelled” to render their services. In his testimony, he clarified that he meant the operators had not been directed to co-operate against their will. Rather, they agreed to provide their services if guaranteed the protection of section 7 of the *EMR*.

It appears that the OPP considered that towing services had been obtained using the *EMR*. On February 27, the OPP invoiced the RCMP CAD\$666,787.94 for reimbursement in connection with towing services. Compensation under the *EMR* is only available if the compulsion power has been exercised in order to obtain the good or service for which compensation is sought.

⁵ Evidence of T. Carrique, Transcript, Vol. 11, p. 306.

3.4 Authority to enforce provincial and municipal legislation

The *EMR* provided that any peace officer could take necessary measures to ensure compliance with provincial and municipal laws. This meant that officers, including RCMP members, had jurisdiction to enforce those laws without first being sworn in as special constables.

Witnesses provided different accounts of whether police services dispensed with swearing in officers as special constables once the *EMR* came into force. In his interview with the Commission, RCMP Deputy Commissioner Michael Duheme suggested that RCMP officers continued to be sworn in, even after the *EMR* came into effect. This stands in contrast to the evidence of OPS Interim Chief Bell, who testified that the removal of the swearing-in requirement was one of the key areas in which the invocation of the *Emergencies Act* benefitted the police, and the evidence of OPS Acting Deputy Chief Patricia Ferguson, who testified to struggling with having to swear in RCMP officers until the *EMR* came into force. OPP Superintendent Carson Pardy also stated, in his interview, that interprovincial policing accreditation was a challenge that the *Emergencies Act* helped the police overcome. Although this contradiction was never put directly to him, I note that, in his testimony, RCMP Deputy Commissioner Duheme acknowledged that he did not have direct knowledge of how the swearing-in process was working on the ground.

3.5 Financial institutions' duty to cease dealings with designated persons

Under the *EEMO*, entities such as financial institutions had a duty to cease dealings with designated persons. As I explain in Chapter 15, a designated person was, essentially, anyone involved in an activity that was prohibited under the *EMR*. Financial institutions could do two things to determine whether clients were designated persons under the *EEMO*: (1) They could make that determination on an ongoing basis, using

their own algorithms and processes; or (2) they could rely on information provided by law enforcement.

To facilitate the latter process, the RCMP shared information about individuals and entities believed to be “designated persons.” It disclosed information to financial institutions in two streams. In the first stream, the RCMP forwarded information from the OPS and the OPP regarding subjects of interest in criminal investigations related to the convoy. In the second stream, the RCMP shared information about individuals associated with vehicles participating in protest activity in downtown Ottawa, and those identified through social media monitoring and other intelligence activities as participating in the downtown Ottawa protest. If an individual had left the protest, or agreed to leave, their information would not be shared.

The RCMP began disclosing information to financial institutions on February 15. In total, the RCMP disclosed 18 individuals and 39 owners or drivers of vehicles to various financial institutions and organizations. It also disclosed the addresses of 170 Bitcoin wallets that it viewed as subject to the *EEMO*.

A question raised at the hearing was whether financial institutions had any discretion in how they applied the measures. Officials from the Department of Finance and the RCMP indicated that financial institutions would have to “vet” the lists against other information in their possession before freezing an account. In the email to financial institutions attaching a disclosure report, the RCMP stated that “[f]inancial institutions should assess the information being disclosed in conjunction with financial intelligence (i.e., account activity, etc.), which may support an entity has ceased engaging in prohibited activities.”⁶

⁶ Email, Kelley Hughes to Financial Institutions, February 17, 2022, PB.NSC.CAN.00004142. See also Email, Francisco Chaves to Michel Arcand and others, February 18, 2022, PB.NSC.CAN.00004709; RCMP-CAMLO Meeting Notes, February 16, 2022, PB.NSC.CAN.00007800.

In her interview with Commission counsel, General Counsel of the Canadian Bankers Association Angelina Mason suggested that the banks' duty to determine consisted mainly of ensuring that the entity named in an RCMP list was in fact the same person identified as a bank's client prior to taking any steps to freeze the account. At the hearing, Department of Finance officials accepted that financial institutions relied heavily on these lists.

As mentioned, financial institutions could identify designated persons without relying on external lists, by using their own internal processes and sources of information. Banks were already required to monitor accounts for suspicious activity. By adapting these processes, transactions linked to the protests in Ottawa could be identified through the banks' normal review procedures, and the relevant accounts could be frozen. This approach was intended to leverage the sophisticated processes that financial institutions have in place to identify activity such as suspicious transactions, potential fraud, and unusually large transactions — information that law enforcement would not necessarily have.

Financial institutions also had a duty under the *EEMO* to report to the RCMP any property they had, including bank accounts, that belonged to a designated person. Pursuant to this obligation, several financial institutions disclosed information about account holders not previously identified by the RCMP. In some cases, the RCMP went back to financial institutions and sought additional information about proactively disclosed entities in order to ascertain that they had been properly designated by the financial institution.

Separate from this reporting obligation, financial institutions also agreed to provide the Department of Finance with aggregate information about asset freezes imposed pursuant to the *EEMO*. This was done primarily through the Canadian Bankers Association (CBA) and the Canadian Credit Union Association (CCUA). The Department of Finance was monitoring how the measures were working, and this information assisted in determining when the measures should be revoked.

The CBA adopted a template that was provided by the Department of Finance to send them daily reports. The Department of Finance also received aggregate reporting from the RCMP. Based on these reports, the Department of Finance has estimated that, in total, approximately 280 accounts, worth around CAD\$8 million, were frozen. Of these, at least 23 accounts were frozen by financial institutions based on their own determinations, as opposed to information obtained from RCMP lists. The CCUA followed a more informal process, based on surveys of its members. The CCUA reported that approximately 10 accounts were frozen.

It is important to note that although approximately 290 accounts were frozen, fewer than 290 individuals or entities were affected, because in some cases multiple frozen accounts belonged to the same person. Indeed, one update indicates that the RCMP provided financial institutions with a list of 57 individuals or entities representing a total of 240 financial accounts that were no longer involved in the protests.

The duty to cease dealings under the *EEMO* was not limited to banks and credit unions. It applied to a wide range of financial institutions, including insurance companies with respect to automobile insurance. However, those provisions were not ultimately applied, insofar as the RCMP did not distribute its lists of designated persons to insurance companies. Law enforcement officials were concerned that suspending insurance policies might make it difficult for protesters to leave, since they would not be able to drive their uninsured vehicles. In the circumstances, the RCMP considered that this would do more harm than good.

The *EEMO* did not set out a formal process for unfreezing accounts. This was a source of some concern for executives of financial institutions, who were unclear how to determine when an individual listed on a report provided by the RCMP was no longer a designated person. There was a period of discussion between financial institutions and government officials, and within government itself, about developing a process. The main options were directing protesters to go in person to either their bank branches or to local police detachments outside of Ottawa to show that they

were no longer participating in prohibited assemblies. The former option gave rise to concerns about violence being directed at the staff of financial institutions. This concern appeared credible given the reports of threats being directed at financial institution employees by customers whose accounts had been frozen.

Ultimately, however, no individualized process had to be developed. On February 21, the RCMP advised financial institutions that it no longer believed the previously disclosed entities met the criteria of a designated person. On February 22, the Incident Response Group (IRG), a special emergency committee of Cabinet that is convened when there is a national crisis, was informed that the RCMP had advised financial institutions to unfreeze all accounts. On February 24, the CBA advised the Department of Finance that all accounts held by its members had been unfrozen, apart from those subject to parallel court processes.

3.6 Reporting to the financial transactions and reports analysis centre of Canada

As I note in Chapter 15, the *EEMO* created reporting obligations for crowdfunding platforms and payment processors. These entities, if they were in possession or control of money or property belonging to a designated person, were required to register with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).

The *EEMO* measures relating to FINTRAC were minimally used. The agency's Deputy Director of Intelligence, Barry MacKillop, stated that from FINTRAC's perspective, there was no noticeable difference in the numbers of suspicious transaction reports received between January 26 and February 23 relative to other periods. While the *EEMO* was in effect, FINTRAC received fewer than five suspicious transaction reports from entities that were newly subject to reporting.

FINTRAC also received relatively few Voluntary Information Reports between January 26 and February 23. Mr. MacKillop noted that this could be, in part, because

law enforcement was focused on front-line work rather than investigations. Nor did FINTRAC make more disclosures than usual during that period.

Mr. MacKillop stated that, from an intelligence perspective, the *EEMO* had no impact on FINTRAC's ability to fulfill its mandate. The measures did not increase FINTRAC's authority or alter who could receive disclosures. Further, the short duration that the *EEMO* was in effect meant that new reporting entities had little time to detect suspicious transactions and file reports.

4. The OPS operation to end the protests

4.1 Discussions of an OPP takeover of command

By February 15, RCMP Commissioner Lucki and OPP Commissioner Carrique perceived that the February 13 plan, which I discuss in Chapter 9, was not being executed because of confusion about whether it was approved and reports that OPS Chief Sloly was delaying its implementation. Commissioner Lucki lost confidence in Chief Sloly and wanted the plan to be actioned. While Commissioner Carrique had not yet lost confidence in Chief Sloly, he shared Commissioner Lucki's desire to proceed.

Commissioners Carrique and Lucki therefore decided to ask Chief Sloly if he would agree to have the OPP assume command of the police response. The OPS would remain the police of jurisdiction and focus on policing the rest of Ottawa. If Chief Sloly did not accept, Commissioner Carrique testified that he would have told then Ontario Solicitor General Sylvia Jones to consider asking the Ontario Civilian Police Commission to decide if it should request that the OPP assume command. These discussions were pre-empted by OPS Chief Sloly's resignation.

OPS Interim Chief Bell promptly supported integration between the OPS, the OPP, and the RCMP, and agreed to a unified command in which OPS Acting Superintendent Robert Bernier and the RCMP and OPP operational commanders would make

decisions jointly and receive strategic oversight from a joint RCMP – OPP – OPS strategic command. This elevated the level of integration from the February 13 plan, which contemplated an integrated command with OPS Acting Superintendent Bernier as the sole operational commander. OPS Interim Chief Bell also confirmed that the February 13 plan was fully approved, and told OPS Acting Superintendent Bernier to make operational decisions without first seeking his approval. From February 15 onward, the implementation of the February 13 plan proceeded promptly and smoothly.

4.2 Communications with the protesters

The invocation of the *Emergencies Act* took place on February 14, 2022, while police forces in Ottawa were working to finalize and implement their enforcement plan. Before enforcement actions began, the OPS engaged in a range of public messaging activities directed toward protesters to educate them that they needed to leave the area and that enforcement was forthcoming.

As I note in Chapter 9, on February 15 and 16, some protesters in Ottawa were still attempting to move out of residential areas and onto Wellington Street in accordance with the deal between the City and protest organizers. However, by this point, the OPS was no longer willing to facilitate such a move. On February 15, OPS officers started advising protesters to leave the area or face possible arrest.

On February 16, the OPS posted a “Notice to Demonstrators” on its website and on social media informing them that they were required to leave and would risk being arrested and charged under the *Criminal Code* if they did not. The notice also described prohibitions contained in the *Emergency Measures Regulation* and the order issued under Ontario’s *Emergency Management and Civil Protection Act* declaration. A further notice was posted to the OPS website that day and shared on social media on February 17, which provided more detail of the consequences protesters could face if they did not stop engaging in unlawful conduct.

On February 16, OPS Interim Chief Bell posted remarks that he had made to Ottawa City Council to the OPS website. Those remarks made it clear that the OPS intended to engage in enforcement and would remove protesters from the downtown core. The next day, the OPS posted a notice to its website and social media advising that a secured area had been established under the *Emergencies Act*. The secured area was defined as from Bronson Avenue to the Canal, and the Queensway (Highway 417) to Parliament Hill.

I note again that this area was not, in fact, designated as a secure area pursuant to the *Emergency Management Regulations*. Rather, police relied on the restriction preventing travel to prohibited public assemblies and the power to secure the Parliamentary Precinct. Further, as I explain in Chapter 9, OPS Acting Superintendent Bernier had planned to create a secured area under common law authority before the emergency declaration. It is not entirely clear which area would have been secured under this common law authority, although it would have included portions of downtown Ottawa. The police reduced the size of the secured area while the *Emergency Measures Regulations* were still in effect, and on February 23, the police briefly maintained this smaller secured area under common law authority after the proclamation of an emergency was revoked.

Prior to and during the enforcement operation, the OPS continued to publish statements on its website and social media, advising protesters that they had to leave and could be arrested if they remained at the protest site.

On February 16 and 17, PLT members travelled through the downtown protest sites to circulate flyers and advise protesters of the need to leave. On February 16, Freedom Convoy organizer Chris Barber and convoy lawyer Keith Wilson published a video on Mr. Barber's TikTok account responding to these notices. Mr. Wilson said that the notices described the emergency orders inaccurately, that the orders still permitted peaceful assemblies, and that protesters were still allowed to come to Ottawa as long as they were not coming to block critical infrastructure or to commit acts of violence.

Mr. Wilson also observed that the police on the ground appeared to be gearing up for a public order operation. He ended the video by calling on concerned citizens to come to Ottawa to protest government overreach and police violence against peaceful protesters.

On the same day, convoy organizers Daniel Bulford, Tamara Lich, and Mr. Barber met with OPS PLT officers. The PLT officers delivered a message advising that the protesters should leave Ottawa and explained that anyone who continued to assist the Freedom Convoy protests with logistics could be criminally charged.

On February 17, OPS Interim Chief Bell announced the creation of a secured area at a press conference and stated that the OPS would prohibit protesters from entering the downtown core. In response to his comments, Freedom Convoy lawyer Eva Chipiuk wrote to Interim Chief Bell challenging the OPS's authority to do so. The letter asserted that such a prohibition was contrary to the *Charter* and inconsistent with the federal emergency orders. Ms. Chipiuk requested that the OPS cease and desist from any actions that would restrict peaceful assembly in downtown Ottawa.

From the various messages put out by the OPS, I would have expected protesters to have known that the police intended to prohibit protesters from entering downtown Ottawa and to potentially arrest those who remained. However, several protesters, including Ms. Lich, testified that they were never told by the City or the OPS that they were required to move their trucks and leave Ottawa. Ms. Lich did recall seeing the OPS flyers, but suggested that she did not believe that they were official because they had not been signed by anyone. Another convoy organizer, Tom Marazzo, testified that he continued to believe, based on legal advice from Mr. Wilson and Ms. Chipiuk, that protesters could enter and remain in downtown Ottawa if they were on foot. Once the public order action was underway on February 18, it became apparent to Mr. Marazzo that police would nonetheless prevent protesters from entering or remaining in the secured area.

4.3 Preparation for enforcement

On February 17, OPS Acting Superintendent Bernier and the RCMP and OPP operational commanders approved an updated operational plan, which I will refer to as the February 17 plan. It built on the February 13 plan that I describe in Chapter 9 in two significant ways.

First, it outlined objectives to accomplish for each of the four phases referenced in the February 13 plan: stabilization, actions on, maintenance, and demobilization. The stabilization phase of the plan, which was carried out prior to February 17, included assembling more resources in Ottawa and, as described earlier in this chapter, changing the messaging to protesters to emphasize that the protest was over, and it was time for them to leave. The actions on phase involved clearing the protesters from downtown Ottawa. The maintenance phase, which began on February 21, involved keeping Ottawa clear of protesters. Finally, the demobilization phase involved returning Ottawa to a state of normalcy.

Second, the February 17 plan included sub-plans for traffic, towing, investigations, arrests, tactical action, and critically, a public order sub-plan that set out the details on clearing each of the areas to be targeted in the actions on phase. These sub-plans had been referred to in the February 13 plan but were still under development. The public order sub-plan does not rely on the *Emergencies Act* or the *Emergency Measures Regulations* as an authority for the public order operation.

The February 17 plan was consistent with the February 13 plan's overall approach. While OPS Acting Superintendent Bernier's interview summary contains a statement that the February 13 plan "did not contain a comprehensive plan to end the occupation of Ottawa,"⁷ he clarified in testimony that it did establish a framework to restore Ottawa to normalcy. The public order sub-plan of the February 17 plan added details on how to execute the public order component of that framework.

⁷ Interview Summary: Robert Bernier, WTS.00000030, p. 18.

On February 17, the police implemented a “core hardening plan,” in which streets around the perimeter of the downtown core were set up as control points in preparation for the public order enforcement action. By late evening, the secured area was set up, and there were officers at all entry and exit points to that area. Officers began engaging with protesters as of 6 p.m. to discourage them from participating in the downtown protests and began restricting entry at the checkpoints starting at midnight.

4.4 The public order operation

On February 18, the police began operations to remove the protesters in downtown Ottawa by force. The operation proceeded in phases that were organized geographically. Police used long-range acoustic devices to alert protesters to the need to leave or face arrest. Police left an exit route open for any individuals who chose to leave.

The first phase of enforcement began at 7:41 a.m. when police began to clear Nicholas Street and Waller Street. Officers were prepared to use force, if necessary, but were only wearing regular uniforms without additional protective gear. Their expectation was that the extensive police presence and threats of arrest would result in most protesters leaving the area voluntarily. This did not occur. Large numbers refused to leave and were more aggressive than expected. Some grabbed for police firearms, struck at officers, and used flagpoles or hockey sticks as weapons. Officers were injured, and as a result, some of the Public Order Unit (POU) officers began to wear their “Level 2” gear. This includes a helmet, baton, visor, and padded gloves. In addition, police began to use horses to deter protesters from approaching the police line. The first enforcement phase took nearly four hours.

After clearing this area, police moved to the second phase, clearing the intersection of Rideau Street and Sussex Drive. At 8 p.m. on February 18, police decided to hold the line they had established in front of the Fairmont Château Laurier hotel, which police considered safer than continuing the clearing operation through the night. They

brought in fencing to secure the area and to reduce the number of officers needed overnight.

At 9 a.m. the next morning, police resumed their operation, moving west toward Wellington Street. Based on the experience the day before, all POU officers wore additional protective gear. The officers' methodical approach continued throughout the day. By the end of February 19, police had cleared the downtown core of protesters and trucks. On February 20, police cleared the Coventry Road staging area.

Freedom Convoy organizers Mr. Barber and Ms. Lich were arrested separately on February 17. Mr. Bulford was arrested on February 18 when he presented himself to police after hearing on the news that an arrest warrant had been issued for him. He was later released without charge. Patrick King, another convoy organizer, was also arrested on February 18, and James Bauder was arrested on February 21.

By February 19, with several key convoy leaders in custody, and in the face of the public order policing action on the previous day, organizer Mr. Marazzo began to encourage protesters to leave Ottawa rather than face further confrontations with police.

The police concluded the public order operation on February 21. A total of 2,223 non-OPS police officers participated in the enforcement action in Ottawa, mostly from the RCMP and the OPP, but also from the Sûreté du Québec (SQ) and municipal police forces from Ontario and Western Canada.

Between February 18 and 20, police in Ottawa made 273 arrests and laid 422 charges. More broadly, between January 28 and March 31, 2022, the OPS laid 533 criminal charges against 140 individuals for actions arising from the Freedom Convoy. Police towed or impounded 110 vehicles. No charges were laid under the *Emergency Measures Regulations*.

The protesters in Ottawa were not offered an alternative site to exercise their right to protest, although some moved to the Canadian War Museum, a few blocks west of the Parliamentary Precinct, and they were permitted to lawfully protest there. That said, the protesters showed no desire to leave downtown Ottawa and protest elsewhere. By remaining in the face of the police operation, they showed their clear desire to continue their protest downtown and on Wellington Street, close to the Parliamentary Precinct and the Office of the Prime Minister and Privy Council.

Some of the protester witnesses suggested that the police carried out the public order operation with undue violence. In response to this testimony, OPS Acting Superintendent Bernier swore an affidavit setting out, in some detail, how the POU plan was put into effect, including the steps taken to deliver messages to the protesters before and during the enforcement action, and the steps taken to deal with individuals who were arrested. The affidavit contains general information and does not address individual protesters.⁸

According to Acting Superintendent Bernier's affidavit, there were no significant injuries sustained by protesters or bystanders during the enforcement operation. Two incidents were reviewed by the Special Investigations Unit, the independent civilian body that investigates allegations of serious injuries caused by the police in Ontario. The investigations did not result in charges or further investigative steps.

Neither a detailed review of the public order operation nor specific findings regarding the arrests of particular individuals is within the purview of my mandate, and I make no findings on these points. Any public order operation is going to require some degree of force to remove persons who are otherwise unwilling to depart the restricted area. This unfortunate reality only reinforces the importance of finding alternative ways to permit lawful protest, because any effort to clear a protest may lead to arrests and the risk of harm.

⁸ Affidavit of R. Bernier, November 20, 2022, AFF.00000020.

As police cleared the downtown core, Ottawa City staff supported them in cleaning city streets (including the removal of human waste) and eventually removing the hundreds of barriers that had been used to block off streets. The City also ensured that any fuel left behind by the protesters was safely collected and disposed of. City staff conducted safety inspections — particularly for those downtown streets where heavy vehicles had been parked during the demonstrations — prior to restoring public transit to those areas.

The City’s declaration of the State of Emergency was terminated on February 24, 2022, and it returned to normal operations on March 2.

5. Federal Government activities during the emergency

Following the invocation of the *Emergencies Act*, the Incident Response Group (IRG) met daily from February 16 to February 23, 2022, when the *Emergencies Act* was revoked. The Assistant Deputy Ministers’ National Security Operations Committee (ADM NS Ops) and Deputy Ministers’ Committee on Operational Coordination (DMOC) also continued to meet frequently throughout this period. I discuss the mandate and composition of these bodies in Chapter 14.

At the IRG meetings, Jody Thomas, the National Security and Intelligence Advisor (NSIA), provided daily operational and threat updates, and RCMP Commissioner Lucki provided daily law enforcement updates. Other officials and ministers reported on developments across the country from the perspective of their individual portfolios and on the implementation of the emergency measures.

The Privy Council Office (PCO) produced various documents that tracked Federal Government responses to the protests. One such tracker was the “Concrete Actions Tracker,” which was first provided at the February 16 IRG meeting, and then updated daily. This was in addition to the IRG Tracker, which I discuss in Chapter 14. The final version of the Concrete Actions Tracker produced to the Commission is dated

March 15, 2022. Other than what is contained in the Concrete Actions Tracker, the PCO did not collect specific information relating to the enforcement of the measures enacted under the *Emergencies Act*. Much of the relevant information would have been in the possession of law enforcement rather than the federal government.

As I note in Chapter 14, the Department of Finance's initial economic analysis on February 10 did not attempt to quantify the economic impact of the blockades. This analysis was completed on February 22. It arrived at a result similar to that published in a *Bloomberg* article on which Deputy Prime Minister Chrystia Freeland relied at the February 13 Incident Response Group (IRG) meeting, which estimated ongoing economic losses of 0.1% – 0.2% of Gross Domestic Product (GDP) every week in which the blockades continued.

The February 22 analysis considered the effects of the blockades on the growth of GDP, which refers to change in GDP between two periods expressed as a percentage, and the level of GDP, which refers to the flow of goods and services produced in the economy during a given period. The Department of Finance's best estimate was that the blockades would reduce the growth of GDP by 0.1% – 0.2% and the level of GDP in the first quarter of 2022 by 0.03% – 0.05%. In simple terms, the change in growth meant that the change in GDP between the fourth quarter of 2021 and the first quarter of 2022 was reduced by 0.1 – 0.2 percentage points. This change in level meant that the economy produced 0.03% – 0.05% less than it would have produced without disruptions.

In his testimony, Deputy Minister of Finance Michael Sabia highlighted that simply looking at figures like 0.1 – 0.2 percentage points does not capture the human consequences of those numbers, such as the impact of layoffs or lower wages on individuals.

The Department of Finance estimated that the value of goods whose free flow was prevented was CAD\$511 million per day at the peak and that the economic impact

on the GDP was between CAD\$28 million and CAD\$56 million per day. To ensure the accuracy of their estimate, the department used three different approaches, all of which yielded similar results.

The Department of Finance did not and could not specifically calculate the broader economic impacts that could have accumulated over time if the protests had continued (for instance, if other ports of entry became blocked, and re-routing was no longer possible). Such an outcome could not be modelled because it is inherently unknowable.

The February 22 analysis asserted that much of the impact on the level of GDP would likely be recouped in the second quarter of 2022, as production caught up. Assistant Deputy Minister for Economic Policy Rhys Mendes explained that they were able to come to this conclusion on February 22 because by that time, they knew that the disruptions had ended and their impact had therefore been limited. Thus, they believed that it was possible for the lost production to be made up by people and factories working overtime. That said, he noted that the impact is “not free,” because there are reasons why workers and factories do not usually operate in this way — time is needed for maintenance, rest, and the like.

The February 22 analysis also cautioned that the economic impacts could quickly escalate if blockades re-emerged, or other blockades surfaced in such a way that re-routing to other ports of entry was not possible. It noted that although the Ambassador Bridge had reopened, it would likely take time to return to the pre-disruption pace of trade and production. Further, the February 22 analysis noted that “the fallout could be even greater if producers choose to source their supply chains elsewhere in the longer term, for fear of these disruptions re-occurring.”⁹

⁹ Blockades – Recent Developments and Summary of Economic Disruptions, February 22, 2022, SSM.CAN.00007571, p. 1.



6. The Parliamentary oversight process

As I discuss in Chapter 2, under the *Emergencies Act*, a proclamation of an emergency is subject to Parliamentary oversight in a number of ways, including the requirement to subject a declaration of an emergency to a vote, both in the House of Commons and the Senate. During the Public Order Emergency, the House of Commons voted to confirm the declaration. The Senate did not vote on this question because before this could happen, the Federal Government revoked the declaration.

6.1 The motion to confirm in the House of Commons

On February 16, the minister of Public Safety tabled a motion for confirmation of a Declaration of Emergency in the House of Commons. As required by section 58 of the *Emergencies Act*, the motion was accompanied by the Government's explanation of the reasons for issuing the declaration and a report on the consultations with the provinces and territories. The *EMR* and the *EEMO*, which had come into effect, were also provided to Parliamentarians.

On February 17, 2022, the House of Commons began to debate the motion. To facilitate debate, the House also adopted a motion to sit until midnight that day, and from 7 a.m. to midnight on subsequent days until the motion for confirmation was put to a vote on February 21. On February 18, the party leaders agreed that the House would not sit, because of the police operation that had begun along Wellington Street earlier in the day.

The House ultimately confirmed the declaration on February 21, by a vote of 185 to 151.

6.2 The motion to confirm in the Senate

The motion for confirmation of the declaration was not tabled in the Senate until February 21, 2022. The evidence indicates that this was partly due to difficulties and

delays in convening the Senate because of the presence of the convoy in downtown Ottawa.

Upon the motion being tabled, the Senate adopted a motion to sit from 9 a.m. until 9 p.m. on February 22 – 25, unless the motion was put to the members sooner. However, when the Governor in Council revoked the declaration of emergency on February 23, the motion to confirm the declaration of emergency was withdrawn in the Senate, and debate concluded.

At the Commission’s hearings, some parties suggested that the Government’s decision to revoke was informed by a desire to avoid a vote in the Senate and the possible defeat of the motion to confirm the declaration.

This premise was rejected by Katie Telford and Brian Clow, senior officials at the Prime Minister’s Office (PMO), who testified that the Senate vote was not a consideration for the IRG or for the Prime Minister. In addition, they testified that they expected the vote in the Senate to succeed and that, from a political perspective, it would have been desirable for the vote to have taken place.

Minister of Justice and Attorney General of Canada David Lametti was asked about a text message exchange dated February 23, 2022, in which he was asked by a colleague why the *Emergencies Act* was not being kept in place longer, given that the optics of revoking it so soon were not necessarily positive. He replied, “we needed to stay ahead of the NDP and the senators were saying that they would vote against based on their view that there was no longer an emergency.”¹⁰ Minister Lametti testified that he was referring to the Government’s commitment, to the NDP and otherwise, that it would not keep the declaration of emergency in place “a minute longer than necessary.” He reiterated that the Government was confident that it had the votes it needed to have the declaration confirmed in the Senate.¹¹

¹⁰ Text messages between David Lametti and Greg Fergus, SSM.CAN.00008754.

¹¹ Evidence of D. Lametti, Transcript, November 23, 2022, pp. 132 – 134 and 162 – 164.

7. The Government's decision to revoke the declaration of an emergency

As noted earlier, the IRG met daily after the invocation of the *Emergencies Act* to assess the overall situation. On around February 19, as the law enforcement operation in downtown Ottawa progressed, federal officials began to have a deliberate conversation around the thresholds for revocation.

Unlike invocation, the *Emergencies Act* does not specify criteria for the revocation of a declaration of a Public Order Emergency. At NSIA Thomas's request, the PCO prepared, for the IRG's consideration, the proposed criteria for determining whether the time had come to revoke the emergency declaration. On February 21, a draft list of eight criteria was circulated for input from senior federal officials. The criteria were revised in light of various comments received and were subsequently presented to the IRG for deliberation.

In his interview with Commission counsel, Assistant Secretary to the Cabinet Jeffery Hutchinson, the lead author of the criteria, commented that several senior officials emphasized that the primary consideration ought to be whether the emergency tools were still necessary to respond to threats of serious violence posed by the remaining protests.

The Deputy Clerk noted that once the *EMR* was in place, some agencies, including the RCMP, wanted to ensure that it was not revoked prematurely. Talking points prepared for RCMP Commissioner Lucki, for the February 20 IRG meeting, state that there was an operational need to keep the *Emergencies Act* in place for another two to three weeks because law enforcement continued to need the powers granted under it.

Email exchanges dated February 20 indicate that the Deputy Clerk asked PCO officials and deputy ministers to prepare a possible rationale for the maintenance of the *Emergencies Act*. They received a long list of justifications for temporary maintenance

of the emergency powers from various federal departments and agencies including the RCMP, the Department of Transport, the Department of Finance, Public Services and Procurement Canada, and the Canada Border Services Agency.

Nevertheless, by February 23, the situational update provided to the IRG, including by the RCMP, was that the situation had stabilized to the point that it was manageable without the use of *Emergencies Act* authorities.

On February 23, the Clerk sent the Prime Minister a Decision Note advising that the Public Order Emergency no longer existed and recommending the revocation of the special measures. The Clerk included a revised threat assessment in which she concluded that the situation had stabilized and no longer amounted to a national emergency or a threat to the security of Canada and that special measures were no longer needed to control it. Given the significance of the memorandum, I reproduce the content of the relevant paragraphs in full:

Based on the revised threat level and advice from the RCMP, the current situation is considered stabilized and within law enforcement and government's existing authorities and capacity to manage. Specifically:

- Federal, provincial and municipal law enforcement agencies have confirmed that their existing authorities and capacity are sufficient to address reduced threats. Police continue to monitor convoy movements and social media traffic. Police agencies assess that existing authorities will be sufficient to address any further attempts to retrench unlawful protests. The authority provided under the EA to compel tow trucks to help with law enforcement intervention is no longer deemed necessary. The risk of foreign interference is low.
- The temporary economic measures proved to be very effective and while the frozen funds will be released once the EA is revoked, governments and law enforcement continue to monitor suspicious transactions under

existing authorities and will signal illegal activities to the appropriate law enforcement. It is important to note that the Minister of Finance is currently exploring the possibility of making permanent some of the economic measures included in the temporary EA regulations due to the continued risk related to these types of activities in future instances and may seek your concurrence on a proposal moving forward.¹²

The Prime Minister agreed with the Clerk's recommendation. The Governor in Council issued the proclamation revoking the declaration of the Public Order Emergency on February 23, 2022.

¹² Memorandum for the Prime Minister – Revoking the Declaration of the Public Order Emergency under the *Emergencies Act*, SSM.NSC.CAN.00003227, p. 2.



Findings

1. Introduction

As this was the first time the *Emergencies Act* has been invoked, it is also the first time a commission of inquiry has been established to consider its invocation. Just as the Cabinet had no precedent to guide it in its interpretation of the Act, there is no blueprint for my work.

The typical tasks associated with a public inquiry are to enquire into a set of circumstances and to prepare a record of the relevant facts so that the public is as knowledgeable as possible and able to make informed judgments. As I have often stated, I consider it essential that this Inquiry bring the facts to light, in full public view. With the end of the public hearings and filing of evidence, I believe that this has been achieved.

The next task of a commission of inquiry is to reach its own conclusions on the facts. This Report provides those answers.

In the previous chapters of this Report, I set out an extensive narrative of the events of January and February 2022. Much of this narrative focused on an unprecedented set of protests in Ottawa, and an equally unprecedented response from numerous governments. Having reviewed that evidence carefully, it is apparent that there were signals missed, opportunities lost, and delays created that resulted in a situation in the nation's capital that was far more serious and complex than it might have otherwise been. In Chapter 18, I set out some of the lessons learned from those events that I hope will guide decision makers in the future.

In this chapter, I set out the findings of fact that enable me to answer the questions posed in the Commission's Terms of Reference and to make recommendations for change. My fact finding is informed by several considerations. To start, I should only make findings necessary to fulfill the Commission's mandate. For example, Canadians have strongly differing views over whether government vaccine mandates were appropriate. This Inquiry is not directed to resolving that debate.

In addition, it would be unfair to evaluate anyone's performance based on what only became known after the fact. However, this should not be confused with assessing what was reasonably foreseeable to individuals and institutions at the time decisions were made. My assessments of others' performance are appropriately informed by both what they knew and what they reasonably could have or should have known.

Of course, the full use of hindsight — that is, what we now know — is not only appropriate, but also necessary in determining what lessons have been learned and what recommendations for change should be made.

It is also important to note that I am precluded from making findings of civil or criminal liability. I am, however, permitted to make findings of misconduct. The Commission took appropriate procedural steps to permit me to make some findings of misconduct, such as sending out confidential notices in writing outlining what findings could be made, and giving parties the opportunity to tender evidence, cross-examine witnesses, and make submissions.

Nonetheless, I have not, in fact, made findings of misconduct for two reasons. First, it was unnecessary to do so to fulfill my mandate. Second, although I have found that certain institutions and their representatives' conduct was, at times, ill-advised or deficient, it did not rise to the level of misconduct. Put simply, the evidence did not support such findings on issues relevant to my mandate.



2. The Freedom Convoy

2.1 The evolution and origins of the convoy

As I describe in Chapters 5 and 6, the origins of the protests in January and February 2022 can be traced to populist movements that pre-date the COVID-19 pandemic and revealed a growing distrust in government by certain segments of the population. Government responses to COVID-19 exacerbated this pre-existing dynamic. The public health measures imposed, and the protests they generated, provided opportunities for those with broader grievances about economic status, government policy, social change, and western alienation to air these concerns.

It is not my role to analyze the efficacy of any government or business response to COVID-19. I accept that restrictions were imposed to reduce the spread of a novel virus and, in doing so, reduce deaths and ease the burden on the healthcare system. In hindsight, some of these measures may ultimately prove to be ineffective, misguided, or confusing, but they were implemented in an unprecedented time and in response to an unprecedented public health crisis.

I also accept that COVID-19 health measures had a profound impact on many Canadians. Businesses were closed and livelihoods were lost. Families and friends could not meet in person. Children could not go to school. People died in hospitals and long-term care homes at times when their loved ones were not allowed to visit them. The protesters who testified at the hearings spoke passionately about the impacts of COVID-19 and how, from their perspective, the desire for change to these rules was a driving force behind the protests. I accept that this was the case.

Canadians who disagreed with COVID-19 policies had the right to engage in lawful protest against what they saw as government overreach. A multitude of COVID-19 protests had already occurred prior to 2022, although none matched the size and scope of what would occur in Ottawa and other locations.

In part, the scale of the early 2022 protests was the culmination of more than two years of COVID-19 restrictions. The spark itself was the Federal Government's decision in November 2021 to require commercial truck drivers to be vaccinated in order to enter Canada. This policy decision alone did not lead thousands of Canadians to protest and donate money to the Freedom Convoy, but it shaped the protest in at least two important ways.

First, it mobilized truckers negatively affected by the policy to find each other and coordinate a response. In this respect, I accept the evidence of convoy organizers Chris Barber, Brigitte Belton, and others that they viewed not exempting truckers from vaccine requirements as threatening the livelihood of many truckers who had chosen not to get vaccinated. Truckers, in general, had already faced significant challenges during COVID-19. This decision prompted a group with expertise in logistics and planning to organize a cross-country journey to Ottawa. Although they blamed the Government of Canada for initiating the vaccine mandate for truckers, it appears that the imposition of the requirement was first announced by the Government of the United States as a requirement to enter that country. It is then that Canada followed suit.

Second, for those already engaged in political action opposing COVID-19 mandates, the “truckers” proved to be a powerful symbol: hard-working Canadians who, despite their contributions to society, were having their lives and livelihoods upended by government COVID-19 regulations. Patrick King, Tamara Lich, and others immediately recognized that the truckers' grievances could be used as a rallying point for the broader dissatisfaction among their friends and supporters, whether with other COVID-19 mandates or with governments in general.

I accept that the Freedom Convoy had support across the country. The success of Ms. Lich's fundraising campaign showed that the Freedom Convoy had tapped into a broader set of concerns shared by many Canadians.

2.2 Organization and leadership of the convoy

While I have used the term “organizers” in this Report, there was no true central organization of the protests over the course of the three weeks. Certain parts of the protests were organized at times, but no one person or group spoke for all protesters, or even most of the protesters.

Serious and significant efforts were made to organize the Freedom Convoy and the donations that it received, including by creating the not-for-profit Freedom 2022 Human Rights and Freedoms Non-Profit Corporation (Freedom Corporation) and engaging accountants and lawyers. I accept that these were good faith efforts to bring legitimacy and organization to the protests. However, as convoy lawyer Keith Wilson recognized, there was no effective manner to control all of the protesters.

Even among those I have termed “organizers,” leadership was fractured and divided. Nearly all of the convoy organizers testified to various levels of dysfunction and power struggles. For example, when Mr. Wilson sought to bring more order to the group, his efforts were met with suspicion and criticism from Freedom Corporation Director Benjamin Dichter and convoy accountant Chad Eros. Mr. Dichter deliberately sought to undermine the deal with the mayor of Ottawa because he believed that Mr. Wilson had orchestrated it as a means to allow the police to end the protest.

2.3 The goals and makeup of the protesters

The Freedom Convoy and the protests in Ottawa and Windsor, Ontario; Coutts, Alberta; and elsewhere were never a single monolithic movement. The protests involved a collection of groups and people with different goals and plans. While there may have been a shared desire to see reform, there was no common understanding on what that change should be or how it would be implemented.

This was true from the time of the protests’ inception. The initial convoy organizers had different views about what they hoped to achieve. On one hand, Mr. Barber

testified that all he wanted was a conversation with the prime minister or the Federal Government about ending COVID-19 mandates. On the other hand, James Bauder and his group, Canada Unity, sought support for a memorandum of understanding (MOU) that, on its face, called for the Governor General to change Canada's system of government if all COVID-19 restrictions were not repealed.

As the protests grew, so did the diversity of views and goals of the people who participated in them. For example, some members of the Quebec group, Les Farfadaas, joined the protests in Ottawa and settled at the Rideau – Sussex intersection. The group had not coordinated with the Freedom Convoy and brought their own purpose and history to the protests.

As a broad-based movement, the protests also attracted individuals and groups who espoused racist, extremist, and other reprehensible views. I have discussed other controversial groups and individuals in this Report, including Mr. King and Romana Didulo, the self-styled “Queen of Canada.” While they do not represent all protesters, their presence was notable and contributed to how the public perceived the protest movement.

Another controversial group associated with the protests was Diagon, and its founder, Jeremy Mackenzie. Diagon may have started as a joke on Mr. Mackenzie's podcast, but it has grown into a larger community. The Royal Canadian Mounted Police (RCMP) has described Diagon as a militia-like network with members who are armed and prepared for violence. In his testimony, the head of the Ontario Provincial Police (OPP) Intelligence Bureau described Diagon as an extremist group. Mr. Mackenzie strongly rejected these characterizations when he testified, asserting that they are the product of certain individuals and groups — including the RCMP — with ulterior motives.

I do not accept Mr. Mackenzie's evidence in that regard. I am satisfied that law enforcement's concern about Diagon is genuine and well founded. The fact that a

ballistic vest that was seized by the RCMP during the protests in Coutts — along with numerous guns — bore a Diagon patch suggests as much.

While it is important to recognize the presence of controversial and extreme elements at the protests, it should not detract from my findings that many and perhaps most of the protesters sought to engage in legitimate and lawful protests. Their participation alone does not mean that they supported or condoned the conduct of extreme or fringe participants.

2.4 The nature of the protests

I accept that many of the people who organized and participated in the protests in Ottawa and elsewhere wanted to engage in legitimate political protest against COVID-19 policies. I also accept that many of the organizers who testified wanted to maintain a peaceful protest, as they recognized that violence or threats of violence would discredit the movement and drain it of popular support.

These efforts, however, were not successful.

I do not accept the organizers' descriptions of the protests in Ottawa as lawful, calm, peaceful, or something resembling a celebration. That may have been true at certain times and in isolated areas. It may also be the case that things that protesters saw as celebratory, such as horn honking, drinking, and dancing in the streets, were experienced by Ottawa residents as intimidating or harassing. Either way, the bigger picture reveals that the situation in Ottawa was unsafe and chaotic.

The lack of safety, despite efforts by the organizers, is illustrated by the blockage of emergency lanes on Kent Street. Organizers made efforts to clear the emergency lanes but were unsuccessful in doing so on this important road. In the event of a fire in one of the large apartment buildings along that street there was potential for a real catastrophe. Propane tanks, jerry cans filled with fuel, fireworks, and other safety hazards that were being stored in the downtown core also posed serious risks.

In addition to these safety risks, I accept the evidence of the residents, police, and municipal politicians that many participants took advantage of the lack of police supervision to disrupt and intimidate residents. There was disregard for both the law and the well-being of the people of Ottawa.

I do not conclude that all of the convoy organizers promoted or condoned unlawful behaviour. To the contrary, most of them recognized that such conduct risked undermining their popular support.

At the same time, I do not accept the evidence espoused by the organizers that they were never aware of harassment, intimidation, or other non-peaceful conduct by protesters. Their knowledge of actual and potential violence or harassment can be inferred from their own evidence. As a starting point, Mr. Barber testified that if you put 200 truck drivers in a room, “somebody’s going to get a black eye and a broken nose.” Mr. Barber himself almost got into a physical altercation “at least twice” with a driver who “was ignorant about moving [trucks] when I asked him to.”¹

Mr. Barber and Ms. Lich also recognized early on that Mr. King’s rhetoric could be seen to condone or support violence, so much so that they asked him not to come to Ottawa. Mr. King still came and, according to Mr. Eros, came close to beating him up after Mr. Eros questioned Mr. King’s cryptocurrency project.

For his part, Mr. Wilson testified about a concern the organizers had regarding what he described as “Antifa” vandalizing property and harassing people in order to discredit the protests. Mr. Wilson heard that the group had come in at night and cut air lines and tires in trucks. Assuming that this actually occurred, it reflects knowledge among protest organizers that certain actors had and were intent on engaging in unlawful conduct.

¹ Evidence of Chris Barber, Transcript, November 1, 2022, pp. 56 and 109.

Mr. Wilson and others also explained that an attempt to move trucks from Rideau Street and Sussex Drive was stopped out of concern for safety when protesters “swarmed in” as police tried to move barricades to facilitate the move. This occurred despite efforts by Ms. Lich and Mr. Wilson to convince protesters that the move was co-operative. The organizers were also aware of death threats being made to the mayor of Ottawa and several other politicians.

I am satisfied that the organizers understood that the protests presented serious challenges to Ottawa residents, the police, and municipal politicians, and that they had caused a severe disruption of life in Ottawa. The Freedom Corporation’s organizers entered into negotiations with the Ottawa mayor precisely to reduce this disruption and the pressure it placed on the City. In this regard, I put little weight on the organizers’ evidence that they never received any direct reports or complaints about harassment and intimidation, as those suffering violence at the hands of protesters would be unlikely to complain to protesters. The organizers needed no such reports to be aware of the effects of the protesters’ behaviour.

Protests are messy and some level of unlawfulness can be expected. I do not consider that the protests became an “occupation” as of the first Saturday. The protesters had, in effect, been invited to park their trucks for the weekend in various locations in the downtown core. By Monday, however, when they refused to leave, the invitation was clearly revoked. In addition, it was clear that the assembly was no longer peaceful, given the widespread intimidation of residents and the fact that their ability to live and work had been fundamentally disrupted. It was apparent that the police were unable to control the protest and limit unlawful conduct in the protest area.

This was, to some extent, the result of the size of the protests. Convoy organizers did not anticipate the level of participation that ultimately occurred. The Freedom Convoy was successful, in part, because it permitted and encouraged participation from groups and individuals who held a variety of perspectives and were frustrated about

a range of issues. Broad participation, however, made it difficult for the organizers to control the message of the protest and the conduct of those involved.

At the same time, I am also satisfied that the organizers did not do all they could to limit the amount of violence and harassment. Mr. Barber and Ms. Lich both testified that they were not in favour of the constant honking, but they took no meaningful steps to stop it. To the contrary, organizers opposed the injunction sought by Zexi Li to restrict honking. In addition, at times, Mr. Barber and Mr. King posted videos and other content where they appeared gleeful about the harm being inflicted on downtown residents. At the hearings themselves, the organizers displayed a lack of empathy for the residents of Ottawa, even with the benefit of hindsight.

Similarly, while some organizers like Ms. Lich and Mr. Barber sought to distance themselves from controversial figures such as Mr. Bauder and Mr. King — and at one point, even convinced Mr. Bauder to retract his MOU — they remained reluctant to sever all ties. I am satisfied that this is, in part, because they understood that the protest movement included Mr. King and Mr. Bauder’s supporters, and those who shared their views. Despite all of the problems Mr. King and Mr. Bauder presented, neither Ms. Lich nor Mr. Barber disavowed them. With respect to Mr. Bauder, Mr. Barber said that, while he did not support an undemocratic change in Government, he still believed that Mr. Bauder shared the same goals and that the MOU was simply “improperly written.” Similarly, with respect to Mr. King, Mr. Barber said he “had all the right reasons and a good heart.”² From Ms. Lich’s view, despite Mr. King having deliberately sought to undermine her deal with the mayor of Ottawa, she believed that “at his core,” Mr. King “was here to — just like the rest of us were, to exercise his democratic rights to a peaceful assembly.”³ Tom Marazzo, another organizer, testified that he had been in contact with Mr. Mackenzie during the protests in Ottawa and spoke about him in glowing terms. These statements show that many organizers, instead of cutting ties with protesters that attracted criticism and controversy, viewed

² Evidence of C. Barber, Transcript, November 1, 2022, pp. 23 and 45.

³ Evidence of Tamara Lich, Transcript, November 3, 2022, pp. 344 and 345.

figures like Mr. Bauder, Mr. King, and Mr. Mackenzie, and their supporters, as part of their movement.

2.5 Misinformation and disinformation

As I describe in Chapters 5 and 6, social media played a critical role in the protests. Some of the organizers initially contacted each other on social media platforms. Facebook, Twitter, and numerous other social networks were the tools by which organizers met, coordinated, and connected with other participants. Many of the organizers already had, or quickly developed, large social media followings. Early planning meetings were livestreamed on Facebook. More than CAD\$10 million in the GoFundMe campaign was raised with the assistance of an accompanying Facebook page. The role of social media is difficult to overstate.

Social media also served as an accelerant for misinformation and disinformation, which I find, for reasons I discuss in Chapter 5, clearly played a role in the protests. I have no doubt that misinformation about COVID-19 influenced the views of some protesters and how they assessed the quality of government health measures. Some protesters also spread misinformation and disinformation about the protests themselves. One notable example is the denials by some prominent organizers about Ms. Lich's deal with the mayor.

I am also satisfied that there was misinformation about the Freedom Convoy, which was used as a basis to unfairly discredit all protesters. In one example, protesters were blamed for an act of arson in an apartment building, which the police later confirmed had no links to the protests. Where there was misinformation and disinformation about the protests, it was prone to amplification in news media. OPP Superintendent Pat Morris testified that, as the officer leading the collection of intelligence for the OPP, what he was seeing in the media did not always reflect what the intelligence was showing.

The fact that protesters could be at once both the victims and perpetrators of misinformation simply shows how pernicious misinformation is in modern society. The overall impact of misinformation and disinformation on the Freedom Convoy protests cannot be precisely identified, but it was pervasive.

Indeed, misinformation and disinformation have become so entrenched in the events surrounding the Freedom Convoy that they arose within this Inquiry itself. From testimony claiming that COVID-19 vaccines manipulate genes to allegations that this Commission was secretly controlled by Federal Minister of Emergency Preparedness Bill Blair — apparently because he also holds the title of “President of the King’s Privy Council for Canada” — misinformation and disinformation have been a constant presence throughout these proceedings.

Misinformation and disinformation are inherently destructive and divisive. They undermine the ability of government officials and members of the public to meaningfully engage in discussions on policy and governance. Here, the Government did not have a realistic prospect of productively engaging with certain protesters, like those that believed COVID-19 vaccines were part of a vast global conspiracy to depopulate the planet. At the same time, protest organizers’ mistrust of government officials was reinforced by unfair generalizations from some public officials that suggested all protesters were extremists. During the hearings, I heard the suggestion that a meaningful dialogue between protesters and the Federal Government was impossible. While I do not necessarily accept that is true, I do find that the prevalence of misinformation and disinformation diminished the prospect of productive discussions.

How to identify and respond to misinformation and disinformation is a topic worthy of further exploration.

2.6 Connections between protest locations

I am satisfied that there was no meaningful coordination between the protests in Ottawa and other locations in Canada. The convoy organizers who testified denied

any connections to other protests. The evidence before me of communication between protest locations was minimal and did not reveal a collaborative effort. A February 10, 2022 Special Threat Advisory Report from the RCMP stated that the protests outside Ottawa “appeared to be inspired by the Ottawa convoy” but that these “solidarity actions appear to be decentralized, in some cases organized impromptu, and not directly linked to organizers in the Ottawa convoy.”⁴ I accept this as an accurate description.

The most troubling connection between protest locations is the presence of Dialogon members in both Ottawa and Coutts. Mr. Mackenzie was in Ottawa, meeting and recruiting Dialogon members. Although he did not travel to Coutts, Chris Lysak, a Dialogon community member with whom Mr. Mackenzie had met previously at a Dialogon event, was in Coutts and was arrested as part of the police investigation into the presence of weapons. The RCMP believes that the ballistic vest displaying the Dialogon logo was Mr. Lysak’s vest. In addition to Mr. Mackenzie’s connections to Mr. Lysak, the Canadian Security Intelligence Service (CSIS) reported that Alex Vriend, a friend of Mr. Mackenzie’s and a Dialogon supporter, collected donations to pay transportation costs for protesters to both Coutts and Ottawa.

Given law enforcement’s characterizations of Dialogon, these connections are troubling, but there is little evidence of significant or widespread coordination between Dialogon supporters in Coutts and Ottawa. To the contrary, in a report on the arrests in Coutts, the RCMP noted that “there has been no information uncovered to suggest that there is an organized effort between the individuals charged in Alberta and individuals involved in the Ottawa protest.”⁵

I do not doubt that the protests in Windsor, Coutts, and other locations drew energy and inspiration from the convoy protests in Ottawa. I do not find, however, that any

⁴ RCMP Ideologically Motivated Criminal Intelligence Team, *Special Threat Advisory – Update 6*, February 10, 2022, PB.NSC.CAN.00000526, p. 4.

⁵ RCMP “K” Division Criminal Analysis Section, *Coutts Intel Brief*, PB.NSC.CAN.00008508, p. 1.

of the Ottawa organizers played a significant role in the organization of the other protests.

3. The policing response in Ottawa

There were several deficiencies in how the police responded to the events in Ottawa. Before identifying these deficiencies, I make three observations. First, the events in Ottawa were unprecedented in size and complexity. They would have presented significant challenges regardless of the adequacy of the police response. Second, before the protests began, the Ottawa Police Service (OPS) was dealing with severe staffing challenges and the loss of experienced officers at the Senior Command level. These staffing issues continued throughout the protests. Third, as already indicated, for many Ottawa residents and businesses, these events were traumatic and extraordinarily difficult to endure. However, without minimizing that impact, I agree with those who point out that no one was seriously injured, and that buildings, highways, and monuments were not destroyed. Our Parliamentary institutions continued to function. I now turn to the deficiencies that I wish to highlight.

3.1 Intelligence failures

Police decision making should be intelligence led. Decisions should be based on the timely and continuous collection of information from multiple sources that is evaluated for reliability, and re-evaluated and supplemented on an ongoing basis. “Intelligence,” put simply, is the evaluation or analysis of information collected.

Before the convoy’s arrival, OPS Chief Peter Sloly recognized the importance of the OPS conducting an ongoing intelligence assessment and instructed his subordinates accordingly. I also acknowledge that the Hendon reports, while generally lauded as containing high-quality analysis, left room for varying interpretations as to what was likely to follow. Having said that, in my view, the Hendon reports, other intelligence received from partner agencies, and the content of the OPS’s own intelligence

assessment, viewed cumulatively, should have raised greater concerns that the events in Ottawa would be unprecedented in size, intensity, and duration, and should have prompted the OPS to plan accordingly.

The OPS's own intelligence officers identified some, but not all, of the important red flags that countered the view that they were only facing a weekend disruption. The Parliamentary Protective Service (PPS) provided information and assessments that articulated the Freedom Convoy's intent to stay, its unprecedented support, its ability to cause disruption, and the potential for it to overwhelm the OPS. The OPP's Provincial Liaison Team (PLT) informed the OPS of the number of vehicles in the convoys headed to Ottawa and the protesters' intent to stay.

In testimony, OPS Acting Superintendent Robert Bernier felt that there was a “bizarre disconnect” between the Hendon reports and the OPS's planning.⁶ I prefer to say that there was a significant disconnect between the information available to the OPS and the early planning for the event. This disconnect arose, in part, because the OPS Intelligence Directorate did not share the Hendon reports with the operational command. However, as I discuss in Chapter 9, the operational command still received sufficient intelligence to understand the risks that Ottawa was facing and did not plan for these risks. The operational command initially discounted this intelligence because it was inconsistent with the OPS's experience with previous weekend protests. While the OPS's reliance on its past experience was understandable, it should have given more weight to the intelligence that contradicted this experience and developed contingency plans.

There were also serious deficiencies in the OPS's ability to access and evaluate open-source social media and other online information based, in part, on staffing shortages. This contributed to shortcomings in intelligence.

⁶ Evidence of Robert Bernier, Transcript, October 25, 2022, p. 242.

At the hearing, issues also arose over the extent to which the chief and other senior OPS officers read the Hendon reports. I need not resolve these issues, other than to note that the uncertainties over who read what and when, and who communicated the contents of the Hendon reports to others, speak to a somewhat disorganized approach and inadequate record-keeping around the collection, review, and dissemination of intelligence.

These issues were not limited to the Hendon reports. The OPS also lacked a system to ensure proper dissemination of its own intelligence products, resulting in uneven distribution. This, coupled with the lack of dedicated meetings to discuss intelligence, made it more challenging to provide oversight and ensure that the operational plan was intelligence led.

It would have been helpful if the OPP had taken a more active posture in questioning the original OPS plan and the assumptions that were baked into it. As I discuss in Chapter 7, the OPP was familiar with intelligence indicating that some protesters would stay beyond the weekend and that the protests could cause significant disruption. However, OPP Superintendent Craig Abrams did not question the OPS's plan to let trucks into the downtown core when he learned of it on January 27. I accept that the OPP was reluctant to do so because the OPS expressed confidence in their plan, OPS Chief Sloy assured OPP Commissioner Thomas Carrique that the OPS had everything it needed, and the OPP did not want to appear to be second-guessing the OPS. Nonetheless, it would have been helpful for the OPP to ask the OPS if it had contingency plans and, if it did not, to offer to help develop and resource them.

Several parties at the Commission relied heavily on the testimony of OPP Superintendent Morris, whose unit was responsible for the Hendon reports. He described the absence of credible threats that protesters intended to engage in violence or other unlawful activity, and, in fact, commented on there being no instances of serious violence despite the size and length of the protests. I disagree with his assessment and accept the evidence from several witnesses that there was violence.

Further, the conduct of some protesters was intimidating and highly disruptive. Some disagreement may come down to different witnesses using the word “violence” to mean different things. In any event, the more important point here is that planning for a weekend event, even when there is no indication of violence, is a very different exercise from planning for something that could potentially become a prolonged, large-scale protest.

I also wish to highlight a fundamental flaw in how intelligence was collected in relation to the Freedom Convoy. The Freedom Convoy was a nation-wide event. However, the intelligence gathering was led by the OPP, a provincial police service. I question, as did several of the witnesses, whether it is appropriate for the intelligence gathering for such an event to be coordinated at a provincial level instead of at a national level.

3.2 Lack of continuity of command

Effective command and control requires continuity of leadership at the strategic, operational, and tactical levels. There must be processes in place to ensure that the best people are able to fill leadership positions, and redundancies to allow for continuous coverage in the event that a commander becomes unavailable. At the time of the protests, the OPS did not have sufficient resources and competencies to implement these best practices. Staffing shortages contributed to this, as did the departure of skilled commanders, and the constant rotation of officers into various roles and responsibilities.

Dysfunction within the OPS prevented optimal use of the resources that it did have. The appointment of three event commanders within the space of several days undermined effective command and control. There was no articulable reason why Acting Superintendent Bernier, certainly one of the OPS's most seasoned commanders, was given no event-related role until February 3 and was not appointed event commander until February 10.

Poor communication respecting transfer of authority, and confusion about who was in charge, compounded these challenges. In Chapter 9, I discuss how this confusion arose, starting with the shift of operational decision-making authority from the OPS incident commander to the event commander without notifying Chief Sloly, and how these events led Chief Sloly to lose trust in subordinates. These events reflect serious dysfunction within the OPS's leadership, and also the absence of a coherent approach to the selection of operational commanders. The switches in event commanders also adversely impacted the OPS's operations and the development of plans and resource requests.

The lack of continuity regarding event commanders was only the tip of the iceberg. There were many situations in which changes took place in staff responsibilities during the relevant period, particularly at the operational and tactical levels. The numerous titles used by the OPS, and the changes in those titles throughout the Freedom Convoy's presence, compounded these difficulties. I question whether the two levels of operational command adopted by the OPS was unduly complicated. OPS witnesses confused these roles in their testimony, and they added to the confusion when partner forces sought to work with the OPS.

3.3 Failures in communication with incident command

The effectiveness of the OPS incident command was undermined due to a lack of internal communication. One of the most glaring examples was the Coventry Road operation, in which an OPS Public Order Unit (POU) operation occurred contrary to agreements protesters had reached with the OPS's Police Liaison Team (PLT). The issue is not whether the PLT's negotiation to remove fuel cans was a good idea; the issue is the disconnect between that negotiated result and the event commander's views. It was critically important that the PLT be given clear parameters and then autonomy to work within those parameters. Instead, a breakdown in communication occurred between the PLT and the operational and strategic command, which adversely impacted the PLT's morale and effectiveness.

There were other similar communication failures. The OPS's efforts to address the challenges at the intersection of Rideau Street and Sussex Drive bore a striking resemblance to the events at Coventry Road, with PLT negotiations and POU enforcement plans operating without coordination and at cross purposes. OPS Acting Superintendent Bernier became event commander on February 10 but did not begin to work with the Integrated Planning Cell (the Cell) — a team of subject-matter experts from the OPP, RCMP and other police forces assembled to assist the OPS — until he was contacted by it on February 12, even though other OPS officers were then embedded with the Cell. Acting Superintendent Bernier was not informed of the City's negotiations with protest organizers until February 13, even though Chief Sloly had been notified days earlier. All of these communication failures were avoidable and undermined the OPS's response to the protests.

3.4 Lack of integration of the PLT into decision making

The Coventry Road and Rideau – Sussex related events were illustrative of a larger problem: the failure to integrate the PLT into the police strategic and operational response. Notwithstanding the broad acceptance of the importance of PLTs, before the integrated command structure prevailed, decisions were made at times without consultation with the PLT. OPS Acting Deputy Chief Patricia Ferguson acknowledged, correctly in my view, that the PLT was not being given the time, room, or authority to negotiate.

Early opportunities to integrate the PLT into the incident command system were missed. While Chief Sloly testified that he invited PLT representatives to a February 1 meeting with POU commanders, it appears that there was insufficient follow-up after this meeting to ensure that the PLT had a voice in operational decision making. The OPS only corrected this deficiency on February 11 with OPS Acting Superintendent Bernier's integrated command table. By that time, the lack of integration of the PLT into decision making had already reduced the PLT's effectiveness in engaging with protesters.

There were certainly instances when OPS Chief Sloly correctly articulated the role of the PLT and met with them. However, a number of his statements, directions, and orders to subordinates appeared to have emphasized or directed enforcement actions without full consideration of measured alternatives and PLT input.

Other OPS commanders also had an inadequate understanding of the PLT's role. This is undoubtedly due, at least in part, to the OPS having neither trained senior officers on the National Framework for Police Preparedness for Demonstrations and Assemblies nor adopted a specific PLT strategy at the time of the protests. I agree with the testimony from OPS Acting Deputy Chief Ferguson and OPS Inspector Russell Lucas that the OPS sometimes prioritized a quick win through enforcement, without an overall plan that truly integrated the role of the PLT.

Seamless involvement of the PLT in decision making would be more likely to produce an agreed-upon or at least a fully informed approach to many of the decisions that had to be made. The lack of integration of the PLT in decision making at various stages during the protests also reflected a lack of appreciation for what the PLT is generally able to do and not do in its work. Ultimately, I am unconvinced that the PLT was given the full opportunity to de-escalate many of the issues that arose. Such de-escalation may have led to at least a smaller protest "footprint," if not a resolution of the entire event.

3.5 The chief's involvement in operational decisions

OPS Chief Sloly testified that he understood the importance of autonomy for operational commanders and that his role was not to make operational decisions. At times, during the protests, he acted consistently within those boundaries. However, he also crossed them on multiple occasions. His actions, however well-intentioned, undermined the chain of command, caused confusion, and left subordinates and integrated partners such as the OPP and the RCMP confused as to the extent to which Chief Sloly had to approve decisions or sign off on plans.

In testimony, Chief Sloly attributed his involvement in operational decisions to his diminished trust in his subordinates, his desire to ensure that the plans were effective, and his deep concern over the readiness of his team for the second weekend of protests. By way of example, Chief Sloly intervened in an attempt to support the development of a public order sub-plan, but this and other interventions fostered further confusion about who was in charge. An unhealthy dynamic between Chief Sloly and his team furthered the problem of his involvement in operational matters. His unfortunate comment that he would “crush” those who did not support his February 9 plan is just one example of this unhelpful dynamic.

The command structure does not need to be so inflexible as to preclude the chief of police from contributing to a discussion at the operational level. Strategic command may need to initiate such discussions if there are concerns about alignment between strategy and operations. But this is not what occurred here. Despite his testimony to the contrary, Chief Sloly used language that conveyed the message that there would be no changes to the plan without his approval. That is the language of operational command.

3.6 The failure to embrace integrated or unified command in a timely way

As an experienced police leader, Chief Sloly understood the value of collaborative policing and had worked co-operatively with other services on a variety of initiatives. Here, however, his mistrust of the motives of other agencies and an overriding concern that he and the OPS retain control contributed to a delay in recognizing the benefit and implementation of an integrated or unified command with policing partners.

Chief Sloly’s distrust of the OPP and the RCMP may well have been linked to public comments and private statements by federal and provincial politicians that blamed the OPS for failing to manage the Freedom Convoy, as well as communication failures

between police forces. That said, I find that the OPP and the RCMP leadership wanted the OPS to remain the police of jurisdiction and to succeed.

Communication between Chief Sloy and the Integrated Planning Cell was also dysfunctional, which likely reflected Chief Sloy's distrust of the Cell's motives and his concern that the OPS remain the police of jurisdiction. As I discuss in Chapter 9, there was miscommunication about the appropriate level of integration between the OPS and the Cell as well as miscommunication about whether Chief Sloy expressed support for the Cell's work and plan. At times, Chief Sloy appeared hostile and dismissive toward the Cell and its concerns, and the OPS's conduct caused the Cell to question the OPS's commitment to integrated command.

I take no issue with Chief Sloy's insistence that the OPS remain the police of jurisdiction. But integrated or unified command supports this by simply integrating or unifying the OPS and its policing partners within a command and control module designed to allow multiple services to seamlessly respond to a critical incident.

3.7 Uncertainty over the existence or adequacy of the plan

In testimony, there was a debate as to whether a comprehensive plan must exist before substantial human resources are provided by other policing agencies or whether the comprehensive plan must be informed by what other policing agencies will provide. This is a false dichotomy, and it focuses on the wrong issue.

Significant resources were provided by the OPP to the OPS without a plan because its needs were obvious and immediate. The OPP did not need to be given a plan to provide some front-line officers to maintain police positions and relieve exhausted OPS officers. However, as police contemplated not only maintaining the *status quo* but also dismantling an unlawful protest, the resource requests increased exponentially. A constellation of factors informed the response of the OPP and the RCMP to these requests, including:

- a. reports that OPS Chief Sloly had instructed his officers to calculate the number of officers needed and then double it;
- b. reports that OPS command and control was dysfunctional and resistant to an integrated command;
- c. reports that the OPS did not have a plan or that its plan was inadequate, overly aggressive or risky;
- d. reports that OPP officers already sent to Ottawa had not been deployed or supported appropriately;
- e. the possibility that the OPP would be asked to provide substantial resources elsewhere in Ontario; and
- f. the sheer size of the ultimate requests for resources.

With respect to the claim about doubling the reported number of resources required, I find that Chief Sloly did make a comment to this effect, but that it was simply an unfortunate turn of phrase intended to convey the importance of not underestimating the resources required when planning. However, it fed into a narrative that questioned reports from the OPS and its decision-making ability, as well as the confidence that external partners had in Chief Sloly and the OPS's operational plan. In fairness to Chief Sloly, he recognized, in a timely way, that substantial additional resources would be needed, identified this as critical to success, and prioritized it. He tasked subordinates with specifically identifying the OPS's needs. He engaged with the Ottawa Police Services Board (OPSB) and with government to press the case for these needed resources.

It was reasonable that the OPP and the RCMP wanted to know that an adequate plan existed and how and when its resources would be utilized. Some parties at the hearing pointed out that additional resources were provided by the RCMP and the OPP to the

Windsor Police Service (WPS) before the operational plan for Windsor was finalized. In my view, there were many differences between the two events that explain why the OPP and the RCMP needed more information before releasing officers to Ottawa. For example, Windsor was a smaller, simpler situation, and a unified command was already in place. In addition, the requests for resources came through the OPP's commander in charge.

A great deal of testimony focused on what plans existed at what points in time. OPS Chief Sloly testified that there was only one plan: it was in place by January 28 and was appropriately updated as more work was done and as circumstances changed. Other witnesses gave evidence that different plans were developed at different stages. In particular, there was conflicting evidence about whether the February 13 plan that the Integrated Planning Cell and Acting Superintendent Bernier developed was or was not an evolution of Chief Sloly's February 9 plan.

This would be a question of semantics if the only issue was whether to characterize the documents as iterations of a single plan or multiple plans. That was not at the heart of what went wrong here. The plan that existed on January 28 was largely a traffic management plan for a weekend event. It was obvious by Monday, January 31 that a different plan was needed.

I accept that it is no easy feat to pivot to a plan to dismantle a protest the size of the one in Ottawa. Members of the public and politicians held unrealistic expectations of how quickly such plans could be developed and operationalized, and they failed to appreciate the importance of a measured response, which would necessarily take more time to execute. However, as I discuss in detail in Chapter 9, the OPS did not develop an overall operational plan until February 13. The various plans that existed prior to that date never represented an appropriate overall plan to comprehensively end the protests.

Further, there was a high level of confusion and mixed messaging at various times over what document(s) constituted the most current plan, what further work it needed, and the extent to which existing documents required the chief's approval. The chief's messaging on these issues was confusing and, at times, inaccurate.

3.8 Communication failures

In addition to poor communication between the police and government that I identify earlier in this chapter, there were also serious problems in how the police and others communicated with the public. Effective communication with the public might well have mitigated unrealistic expectations around the police response. Effective communication involves accurate, timely, and consistent messaging. That did not take place in Ottawa.

During the public segment of an OPSB meeting, Chief Sloly identified the number of officers he sought from other police agencies. He indicated that he did so in response to a question asked by the Board in a public meeting. It would have been preferable if Chief Sloly asked to be permitted to answer that question *in camera*. I agree with the witnesses who suggested that it was unwise for him to reveal such operational details publicly. Such revelations could have compromised operations by signalling that the OPS was preparing for a mass mobilization of resources in an attempt to remove protesters.

It was also ill-advised for the Ontario solicitor general to publicly claim that 1,500 OPP officers had been sent to Ottawa. As Ontario Deputy Solicitor General Mario Di Tommaso acknowledged, this too represented operational information. Further, it left the mistaken impression that 1,500 OPP officers were in Ottawa at a single point in time when, in reality, that number represented the total number of officer shifts that had been provided.

As I discuss later in this chapter, the response to the Windsor protests required a highly coordinated messaging plan that involved both police and government. This

was missing in Ottawa. The Province of Ontario's refusal to participate in the tripartite meetings, which were intended to have participation from municipal, provincial, and federal government representatives, contributed to these messaging failures.

3.9 The plan's adequacy

With one exception, I do not intend to critique the ultimate plan and subplans that were adopted by the OPS and the Integrated Planning Cell. These plans are designed by professional planners and subject-matter experts. Moreover, each protest is different. There is no precise template — nor should there be — for how an operation is done.

However, Phase 3 of the February 13 plan included, appropriately, that during the maintenance phase, the police should be “[c]ommunicating with persons who wish to continue to demonstrate, discouraging them from continued illegal activities and promoting lawful actions to express their messages.” The latter aspect of this direction — promoting lawful expressions of the protesters' message — was not carried out effectively.

The evidence showed that after the dispersal of the protesters from Ottawa's downtown core, some people continued to protest in front of the Canadian War Museum and in Confederation Park. This fact reinforced my finding that many protesters wanted to engage in a lawful protest. In my view, there should have been a heavier emphasis on identifying locations for lawful protests as part of the messaging to be communicated to the protesters before dispersal of the protest took place. There was no evidence that locations had been clearly identified in advance and that this was communicated to protesters in a comprehensive way. This shortcoming, which was also present in the police response in Windsor, can be contrasted with the steps taken in Coutts to clearly identify an alternative, highly visible location for lawful protest. In fairness, the advice given by Freedom Convoy lawyer Keith Wilson that effectively encouraged continued protests in Ottawa's downtown core may have made many protesters less receptive to offers of alternative protest locations.

3.10 Legal uncertainty

At the outset of the protests, the OPS was uncertain about what it could lawfully do. As I discuss in Chapter 7, the OPS received a hastily drafted legal opinion on January 28 that was requested too late (January 27) and which, in any event, did not provide concrete advice on the most pressing issues that would inform operations, such as the ability to exclude trucks from the downtown core. I saw little evidence that the OPS had a clear understanding of the powers its officers had at common law, by statute, or through the invocation of provincial emergency legislation. The lack of understanding of police common law powers was particularly problematic.

I appreciate that these legal powers are not easily articulated. Reasonable people can differ on what powers exist. But policing a protest, a convoy entering one's city, or an occupation depends, to a considerable degree, on a clear understanding of the available police powers and their limits. I return to this theme in my recommendations.

3.11 Decision making and communication unduly influenced by extraneous considerations

The OPS and the OPSB were entitled to utilize crisis management communications experts or strategists to assist them with messaging. However, several meetings involving the OPS chief and external communications advisors from Navigator Ltd. and/or Advanced Symbolics, Inc. appear to have morphed into operational discussions that considered which decisions would best address reputational concerns about the OPS and Chief Sloly. Chief Sloly should have been far more careful to avoid even the perception of operational or tactical decisions tied to reputational concerns.

Similarly, following some interactions with his subordinates, Chief Sloly appears to have left them with the impression that he was consumed with how he would be perceived when the event was over, and the extent to which he would be blamed for deficiencies in the police response. It appeared to some people, with some justification,

that Chief Sloly was too willing to attribute blame to others, while avoiding any blame himself.

3.12 Chief Sloly

Much of the focus of the evidence was on Chief Sloly. It is all too easy to attribute all of the deficiencies in the police response solely to him. This would be unfortunate and indeed, inconsistent with the evidence. Errors in leadership must be seen in the context of a truly unprecedented event in size, duration, and complexity. Chief Sloly served the public with distinction as a police leader for 30 years. He came to Ottawa as an agent of change to address racism, misogyny, and a lack of community trust in the OPS, and he faced substantial resistance in doing so. He was heading the OPS at a time when the senior ranks had been depleted and expertise had been lost. Chief Sloly's resignation, rooted in an acknowledgement that he had lost the confidence of others, did remove one obstacle to a successful resolution by creating an opportunity to restore that confidence.

As well, some errors on Chief Sloly's part were unduly enlarged by others to a degree that suggests scapegoating. He was rarely given the benefit of the doubt as to his intentions. His statements were sometimes cast in an unreasonably harsh light. For example, his public comment that "there may not be a policing solution to the demonstrations" attracted disproportionate scrutiny. I found it obvious that he was not abandoning the city through this comment or attempting to diminish the OPS's important role in the ultimate solution.

4. The policing response in Windsor

The police response in Windsor was influenced by what had transpired and was still occurring in Ottawa. It was also affected by the economic importance of the Ambassador Bridge to the city of Windsor, the province of Ontario, and more generally, the Canadian economy.

The threat of a blockade to the Ambassador Bridge was reasonably foreseeable to the WPS and other police agencies by February 4, when a Hendon report referred to the possibility of a blockade starting on February 7. This was consistent with the intelligence that the WPS was gathering through social media and its contact with local protest organizers. Thus, the police had at least three days to plan for a potential blockade of the Ambassador Bridge.

Actual planning and preparation, prior to February 7, were limited for a couple of reasons. First, jurisdictional issues hampered the police response. The WPS is responsible for policing the city of Windsor and responds to incidents that occur on the Ambassador Bridge. The Canada Border Service Agency's (CBSA) jurisdiction extends only to the physical port of entry, and given its limited jurisdiction, the CBSA advised the WPS that it did not have a plan to deal with the blockade. The federal government had authority over the bridge itself, but not the municipal roads feeding into it.

Second, partner police resources were already stretched thinly elsewhere. The RCMP told the WPS that it would need to balance competing demands for resources. When the WPS requested assistance from the OPP prior to the Ambassador Bridge blockade, the OPP responded at the local detachment level and did not escalate the response or send additional resources.

While the WPS and the OPP separately tried to prevent a blockade from taking hold through dialogue with protesters on February 7, they were unable to do so. There were local protest organizers who had a good relationship with the WPS. However, by February 7, there were other groups of protesters with no such relationship. There was no single group of protesters with a shared vision and clear leadership. This affected the ability of police to prevent the blockade or obtain concessions during the protest.

I also find that the WPS had learned from what had happened in Ottawa and tried to prevent a blockade of the bridge by controlling the intersection nearest to it. However, protesters responded by blocking other intersections farther from the bridge. The blockade did not immediately bring traffic in both directions to a complete standstill. However, data collected by the CBSA clearly indicates that only eight commercial vehicles entered Canada through that port of entry between February 8 and 13. As such, the protesters' actions effectively caused a blockade of the Canada-bound traffic during that time frame.

Much as in Ottawa, the protesters in Windsor represented a cross-section of Canadians who were present for a variety of reasons. Situational reports document the presence of dozens of children at times, and many personal vehicles alongside commercial vehicles. However, unlike in Ottawa, the protest did not entrench itself long enough to see a “surge” on weekends. It began in earnest on Monday, February 7, and police enforcement action began early on the morning of Saturday, February 12. However, police described the evenings in Windsor as having a “party-like” atmosphere, with a corresponding surge of people who were drinking alcohol and behaving boisterously — and sometimes aggressively — toward police.

Unlike in Ottawa, police integration in Windsor proceeded swiftly and smoothly. The OPP and the WPS established a unified command and agreed to have the OPP lead the public order planning and operations on February 10. The speed with which the WPS and the OPP did so was the result of pre-existing relationships and trust between senior WPS and OPP officers, as well as the WPS's acknowledgment of the need to let the OPP's subject-matter experts control both the planning and the conduct of POU-led action. The division of responsibility between the WPS and the OPP during the weekend of February 12 – 13 reflected their forces' respective strengths and allowed action to proceed efficiently.

Police planning and resource deployment also proceeded smoothly, with a full operational plan and all necessary subplans developed by the evening of February 11,

only 48 hours after the planning process had begun. Planning proceeded quickly in part because the OPP command had assured OPP Superintendent Dana Earley that Windsor was a priority and that she would have whatever resources were necessary. The RCMP supported this approach because it had confidence in the OPP's control over the situation.

I find that both the OPP and the WPS command respected the autonomy of their respective commanders on the ground in Windsor. Though the OPP command made it clear to Superintendent Earley that Windsor was a priority and that clearing the blockade was urgent, there was no evidence of any interference in her decision making. As I explain in Chapter 10, the OPP command's message to Superintendent Earley that clearing the Ambassador Bridge was her priority was an appropriate strategic-level communication.

I also find that there was a unified approach to messaging between police, the Windsor Police Services Board (WPSB), and the municipal government. Unlike in Ottawa, where the mayor and the chair of the OPSB were at odds, Windsor's mayor was also the chair of the WPSB. This meant that information flowed freely between the WPSB and City Council, and that it fostered coordination, which allowed the WPS to control public messaging.

I find that the OPP and the RCMP prioritized clearing the Ambassador Bridge blockade over other protests for several reasons, including the economic impact of the blockade, the smaller and less entrenched nature of the Windsor protest compared to Ottawa, the rapidity and seamlessness of the integration between the WPS and the OPP, and the fact that the plan in Ottawa was not yet ready.

Finally, I find that the Ambassador Bridge blockade was cleared as of shortly after midnight on February 14, before the Federal Government invoked the *Emergencies Act*. While the blockade never again took hold, there were continued threats of further disruptions to the bridge and other critical infrastructure in and around Windsor. These

threats contributed to the need for a lengthy demobilization period and continued police presence and checkpoints along Huron Church Road, which was not fully reopened to the public until March 28. Police established these checkpoints without relying on the *Emergency Measures Regulations* and continued to use them following the revocation of the Public Order Emergency.

5. Civilian oversight and governance of the police

5.1 The oversight role of police services boards

The *Independent Civilian Review into Matters relating to the G20 Summit* (the “Morden Report”) and *Missing and Missed — Report of The Independent Civilian Review into Missing Person Investigations* (the “Epstein Report”) articulate the important oversight role and responsibilities of a police services board during and after a critical incident. These reports dispel misconceptions about the role of civilian police services boards and the prohibition against these types of boards directing the day-to-day operations of a police service. This prohibition exists but has been misinterpreted in a way that unduly narrows a board’s ability — indeed, duty — to obtain information and ask questions relating to a critical incident that are relevant to its oversight mandate.

Unfortunately, this Inquiry has revealed that the guidance set out in the Morden and Epstein reports in this regard has not yet been fully realized. Throughout the protests in Ottawa, the OPSB had a diminished view of its own role. Its ability to provide proper oversight of the OPS was further undermined by Chief Sloly’s resistance to providing it with relevant information. Furthermore, Ontario’s Ministry of the Solicitor General, which is responsible for ensuring the provision of adequate and effective policing, did not fully utilize its existing authority when it became aware of issues at the OPSB. Finally, when the OPSB attempted to act decisively, it faced external political pressure. Each of these factors diminished or undermined the effective civilian police oversight role of the OPS by the OPSB.

5.2 Resistance to board meetings

As I discuss in Chapter 9, OPS Chief Sloly was resistant to meeting with the OPSB during the protest, viewing the meetings as a demand on his time that could otherwise be spent responding to the protests themselves. Ultimately, the OPSB had to force the issue by directing a Special Meeting of the Board, which the chief was legally obligated to attend.

It is a police chief's responsibility to answer to the police services board. While I appreciate that Chief Sloly had many demands on his time, maintaining regular communication with the OPSB was an essential part of his responsibilities, and necessary to permit the OPSB to fulfill its mandate. Police services must prioritize board meetings, rather than view them as an impediment to policing. This is of particular importance when a police service is responding to a critical event. It may have been difficult for Chief Sloly to devote sufficient time to updating the OPSB because he was involved in operations. In contrast, the WPS executive in Windsor had the ability to update the WPSB because it was less involved in operations.

5.3 The OPSB's request for detailed information on operational plans

As I discuss in Chapter 8, on January 26, the OPSB asked about the OPS's operational plan and was provided with a high-level explanation. The OPSB did not request further details prior to the convoy's arrival. OPS Chief Sloly did, however, assure the OPSB that a plan was in place.

The OPSB failed to obtain details of the operational plan until February 15, shortly before enforcement action occurred. According to OPSB Chair Diane Deans, the Board became more interested in the details of the operational plan as the demonstrations dragged on, and their requests for more information led to increasing tension between the OPSB and Chief Sloly. Chief Sloly testified that he limited the information he provided for a variety of reasons: a prior breach of confidentiality on a board member's

part; a lack of precedent for the level of information the OPSB sought; and concerns that operational detail was unnecessary for the Board to exercise its functions.

It was within the OPSB's authority to request the details of the operational plan. It was also open to the Board to set priorities for the OPS, such as ensuring continued effective policing in the areas of the city not affected by the protests. I wholly endorse the guidance in this regard as set out in the Morden and Epstein reports.

In light of the conflicting information received by the OPSB ahead of the convoy's arrival, which I discuss in Chapter 8, the Board should have ensured that the OPS had contingency plans in place in case the protest turned into a more protracted demonstration. The OPSB did not do this.

As I discuss in Chapter 9, OPS Chief Sloly maintained a high degree of resistance in sharing the OPS's operational plan with the OPSB throughout February. When asked if he would have provided the Board with a copy of the OPS's plan if the Board had specifically directed him to do so, Chief Sloly said that he would have consulted with legal counsel and, if there was no prohibition, he "would have provided what we could, and that would largely be a heavily redacted document."⁷ But there is no constraint on providing this type of information to a board and there are mechanisms in place to ensure the confidential exchange of information. It would be inappropriate — and against the guidance set out in the Morden Report — to provide the OPSB with a "heavily redacted document" of the kind described by the chief.

Chair Deans explained that the OPSB wanted its relationship with Chief Sloly to be collaborative and did not want to create more angst for him by telling him what to do. While maintaining a positive relationship between a board and a chief of police is important, it cannot come at the cost of being denied necessary information. Chair Deans confirmed that the OPSB would have been better able to exercise its oversight

⁷ Evidence of Peter Sloly, Transcript, October 28, 2022, p. 256.

function if it had been provided with the information it had requested. I consider that its statutory duty entitled it to direct the chief to provide this information.

5.4 Confidentiality

One reason that OPS Chief Sloly gave for not providing the OPSB with a detailed operational plan was his pre-existing concern around the Board's ability to maintain confidentiality. He testified about *in-camera* discussions that had been leaked by OPSB members to the public prior to the convoy's arrival. This was corroborated by Graham Wight, an OPSB police services advisor, who stated that the OPSB's executive director had described it as a "leaky organization" and recalled that Chair Deans had also expressed concerns about confidentiality.⁸ Chair Deans seemed to acknowledge these concerns in her testimony.⁹

It does not appear that Mr. Wight took any steps in response to these concerns, though in fairness to him he indicated to the Commission that he was never asked for advice on this issue. I am not aware of the seriousness of these confidentiality issues or whether the OPSB took any steps to address them. I will simply say that it is imperative that trust be maintained between police services and their boards. This cannot be achieved without the ability to communicate confidentially.

While I accept that the OPSB's ability to maintain confidentiality was of concern to the OPS, this is not an acceptable reason for failing to provide the Board with all of the information necessary to exercise its oversight function. OPS Chief Sloly acknowledged in his testimony that internal issues at the Board regarding confidentiality did not relieve him of his obligation to provide this information, though it might impact the level of caution with which he would brief.

⁸ Interview Summary: Graham Wight, WTS.00000081, p. 4.

⁹ Evidence of Diane Deans, Transcript, October 19, 2022, p. 72.

The provincial Code of Conduct for Police Service Board Members requires them to keep confidential information disclosed to them during *in-camera* meetings. If a member breaches this obligation, there is a range of possible consequences, from additional training to removal. The *Police Services Act* also requires the provincial solicitor general to monitor boards to ensure that they comply with prescribed standards.

The OPSB had primary responsibility for taking action to rectify these issues. Because they were aware of these concerns, Ontario's Ministry of the Solicitor General and OPS Chief Sloly should also have raised concerns about confidentiality with the Board. While it appears that Chief Sloly did raise these concerns with OPSB Chair Deans, he did not know whether there had been any action in response. The Ministry of the Solicitor General did nothing about this issue, and it appears that the police services advisor never reported these concerns to Ontario's inspector general of policing. It is obvious to me that this unresolved issue undermined the relationship of trust between the OPSB and the OPS, compromising their ability to collaborate.

5.5 Oversight by the Ontario Ministry of the Solicitor General

In Chapter 8, I describe the mandate of the Ontario Ministry of the Solicitor General in relation to police services boards. In Chapter 9, I discuss how the Ministry interacted with the OPSB during the protests. I note that Kenneth Weatherill, Ontario's Inspector General of Policing, was concerned that Chief Sloly did not share an operational plan with the OPSB, and that the Board was not holding the chief accountable to the extent that it was entitled. However, Mr. Weatherill did not believe that it was the Ministry's role to weigh in on these matters.

I do not agree. The Ministry has a statutory duty to monitor board performance and ensure adequate and effective policing in the municipality. Insofar as the Ministry had concerns that the Board was not exercising its oversight function, it fell to the Ministry to provide guidance to the Board. This could have empowered the Board to direct the

chief to provide operational information, particularly given that the Board was hearing from Chief Sloy that it was “unlawful” for him to do so. I find that, based on what the Ministry knew at the time, it would have been preferable if it had acted.

The Ministry’s decision not to provide the OPSB with the training that it requested during the protests — directing them instead to send the questions they had about their role in writing to the Ministry — demonstrated another shortcoming in its response. While I commend the Ministry on its helpful answers to the questions sent by the OPSB, I cannot agree with Mr. Weatherill’s decision to deny the Board’s request for training. He identified two reasons for this decision. First, the OPSB could consult other resources. This response is unsatisfactory as the Ministry is the only body with a statutory duty to monitor police boards and ensure adequate and effective policing in municipalities. Second, he took the position that it would have been irresponsible to pull the Board away from its governance responsibilities to provide this training. I disagree. The OPSB was seeking to better understand its role. Any training the Ministry could have provided on governance during a major event, even informally, would have served to enhance the Board’s ability to govern effectively.

5.6 Outside influences on the Ottawa Police Services Board

I describe in Chapter 16 how the OPSB decided to hire an external candidate to act as interim chief after Chief Sloy resigned from the OPS. This information was initially communicated to Ontario Deputy Solicitor General Di Tommaso by Mr. Weatherill. Deputy Solicitor General Di Tommaso, in turn, informed OPP Commissioner Carrique. In doing so, Deputy Solicitor General Di Tommaso indicated that the information came from an ongoing *in-camera* meeting of the OPSB.

While the role of the police services advisor includes reporting information on police services boards to the inspector general of policing and the deputy solicitor general, confidential information communicated *in camera* should not be circulated outside of this reporting structure without the Board’s knowledge. The relationship between

police services boards, police services leadership, and the provincial government requires that confidential information be treated as such. The OPSB should have been aware that the Ministry would be communicating this confidential information to OPP Commissioner Carrique.

The facts of this case raise the question of to what extent it is appropriate for confidential board information to be shared more widely, as was done when OPP Commissioner Carrique communicated the information to RCMP Commissioner Brenda Lucki. While the RCMP is a federal entity, at the time, it was part of the command structure that was in place in Ottawa. It is therefore possible that Commissioner Lucki had relevant information for the OPSB to consider in making its decision regarding the next Ottawa chief of police. In my view, this question cannot be conclusively answered on the evidence before me, but I raise it for others' consideration.

If Commissioners Lucki and Carrique had concerns about the impact of a change in OPS leadership on operational plans, these concerns should have been raised with the OPSB, either directly or through the relevant deputy minister. The Board would have benefited from this additional perspective in making this important decision.

Ottawa Mayor Jim Watson had his own concerns with the hiring of an external candidate. He raised these directly with OPSB Chair Deans. In Chapter 16, I describe how he may have implied that her continued leadership of the OPSB was contingent on having the Board reverse its course on this decision. This again undermined the Board's ability to exercise its governance and oversight functions and to act decisively. It was open to him to communicate his concerns to Chair Deans, but he should have been careful to not insinuate that failure to comply would have consequences for her continued leadership.

6. Pre-invocation activities by the Federal Government

6.1 The Federal Government's situational awareness

In the lead-up to the arrival of the Freedom Convoy, the message conveyed to the RCMP by the OPS was that they had the protest situation well in hand. The RCMP accepted that message at that time. The RCMP was not the police of jurisdiction in Ottawa, and so I accept that it was reasonable for it to accept the OPS's reassurances in this regard.

However, there were troubling signals about both the character and possible duration of the protests that were immediately apparent to the Federal Government. The RCMP described the Freedom Convoy as a nation-wide protest with the goal of disrupting traffic flow and the general business of government in the hope that this would cause the Federal Government to lift all COVID-19-related public health measures. Most indications were that the protests would be peaceful; however, the Freedom Convoy was also attracting attention and support from ideologically motivated networks. Open-source monitoring had identified posts associated with the Freedom Convoy that were advocating violence. A number of threats were being made against elected and other public officials, with Prime Minister Justin Trudeau and Minister of Transport Omar Alghabra being particular targets of strong resentment. Minister Alghabra was advised to stay at home and participate in meetings from there. Several other ministers had already been placed under increased protection in mid-January due to an escalation in online threats, including references to assassination, from individuals and groups opposed to public health measures.

The prime minister and his staff had recently observed and experienced an unprecedented level of violent rhetoric and threats to their safety during the 2021 federal election campaign. On the heels of this experience, they were somewhat skeptical of the OPS's assurances that the protest would follow the usual pattern of a demonstration.

CSIS advised that it was investigating ideologically motivated violent extremism (IMVE) activities, and that there had been online commentary calling for violence and the storming of Parliament Hill buildings. CSIS reported that it was unaware, at that time, of any tangible plots of serious violence.

RCMP Commissioner Lucki advised that it was unknown how long the convoy protesters planned to stay in Ottawa, but that social media posts indicated that some participants might stay until January 31, 2022, in order to the disrupt the House of Commons when it returned.

As I discuss in Chapter 14, a number of Federal Government witnesses raised concerns in these proceedings about gaps in the federal government’s ability to collect information needed in order to properly monitor and collect open-source information from social media. They identified the absence of a legislative framework and the lack of necessary tools to engage in this type of collection as particular concerns.

I accept that there is a gap in the federal government’s authority and ability to monitor the digital information environment, and that this gap hampered its ability to anticipate the convoy and understand and gauge the situation as events unfolded.

I also agree with the observation of the McDonald Commission, which was established to investigate the activities of the RCMP Security Service in the aftermath of the October Crisis, that accurate intelligence is needed not only to enable the government and police forces to take effective action, but also to avoid over-reacting to threats. Sound intelligence enables the government to cope with a crisis using methods appropriate to the real, rather than the imagined, dimensions of the threat. As Commissioner McDonald cautioned,

[a] small group of terrorists could realize a very great victory for their undemocratic cause by frightening a government into adopting measures

which encroach on the civil liberties of citizens to a degree far in excess of what may be necessary to deal with the actual threat.¹⁰

I also note that a number of Federal Government witnesses expressed concerns about the flow of information between law enforcement and government, in part due to concerns surrounding operational independence. I have already discussed this problem in my findings on the policing response, and simply note that the problem applies with equal force at the federal level.

A related concern is the seemingly limited amount of “raw” information that is passed up through the chain of command, as opposed to delivered in synthesized reports. I was surprised to hear, for instance, that the National Security and Intelligence Advisor (NSIA) does not receive reports provided to the RCMP by other intelligence agencies. I appreciate that high-ranking officials and Cabinet ministers generally have neither the time nor the inclination to pore through extensive materials, but particularly in an emergent situation, there is value in providing more information, and filtering it less.

6.2 Government messaging

On January 27, ahead of the Freedom Convoy’s arrival, the prime minister gave a televised address in which he said the following:

[t]he small fringe minority of people who are on their way to Ottawa, or who are holding unacceptable views that they’re expressing, do not represent the views of Canadians who have been there for each other who know that following the science and stepping up to protect each

¹⁰ Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police, *Second Report: Freedom and Security Under the Law*, Vol. 1 (1981), p. 436.

other is the best way to continue to ensure our freedoms, our rights, our values as a country.¹¹

These comments, as well as remarks the prime minister made at a press conference on January 31, were interpreted by many as referring to all Freedom Convoy participants. This served to energize the protesters, hardening their resolve and further embittering them toward government authorities.

I expect that the prime minister was intending to refer to the small number of people who were expressing racist, extremist, or otherwise reprehensible views, rather than to all Freedom Convoy participants. It may well be that his comments were taken out of context, including by some media. However, in my view more of an effort should have been made by government leaders at all levels during the protests to acknowledge that the majority of protesters were exercising their fundamental democratic rights. The Freedom Convoy garnered support from many frustrated Canadians who simply wished to protest what they perceived as government overreach. Messaging by politicians, public officials and, to some extent, the media should have been more balanced, and drawn a clearer distinction between those who were protesting peacefully and those who were not.

6.3 Early federal responses to the arrival of the Freedom Convoy

By Monday January 31, it became clear that, contrary to expectations, the Freedom Convoy was not leaving, and the OPS was overwhelmed. The federal government started to become more involved at all levels: political, public service, and law enforcement. Internally, the government activated both existing committee structures and *ad hoc* working groups, to track what was happening and assist in developing strategies. Externally, ministers and senior public servants began reaching out to

¹¹ Overview Report: Timeline of Key Events, COM.OR.00000004, p. 5; *Canadian Frontline Nurses and Kristen Nagel v. Attorney General of Canada*, Notice of Application, February 18, 2022, para 26, COM00000397, p. 73.

municipal and provincial counterparts, as well as the OPS and the OPP, in an effort to coordinate and help resolve the situation.

By the end of the first week of the protests, there was a sense within the Federal Government that the OPS had lost control of the situation in Ottawa. On February 3, the Cabinet Committee on Safety, Security, and Emergencies (SSE) met to discuss whether there was anything the federal government could do to assist in resolving the situation. At that meeting, Deputy Minister of Public Safety Rob Stewart reported that the OPS had expressed the view that they would not be able to bring the protests to a conclusion without the assistance of the federal government. At this meeting, CSIS advised that, at this point, there was no indication that violent extremism was planned, but that they were watching persons of interest.

As I discuss in Chapter 9, there was early confusion and disagreement about the number of policing resources being provided to the OPS. Beyond the question of numbers of officers that had already been deployed to Ottawa, there was also confusion around the proper process for requesting assistance from the RCMP. Both the OPP and the RCMP were understandably hesitant to commit the considerable resources requested by the OPS without knowing that an adequate plan existed for how they would be utilized. An added complication for the RCMP was that providing a large number of officers to the OPS meant drawing on the resources of RCMP divisions across the country. This became increasingly problematic as protest activities around the country increased in frequency and seriousness. It was unfortunate that these types of process questions may have hindered prompt aid. It would have been preferable if these issues could have been discussed and addressed in a multilateral forum such as the tripartite table that the Federal Government attempted to establish to address the situation in Ottawa.

I find the Province of Ontario's reluctance to become fully engaged in such efforts directed at resolving the situation in Ottawa troubling. As I discuss in chapters 9 and 14, it appears that Ontario's refusal to participate in the political tripartite table with Ottawa

and the Federal Government was based on two beliefs. First, as Ontario Deputy Solicitor General Di Tommaso expressed it, Ontario’s view was that responsibility for resolving the situation in Ottawa fell largely to the Federal Government because the Freedom Convoy was “protesting a federal vaccine mandate on Parliament’s doorstep.”¹² Second, it was Ontario’s position that the situation in Ottawa was a policing matter best left to the OPP.

The prime minister’s view was somewhat different. He concluded that the Ontario Government was content to sit back and let the Federal Government “wear” the problem. Ottawa Mayor Watson expressed a similar sentiment.

In Canada’s constitutional order, municipalities fall within provincial jurisdiction. I recognize that Ottawa is a uniquely complex city from a jurisdictional perspective, given the multiple levels of government that operate there, among other reasons. In fact, many of the key federal institutions affected by the protest, including the Prime Minister’s Office and Privy Council Office, the Supreme Court of Canada, and Parliament, are located there. But this does not change the fact that Ottawa is a municipality created by the Province of Ontario and subject to its jurisdiction. The Province is ultimately responsible for effective policing in Ottawa. Given that the City and its police service were clearly overwhelmed, it was incumbent on the Province to become visibly, publicly, and wholeheartedly engaged from the outset.

In one of the Commission’s policy roundtables, Professor Leah West of Carleton University described the events leading to the invocation of the *Emergencies Act* as a failure in federalism. Unfortunately, I find that this description is apt. I recognize that Ontario was eventually spurred to action by the Ambassador Bridge blockade. It was not until Prime Minister Trudeau spoke to Premier Doug Ford on February 9, after the Ambassador Bridge blockade, that collaboration became the name of the game. It is unfortunate that such collaboration did not take place days earlier.

¹² Interview Summary: Mario Di Tommaso, WTS.00000041, p. 3.; Evidence of M. Di Tommaso, Transcript, November 10, 2022, p. 170.

Had there been greater collaboration at the political level from the start, it could well have assisted in ironing out the communication, jurisdictional, and resourcing issues that plagued the early response to the protests. It could also have assisted in identifying authorities available to each level of government that might have been used to respond to the protests and coordinate direct engagement with protesters. It could also have provided the people of Ottawa with a clear message that they had not been abandoned by their provincial government during a time of crisis.

Unfortunately, Ontario's premier and solicitor general exercised Parliamentary privilege to resist the summonses that I issued to them. The Commission would have greatly benefited from the perspective that their testimony could have provided.

By February 5, the protest activity in Coutts had become sufficiently problematic that the government of Alberta requested the federal government's assistance in the form of heavy equipment and personnel. By this time, the Alberta division of the RCMP had also requested that additional RCMP officers be sent to Alberta to assist, on the basis that the acting minister of Justice and Solicitor General was of the opinion that an emergency existed in the province. While the RCMP was able to provide Alberta with the requested policing resources by drawing on officers from its British Columbia division, the federal government did not provide the requested towing equipment. The only heavy towing equipment to which the federal government had access were Canadian Armed Forces heavy-duty wreckers that were neither readily available nor suitable for the intended use.

Meanwhile, protests had also spread to Toronto, Ontario and Québec City, Quebec. On February 7, the Ambassador Bridge blockade began, instantly wreaking havoc at the single most important commercial land crossing in Canada. On February 8, the situation in Coutts had deteriorated to the point that protesters had re-established a full blockade of the highway, effectively shutting down Alberta's largest port of entry.

The Federal Government perceived that the situation was worsening nation-wide. The minutes of the February 6 and February 8 meetings of the SSE reflect the Federal Government's concerns: The CBSA reported that there had been at least a dozen situations involving Canada's borders in the past 10 days; CSIS reported an increase in online activity focused on anti-enforcement rhetoric and invitations to participate in blockades at border crossings, though no actual violence had been identified to date; Public Safety Canada reported that the OPS staff were tired and needed reinforcements, and that the protest appeared organized, including that the blockade at the Ambassador Bridge was designed to divide the OPP's attention; and the RCMP reported that the OPP was in the process of developing an integrated plan to manage the Ottawa demonstration, but that demonstrations persisted in Windsor, Coutts, and Winnipeg, Manitoba.

There was public perception and expectation that, since the protests were triggered by a federal vaccine mandate and were taking place "at Parliament's doorstep" in Ottawa as well as along the Canada – U.S. border, the Federal Government should own the situation and solve the problem. Jurisdictionally, however, there were severe limits on what it could do. As noted, attempts by the Federal Government to coordinate a response with the provinces had, to that point, failed to bear fruit. On February 9, the Clerk of the Privy Council instructed the federal deputy ministers to create a comprehensive list and preliminary assessment of all available federal powers, authorities, and resources that might be available to assist in resolving the protest situation across the country. It was at this time that use of the *Emergencies Act* began to be seriously considered.

7. The path to invoking the *Emergencies Act*

As I discuss in Chapter 14, on February 10, the prime minister convened an Incident Response Group (IRG) meeting to discuss potential Federal intervention. The IRG is a purpose-built special committee of Cabinet, chaired by the prime minister and convened to respond to crisis situations. It is less formal and more flexible than other

Cabinet committees and involves a far greater degree of direct input from senior public servants.

By this point, the Federal Government was already familiar with the *Emergencies Act*. In March 2020, in response to the COVID-19 pandemic, the Federal Government considered using the Act as part of the federal response. Government officials studied the parameters of the statute (in what the prime minister described as “a crash course in the *Emergencies Act*”¹³) and engaged in extensive consultations with the provinces. In the end, the prime minister concluded that it was not appropriate to invoke the Act in response to the pandemic. But this process meant that, by February 2022, key decision makers already had at least some familiarity with this statute.

The February 10 IRG meeting was preceded by a ministerial briefing. RCMP Commissioner Lucki gave an operational update, at which she expressed concerns about the OPS’s ability to resolve the situation in Ottawa. When the Cell arrived in Ottawa to review the Ottawa police plan, they discovered that there was no plan to review. There was reason to hope that progress would be made, because as of that morning the appropriate people from the OPS were engaged with the Integrated Planning Cell. But it was unlikely that there would be any significant actions taken for a few days. As for the national situation, open-source reporting suggested that there was a plan to block a Canadian National Railway (CN Rail) route. There were at least 24 planned demonstrations in British Columbia for the coming weekend, with others planned for later in February and the beginning of March. There were another five planned in Nova Scotia, and five in Manitoba. She noted that these were just the ones they knew about; she expected there would be more. She further noted that managing these protests was a huge draw on RCMP resources nation-wide. Further deployment would have a significant impact on operations, including on a number of national security investigations. CSIS Director David Vigneault advised that as the

¹³ Evidence of Prime Minister Justin Trudeau, Transcript, November 25, 2022, pp. 42 and 43.

occupation continued and frustrations and tensions increased, so did the risk that an individual or small group would mobilize to violence.

At the February 10 IRG meeting, NSIA Jody Thomas and RCMP Commissioner Lucki provided a situational update. The report on Ottawa was that the situation remained largely unchanged. The Integrated Planning Cell was developing a plan of action. There were challenges throughout the country. The size of the Coutts protest was smaller than in previous days, but those who remained were entrenched. The protesters at the Ambassador Bridge were becoming more aggressive, and enforcement action was set to begin the next day. New Brunswick and Nova Scotia were already using their emergency statutes to address protests, and Ontario was expected to follow suit the following day. There were also rumours of blockades at the Alberta – Northwest Territories border. Minister Blair noted that in areas like Coutts and Windsor, police capacity was exceeded almost immediately after the protests began.

On the basis of the information available at that time, I find that there was cause for serious concern that protests associated with the Freedom Convoy were spreading and would continue to do so, and that law enforcement, while responding to these challenges for the moment, were stretched to the limit.

The IRG soon began the “two track” consideration that I describe in Chapter 14, examining existing federal authorities under Track 1, and considering what additional authorities might be needed, either through new legislation or the use of the *Emergencies Act* under Track 2. The results of this process were presented to the IRG on February 12.

The use of the Canadian Armed Forces, while technically an available option, was never seriously considered by the IRG, nor should it have been. Soldiers are trained for combat, not for crowd control. Even the appearance of military involvement risked exacerbating the protests rather than resolving them.

The IRG also considered an Engagement Proposal, prepared by Deputy Minister Stewart and OPP Inspector Marcel Beaudin, for a representative of the Federal Government to meet with protest leaders if they agreed to leave the protest and publicly denounce unlawful activity. The IRG ultimately decided not to pursue this approach.

I am not troubled by the Government's decision not to pursue this approach. The Ottawa protest had been going on for more than two weeks and was fueling a growing national movement. The Government understandably wanted it to end quickly. I accept that meeting with an undefined group of organizers with no clear leadership, when in any event there was little likelihood of predicting, let alone controlling, the protesters' actions, was unlikely to resolve matters. Comparable attempts to negotiate in Windsor had been unsuccessful for similar reasons. I find that the Engagement Proposal was a good faith effort by public officials to try to solve the problem, but that it was reasonable in the circumstances for the Federal Government not to pursue it.

There was one criticism of this Engagement Proposal, however, that I do not accept. As it was being prepared, RCMP Commissioner Lucki raised the concern that it might cross the line into interference with police operational independence. I do not view this as a concern here. The proposal did not purport to direct police in respect of operational matters, but rather contemplated a non-policing solution developed with input and guidance from police. There was nothing to suggest that the Engagement Proposal was an attempt to direct law enforcement in any way.

The IRG met at 4 p.m. on Sunday February 13 to discuss whether the time had come to invoke the *Emergencies Act*. By the end of that meeting, there was consensus around the table that invoking the *Emergencies Act* was necessary. The prevailing view was that the protest in Ottawa had become an entrenched illegal occupation, and that the situation across the country was dangerous, complex, and volatile. The IRG concluded that a meeting of the full Cabinet should be held to discuss the invocation of the *Emergencies Act*.

Cabinet met at 8:30 p.m. that evening. After receiving a situational update and a briefing on the *Emergencies Act*, Cabinet proceeded to deliberate on whether the thresholds had been met and the Act should be invoked. The consensus was that it should be and that a First Ministers' Meeting should be called to consult with the provinces. The final decision on invoking the Act was left *ad referendum* to the prime minister, following the First Ministers' Meeting, meaning that no further Cabinet meeting would be necessary.

Two issues arose at the hearing about information provided to the IRG and Cabinet that require additional comment.

First, the prime minister expressed the view that there was no police plan in place for clearing the Ottawa protest by February 13, and that he was not confident they had the situation under control. At the February 12 IRG meeting, Commissioner Lucki indicated that she would provide additional details of the police plan at the next meeting, however she did not speak at the February 13 IRG meeting, and therefore did not provide an update on the plan. I heard the suggestion that, had Commissioner Lucki told the IRG about the plan, a different decision might have been made.

I accept that it would have been preferable for Commissioner Lucki to provide a further update on February 13, but I am not prepared to find that it would have made a difference. First, while the evidence was somewhat contradictory as to what Commissioner Lucki understood regarding the approval of the plan on February 13, regardless of the status of the plan, she had significant doubts about police leadership in Ottawa and what that meant for timing and implementation of the plan. Second, a further update on the plan from Commissioner Lucki was unlikely to have inspired confidence around the IRG table. Federal officials had repeatedly been told a plan was in place without any apparent results. Several ministers and officials also had concerns about police leadership in Ottawa, many of which I have found to be valid. The February 13 plan was a significant development, but its successful execution depended on integration and co-operation between law enforcement actors, issues

that had not been fully resolved by the time of the IRG meeting. However, even more significant was the fact that, by this point, the IRG's concerns were national in scope. The fact that a plan existed for Ottawa, though relevant, was unlikely to have changed the course of the IRG's deliberations. As the Clerk of the Privy Council testified, "there was no single plan at any single site that would have necessarily changed my advice to the Prime Minister about the totality of the circumstances that led to the invocation of the *Emergenc[ies] Act*."¹⁴

The second issue relates to Commissioner Lucki's view that not all of the tools available through existing legislation had been exhausted in responding to the protests.

As I discuss in Chapter 14, Commissioner Lucki made this comment to Public Safety Minister Marco Mendicino's chief of staff in replying to an email request to provide the RCMP's "wish list" of powers that could be granted if the *Emergencies Act* was invoked. This view was not included in speaking notes that Commissioner Lucki sent NSIA Thomas, who spoke on her behalf during the Cabinet meeting, and, therefore, this view was not conveyed to Cabinet.

I do not view this as particularly significant. The Clerk confirmed that in the conversation around the invocation of the *Emergencies Act*, Cabinet was briefed that there were tools and authorities in many organizations that had not been fully deployed, including in the RCMP. It is clear that legal tools and authorities existed; the problem was that these powers, such as the power to arrest, were not being used because doing so was not thought to be an effective way to bring the unlawful protests to a safe and timely end.

Following the February 13 Cabinet meeting, the Privy Council Office was tasked with convening a First Ministers' Meeting for the next morning. No agenda or briefing material was provided in advance. Out of concern that knowledge of the purpose of the meeting would trigger a reaction from protesters if it became known, the premiers

¹⁴ Evidence of Janice Charette, Transcript, November 18, 2022, p 270.

were not advised of the topic of the call, though it appears that none of the premiers were surprised about it or seemed ill-prepared to discuss the possible invocation of the Act.

The result of the meeting was that the prime minister did not believe that the premiers had a solution to the crisis that did not require the invocation of the *Emergencies Act*. After receiving a memorandum from the Clerk of the Privy Council recommending invocation of the Act, he decided to do so.

The clerk's memorandum referred to a threat assessment that was to be provided to the prime minister under separate cover. That assessment would have been a collation of the inputs and assessments that had been delivered up to that point. It was never prepared. In my view, this integrated assessment document should have been provided. A threat assessment is a critical component of a decision-making process. It would have constituted an important part of the record and, although I accept that it would likely not have contained any significant information that had not been communicated earlier, there is benefit in presenting information in consolidated form. I do not, however, find that its absence in any way affected the validity of the decision.

8. How to assess the invocation of the *Emergencies Act*

8.1 The role of the Commission in reviewing the decision to invoke the *Emergencies Act*

One of the most difficult questions that I have faced, and one for which there is no precedent, is what role the Commission should assume in assessing Cabinet's decision to declare a public order emergency. Some parties have argued that I should not opine on the appropriateness or legality of the decision, as that is the role of the Federal Court in a judicial review proceeding. Others have argued that pronouncing on the decision is the *raison d'être* of the Inquiry.

I consider this question in light of the terms of my mandate. Section 63 of the Act and my Order in Council both direct me to enquire “into the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency.” There is no clear direction to decide whether the decision to declare an emergency was justified in law. Arguably, this is implied by this language, but the emphasis is on an enquiry into the circumstances leading to the decision, rather than the decision itself.

That being said, I must also consider my mandate in light of the Act’s emphasis on public accountability. The various oversight mechanisms contained in the *Emergencies Act* speak to a legislative intention to subject the declaration of an emergency to careful scrutiny both during and after the life of an emergency.

The role and focus of a commission established under section 63 will, to some extent, depend on the context. In some instances, it may be beyond doubt that the conditions for invoking the *Emergencies Act* were met, but there may be other questions regarding the circumstances that led to the declaration and the measures taken under it that require careful review. In the present situation, however, I am faced with a statute that has never been used or judicially interpreted, and questions have been raised by the parties as to whether its conditions have been satisfied. My assessment of the circumstances must therefore inevitably involve a consideration of the Act’s requirements.

I acknowledge that the Commission’s role is distinct from that of a court. The Commission does not have the legal authority to adjudicate the “lawfulness” of the declaration as such. I do not intend or consider my findings on this topic to be in any sense binding on the courts. The effect or significance of the Commission’s findings and conclusions in the judicial review proceedings will be a matter for the Federal Court to determine.

Thus, I interpret the Act and the Terms of Reference of my mandate as directing that I should enquire into the circumstances that led to the declaration being issued, examine and assess the basis for the invocation of the Act, and make findings and draw conclusions about the appropriateness of the declaration and the exercise of powers granted under it, including whether the Act's requirements were met. The ultimate legality of the decision remains within the purview of the courts.

8.2 Norms, values, and interpretive principles

Before considering the relevant legislative provisions, I will outline the norms, values, and principles that, in my view, underlie emergency legislation and ought to be considered when interpreting the legislation and considering whether its requirements have been met. In doing so, I draw on the work of Professor Nomi Claire Lazar, University of Ottawa, on the theory and ethics of emergency powers in liberal democracies.¹⁵

The difficulty of addressing emergencies can be understood as a challenge in reconciling the tension between the conflicting values that come to the forefront in an emergency situation. Three pairs of values in particular must be balanced in considering whether invocation of emergency legislation is justified: order and freedom, speed and deliberation, and rules and exceptions.

Tensions between order and freedom sit at the heart of our system of governance. Freedom cannot exist without order, because the machinery of order — such as procedures, laws, police, and courts — create the conditions for the protection of freedom, the enjoyment of freedom, and the mediation of conflicting freedoms. While order constrains freedom — laws, for example, limit the range of permissible actions — without order's constraints, freedom cannot exist.

¹⁵ Nomi Claire Lazar, *States of Emergency in Liberal Democracies* (Cambridge University Press, 2013), Ch. 4 – 6.

The ever-present tension between order and freedom generally goes unnoticed in our society because we are accustomed to the many day-to-day limits on our rights in the service of order. Traffic rules, driver's licences, building codes, municipal by-laws, and of course the criminal law are all examples of constraints on our freedoms, but they are habitual, accepted, and therefore inconspicuous.

It is commonly assumed or asserted that tensions and trade-offs between order and freedom are a distinctive problem of emergencies and emergency powers. In fact, they are not. The fundamental and inevitable tension between order and freedom is a constant; it is simply more visible, and more stark in a time of emergency. In times of emergency, however, freedoms that are usually unconstrained may suddenly be curtailed. This puts a spotlight on the clash of values.

The tension between order and freedom is reflected in the thresholds for invoking the *Emergencies Act*. When the use of emergency powers becomes necessary, this is generally because the order necessary to freedom is under a special threat. The threshold for invocation is the point at which order breaks down and freedom cannot be secured or is seriously threatened.

The tension between speed and deliberation is one that is inherent in our system of government but becomes acute in a situation of emergency. In normal times, we expect government action to be timely and effective, but also cautious, deliberative, and well thought out. Acting in haste is generally considered the greater risk; thus, the legislative process is designed to slow down government action to ensure that it is properly and thoroughly deliberated. The urgent character of emergencies, however, demands quick decisions, which cannot be achieved through the normal legislative process. Emergencies by their very nature often require rapid if not instant response, as hasty action may be necessary to protect life and limb. As I explain earlier in this section, the *Emergencies Act* accommodates this to a degree by reversing the sequence of decision and deliberation. While deliberation normally precedes decision, under the *Emergencies Act*, the decision is made by Cabinet where deliberations are

usually much less extensive than in the legislative process. In this sense the decision comes first, and the deliberation follows. This deliberation may lead the legislature to reverse the executive's decision; thus, despite the need for speed, the check on executive power is ultimately preserved.

Finally, the tension between rules and exceptions is also reflected in the Act. The definitional thresholds under the *Emergencies Act* attempt to delineate the conditions under which exceptions to the normal course of law are justifiable. But the law can only go so far in anticipating what may occur. The determination that those thresholds have been met and that the Act must be invoked is not a cut-and-dried activity; it inevitably requires the exercise of judgment, often in the heat of a crisis. The accountability mechanisms inherent in the Act ensure that the decision makers operate in full knowledge that their decision will not escape scrutiny and judgment. That scrutiny must be careful, and that judgment must be exercised in a manner that is firm, but fair.

8.3 Interpreting the *Emergencies Act*

The *Emergencies Act* is, without doubt, extraordinary legislation. It temporarily allows the executive to legislate without going through the usual Parliamentary process. It contemplates the taking of measures that may not be appropriate in normal times. It allows for the temporary suspension of the division of powers under the Constitution.

The *Emergencies Act* is also necessary. It is a fundamental responsibility of government to ensure the safety and security of people and property in emergency situations. Most, if not all, modern democratic governments have enacted emergency power legislation in order to ensure that this responsibility can be fulfilled.

I discuss Canada's history of emergency measures legislation in Chapter 2. By the time the *Emergencies Act* was enacted, the *War Measures Act* was considered, to use the words of then Minister of National Defence Perrin Beatty, "an archaic and

dangerous piece of legislation completely out of tune with democratic Canadian life.”¹⁶ In part because of the *War Measures Act*'s troubled legacy, the Government that brought in the *Emergencies Act* was acutely aware of the need to craft a statute that ensured respect for civil liberties and the rule of law, while at the same time being powerful and flexible enough to deal with urgent, unanticipated circumstances.

The *Emergencies Act*, while in some respects imperfect or outdated, is a statute firmly anchored in the principles of the rule of law, constitutionalism, and public accountability. It is predicated on a complex matrix of conditions, requirements, checks, balances, and accountability mechanisms designed to prevent its abuse. The combination of limits and safeguards in the *Emergencies Act* distinguishes it from emergency statutes at the provincial and territorial level in Canada, which generally have lower thresholds for declaring an emergency and fewer, if any, mechanisms for accountability.¹⁷ It also distinguishes the *Emergencies Act* from emergency statutes in comparable countries around the world, which generally lack this robust, multi-layered approach to constraints and oversight.¹⁸

The Act does not envision unrestricted legislation by decree. Rather, it reverses the normal order of decision and deliberation, so that rather than having legislative action follow deliberation by Parliament, action comes first, and Parliamentary deliberation follows shortly thereafter. As Professor Lazar has written, the *Emergencies Act*

does not eliminate deliberation, debate, and oversight [...]. The *Emergencies Act* functionally shifts these processes of deliberation forward in time. While deliberation over the public good and what laws, policies and actions might best serve it takes place *in advance* in normal

¹⁶ *House of Commons Debates (Hansard)*, 33rd Parl., 2nd Sess., Vol. 9 (November 16, 1987), p. 10808 (The Hon. Perrin Beatty).

¹⁷ Jocelyn Stacey, *Governing Emergencies in an Interjurisdictional Context*. This paper is reproduced in Vol. 5 of this Report.

¹⁸ See, for example, Kim Lane Scheppele, “North American emergencies: The use of emergency powers in Canada and the United States” (2006) 4:2 *International Journal of Constitutional Law* 213.

times, the Act allows that sometimes decisions [...] must be made *now*, while remaining subject to deliberation and judgment along the way and after the fact.¹⁹

Put simply, the operational principle underlying the *Emergencies Act* is a recognition that in a situation of emergency, it may be necessary for the executive to “act now and ask later.” Invocation of the *Emergencies Act* is a drastic move, but it is not a dictatorial one.

When the Act was introduced, the Government of the day tabled a white paper that reviewed the policy, constitutional, and legal basis for the legislation, and was intended to aid in the discussion of the complex and fundamental issues associated with the formulation of emergencies legislation.²⁰ According to the white paper, the category of public order emergency was designed to deal with “situations resulting from lawlessness, terrorism or insurrection,”²¹ also described as “several varied kinds of contingencies, ranging from civil unrest to apprehended insurrection.”²² The common thread tying these circumstances together is that they

arise from the deliberate actions of individuals or groups that place in jeopardy the life, liberty, safety, security, or property of the citizen, the rule of law, or constitutional government. And when such disturbances are so serious in nature or so widespread in scope as to threaten the security of Canada as a nation, the federal government has a constitutional as

¹⁹ Nomi Claire Lazar, *On Necessity under the Emergencies Act*, p. 9-6. This paper is reproduced in Vol. 5 of this Report.

²⁰ Canada, Emergency Preparedness Canada, *Bill C-77: An Act to Provide for Safety and Security in Emergencies — Working Paper*.

²¹ Canada, Emergency Preparedness Canada, *Bill C-77: An Act to Provide for Safety and Security in Emergencies — Working Paper*, p. 56.

²² Canada, Emergency Preparedness Canada, *Bill C-77: An Act to Provide for Safety and Security in Emergencies — Working Paper*, p. 22.

well as a social responsibility to intervene to restore conditions of safety and security.²³

I return here to the tension between rules and exceptions as this manifests itself in the *Emergencies Act*. The white paper asserts that the *Emergencies Act* is intended to provide the government with “an appropriately safeguarded statute to deal with a full range of possible emergencies.”²⁴ Parliament may only go so far in anticipating what may occur. The determination of whether it necessary and appropriate to invoke the Act will ultimately and always require the exercise of judgment. What Canadians can and should expect is that this judgment be exercised in good faith, in the best interests of the country, in compliance with each of the prerequisites required by the legislation, and in keeping with the rule of law.

8.4 The statutory thresholds for declaring a public order emergency

In interpreting the Act, I face a similar challenge to that faced by Cabinet: interpreting a complex, multi-layered legislative scheme enacted more than 35 years ago in a very different social and political context, and for which there is no precedent. Ascertaining what constitutes a public order emergency is a complex exercise, requiring one to weave together several multi-part definitions across two statutes. I begin with the definition of a “national emergency,” which is a threshold that must be met before any of the types of emergency under the Act may be declared:

<p>3 For the purposes of this Act, a national emergency is an urgent and critical situation of a temporary nature that</p>	<p>3 Pour l’application de la présente loi, une situation de crise nationale résulte d’un concours de circonstances critiques à caractère d’urgence et de nature</p>
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²³ Canada, Emergency Preparedness Canada, *Bill C-77: An Act to Provide for Safety and Security in Emergencies — Working Paper*, p. 22.

²⁴ Canada, Emergency Preparedness Canada, *Bill C-77: An Act to Provide for Safety and Security in Emergencies — Working Paper*, p. 50.



<p>(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</p> <p>(b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada</p> <p>and that cannot be effectively dealt with under any other law of Canada.</p>	<p>temporaire, auquel il n'est pas possible de faire face adéquatement sous le régime des lois du Canada et qui, selon le cas :</p> <p>a) met gravement en danger la vie, la santé ou la sécurité des Canadiens et échappe à la capacité ou aux pouvoirs d'intervention des provinces;</p> <p>b) menace gravement la capacité du gouvernement du Canada de garantir la souveraineté, la sécurité et l'intégrité territoriale du pays.</p>
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The Government of Canada has confirmed that, in invoking the *Emergencies Act*, the Governor in Council relied on paragraph (a) of this definition.

The definition of a public order emergency builds upon the notion of a national emergency, and ties it to the concept of “threat to the security of Canada”:

<p>16 In this Part,</p> <p>...</p> <p>public order emergency means an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency;</p>	<p>16 Les définitions qui suivent s'appliquent à la présente partie.</p> <p>...</p> <p>état d'urgence Situation de crise causée par des menaces envers la sécurité du Canada d'une gravité telle</p>
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<p>threats to the security of Canada has the meaning assigned by section 2 of the <i>Canadian Security Intelligence Service Act</i>.</p>	<p>qu'elle constitue une situation de crise nationale.</p> <p>menaces envers la sécurité du Canada S'entend au sens de l'article 2 de la <i>Loi sur le service canadien du renseignement de sécurité</i>.</p>
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The definition of “threat to the security of Canada,” in turn, is found in the *Canadian Security Intelligence Service Act*:

<p>2 In this Act,</p> <p>...</p> <p>threats to the security of Canada means</p> <p>(a) espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage,</p> <p>(b) foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,</p> <p>(c) activities within or relating to Canada directed toward or in support of the threat or use of acts</p>	<p>2 Les définitions qui suivent s'appliquent à la présente loi.</p> <p>...</p> <p>menaces envers la sécurité du Canada Constituent des menaces envers la sécurité du Canada les activités suivantes :</p> <p>a) l'espionnage ou le sabotage visant le Canada ou préjudiciables à ses intérêts, ainsi que les activités tendant à favoriser ce genre d'espionnage ou de sabotage;</p> <p>b) les activités influencées par l'étranger qui touchent le Canada ou s'y déroulent et sont préjudiciables à ses intérêts, et qui sont d'une nature clandestine ou trompeuse ou comportent des menaces envers quiconque;</p>
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<p>of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state, and</p> <p>(d) activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada,</p> <p>but does not include lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in paragraphs (a) to (d).</p>	<p>c) les activités qui touchent le Canada ou s’y déroulent et visent à favoriser l’usage de la violence grave ou de menaces de violence contre des personnes ou des biens dans le but d’atteindre un objectif politique, religieux ou idéologique au Canada ou dans un État étranger;</p> <p>d) les activités qui, par des actions cachées et illicites, visent à saper le régime de gouvernement constitutionnellement établi au Canada ou dont le but immédiat ou ultime est sa destruction ou son renversement, par la violence.</p> <p>La présente définition ne vise toutefois pas les activités licites de défense d’une cause, de protestation ou de manifestation d’un désaccord qui n’ont aucun lien avec les activités mentionnées aux alinéas a) à d).</p>
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The Government of Canada has confirmed that, in invoking the *Emergencies Act*, the governor in council relied on paragraph (c) of this definition.

The previously mentioned provisions, taken together, comprise the definition of a public order emergency. The legal authority to declare a public order emergency is found in section 17 of the *Emergencies Act*:

<p>17 (1) When the Governor in Council believes, on reasonable grounds, that a public order emergency exists and necessitates the taking of special temporary measures for dealing with the emergency, the Governor in Council, after such consultation as is required by section 25, may, by proclamation, so declare.</p>	<p>17 (1) Le gouverneur en conseil peut par proclamation, s'il croit, pour des motifs raisonnables, qu'il se produit un état d'urgence justifiant en l'occurrence des mesures extraordinaires à titre temporaire et après avoir procédé aux consultations prévues par l'article 25, faire une déclaration à cet effet.</p>
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Section 25 refers to the obligation of the Federal Government to consult with the provinces prior to a declaration of a public order emergency:

<p>25 (1) Subject to subsections (2) and (3), before the Governor in Council issues, continues or amends a declaration of a public order emergency, the lieutenant governor in council of each province in which the effects of the emergency occur shall be consulted with respect to the proposed action.</p>	<p>25 (1) Sous réserve des paragraphes (2) et (3), le gouverneur en conseil, avant de faire, de proroger ou de modifier une déclaration d'état d'urgence, consulte le lieutenant-gouverneur en conseil de chaque province touchée par l'état d'urgence.</p>
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Section 19 sets out the powers available in the event of a public order emergency, which I discuss in the next section.

In summary, to declare a public order emergency, Cabinet had to believe, on reasonable grounds, that:

- a. there was an urgent and critical situation of a temporary nature that seriously endangered the lives, health, or safety of Canadians;
- b. the emergency arose from activities directed toward the threat or use of serious violence against persons or property for the purpose of achieving a political, religious, or ideological objective;
- c. the emergency was of such proportions or nature that it exceeded the capacity or authority of a province to deal with;
- d. the emergency could not be effectively dealt with by any other federal law; and
- e. the emergency required the taking of special temporary measures.

The Government also had to establish that the requirement of provincial consultation mandated by section 25 had been met.

8.5 The “reasonable grounds to believe” standard

The “reasonable grounds to believe” standard is a familiar one in law. It requires something more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities. In essence, reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information.²⁵

The “reasonable grounds to believe” standard is sometimes expressed as “reasonable and probable grounds to believe.” As the Supreme Court of Canada has explained, these terms are synonymous: “[r]easonableness’ comprehends a requirement of

²⁵ *Mugesera v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 100, para 114 [internal references omitted]; see also *R v. Beaver*, 2022 SCC 54, paras 71 and 72.

probability.”²⁶ This means that a person who exercises a power based on reasonable grounds to believe must believe in the probability that certain facts or a certain situation exists. However, the existence of the facts or situation need not ultimately be proven on a balance of probabilities.

The “reasonable grounds to believe” standard has both a subjective and an objective component. The decision maker must subjectively (i.e., personally) believe that the conditions are met, and that belief must be justifiable from an objective point of view. The objective element means that a reasonable person “standing in the shoes” of the decision maker must be able to come to the same conclusion that the decision maker did. It is possible for the decision maker to be reasonably mistaken about the existence of a fact or situation, but still meet the standard. An error is reasonable if a reasonable person placed in the same situation, observing the same facts, would have committed the same error.²⁷

Importantly, the objective component must be based on an assessment of the totality of the circumstances known to the decision maker at the time of the decision, not what may become known after. This cuts both ways. On the one hand, it means that the decision maker may not rely on information obtained after the fact to bolster the reasonableness of the decision. On the other hand, it means that information unknown to the decision maker at the time cannot be used to undermine the reasonableness of the decision unless it was unreasonable for the decision maker not to have secured such information before acting.

The context in which the *Emergencies Act* operates is important. Cabinet will invariably be acting on incomplete information and in circumstances of urgency. These practical realities must be considered when assessing whether Cabinet had reasonable grounds to believe a public order emergency existed.

²⁶ *Baron v. Canada*, [1993] 1 S.C.R. 416, p. 447.

²⁷ See Anne-Marie Boisvert, *The Reasonable Grounds to Believe Standard in Canadian Criminal Law*. This paper is reproduced in Vol. 5 of this Report.

A similar recognition exists in the criminal law, where police officers are required to exercise certain powers on a “reasonable grounds to believe” standard in dynamic and volatile circumstances. In *R. v. Beaver*, the Supreme Court discussed this dynamic in the context of the police power to make an arrest:

In evaluating the objective grounds to arrest, courts must recognize that, “[o]ften, the officer’s decision to arrest must be made quickly in volatile and rapidly changing situations. Judicial reflection is not a luxury the officer can afford. The officer must make his or her decision based on available information which is often less than exact or complete”. Courts must also remember that “[d]etermining whether sufficient grounds exist to justify an exercise of police powers is not a ‘scientific or metaphysical exercise’, but one that calls for the application of ‘[c]ommon sense, flexibility, and practical everyday experience’”.²⁸

Provided that the necessary factual basis exists, the “reasonable grounds to believe” standard builds in the concept of a margin of appreciation. Reasonable minds may differ on the same question, and a decision is not wrong or unreasonable because an outcome thought likely to happen does not materialize. The margin of appreciation inherent in the standard is important, particularly when the decision is one made by the highest levels of the executive, in a situation of urgency, and requires the application of judgment.

I emphasize, however, that the decision must nevertheless be carefully scrutinized. The “reasonable grounds to believe” standard was inserted specifically to ensure that decisions made under the Act would be reviewable.²⁹ While the standard may be a flexible one, the margin of appreciation it affords Cabinet is not limitless. Moreover, given the impact that the use of the *Emergencies Act* can have on both *Charter* rights

²⁸ *R. v. Beaver*, 2022 SCC 54, para 72(5) [internal citations omitted].

²⁹ *House of Commons Debates*, 33rd Parl., 2nd Sess., Vol. 12 (April 25, 1988), pp. 14765 and 14766 (Bud Bradley).

and the constitutional division of powers with the provinces, the review of the decisions made by Cabinet must be meaningful. All of the prerequisites to the declaration must be in place. The Act is not a tool of convenience; it is one of last resort.

8.6 Economic considerations

One interpretive question that arose during the Inquiry was whether economic concerns could be relevant to the existence of a national emergency under the *Emergencies Act*. The *Emergencies Act* does not, and was not intended to, capture purely economic crises.³⁰

This does not mean that when a public order disturbance causes economic disruption to such a degree that it seriously endangers the lives, health, and safety of Canadians, those effects are irrelevant or that Cabinet is required to disregard them. To the extent that a public order event causes an economic disruption that is significant enough to put the life, health, and safety of Canadians in danger, Cabinet can take those consequences into account when considering whether the situation constitutes a national emergency.

9. Assessing the decision to invoke the *Emergencies Act*

As the IRG and Cabinet deliberated over whether to invoke the *Emergencies Act*, they were required to weigh a significant amount of information, much of which I have set out in this Report. I discuss next what I believe to have been the most salient information regarding each of the statutory conditions. In doing so, I consider only the information known to Cabinet and the prime minister at the time the decision was made. I note that this discussion is not comprehensive, in that it does not reflect all the information before Cabinet, and that the information listed under one requirement may in some cases also have bearing on another.

³⁰ Canada, Emergency Preparedness Canada, *Bill C-77: An Act to Provide for Safety and Security in Emergencies* — Working Paper, p. 26.

9.1 Subjective grounds

There was little suggestion by the parties that the subjective requirement had not been met, (i.e., that Cabinet did not genuinely believe that the statutory requirements for a declaration of a public order emergency had been satisfied). This conforms with my assessment of the evidence I heard from the various officials and ministers who were instrumental in the decision to invoke the Act. The Federal Government undertook a thorough and structured analysis and, applying the law as it understood it to be, Cabinet and the prime minister believed that the threshold for declaring a public order emergency had been met.

Some suggestion was made that in the absence of disclosure of the legal advice that Cabinet received, which is protected by solicitor – client privilege, it cannot be known whether its decision conformed to that opinion. I do not accept this argument. Numerous witnesses, including, but not limited to the prime minister, the clerk of the Privy Council, and the minister of Justice (who was responsible for providing the legal advice to Cabinet), testified that they believed the legal thresholds for invoking the *Emergencies Act* were met. Each of them explained what they believed those thresholds to be. I do not need to see the legal advice itself in order to accept the evidence that they believed their conclusion to be justified in law.

I note, however, that it would have been preferable if the legal basis for Cabinet’s decision had been articulated at an earlier stage of the Commission’s work, an issue to which I return in my Recommendations.

I have no hesitation in accepting that Cabinet had a subjective belief that it was facing a public order emergency. The more substantial issue that I must assess is the objective question: whether Cabinet’s belief in the existence of a public order emergency was objectively reasonable. I turn now to that question and will assess it with respect to each of the statutory thresholds contained in the Act.

9.2 An urgent and critical situation of a temporary nature that seriously endangered the lives, health, or safety of Canadians

From my assessment of the situation as understood by Cabinet, I am satisfied that a compelling and credible factual basis existed that objectively supported a reasonable belief that the lives, health, and safety of Canadians were seriously endangered.

Cabinet had four main bases upon which to conclude that this criterion was satisfied: dangers to the life, health, and safety of residents and other innocent bystanders in Ottawa, as well as other areas affected by the protests; risk of serious injury and violence within the protests themselves; the short- and long-term impacts of border blockades; and the risk of conflict arising from counter protests.

The impact of the occupation on the residents of Ottawa was striking. Many experienced negative effects on their physical and psychological health and were legitimately concerned for their personal safety. Street obstructions impeded access to critical public and emergency services. There were multiple reports of harassment, intimidation, and assaultive behaviour, to which law enforcement was often unable to respond. The very fact that law enforcement was overwhelmed and unable to enforce basic laws created a safety risk. The fire hazards caused by open fires, wood piles, propane tanks, and jerry cans of fuel were constant. Residents endured prolonged exposure to diesel fumes and excessive noise from air and train horns. Many of these effects had a particularly strong impact on vulnerable individuals, especially those who rely on homecare or the delivery of goods and services.

There were also dangers to bystanders who found themselves in the midst of other protests across the country. Residents of Coutts, for example, appear to have been unable to travel to Milk River to access essentials such as medical services and grocery stores. Others suffered negative impacts to their psychological health.

There were also reasonable concerns regarding serious injury and violence arising from the protests themselves. On several occasions, police attempting to enforce the law were swarmed. Tow truck drivers who tried to assist were physically threatened. Police reported that the tone of the protests was becoming increasingly hostile, as were some protesters. The entrenched nature of the protests made it more likely that some form of police enforcement action would be necessary, and if such action occurred, the large numbers of protesters involved increased the potential for violent confrontation. Children were present at many protest sites, placing them at risk, and there were suggestions that they were being used as human shields to prevent police enforcement. The possibility of injury was particularly high following the discovery of a large cache of weapons in Coutts. The recent known presence of weapons at the site of a protest, together with the inflammatory provocation expressed by protest supporters, increased concerns that bad actors such as had been discovered at Coutts might be present within, or might join, other protests.

There was also a risk of violence arising from counter protests. Frustration was growing on the part of individuals and communities impacted by the ongoing protests. There were numerous reports of confrontations between protesters and others, and suggestions by some, such as union leadership in Windsor regarding the blockade, that they would take matters into their own hands.

The border blockades had both immediate and potentially long-term impacts on the lives, health, and safety of Canadians. They instantly disrupted the lives and livelihoods of thousands of Canadians. They interfered with critical supply chains and risked causing shortages of essential medical supplies and food. There was concern that they would expand to other critical infrastructure such as railways and ports, the consequences of which would be profound. Coming at a time when the economy was already particularly vulnerable, they risked jeopardizing Canada's trade relationships, and significantly imperilled the economic livelihood of Canadians, with unknowable consequences.

As explained earlier in this section, I recognize that the *Emergencies Act* was not intended to apply to “economic emergencies.” Financial costs and trade impacts are not sufficient in themselves, and I have not considered them to be so. What is relevant, however, is the human health and public safety consequences that may flow from a serious, sudden, prolonged, and deliberate disruption to economic security and the ability to earn a living. The human impact of this cannot be ignored in considering whether there was “an urgent and critical situation that seriously affected the lives, health, and safety of Canadians.”

I also acknowledge that there were facts that suggested that the situation might be less concerning. Certain sites and situations, such as Coutts and the Ambassador Bridge, were in the process of being brought under control. There remained, however, considerable uncertainty as to whether that control could be maintained. As RCMP Commissioner Lucki reported to the Deputy Ministers’ Committee on Operational Coordination (DMOC) regarding the Ambassador Bridge blockade, it “would only take a few vehicles to shut it down again.”³¹

In addition, the protests were an ongoing, rolling, and mobile movement. As one protest ended, another would soon appear. I note that Cabinet was receiving reports of potential blockades of rail crossings and ports. While these situations did not materialize, the Government’s concern about them was reasonable.

I accept that there had not been reports of serious, widespread violence manifesting at protest sites, and that Police Liaison Teams (PLTs) had, on certain occasions, been able to negotiate with protesters to mitigate harms, such as by opening traffic lanes for essential services and, in some cases, cross-border traffic. These were important factors to take into consideration, but they did not render Cabinet’s conclusion that the safety of Canadians was endangered unreasonable. Objectively speaking, there were substantial grounds for this concern.

³¹ DMOC Read out, February 13, 2022, SSM.CAN.00000096, p. 1.

9.3 Activities directed toward the threat or use of serious violence against persons or property for the purpose of achieving a political, religious, or ideological objective

The invocation of the *Emergencies Act* requires that there be a threat to the security of Canada, that is to say, a real risk of serious violence against persons or property, and that the violence be directed to achieving a political, religious, or ideological objective. Lawful advocacy, protest, and dissent are excluded from the definition, unless carried out in conjunction with threat activity.

This proved to be the most controversial of the statutory requirements in this instance and was the focus of much attention during the Inquiry.

Canadian criminal law helps to illuminate the meaning of “serious violence” against persons. The term “serious violent offence” has been held, albeit in a different statutory context, to mean an offence in which someone causes or attempts to cause “serious bodily harm.” “Serious bodily harm,” in turn, means “any hurt or injury, whether physical or psychological, that interferes in a substantial way with the physical or psychological integrity, health or well-being of the complainant.”³²

In my view it is reasonable to interpret “serious violence” to persons in the context of the *Emergencies Act* as violence causing, or intended to cause, substantial interference with someone’s physical or psychological integrity, health, or well-being.

Threats or use of serious violence against property may also be threats to the security of Canada.

In assessing the threat requirement, it is important not to lose sight of the “purpose” element. Only those threats of serious violence that can reasonably be viewed as

³² *R. v. C.D.*; *R. v. C.D.K.*, [2005] 3 S.C.R. 668, para 20; *R. v. McCraw*, [1991] 3 S.C.R. 72, p. 81.

being for the purpose of achieving a political, religious, or ideological objective are relevant.

There was information before Cabinet indicating a threat of serious violence for a political or ideological purpose. Ideologically motivated extremists, several of whom CSIS had identified as subjects of investigation, were present at and encouraging the protests. There were numerous threats made against public officials by individuals opposed to public health measures. Targets included the prime minister and several Cabinet ministers, the premier of Ontario, the mayors of Ottawa, Windsor, and Coutts, multiple Ottawa City councillors, and the chief of the Ottawa Police Service. Certain federal elected officials and staff had been advised to stay away from downtown Ottawa for their own safety. CSIS and the Integrated Terrorism Assessment Centre (ITAC) had repeatedly advised that, although no tangible plot had been identified, the protests presented an opportunity for IMVE supporters to engage in threat activities. CSIS and ITAC had also advised of the risk that a lone wolf actor, inspired by the IMVE elements at the protests, might conduct an attack against soft targets such as opposition groups or members of the public, and that lone wolf actors are very difficult to detect and predict.

The rhetoric of the protests also increasingly began to contemplate violence as part of a desire to achieve policy change over public health measures. Online messaging from protesters in Ottawa, Coutts, and elsewhere suggested that protesters intended to succeed in their cause or die trying. Messaging also indicated that any action by police or Government would be interpreted as a “call to arms.” NSIA Thomas and the RCMP reported that the protesters in Ottawa were becoming more hostile and aggressive, suggesting that violence might erupt out of frustration with the Government’s refusal to accede to their demands. According to the following, from OPS Deputy Chief Steve Bell, after weeks of occupying the streets of downtown Ottawa, the mood of participants was already volatile and becoming more so:

The 11th, 12th, and 13th are the weekend. I remember that weekend having extreme concerns for the safety of our members, for the safety of our community based on the volatility and escalation in violence in direct confrontational interactions with our members as it relates to them trying to manage the area or conduct any enforcement in it. It was concerning. The situation at this point was becoming exceptionally more volatile and you could see it escalate almost on an hour-by-hour basis.³³

I recall that the white paper specifically indicated that the concept of a public order emergency was intended to cover situations of “civil unrest” and “lawlessness,” when connected to threats of politically motivated serious violence.

Throughout the protests, there were also various threats made against the Canadian system of government itself. Perhaps the most notorious was the “Memorandum of Understanding” prepared by Canada Unity, which proposed to have the Governor General and the Senate force the resignation of Canada’s democratically elected Government. There were others, including Patrick King’s messages on social media that included statements such as “WE WILL BE THE NEW GOVERNMENT. We will just take the power and share it together.”³⁴ Concerns such as these took on an additional gravity with the discovery in Coutts of a large cache of weapons and ammunition amassed by protesters with allegedly extremist anti-government views.

These threats must be understood in the broader context of the online rhetoric that had become increasingly violent over the course of the pandemic. This included references to assassination, holding “Nuremberg Trials 2.0,” and conducting civilian arrests of those perceived to be involved with public health rules. These concerns must also be assessed within the context of law enforcement’s acknowledgement that its ability to identify potential perpetrators was limited and that a significant portion of

³³ Evidence of Steve Bell, Transcript, October 24, 2022, p. 128.

³⁴ OPS Daily Intelligence Advisory Convoy 2022, OPS00010125, p. 1

ideologically motivated violent rhetoric occurring online likely remained undetected and unreported.

In my view, there was credible and compelling information supporting a reasonable belief that the definition of threat to the security of Canada was met.

I recognize, of course, that CSIS had not assessed the protests as constituting a threat to the security of Canada pursuant to their mandate under the *CSIS Act*. Some parties suggested that, because of this, Cabinet's conclusion that there was such a threat was unreasonable. I do not accept this argument.

To be clear, I agree that since the definition of "threats to the security of Canada" in the *Emergencies Act* is incorporated by reference from the *CSIS Act*, the definition is the same in both statutes. The effect of incorporation by reference is that the incorporated material is considered to be part of the text of the legislation.³⁵

This said, the *CSIS Act* and the *Emergencies Act* are different regimes that operate independently from each other. They serve different purposes, involve different actors, and implicate different considerations. While CSIS's input was, of course, an important consideration for Cabinet, it was not, and should not have been, determinative.

In other words, it is not the definition itself that is different, but rather that two different decision makers, each interpreting the same words in the context of different statutes, can reasonably come to different conclusions as to whether the threshold is met.

I recognize that CSIS Director Vigneault, in explaining why he advised the prime minister that declaring a public order emergency was necessary even though CSIS had not identified a threat to the security of Canada, erroneously referred to the definition of "threat to the security of Canada" as being "broader" under the *Emergencies Act* than under the *CSIS Act*. Similar comments were made by Minister Blair and NSIA

³⁵ *B.C.G.E.U. v. British Columbia (Minister of Health Services)*, 2007 BCCA 379, paras 34 and 35.

Thomas. I note that these witnesses are not lawyers, and I consider their evidence on this with that in mind.

Minister of Justice and Attorney General of Canada David Lametti explained the point more clearly:

So there is a definition that is incorporated by reference. It's moved into the *Emergencies Act* and the decision-making power remains with Cabinet.

So there's also a purpose change. What CSIS is doing is determining whether a threshold is met for the purposes of further investigations, generally clandestine, according to CSIS protocols, with warrants, et cetera, they're all -- you've heard testimony already from the CSIS Director, as well as Madam Tessier, about the rules of thumb that CSIS uses for proceeding in their analysis under section 2.

That isn't incorporated in here because the decision maker is different. And the inputs can be much wider - have to [be] much wider when you're a member of Cabinet, when you're making a decision Governor-in-Council. There are other inputs that can go into the meeting of that definitional standard that CSIS wouldn't normally use. And so that's very, very important to underline, that it is -- while it is the same standard of the same magnitude, the interpretation of that standard is being done according to a wider set of criteria by a very different set of people with a different goal in mind, and that goal is given by the *Emergencies Act* and not the *CSIS Act*.³⁶

The prime minister confirmed that this was his understanding as well.

³⁶ Evidence of David Lametti, Transcript, November 23, 2022, p. 81.

There's been a bit of back and forth at this Commission on whether these words are different or can be read differently, or broader when they're used in a public order emergency than they're used for the CSIS. It's not the words that are different. The words are exactly the same in both cases. The question is, who is doing the interpretation, what inputs come in, and what is the purpose of it?³⁷

I also accept that the definition in section 2(c) of the *CSIS Act* includes broad, open-ended concepts such as “threat” and “serious,” that leave scope for reasonable people to disagree. As University of Ottawa Faculty of Law Professor Craig Forcese has written regarding the four categories of threat outlined in section 2 of the *CSIS Act*, “each of these categories of national security threat is broad and vague, and thus capable of expansive definition.”³⁸ While I do not suggest that expansive definition is appropriate, I agree that the definitions are broad and open-ended.

I note as well that both Director Vigneault and CSIS Deputy Director of Operations Michelle Tessier candidly acknowledged that determining whether a threat to the security of Canada exists is “not an exact science.” Director Vigneault further noted that “in this event and other events of the sort that we've seen in the US, [...] in other democracies is that there could be a very quick turn of events.”³⁹ My impression, upon hearing the CSIS witnesses and reviewing the documents, is that CSIS was, with good reason, extremely hesitant to invoke its investigative mandate with respect to the Freedom Convoy protests, beyond the existing subjects of investigation. Under the current structure of the *Emergencies Act*, this can lead to precisely the situation that seems to have occurred here: a public order disturbance arising from a threat to the security of Canada that has not been identified as such by CSIS.

³⁷ Evidence of Prime Minister Trudeau, Transcript, November 25, 2022, p. 50.

³⁸ Craig Forcese, “Through a Looking Glass Darkly: The Role and Review of ‘National Security’ Concepts in Canadian Law” (2006) 43:4 *Alberta Law Review* 963, p. 969.

³⁹ Evidence of David Vigneault, Transcript, November 21, 2022, p. 42.

I highlight here the situation in Coutts, Alberta, which was a concrete manifestation of the very risk that had been identified to Cabinet: a highly disruptive, but mainly peaceful protest that included a smaller group of actors who allegedly intended to effect serious violence for a political purpose. The fact that this situation was discovered and disrupted is a credit to law enforcement. It was, nevertheless, clearly a situation that could reasonably be viewed as meeting the definition under section 2(c) of the *CSIS Act*, but that CSIS had not identified as such. In the same way, Cabinet could reasonably consider that the risk of similar groups of politically or ideologically motivated violent actors being present at other protests met the definition in section 2(c) although CSIS had not identified them.

Though no definitive links had been found, there was legitimate concern that similar individuals or groups intent on violence might be present in Ottawa or at other protests. Law enforcement and intelligence agencies view the group Diagon as a militia-like extremist organization. The discovery of the Diagon insignia among the material seized at Coutts, coupled with the presence of Diagon leader Jeremy Mackenzie in Ottawa, heightened this concern.

I recognize that some of the information before Cabinet at the time, such as the suggestion that a firearms theft in Peterborough, Ontario, might be connected to the protests, was later found to be unsubstantiated. The record before me shows, however, that most of the information that Cabinet was acting upon was borne out.

It is also important to acknowledge that not all the threats of serious violence I have enumerated can be linked to both specific political or ideological objectives and to identified protesters. However, in some instances the link between serious violence and political or ideological objectives is clear, such as the threats to assassinate public officials because of the government's public health policies. In still other cases, for example the alleged conspiracy uncovered at Coutts, not only is this connection between serious violence and politically or ideologically motivated violence made, but it can also be attached to a specific protester. When the record is viewed as a

whole, the inference connecting the protests to threats of serious violence and the achievement of political or ideological objectives is readily and reasonably available.

I emphasize here that this should in no way be taken to mean that peaceful, lawful protest that seeks to achieve a change in government policy is in any way a threat to the security of Canada. To the contrary, it is a fundamental and cherished part of a healthy democracy. Indeed, the right to protest helps ensure the security of Canada. But the situation that Canada experienced in February 2022 was not peaceful, lawful protest. Many of the protesters may have intended it to be, but the situation escaped their control. As NSIA Thomas put it, at some point peaceful, lawful protest “metastasized into something else.”⁴⁰

To return once again to the theoretical principles underlying emergency powers, the threshold for invocation is the point at which order breaks down and freedom cannot be secured or is seriously threatened. In my view, that threshold was reached here.

I do not come to this conclusion easily, as I do not consider the factual basis for it to be overwhelming and I acknowledge that there is significant strength to the arguments against reaching it. It may well be that serious violence might have been avoided, even without the declaration of emergency. That it might have been avoided does not, however, make the decision wrong. There was an objective basis for Cabinet’s belief, based on compelling and credible information. That was what was required. The standard of reasonable grounds to believe does not require certainty.

9.4 An emergency of such proportions or nature that it exceeded the capacity or authority of a province to deal with it

In order to constitute a national emergency under section 3(a), the situation must be such that a province lacks the capacity (i.e., the ability in practice), or the authority,

⁴⁰ Evidence of Jody Thomas, Transcript, November 17, 2022, pp. 224 and 225.

(i.e., the power), to deal with the emergency. An emergency could be beyond the capacity or authority of a province to deal with if:

- a. the emergency is such that no single province would be capable of resolving the entire situation, because the emergency extends beyond provincial boundaries; or
- b. the emergency is beyond the capacity or authority of at least one province, such that the provinces, collectively, would be unable to resolve the situation.

I find that this requirement is met. This was a nation-wide, mobile, and constantly evolving series of events. Many provinces were affected, and the protest groups were numerous and geographically disparate. The protest in Ottawa drew protesters and convoys from across the country. The convoys were, by definition, mobile.

It is true that the protests were first and foremost policing matters, and in that sense fell within provincial jurisdiction. Although certain provinces expressed the view that they could manage the situation in their own province, this was uncertain, and evidently not the case nation-wide. I note also that certain affected provinces had indicated their incapacity to resolve the situation. The protests in Ontario required drawing on RCMP resources from all over the country. Alberta had requested federal assistance with law enforcement, which the RCMP had been able to provide by drawing on resources from British Columbia. On February 11, the premier of Manitoba requested “immediate and effective federal action regarding the blockade activity unfolding at the Canada-US border crossing at Emerson, part of a series of damaging protest activities now occurring at international border crossings across the country.”⁴¹ In addition, it was reasonably foreseeable that if the protests continued to spread as anticipated, absent

⁴¹ Letter from Premier Heather Stefanson to Prime Minister Trudeau, February 11, 2022, SSM.NSC.CAN.00001176.

federal action, provincial resources would be insufficient, as they had proved to be in Ontario and Alberta.

Between their inception and the date that the emergency was declared, the protests had grown into a movement that could not be resolved in a localized, piecemeal fashion. It was a national situation, requiring national measures such as cutting off funding to the protests, which no province had the authority to do.

9.5 Could the emergency be effectively dealt with by any other law of Canada, and did it require the taking of special temporary measures?

For a situation to constitute a national emergency, it must be one that cannot be dealt with under any other law of Canada. This raises the question: what is meant by “any other law of Canada”? The Supreme Court has held that the phrase “law of Canada” in section 101 of the *Constitution Act, 1867* means federal statute, regulation, and common law.⁴² In other words, it excludes provincial law. Both federal and provincial legislation differentiates between the language “law of Canada” with “law of Canada or a province.”⁴³

Section 3 of the *Emergencies Act* confirms this interpretation. Section 3(a) requires that a national emergency must “exceed the capacity or authority of a province to deal with it.” It would be redundant for section 3 to also require that the situation be one that “cannot be effectively dealt with” by provincial law. Rather, once Cabinet has established that a situation exceeds provincial authority, it must then consider whether that situation can be effectively addressed under any other federal statute or common law before concluding that a “national emergency” exists under the *Emergencies Act*.

⁴² *Roberts v. Canada*, [1989] 1 S.C.R. 322.

⁴³ See for example, *Privacy Act*, R.S.C. 1985, c P-21, ss. 8(2)(e); *Softwood Lumber Products Export Charge Act, 2006*, SC 2006, c. 13, s. 88. See also examples in provincial statute, *Business Corporations Act*, SNWT (Nu) 1996, c. 19, s. 264; *Income Tax Act*, R.S.B.C. 1996, c. 215, s. 68.1.

The modifier “effectively” is important. There may be situations where other federal laws could technically apply to a situation, but still fall short. Practical considerations must be taken into account, such as whether the resources exist to enforce existing authorities, whether they would be effective in resolving the situation in a timely way, and whether they would address the situation safely.

Here, the evidence shows that the federal government found itself seriously impacted by the protests in the operation of its ports of entry and with respect to critical buildings in Ottawa, as well as in areas of responsibility such as the economy and trade. Jurisdictionally, however, it was unable to resolve the protests or meaningfully contribute to the efforts of police to do so, beyond providing the assistance of the already-stretched RCMP. As I discuss earlier in this section and in Chapter 14, the Federal Government had done considerable work to identify solutions that could be drawn from existing authorities, but ultimately concluded that none, taken separately or together, were a viable solution to the situation.

Although there continued to be laws such as the *Criminal Code* that, if effectively used, could bring the protests under control, it was apparent that law enforcement had serious concerns about using those powers, including whether engaging in enforcement action would give rise to unacceptable safety risks for police, protesters, and bystanders. This is as an example of a law being legally available, but ineffective due to the practical realities of the situation.

Finally, although the option of deploying the Canadian Armed Forces continued to exist, I agree with the Federal Government’s view that it was not an appropriate solution in these circumstances. In saying this, I recognize that when the *Emergencies Act* was adopted, use of the military against civilians to quell protests was considered not only a viable option, but preferable to using emergency powers. The white paper proposes that “[l]ess serious emergencies arising from the breakdown of public order would

continue to be dealt with under the *Criminal Code* or Part XI of the *National Defence Act* (which covers aid to the Civil Power [...]).”⁴⁴ Much has changed since then.

The question of whether the emergency necessitated special temporary measures is effectively a consequence of the previous point. The work done to identify solutions within existing legislation identified the gaps in authority that would require the taking of special temporary measures. As I explain later in this chapter, only measures that are necessary to address the Public Order Emergency could be taken.

9.6 Provincial consultation

The Federal Government submits that the First Ministers’ Meeting on February 14, 2022, complied with its obligation to consult with the provinces before declaring a public order emergency. The Federal Government was correct to recognize that this was the only “consultation” that took place, and that the previous “engagements” that I review in Chapter 14 would not, on their own, satisfy this requirement. The First Ministers’ Meeting was the only time the premiers were asked for their views on the invocation of the *Emergencies Act*.

The Federal Government has only carried out this sort of consultation once before. That was in 2020, when it considered declaring an emergency in response to the COVID-19 pandemic. The provinces point to those consultations as an example of a proper process. Compared to that process, a number of provinces have suggested that the First Ministers’ Meeting was a perfunctory exercise that did not comply with the statutory consultation requirement.

The 2020 example notwithstanding, there is effectively no “playbook” to instruct federal officials in how to carry out an effective and meaningful consultation under section 25.

⁴⁴ Canada, Emergency Preparedness Canada, *Bill C-77: An Act to Provide for Safety and Security in Emergencies – Working Paper*, p. 58.

The Government, when introducing the *Emergencies Act*, recognized that measures taken pursuant to a declaration of emergency might intrude upon areas of provincial jurisdiction.⁴⁵ The obligation of the Federal Government to engage in consultations was a response to this exceptional aspect of the Act.

The white paper explains how the Government anticipated that the term “consultation” should be understood in the context of the *Emergencies Act*:

“Consultation” in this context is to be interpreted in its fullest dictionary sense of not only exchanging information but also seeking the advice and taking into consideration the interests and views of the provincial government which may be affected. Furthermore, to ensure clarity and accountability, the onus of consultation will vary depending upon the circumstances of the emergency and operational requirements. The limitation of “reasonableness,” where it is applied, is designed to permit the commencing and conducting of necessary operations and controls in a timely fashion.⁴⁶

Thus, the intention was to create a requirement that would maximize the principles of federalism but remain flexible enough that the consultation requirement would vary in keeping with the practical realities and exigencies of any given emergency situation.

The white paper noted that as a legal matter, it is “clear that Parliament, and Parliament alone, has authority to determine when such a national emergency exists,” but that consultation is desirable not only to “respect principles of federalism,” but also because “the effective deployment of the country’s resources during a national crisis

⁴⁵ *House of Commons Debates*, 33rd Parl., 2nd Sess., Vol. 9 (November 16, 1987), pp. 10807 and 10809 (The Hon. P. Beatty). See also Canada, Emergency Preparedness Canada, *Bill C-77: An Act to Provide for Safety and Security in Emergencies – Working Paper*, pp. 50 – 53.

⁴⁶ Canada, Emergency Preparedness Canada, *Bill C-77: An Act to Provide for Safety and Security in Emergencies – Working Paper*, pp. 55 and 56.

requires the coordination of efforts by all levels of government, and thus demands consultation.”⁴⁷

I certainly agree that the premiers had little time to prepare and that the notice they received was not explicit regarding the topic to be discussed at the First Ministers’ Meeting. That said, in the context of the events, the topic of discussion probably did not come as a surprise to many of the participants.

The Federal Government indicated to the Commission that one of the reasons it did not inform the provinces of the purpose of the meeting was the concern that news could leak, and the potential for the declaration of an emergency could anger protesters and increase the risk of violence. I accept this point as valid, though I would characterize it as one taken out of an abundance of caution. I hope and expect that if the provincial governments were advised of the concerns that CSIS had expressed regarding the potential for escalation and violence should the proposed use of the *Emergencies Act* become public, they would have respected the confidentiality of the information.

Taken in isolation, it is arguable that the First Ministers’ Meeting was not an appropriate consultation. In my view, however, this conclusion would be a mistake. The First Ministers’ Meeting must be considered in the context of the substantial intergovernmental engagement work that came before, both at the political and the officials’ level, the aim of which was to make sure that existing legal tools were being used and resourced — a key aspect of and reason for consultation under the *Emergencies Act*.

Considering the totality of the circumstances, my view is that the manner in which the Federal Government conducted the consultation was adequate and satisfied the minimum requirements of section 25 but could and likely should have been better. It would have been preferable, for instance, if the provinces had been provided a

⁴⁷ Canada, Emergency Preparedness Canada, *Bill C-77: An Act to Provide for Safety and Security in Emergencies – Working Paper*, p. 32.

brief period to provide feedback on the proposed measures. This might have assisted Cabinet in delineating the scope and application of the measures taken under the Act.

There was no formal consultation with Indigenous communities regarding use of the *Emergencies Act*, although I heard evidence that the minister of Crown and Indigenous Relations reached out to the heads of the three national Indigenous organizations. The Act as currently drafted does not require consultation with Indigenous Peoples. This is an issue to which I return in my Recommendations.

9.7 Conclusion on the invocation of the *Emergencies Act*

I end with a quote from Perrin Beatty, the minister who introduced the *Emergencies Act*:

When the country is threatened by serious and dangerous situations, the decision whether to invoke emergency powers is necessarily a judgment call, or more accurately a series of judgment calls. It depends not only on an assessment of the current facts of the situation, but even more on judgments about the direction events are in danger of moving and about how quickly the situation could deteriorate. Judgments have to be made, not just about what has happened or is happening, but also about what might happen. In addition, to decide about invoking exceptional measures, judgments have to be made about what the government is capable of doing without exceptional powers, and on whether these capabilities are likely to be effective and sufficient.⁴⁸

For these reasons, I have concluded that Cabinet was reasonably concerned that the situation it was facing was worsening and at risk of becoming dangerous and unmanageable. There was credible and compelling evidence supporting both a

⁴⁸ House of Commons, Legislative Committee on Bill C-77, *Evidence*, 33rd Parl., 2nd Sess., Vol. 1, No. 1 (December 15, 1987), pp. 13 and 14 (The Hon. P. Beatty).

subjective and objective reasonable belief in the existence of a public order emergency. The decision to invoke the Act was appropriate.

10. Were the measures appropriate and effective?

I am required by section (a)(iii) of the Order in Council to set out findings and lessons learned on the appropriateness and effectiveness of the measures taken under the *Emergency Measures Regulations (EMR)* and the *Emergency Economic Measures Order (EEMO)*.

10.1 The Commission's mandate

In assessing how I should examine the measures contained in the *EMR* and the *EEMO*, I am guided by both the purpose of the Inquiry mandated by section 63(1) of the *Emergencies Act* and the terms of the Order in Council establishing the Commission.

As I have already stated, this Commission is intended to be a tool of public accountability. As such, it must be able to fully examine not only the circumstances that led to the invocation of the Act, but also the measures taken under it. It is possible for a government to be entirely justified in invoking the Act, but still use the Act in an unjustifiable manner. A commission under section 63(1) must have a robust role in examining measures adopted under the Act in order to fulfill its role as a check against government overreach.

The language in the Order in Council appointing me is consistent with this approach. The language of “appropriateness and effectiveness” is broad and places few restrictions on how I may go about my consideration of the measures.

Although the role of the Commission is not to conduct a judicial review, and the Commission does not have the legal authority to render a formal judgment on the “lawfulness” of the measures, I cannot avoid considering the legality of the measures

in assessing whether they were appropriate. Again, I do not intend or consider my findings on this topic to be in any sense binding on the courts. The effect or significance of my findings and conclusions in any judicial review proceedings will be a matter for the Federal Court to determine.

In my view, however, assessing the appropriateness of measures goes beyond a consideration of whether statutory or constitutional thresholds for the measures have been satisfied. “Appropriateness” is a more open-textured standard that permits me to assess the measures holistically. Parts of a measure may be appropriate while other parts may not be. However, any measure that does not meet the statutory preconditions will by definition be inappropriate.

I therefore interpret my mandate to give me the freedom to comment about any aspect of the appropriateness of the measures as broadly defined, in light of the information received during the course of the Inquiry.

Effectiveness relates more directly to whether the measures fulfilled the purpose of responding to the particular emergency in question. The concept is closely related to appropriateness. The fact that a measure was wholly ineffective in addressing an emergency may be a strong signal that it was also inappropriate. However, this is not always the case. Even a well-designed, lawful, and rights-respecting measure might still fail to successfully contribute to the resolution of an emergency. No measure can be perfect, particularly when created in situations of urgency. In such circumstances, a measure might well be appropriate, even if not ultimately effective in the particular case.

Moreover, like appropriateness, effectiveness is not an all-or-nothing concept. A measure may have been effective but could have been more effective if drafted or implemented differently. My mandate is broad enough to allow me to make this type of comment where applicable.



10.2 The legislative framework

Section 19(1) of the *Emergencies Act* sets out the powers that are available in a public order emergency:

<p>19 (1) While a declaration of a public order emergency is in effect, the Governor in Council may make such orders or regulations with respect to the following matters as the Governor in Council believes, on reasonable grounds, are necessary for dealing with the emergency:</p> <p>(a) the regulation or prohibition of</p> <p>(i) any public assembly that may reasonably be expected to lead to a breach of the peace,</p> <p>(ii) travel to, from or within any specified area, or</p> <p>(iii) the use of specified property;</p> <p>(b) the designation and securing of protected places;</p> <p>(c) the assumption of the control, and the restoration and maintenance, of public utilities and services;</p>	<p>19 (1) Pendant la durée de validité de la déclaration d'état d'urgence, le gouverneur en conseil peut, par décret ou règlement, prendre dans les domaines suivants toute mesure qu'il croit, pour des motifs raisonnables, fondée en l'occurrence :</p> <p>a) la réglementation ou l'interdiction :</p> <p>(i) des assemblées publiques dont il est raisonnable de penser qu'elles auraient pour effet de troubler la paix,</p> <p>(ii) des déplacements à destination, en provenance ou à l'intérieur d'une zone désignée,</p> <p>(iii) de l'utilisation de biens désignés;</p> <p>b) la désignation et l'aménagement de lieux protégés;</p> <p>c) la prise de contrôle ainsi que la restauration et l'entretien de services publics;</p>
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<p>(d) the authorization of or direction to any person, or any person of a class of persons, to render essential services of a type that that person, or a person of that class, is competent to provide and the provision of reasonable compensation in respect of services so rendered; and</p> <p>(e) the imposition</p> <p>(i) on summary conviction, of a fine not exceeding five hundred dollars or imprisonment not exceeding six months or both that fine and imprisonment, or</p> <p>(ii) on indictment, of a fine not exceeding five thousand dollars or imprisonment not exceeding five years or both that fine and imprisonment, for contravention of any order or regulation made under this section.</p>	<p>d) l’habilitation ou l’ordre donnés à une personne ou à une personne d’une catégorie de personnes compétentes en l’espèce de fournir des services essentiels, ainsi que le versement d’une indemnité raisonnable pour ces services;</p> <p>e) en cas de contravention aux décrets ou règlements d’application du présent article, l’imposition, sur déclaration de culpabilité :</p> <p>(i) par procédure sommaire, d’une amende maximale de cinq cents dollars et d’un emprisonnement maximal de six mois ou de l’une de ces peines,</p> <p>(ii) par mise en accusation, d’une amende maximale de cinq mille dollars et d’un emprisonnement maximal de cinq ans ou de l’une de ces peines.</p>
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These provisions must be read together with section 17(2), which sets out certain things that must be contained in a declaration of a public order emergency:

<p>17 (2) A declaration of a public order emergency shall specify</p> <p>(a) concisely the state of affairs constituting the emergency;</p> <p>(b) the special temporary measures that the Governor in Council anticipates may be necessary for dealing with the emergency; and</p> <p>(c) if the effects of the emergency do not extend to the whole of Canada, the area of Canada to which the effects of the emergency extend.</p>	<p>17 (2) La déclaration d'état d'urgence comporte :</p> <p>a) une description sommaire de l'état d'urgence;</p> <p>b) l'indication des mesures d'intervention que le gouverneur en conseil juge nécessaires pour faire face à l'état d'urgence;</p> <p>c) si l'état d'urgence ne touche pas tout le Canada, la désignation de la zone touchée.</p>
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Section 19(2) provides that if a declaration of emergency is limited to a specific area of Canada, the powers in section 19(1) can only be exercised or performed with respect to that area. Section 19(3) provides that the powers in s. 19(1) shall be exercised in a manner that does not unduly impair the provinces' ability to deal with the emergency, and with a view to achieving concerted action with them.

As I have noted earlier, the preamble to the Act confirms that measures must comply with the *Charter* and the *Canadian Bill of Rights*. Of course, this would be true even in the absence of the Act's preamble.

Taken together, these provisions indicate the following requirements for measures taken under the Act:

- a. The measures must fall within one of the types of measures authorized in section 19(1) of the *Emergencies Act*;
- b. The governor in council must have reasonable grounds to believe that the measures are necessary for dealing with the emergency;
- c. The measures may only relate to the parts of Canada to which the declaration of emergency applies;
- d. The measures must not unduly impair the provinces' ability to deal with the emergency; and
- e. The measures must comply with the *Charter of Rights and Freedoms* and the *Canadian Bill of Rights*.

In the case of the *EMR* and *EEMO*, some of these criteria are non-controversial. There was no suggestion that the measures in question fell outside of the scope of the kinds of measures authorized by section 19(1). Similarly, I did not hear a suggestion that the measures themselves unduly impaired the ability of provinces to respond to the events of January and February 2022. As such, I need not comment further on these matters.

The requirement for the governor in council to have reasonable grounds to believe the measures are necessary is a threshold that requires more extensive discussion. I have already discussed the standard of “reasonable grounds to believe” in my analysis on the invocation of the Act. In section 19 of the Act, the belief on reasonable grounds is tied to the necessity of the measures. The English text of section 19(1) refers to order and regulations “necessary for dealing with the emergency,” while the French text refers to “toute mesure ... fondée en l’occurrence.” This difference in terminology can be resolved by an interpretation of the term “necessary” that is informed by the notion of “justification.”

A necessary measure is one that is required, needed, or essential in order to deal with a declared public order emergency. A government confronting an emergency situation will seek not only to resolve the situation but to do so in a particular way.⁴⁹ Here, the Federal Government witnesses emphasized the importance of resolving the protest situation quickly and safely. In other words, Cabinet determined that it was necessary to resolve the emergency as soon as possible, and with a minimum amount of physical force, in order to ensure the safety and security of Canadians and restore their faith in the ability of their institutions to respond to a crisis. In my view, this was an appropriate outcome to strive for in addressing the emergency. A necessary measure will be one that Cabinet reasonably believes is needed to bring about that outcome.

In assessing what is necessary for dealing with an emergency, Cabinet will properly take into account a wide range of circumstances, including the urgency of the situation, the nature and scope of the emergency, and an assessment of how existing authorities have been used.

Necessity also requires tailoring. Cabinet, when it designs measures to adopt, must tailor these so as not to impose unnecessary restrictions or requirements on persons, property, or areas, or confer unnecessary powers on law enforcement or other officials. There may be more than one measure that could achieve the outcome of resolving the emergency quickly and safely. To show that a measure is necessary, Cabinet must consider alternatives, and be able to justify why the measure they chose, from among the possible measures likely to bring about the outcome, was deemed necessary in the circumstances.

With respect to the requirement that measures comply with the *Charter*, I only wish to note that this question encompasses an assessment of whether a *Charter* right has been limited by the measures, as well as if such a limit can be justified under section 1 of the *Charter* pursuant to the *Oakes* test, which I describe in Chapter 3.

⁴⁹ Nomi Claire Lazar, *On Necessity in the Emergencies Act*, p. 9-11. This report is reproduced in Vol. 5 of this Report.

10.3 Approach to my assessment

In assessing the appropriateness and effectiveness of the measures, I am mindful of the tension between speed and deliberation that is inherent in the exercise of emergency powers.

The urgent character of emergencies will generally demand quick decisions. Inaction or delay may lead to an emergency becoming significantly worse. The *Emergencies Act* is designed to permit swift action, and it is unlikely that measures adopted under the law will be models of perfection. In assessing measures, I cannot ignore the reality of the situation in which they were made.

At the same time, emergency measures are powerful tools. It is essential that reasonable efforts be made to ensure that they are as focused and controlled as possible, while still being effective in achieving their aim. Circumstances of urgency will nearly always be present when the *Emergencies Act* is used. This cannot serve as an excuse to accept what are otherwise inappropriate measures.

The present case presents an unusual situation due to the short duration of the emergency. As I have explained, the *Emergencies Act* reverses the normal order of deliberation and decision, allowing quick decisions to be made in urgent circumstances, with more considered deliberation to follow. Had the Public Order Emergency continued for a longer period, I expect that this process of deliberation and refinement would have taken place, whether through the Parliamentary review process, or by Cabinet itself. As it stands, the Parliamentary Review Committee was not even established until after the emergency was over, and there was likely insufficient time during the emergency for any meaningful refinement of the measures after they were enacted.

Assessing effectiveness presents additional challenges. The *EMR* and *EEMO* did not exist in a vacuum. At the same time those provisions were in effect there were many other ongoing activities directed toward responding to the protests. Separating the impact of the measures from other activities of government, law enforcement, and

private actors is, in many cases, impossible. Assessing the effectiveness of measures may involve drawing reasonable inferences.

It is also important for me to assess the measures both individually and as a whole. The measures were intended to work with each other, and with existing powers and authorities. Their effectiveness and their appropriateness should be assessed within the full context in which they operated.

A final word on this part of my mandate: During this Inquiry, attention was focused primarily on the question of whether it was appropriate for the Federal Government to invoke the *Emergencies Act*. Less attention was paid to the question of the appropriateness or effectiveness of some of the measures. This is largely a function of the short time during which the declaration of emergency and measures were in place, and the short time frame in which the Commission operated. Readers of this Report should be aware that, as I conduct my assessment of the measures, I do so without the benefit of the same thoroughness of submissions with respect to some of the measures as that which I received on the question of invoking the Act.

10.4 The deterrent effect of the measures

Before turning to an examination of the individual measures, I wish to begin by discussing the topic of deterrence. Throughout the hearings various witnesses referred to the deterrent effect of the declaration of the emergency itself as well as the measures adopted under it. This objective was particularly true of the emergency economic measures.

As a general matter, I agree that deterrence was an appropriate objective. The use of force to resolve the unlawful protests in Ottawa and elsewhere in Canada necessarily entailed a risk of physical harm to protesters, police, and bystanders alike. The larger the protests, the greater the risk. In Chapter 4, I discuss the role that Police Liaison Teams (PLTs) play in reducing the footprint of protests in order to make public order operations safer. The use of emergency measures to deter participation in the unlawful

protests was consistent with this approach. It was preferable, as a general matter, to dissuade protesters from participating than to remove them by force.

This is not to say that all deterrence measures were necessarily appropriate. Particular means of deterring participation might be grossly inappropriate. My point is that the strategy of deterrence was an appropriate one to pursue through the use of emergency measures.

Evaluating the effectiveness of the measures on deterring participation is difficult. It is generally impossible to know how many protesters left before enforcement and what motivated any given protester to leave. It is similarly impossible to know for a fact whether any person chose not to join the protests as a result of the measures. I did, however, hear considerable agreement among witnesses that the invocation of the *Emergencies Act* discouraged some individuals from remaining at existing unlawful protests or starting new ones.

A number of federal officials testified that they believed the measures had a significant deterrent effect. Although some of these witnesses rightly acknowledged that evidence of this was speculative or anecdotal, their belief appears to have been informed, at least in part, by the assessment of law enforcement personnel, who were in a position to observe these effects “on the ground.” Moreover, the deterrent effect reported by law enforcement was not only in Ontario; it extended from one side of the country to the other. For example, on February 21, RCMP Commissioner Lucki reported to the IRG that law enforcement in British Columbia, Nova Scotia, and Manitoba had each reported that the *Emergencies Act* had served as an effective communication tool and deterrent in their jurisdictions.

In Ottawa, law enforcement issued notices to protesters highlighting some of the measures that could be taken against them pursuant to the *EEMO* and the Ontario emergency regulations. I heard from law enforcement that this messaging incentivised some individuals to leave voluntarily, and deterred others from joining the unlawful

protests. I heard of similar messaging with respect to the *Emergencies Act* being used in Winnipeg and Windsor. Some witnesses felt that the *Emergencies Act* helped reduce the risk of a second blockade in Windsor and mitigated the threat of new unlawful protests in other provinces.

Although I note that the protest organizers who testified before this Commission do not appear to have been personally deterred by the invocation of the *Emergencies Act*, I am satisfied, based on the preceding paragraphs, that it did have some deterrent effect. While it is not possible for me to measure that effect with any precision, I find that messaging regarding the *Emergencies Act* likely incentivised some protesters to return home voluntarily or helped convince some individuals to stay home altogether.

I note that when the declaration of emergency was first proclaimed, unlawful protest activity nationwide was volatile and barely controlled. Within nine days, it was brought under control, and the declaration was revoked. In my view, it is fair to say that the declaration of an emergency and the measures taken pursuant to that declaration had a deterrent effect across the country, and this was an appropriate objective.

10.5 The prohibition on public assemblies

The prohibition on participation in certain types of public assemblies that were likely to lead to breaches of the peace was the cornerstone of the entire measures package. More than any other measure, the prohibition on participation directly targeted the most immediate manifestation of the emergency; namely, the protests themselves.

This measure was also the one that most directly impacted the constitutional rights of protesters. Most of the participants in the protest were engaged in the exercise of the core right protected by freedom of expression: political expression. While some protesters may have crossed the line into violence, and at times and in places, the assembly may not have been “peaceful,” the fact remains that many protesters were engaged in conduct that is afforded significant protection under the *Charter*. For this measure to have been appropriate, it needed to be carefully tailored.

In my view, Cabinet went to significant lengths to tailor the prohibition. It did not prohibit all anti-government protests, but only those that were likely to result in a breach of the peace as well as the serious disruption of the movement of persons, goods or trade, interference with critical infrastructure, or the support or threat or use of acts of serious violence (which is not constitutionally protected). This tailoring made a difference. Protests lawfully continued in various locations, including just outside of the town of Milk River, Alberta, and at the Canadian War Museum in Ottawa, Ontario.

One aspect of the measure does raise legitimate concerns: its geographical scope. It may be argued that the prohibition should have applied only in Ontario. By the time the *EMR* was made, the situation in Coutts had effectively been resolved, and the protest at the Pacific Highway border crossing in British Columbia was in the process of being cleared. Protesters in Emerson, Manitoba, had already been told that the RCMP would shortly be conducting an enforcement action, which resulted in them voluntarily leaving within days. Representatives of several provinces, both in the First Ministers' Meeting and during the Inquiry, stressed that they were able to manage local protests without the *Emergencies Act*. While Ottawa was by no means the Federal Government's only concern, it was the primary site of protest activity.

Federal Government witnesses stressed the importance of a Canada-wide prohibition because unlawful protests were still taking place outside of Ottawa, and there was a very real risk that new ones would erupt elsewhere. There is force to this submission. It would not be difficult, for instance, to imagine protesters in Ottawa simply moving to Gatineau, Quebec, and encamping outside of the federal institutions located there.

On the other hand, the Federal Government had the option to enact this provision of the *EMR* as only applicable within Ontario, but to clearly announce to protesters that it was prepared to quickly amend the *EMR* to expand it to any other province should circumstances so require.

While it is important for Cabinet to carefully consider limiting the geographical scope of measures such as this, I am satisfied that they did, and that there was an objective basis for Cabinet to believe that it was necessary that this measure apply nationally. Although I view it as a close call, I accept that Cabinet was reasonably concerned about continued proliferation of unlawful protests and over-stretched law enforcement resources nation-wide. This was a dynamic and fluid situation. As Minister of Intergovernmental Affairs Dominic LeBlanc explained, the national application of the measure was intended to be both dissuasive and preventive; dissuasive, by making it clear that a protest deemed unlawful in one jurisdiction could not simply show up in another; preventive, by giving the provinces the tools they would need to deal with situations that might suddenly arise in their jurisdiction, without further intervention by the Federal Government. The measure sent a clear signal that conduct like that which was occurring in Ottawa would not be tolerated anywhere in Canada. Finally, Cabinet was concerned about coordination between the protests. While I have found that there was no such coordination, that concern was nonetheless reasonable at the time, and would have contributed to a reasonable belief that it was necessary for this measure to apply nation-wide.

I have little difficulty concluding that this measure was effective. The provision clearly indicated to protesters that their conduct was unlawful and provided a firm foundation for police action to remove protesters who did not leave on their own.

The strongest argument against the effectiveness of this measure is that police did not lay any charges under the *EMR*. The suggestion is that the existence of the *EMR* did not really play a role in ending the protests since it was not used. I do not find this argument compelling for at least two reasons.

First, as I discuss in Chapter 4, the policing of public protests cannot be reduced to a singular model of police laying charges against protesters. The management of public order events is more complex. The fact that police have exercised their discretion in a particular way — including to not lay certain types of charges — does not tell the full

story of the role the law played in managing the situation. In the case of the prohibition on participation, the Commission heard evidence that it was used by police in public messaging prior to enforcement to convince protesters to leave, not only in Ottawa, but in other provinces as well. As I indicate earlier in this chapter, I am satisfied that this measure did play a role in dissuading participation in the unlawful protests. The fact that they did so without actually needing to lay charges should arguably count in favour of its effectiveness, not against it.

Second, this argument looks at the prohibition on participation in isolation, rather than in the context of the measures as a whole. The effectiveness of the prohibition on participation cannot be assessed without considering the other measures that rested on it, such as the power to create exclusion zones, the prohibition against providing material support, or the *EEMO* asset freezing regime. As I discuss in more detail later this chapter, these measures were also effective in responding to the emergency. Since they all relied on the central prohibition on participation, I have no difficulty in accepting that the measure was itself effective.

10.6 Prohibition on travelling to or within a prohibited public assembly

The appropriateness of the ban on travelling to or within a prohibited public assembly is closely tied to the appropriateness of the prohibition against participation. Indeed, I see very little conceptually that divides the two. The prohibition against travel was subject to a number of exceptions, the most significant of which is that it did not apply to a person who resides in, works in, or is moving through that area for reasons other than to participate in or facilitate the assembly. In light of my conclusion on the appropriateness of the prohibition on participation, I do not see why I would arrive at a different conclusion on this aspect of the *EMR*.

My conclusion might have been different had there been evidence that the measure was intended or used to limit access to the protest area by representatives of the

media. In that case, the measure would be limiting access to the protest by persons who were not engaged in any unlawful activities, but who were still exercising a key constitutional right — freedom of the press. In such circumstances, other considerations, such as the operational requirements of the police, would have to be strong enough to render the measure appropriate. However, since I did not hear evidence or receive submissions on this point, I merely identify this as a potential weakness of how the measure was drafted that should be considered in the future.

With respect to the effectiveness of this provision, I have no difficulty concluding that it was effective. It was this provision that the OPS relied upon to create an exclusion zone around the downtown core, which was a critical component of their operational plan. Indeed, this speaks to the necessity of the measure as well.

I acknowledge that OPS Acting Superintendent Bernier believed that the police had common law power to create exclusion zones and that this power was sufficient to allow for the implementation of the plan to end the Ottawa protest. I agree that there is a common law power to create exclusion zones in some circumstances. This power, however, is not clearly defined. In my view, it is doubtful that the common law would have allowed for the creation of an exclusion zone on the scale of the one that was created pursuant to the *EMR*. At an absolute minimum, reliance on the common law would have led to disputes over the legality of such an exclusion zone. I note that although Ontario's *Emergency Management and Civil Protection Act* would have permitted the Government of Ontario to make a prohibition order akin to this measure, this was not included among the measures that Ontario adopted pursuant to its declaration of emergency.

The fact that many protesters did not respect the measure and that other protesters attempted to join the demonstrations, does not change my conclusion. As I have already said, I find that, taken as a whole, the measures provided clarity and had a deterrent effect. The fact that many protesters did not comply with this rule may mean that it was not fully effective in ending the protests on its own, but that is not

a reasonable standard against which to measure the *EMR*'s effectiveness. What must be assessed is whether it was effective in the sense that it made a meaningful contribution to bringing the emergency to an end. I conclude that it did.

10.7 Prohibition on bringing minors to a prohibited public assembly

In light of my conclusions on the appropriateness of the prohibition on participation and travel, it follows that the ban on causing minors to travel to or participate in prohibited assemblies was also appropriate. I heard evidence of protesters bringing young children to protests in Ottawa, Windsor, and Coutts. I suspect that many of the parents who did so believed that they were taking their families to lawful protests. In certain places and at certain times, they were likely correct. However, there was also a suggestion that, in some cases, children may have been used to prevent police enforcement. As events unfolded, the reality was that children were present in locations that were already unsafe, and becoming even less so by the day. By the time the *Emergencies Act* was invoked, these protests were no place for children.

In terms of the effectiveness of the measure, I am satisfied that at least some parents decided to either remove their children from the protest locations or not bring their children to the protests in the first place. I heard evidence that on several occasions, the police decided not to proceed with enforcement because of the presence of children at the protests; when the police did move to enforce in Ottawa, this no longer appeared to be an impediment. In light of this, and of the overall evidence of deterrence presented to me, it seems a matter of common sense that this measure had an impact.

10.8 Designation of protected places

I arrive at a somewhat different conclusion with respect to the list of designated protected places under section 6 of the *EMR*. Although I find that the objective of the measure was appropriate, its design was not.

It was appropriate to create a measure aimed at protecting designated places in light of the very real threat that new protests might emerge and interfere with critical infrastructure or other important property.

That said, the drafting of this provision strikes me as problematic in two respects. First, it simply provided that designated places could be “secured,” without elaboration as to what this meant. This is too vague to properly restrict the exercise of enforcement powers, and arguably too vague to be useful. As I discuss in Chapter 16, the Federal Government and the OPS ultimately decided that this provision should not be used in Ottawa. Second, it may also be problematic that the provision identifies a lengthy list of places that may be designated as protected, but also gives the minister of Public Safety and Preparedness the authority to designate, without restriction, any other places.

I recognize that I did not hear argument on this point and that there may be evidence and argument to support the measure, but based on the information before me, I conclude that it was not appropriate as drafted. I believe that this measure could have been appropriate, had it been properly designed. A more carefully crafted measure would have specified, for example, what types of conduct were prohibited, for instance damaging, destroying, or obstructing the use or operation of a designated place. This would have given direction to both the police and the public on how the provision would be implemented.

As for effectiveness, while I have found that the *EMR* as a whole deterred protesters, there is little to suggest that the power to secure designated places specifically contributed to this, and the power went unused because Cabinet’s reasonable fears

of further illegal protests interfering with designated places did not materialize. I therefore conclude that it was not an effective measure.

10.9 Rendering essential services

The measures that empowered the RCMP or its designate to require towing companies to assist the police was appropriate in light of the circumstances. Perhaps the defining feature of the demonstrations in January and February 2022 was the extensive use of trucks and heavy equipment as protest tools. They were the key components of slow rolls, blockades, and the long-term occupation of the streets of Ottawa, as well as locations such as Coutts. Honking their horns was one of the most obvious forms of the protesters' expression, as well as the cause of harm to local residents. Given the size of the vehicles and equipment involved, the police required towing capacity to help resolve at least some of the protests that took place.

I also heard evidence of the difficulty authorities had in procuring towing capacity. Towing companies near Ottawa, Windsor, and Coutts refused to assist police due to pressure from protesters and their supporters. I acknowledge that the Ontario Provincial Police (OPP) expressed confidence that it would have been able to deal with the protests even if the towing companies it had secured ultimately decided not to co-operate. However, having considered all the evidence, I am satisfied that tow trucks were important for a safe enforcement operation. It was likely that most, and potentially all available towing companies would have refused to assist police without the *EMR*. Although I have no basis to question the OPP's belief that the Ottawa protest could have been ended without access to heavy tow trucks, it is nonetheless certain that the operation was made considerably easier and likely safer because of the availability of tow trucks. The tow trucks also allowed the reopening of the streets once they were cleared of protesters. The authority to compel, if necessary, avoided the problem of retribution from protesters and their supporters, and offered companies the broad indemnification they felt they needed in order to participate. Indeed, it turned out to be the carrot of indemnification, and not the stick of sanction

for refusing to co-operate, that ultimately proved more important in procuring towing capacity.

I find that the measure was effective. While there was some debate about this, I am satisfied that the measure was used in Ottawa. This is clear from the OPP bill provided to the federal government for more than half a million dollars. The federal government was only required to pay to the extent that the *EMR* was invoked to require towing services. As I have already said, I am satisfied that such co-operation was not forthcoming absent the indemnification and compulsion measures under the *EMR*.

10.10 Enforcement authority for extra-provincial police

The *EMR* removed the need for the swearing in of out-of-jurisdiction police officers in order to enforce provincial laws and municipal by-laws. This allowed for rapid deployment of RCMP and officers from other provinces to assist the OPS and the OPP. By simplifying and accelerating this process, the measures assisted in bringing the situation to a rapid end.

I am satisfied that it was advantageous to remove this swearing-in requirement for RCMP officers to effectively assist with police operations in the protests. While the RCMP would have been able to enforce the prohibitions in the *EMR* itself without being sworn in, police operations also included enforcing provincial laws, including the provincial emergency measures.

The difficulties encountered when the RCMP came to assist in Windsor would have been avoided if the *EMR* measures had been in place. OPP Superintendent Earley, who led the operation in Windsor, found the swearing-in process so cumbersome that she circumvented it by pairing every RCMP officer with a partner from the OPP or the WPS so that the full range of authorities under provincial and municipal legislation could be used. This was a pragmatic solution, but an unfortunate waste of police resources at a time when they were badly needed and clearly stretched.

I recognize that the OPS had already taken steps to simplify and speed up the swearing-in process in Ottawa, but in a situation where time was of the essence, removing this unnecessary administrative burden was appropriate, especially given that several hundred RCMP officers were about to arrive in Ottawa, and the Government wanted the State of Emergency to be in place for as short a time as possible. As OPS Interim Chief Steve Bell noted, removing the swearing-in requirement allowed the OPS to “streamline and effectively create operational bodies.”⁵⁰

10.11 Border measures

The provision of the *EMR* that allowed the Canada Border Services Agency (CBSA) to exclude foreign nationals from entering Canada to participate in an unlawful assembly was ultimately of little, if any, assistance in resolving the emergency. The CBSA already had exclusion powers which it had successfully used to exclude many individuals who were entering Canada for the purpose of joining the protests, most notably, the requirement for individuals to show proof of COVID-19 vaccination. There was only one case in which foreign nationals were turned away at the border on the authority of the *EMR* provision. I have no difficulty concluding that their exclusion had no bearing on the resolution to the Public Order Emergency.

Given the lack of evidence of an influx of foreign nationals who could not be turned away using existing vaccination requirements, I conclude that this measure was not effective.

In the circumstances however, I am not prepared to say that it was not justified as part of the measures considered necessary at the time. The concern about American involvement and potential participation in the protests was reasonable. Many of the border blockades involved protests taking place on both sides of the port of entry. Calls originating from the United States had flooded emergency 911 call centres in Ottawa. More than CAD\$6 million in funding for the Freedom Convoy had been sent

⁵⁰ Evidence of S. Bell, Transcript, October 24, 2022, p. 130.

from the United States. The links between the United States and what was happening in Canada were significant enough that Prime Minister Justin Trudeau raised this in his call with U.S. President Joe Biden, who acknowledged that the situation was a shared problem. In this light, it was reasonable to consider that individuals would come to Canada to physically join the protests, and it was appropriate to take measures to prevent this.

10.12 Prohibition on providing material support

The prohibition on providing material support to individuals involved in illegal protests was appropriate. The Ottawa protests were only able to become as entrenched as they did through extensive contributions of support from others. Cash donations allowed for the purchase of hotel rooms and fuel. Sophisticated operations like Adopt-A-Trucker provided food, showers, and shelter. All of these contributed to sustaining the protests. It was appropriate for the Government to attempt to cut off this support to encourage protesters to depart before the police resorted to the use of force.

In reaching this conclusion, I am mindful that providing material support to protesters could be viewed as a constitutionally protected expressive act. However, given the pressing need to bring the protests to an end, and the important role that cutting off donations played in achieving that goal, I find that it was a reasonable limit to prohibit such donations.

I also have no difficulty in concluding that this measure was effective. Although I have found that few of the online donations ever reached the protesters, there were many other ways that third parties provided material support that sustained the protests. When this provision was taken together with other measures, such as the asset freezing regime under the *EEMO*, I conclude that it played a role in reducing the level of support received by the protesters, which in turn reduced their capacity to continue with the protests. This likely had at least some impact on the footprint of the protests prior to police enforcement action.

10.13 Asset freezing

The asset-freezing regime had two main purposes: first, discouraging people from remaining at the site of unlawful protests; and second, preventing further financial support from reaching convoy participants.

The level of financial support provided to the Ottawa protest from people across Canada and around the world was significant. Protest organizers were clear that they were stunned by how successful they were in generating funds. While their intended use was not always well-defined, it was obvious that the donated funds could enhance the ability of protesters to remain in Ottawa for an extended time, whether by purchasing food, fuel, hotel rooms, or entertainment.

However, as I have found, relatively little of this donated money ever reached the protesters. Most funds were blocked through steps taken by private entities and through court orders. This raises an interesting question of whether the provisions of the *EEMO* directed at freezing assets were necessary to respond to the unlawful protests.

I have concluded that they were, at least when viewed through the prism of the “reasonable grounds to believe” standard under the *Emergencies Act*. Given the pace at which donations were accruing, it was reasonable for Cabinet to be concerned that donations were continuing to make their way to protesters. The ability of Tamara Lich’s Freedom Convoy fundraiser to move to GiveSendGo so quickly following GoFundMe’s decision to shut it down demonstrated that both protesters and donors could rapidly change their fundraising tools. The use of cryptocurrencies as a fundraising tool complicated matters even more. It was entirely reasonable for Cabinet to be concerned that there would be further attempts to evade the effects of the Attorney General’s Restraint Order, or the *Mareva* injunction obtained by downtown Ottawa resident Zexi Li. There was evidence that court orders, while useful tools, could be slow to obtain and might not be effective in intercepting donations before they could

be moved. In light of the evidence, I conclude that Cabinet had reasonable grounds to believe that an extraordinary measure such as the *EEMO*'s asset freezing provision was necessary to prevent the protests from being financially sustained over the long term.

In addition, as I will explain later, the asset freezing regime had a significant impact in encouraging protesters to leave unlawful protests.

That conclusion, on its own, does not answer the question of whether the measures were appropriate. In particular, there are six features of the scheme that call for additional scrutiny: 1) the impact of asset freezing on *Charter* rights; 2) the geographical scope of the measure; 3) the application of the measure to provincially regulated financial institutions; 4) the scope of who the measures applied to; 5) the absence of discretion or exceptions in the scheme; and 6) the absence of adequate procedural protections.

As I discuss in Chapter 3, fundraising itself attracts constitutional protection under section 2 of the *Charter*, both for donors and for the recipients of the funds. For donors, the act of donation can itself be an expressive act. Given the political character of the protests, I have no difficulty in finding that many donors to the Freedom Convoy did so at least in part to express solidarity with protesters and to add their voices to a political protest. It also impacted protesters themselves by removing a key resource that permitted them to continue to engage in political expression.

However, for reasons I explain earlier in this chapter, by the time the *Emergencies Act* was invoked, ending the unlawful protests was itself a reasonable limit on freedom of expression. The asset freezing regime, while highly impactful on protesters, did not involve physical force or violence. By encouraging protesters to leave without having to resort to force, the *EEMO* sought to achieve an end to the unlawful protests that did not place the physical well-being of protesters or others at risk. It was a proportionate response to the situation as it existed as of February 14, 2022.

It was not an infringement of section 8 of the *Charter* for the *EEMO* to require listed entities to freeze property owned, held, or controlled by persons engaging in prohibited activities. While the *Charter* protects individuals against “unreasonable search and seizure,” the freezing of assets under the *EEMO* is neither unreasonable nor a “seizure” for the purposes of section 8. The Supreme Court has explained that s. 8 is meant to promote an individual’s privacy interests. It does not protect against restrictions on the enjoyment of property. Accordingly, even the taking of property by government action would not, in itself, constitute a “seizure” for the purpose of s. 8 unless it were done in the context of an administrative or criminal investigation.⁵¹ The *EEMO* did not constitute a taking of the assets in question; it only required designated institutions to freeze them. This was not meant to assist an administrative or criminal investigation, but to deter people from continuing to participate in illegal protests.

The second feature of the *EEMO* that requires consideration is that it applied throughout Canada. It might be argued that it should have been limited to Ontario, given its obvious focus on those who were involved in or supported the protests in Ottawa. The simple response is that the measures had to be national in scope in order to be effective. Between online banking and smartphone apps, moving money between financial institutions takes only minutes to accomplish. Had the *EEMO* applied only to institutions in Ontario, there would have been little to stop protesters raising or moving money using out-of-province entities.

The third feature of the *EEMO* was the fact that it covered provincially regulated financial institutions, such as credit unions. This was a real concern. One of the most significant aspects of the emergency branch of the “Peace, Order, and good Government” (POGG) power, which I discuss in Chapter 2, is that it permits the Federal Government to deal with matters that are ordinarily in the exclusive jurisdiction of the provinces. Such disruption of the ordinary rules of federalism should not be done lightly, nor accepted as appropriate without serious justification.

⁵¹ *Québec (Attorney General) v. Laroche*, [2002] 3 S.C.R. 708, paras 52 and 53.

However, I find that the *EEMO*'s regulation of provincial institutions was appropriate for two reasons. The first is that, just as protesters could easily move their money from province to province, so too could they move their money from banks to credit unions or other provincial institutions with relative ease. Second, the *EEMO* did not seriously interfere with provincial jurisdiction. The sole impact of the measure was to require asset freezing. Provinces remained free to regulate their institutions in any other way they saw fit.

The fourth feature of the *EEMO* is that it applied to more people than it should have. As I discuss in Chapters 15 and 16, there was a tension between what the *EEMO* did, and what the Federal Government was seeking to achieve. The *EEMO* required the freezing of assets for all “designated persons,” which would include not just protesters, but also small-dollar donors to the Freedom Convoy. On the other hand, the Federal Government stated, both in February 2022 and to the Commission, that it only wanted financial institutions to freeze the assets of protest leadership and major supporters. The message conveyed by the Government was that contributions to illegal protests were prohibited and exposed the donors to having their accounts frozen but that, at least at the outset, only significant donors would be targeted.

Ultimately, I do not find that the scope of the *EEMO* was inappropriate. Seeking to prevent any funds from supporting the illegal protests was, in my view, a reasonable measure in the circumstances. Further, the measure was not retrospective, meaning that those who had donated to the Freedom Convoy before the *Emergencies Act* was invoked were never at risk of having their assets frozen.

I note that in practice asset freezing was done largely on the basis of lists of designated persons provided by the RCMP to financial institutions. There appears to be no dispute that these lists did not capture small-dollar donors or others with only a peripheral connection to the protests. This mitigated the effects of the provision.

A related scope issue that I heard evidence about pertained to joint bank accounts. An individual who had no connection to the protests could still have had their assets frozen under the *EEMO* if they held their accounts jointly with a protester. It is not difficult to imagine a scenario where an individual would participate in the protests without the involvement of their spouse (or, indeed, against the spouse's wishes). It is clearly unjust for individuals with no connection to the protests to have their accounts frozen.

The difficulty, however, is that this appears to have been unavoidable. None of the parties made submissions on how the *EEMO* could have been structured to avoid this consequence, and I am unable to think of an obvious mechanism myself. The question then is whether the inevitable impact of the *EEMO* on innocent third parties rendered the measure inappropriate. Again, and not without some hesitation, I conclude that the measures were still appropriate. Excluding joint accounts from the *EEMO* would have allowed the protesters to easily and quickly circumvent it by using or creating joint accounts.

A fifth feature of the *EEMO* is that it imposed a blanket requirement to freeze assets without any type of discretion or exceptions for humanitarian considerations. I heard evidence of the *EEMO* interfering with the ability to purchase necessary medicines or interfering with child and spousal support payments. The *EEMO* did not intend such consequences.

In my view there ought to have been a provision granting flexibility in the *EEMO*'s application. Unlike the impact of asset freezing on joint accounts, which appeared to be an inevitable consequence of the *EEMO* regime, this measure could have been drafted to permit at least some type of humanitarian exception. Indeed, it appears that this was a matter of discussion between financial institutions and the Department of Finance while the *EEMO* was in effect. The absence of such a provision was concerning.

My criticism here is tempered by the reality that the *EEMO* was drafted quickly and was in force for only a short period of time. While officials from the Department of Finance ought to have anticipated the need for some type of exception regime when designing the *EEMO*, I am prepared to accept that the speed in which the measures had to be drafted may have made this challenging to do. Had the *EEMO* been in effect for a longer period of time, I would have expected that a system of exceptions or flexibility would have been introduced.

A sixth feature of the asset freezing regime is that it did not provide for adequate procedural protections. There were two components to this criticism: the absence of adequate notice to persons whose assets were to be frozen, and the absence of any unfreezing mechanism.

I do not accept that there was a failure to provide adequate notice. While there was no formal obligation in the *EEMO* for financial institutions to tell their customers about asset freezing, I do not think it was necessary to include such a rule. What was required was for protesters to know ahead of time that they were at risk of having their assets frozen if they continued in the conduct that qualified them as designated persons. I am satisfied that the police and the Federal Government went to considerable lengths to inform protesters about the invocation of the *Emergencies Act* and the possible consequences that they would face if they continued in their participation in the protests. Although there was less publicity with respect to the prohibition on making donations, there is also no indication that any donors had their accounts frozen.

The absence of a delisting mechanism is more troubling. If one of the objectives of the freezing regime was to convince people to leave protest sites, the regime should have had a mechanism to unfreeze accounts once people complied. The absence of any specific rules about unfreezing caused concern for financial institutions, who were unclear how to determine when an individual listed on a report provided by the RCMP was no longer a designated person. The Department of Finance initially expected that financial institutions would, as a result of their obligation to monitor client relationships

on an ongoing basis, unfreeze accounts once they confirmed that individuals were no longer involved in the prohibited activities. However, security concerns began to arise for front-line workers at financial institutions regarding individuals coming in and demanding to have their accounts unfrozen.

The absence of any rules was also a problem from the perspective of protesters. They received no direction on what they should do to have their accounts unfrozen, beyond leaving the protests. They were not told who to contact or what information they should provide. This lack of direction may well have contributed to the frustration and the security concerns mentioned previously.

The lack of an unfreezing mechanism was a failing of the *EEMO*. The Government ought to have anticipated the need to give former protesters prompt access to their funds. Greater attention ought to have been paid to this issue at the outset. However, I am satisfied that, with more time, such a system would have been developed. Department of Finance officials were already working with the RCMP to develop such a process when, on February 21, the RCMP issued a blanket notice to financial institutions that it no longer viewed any of the previously listed individuals to be “designated persons.” This was, for all intents and purposes, a clear statement that financial institutions should unfreeze accounts.

There is one aspect of the freezing regime that was, in my view, inappropriate in principle: the suspension of vehicle insurance. While intended to be another measure to discourage participation, it was in fact counterproductive and if implemented, would have been potentially dangerous. As police explained, it would be dangerous to suspend the insurance on these vehicles, as it would mean that either the protesters would have to leave without their vehicles, or they would have to drive away in uninsured vehicles. If they were then involved in an accident, innocent people might have been unfairly impacted by the absence of insurance. This measure was viewed as sufficiently problematic that the RCMP decided not to provide its designated persons lists to insurance companies. Quite simply, they did not want this part of

the *EEMO* to be used. While perhaps well intentioned, I do not view this measure as having been either necessary or appropriate.

Given the overall effectiveness of the asset-freezing regime in bringing the emergency to a safe and speedy resolution, I conclude that it was an appropriate and effective measure. As I have found, there ought to have been mechanisms providing for flexibility in the application of the regime and for the unfreezing of accounts, and the insurance provision should not have been included. Viewed as a whole, however, it was a powerful tool to discourage participation and to incentivise protesters to leave. I am satisfied that it played a meaningful role in shrinking the footprint of the protests, and in doing so, made a meaningful contribution to resolving the Public Order Emergency.

10.14 Reporting to Financial Transactions and Reports Analysis Centre of Canada

The measures requiring Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) reporting by payment processors and crowdfunding platforms were a function of a legislative gap that pre-dated the protests. As Deputy Prime Minister Chrystia Freeland put it, FINTRAC’s monitoring authorities “were appropriate for a 20th century economy, but not for a 21st century economy.”⁵²

While the changes may have enhanced the integrity of Canada’s anti-money laundering and terrorist financing regime, they had no impact on resolving the protests. According to FINTRAC itself, the changes did not result in any shift in reporting patterns and had no impact on its ability to fulfill its mandate because they were not in place long enough to have an effect.

While I am mindful that this was not argued or explored during the hearing, it strikes me that s. 4(2) of the *EEMO*, which required payment processors and crowdfunding platforms to report transactions reasonably suspected of being related

⁵² Evidence of Chrystia Freeland, Transcript, November 24, 2022, pp. 15 and 16.

to the commission of a money laundering or terrorist activity financing offence by a designated person, may have been unnecessary simply because it was largely redundant given other provisions in the *EEMO*. Crowdfunding platforms and payment processors were listed entities under section 3 of the *EEMO*. Section 2 of the *EEMO* required listed entities to cease dealings with designated persons. Thus, there would be no completed transactions by designated persons for the entities to report to FINTRAC. Meanwhile, under section 5 of the *EEMO*, the entities would have to report the existence of property in their possession belonging to a designated person, as well as any information about transactions or attempted transactions in respect of that property, to the RCMP or the Canadian Security Intelligence Service (CSIS). It is difficult to see, then, why reporting to FINTRAC under s. 4(1) was necessary.

The types of reporting obligations that section 4(3) of the *EEMO* imposes on crowdfunding platforms and payment processors already exist for other money services businesses. While I appreciate that this measure was important to fill a gap in the architecture of Canada's financial reporting and intelligence scheme, I have difficulty seeing how it was necessary for the specific purpose of dealing with the Public Order Emergency, particularly since it was acknowledged that this measure would take a long time to have an effect. Based on the information I have, I would conclude it was not appropriate as an emergency measure, but I recognize that there may be evidence and arguments on this point that were not before me.

11. Conclusion

Many have called the events of January and February 2022 exceptional. I think that is an apt description. There was much about that period that was, if not wholly unprecedented, then at the very least extraordinary. One exceptional event, and the focus of this Inquiry, was the use of the *Emergencies Act* for the first time in its 35-year history.

It is unsurprising that the *Emergencies Act* had never been used until now. It is exceptional legislation, meant for exceptional times. It can only be invoked when a multi-layered series of preconditions are satisfied. Its invocation triggers a series of review, oversight, and accountability mechanisms that serve as a check against governments using the Act when they should not, and as a means to restrain overreach. The cumulative effect of these preconditions and mechanisms is that resort to the *Emergencies Act* will be rare.

I have concluded that in this case, the very high threshold for invocation was met. I have done so with reluctance. The state should generally be able to respond to circumstances of urgency without the use of emergency powers. It is only in rare instances, when the state cannot otherwise fulfill its fundamental obligation to ensure the safety and security of people and property, that resort to emergency measures will be found to be appropriate. As for the measures Cabinet put in place in response to the emergency, I conclude that while most of the measures were appropriate and effective, others fell short.

It is regrettable that such a situation arose here, because in my view, it could have been avoided. As I have explained in this Report, the response to the Freedom Convoy involved a series of policing failures. Some of the missteps may have been small, but others were significant, and taken together, they contributed to a situation that spun out of control. Lawful protest descended into lawlessness, culminating in a national emergency.

The failures were not only in policing. The events of January and February 2022 can also be seen as a failure of federalism. In Canada, our federal system of government enriches democracy by striving to maintain national unity while supporting regional diversity. But fulfilling these promises depends on co-operation and collaboration. Responding 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. Unfortunately, in January and February 2022, this did not always happen.

The Freedom Convoy was a singular moment in history, in which simmering social, political, and economic grievances were exacerbated by the COVID-19 pandemic, shaped by a complex online landscape rife with misinformation and disinformation, and unleashed in a torrent of political protest and social unrest. Though extraordinary, it was not entirely unpredictable. Historically, it is common for pandemics to be accompanied by a decline in social cohesion and a surge in civil unrest. This one has been no exception.

It was the failure to anticipate such a moment and to properly manage the legitimate protests that emerged, especially the protest in Ottawa, that resulted in the 2022 Public Order Emergency. Had various police forces and levels of government prepared for and anticipated events of this type and acted differently in response to the situation, the emergency that Canada ultimately faced could likely have been avoided. Unfortunately, it was not.

Fortunately, the Parliament that passed the *Emergencies Act* had the wisdom to create a statute with both the powers needed to protect Canadians in times of crisis, and the safeguards needed to ensure restraint and accountability.

There are important systemic lessons to be learned for both police and governments from the events in January and February 2022. I have recommended legislative amendments that I hope will result in improvements to the *Emergencies Act*. I have also suggested best practices that I hope will better prepare governments and police to respond to situations that risk becoming public order emergencies.

I also hope that through the work of this Commission and this Report, I have provided the public with the transparency and accountability that Parliament intended from this Inquiry.



Recommendations

1. Introduction

Paragraph (a)(iii) of the Order in Council establishing this Commission directs me to “make recommendations, as pertains to the matters examined in the Public Inquiry, on the use or any necessary modernization of the Act, as well as on areas for further study or review.” Making recommendations is one of the most significant aspects of any commission of inquiry, this one included. At the same time, it is important to be realistic in terms of the scope of my recommendations. The mandate that I was given was broad, dealing with matters as far ranging as misinformation and social media, to online funding platforms, to complex policing operations, to the reform of the *Emergencies Act*. Given the short timelines that the Commission has worked under, I could not hear enough evidence to make informed and meaningful recommendations on every topic that falls within my mandate.

I have therefore focused my recommendations on matters that are both central to my mandate and for which I have received extensive information. In several other areas, I have recommended further study into specific issues, though I frequently suggest particular areas of focus or concern. Where I recommend further study, it is not because I view the matter as less important than one for which I make a specific recommendation. Indeed, in many cases, I have declined to make a recommendation because of the significance of the matter. In order to best serve the public, these matters require further study, reflection, and deliberation before being addressed.

My recommendations are often drawn from suggestions of witnesses, the submissions of parties, and the policy experts who wrote papers or participated in roundtables.

Although I do not often explicitly tie my recommendations to specific contributors, I am grateful for the assistance provided by each of them.

A final note about the scope of my recommendations: This Commission of Inquiry is a creature of federal legislation and for this reason, many of my recommendations are directed to the Federal Government. However, many of the issues that arose in this Inquiry engaged the interests and responsibilities of non-federal actors as well. This is reflected in the fact that eight provinces and territories, a number of municipal governments, and representatives of Indigenous governments all participated in some way in the Commission's work. Therefore, to the extent relevant to my mandate, I have also made recommendations to persons and bodies outside of the Federal Government.

2. Policing

My mandate directs me to examine, among other things, the efforts of police and other responders prior to and after the declaration of the Public Order Emergency, to the extent relevant to the circumstances of the declaration and the measures taken. The regulation of policing falls within the jurisdiction of both the federal and provincial¹ governments. Federal, Indigenous, provincial, and municipal police services and oversight bodies co-exist in Canada. Recommendations relating to policing fall within my mandate for several reasons. First, police responses, whether municipal, provincial, or federal, affected the Federal Government's decision to invoke the *Emergencies Act* in February 2022, and might be expected to do so in the future. Best practices in police responses may reduce the likelihood that future public order emergencies are proclaimed.

Second, protests such as the Freedom Convoy have a national dimension, requiring all governments to work together to respond in a way that is consistent with both

¹ Unless the context suggests otherwise, my references to provinces include territories.

public safety and constitutional rights. The federal government has an important role to play in coordinating, if not leading, how governments, police services, and oversight bodies work together.

What follows are my recommendations related to policing. I make one observation on wording. In policing circles, the Freedom Convoy was described in various ways: an incident, a major incident, a major event, or a critical incident. Nomenclature is not uniform throughout the country (as it arguably should be). It also reflects that in some jurisdictions, criteria have been developed to differentiate between how a police response should be organized and operationalized for subcategories of major events. Unless the context requires otherwise, I use the term “major event” to mean protests of a dimension that raise issues of the type identified during this Inquiry.

2.1 Intelligence

The evidence disclosed multiple issues around how information is collected, analyzed, and shared by police, intelligence agencies, and governments. In relation to the Freedom Convoy, police and intelligence agencies operated to some extent in silos, sometimes providing inconsistent information or analysis to decision makers. At times, there was also poor record-keeping, particularly within the Ottawa Police Service (OPS), of when and to whom information had been distributed.

The intelligence response to the Freedom Convoy was initially led by the Ontario Provincial Police (OPP), despite the protest’s national dimensions, which raises additional systemic concerns. The Federal Government also sought intelligence through several intelligence agencies and through the Royal Canadian Mounted Police (RCMP), but that intelligence was at times lacking, sometimes inconsistent with other information or intelligence being provided to police agencies, and deficient in relation to social media and open-source materials.

Former OPS Chief Peter Sloly recommended that the national security and police framework for intelligence assessments be updated and that all levels of policing

should be involved in intelligence assessments for major events that pose national security risks. He suggested incorporating innovative elements into the assessment process, including several named innovations, all to be infused with equity, diversity, and inclusion principles.

Ontario Deputy Solicitor General Mario Di Tommaso underscored the need for greater coordination among governments, police services, and intelligence agencies, especially in relation to intelligence sharing.

Nathalie Vinette, RCMP Divisional Intelligence Officer, recommended the creation of a pre-existing plan for bringing together the various members of the intelligence community during a major event.

Lisa Ducharme, Acting Director General, RCMP Federal Policing, National Intelligence Division, believed that the Freedom Convoy highlighted the challenge of coordination in the production and dissemination of intelligence at the federal level. She described it as information overload, with many different departments creating their own intelligence products based on the same pool of information. Ms. Ducharme said this made it challenging to manage information flows. She suggested a central body that coordinates the flow of information and consolidates the available intelligence products before briefing senior levels of government.

The Canadian Civil Liberties Association (CCLA) sounded a cautionary note regarding intelligence gathering, particularly in the context of “open source” intelligence:

The routine and indiscriminate monitoring of the communications of people in Canada fundamentally alters the nature of the relationship of individuals to the state in a democracy. We typically assume that we are presumed innocent and can participate in society (which is increasingly not just possible to do online but often necessary) without ubiquitous state surveillance. The kind of mass surveillance proposed by some

witnesses changes things dramatically and can have a chilling effect on individuals and their willingness to engage with others in online spaces.

The CCLA also suggested that any recommendations in this area should be modest, encouraging further study and highlighting the human rights dimensions of any such endeavour. I have done so in the recommendation that follows.

Recommendation 1: The federal government — in conjunction with provincial, Indigenous, and territorial governments; police and intelligence agencies; the Canadian Association of Police Chiefs; and other stakeholders — should develop or enhance protocols on information sharing, intelligence gathering, and distribution that:

- a. identify how and by whom information and intelligence should be collected, analyzed, and distributed for major events, such as protests, that have multijurisdictional or national significance;
- b. enhance the ability to collaboratively evaluate information collected for reliability;
- c. adhere to the *Canadian Charter of Rights and Freedoms* and the reasonable expectations of privacy of those affected;
- d. enhance record-keeping regarding the collection, analysis, and distribution of information and intelligence;
- e. ensure compliance with legislative mandates, for example, statutory limits on surveillance of lawful protests by the Canadian Security Intelligence Service (CSIS);
- f. promote appropriate access to and interpretation of social media and open-source materials;

- g. ensure that — where appropriate — comprehensive, timely, and reliable intelligence be communicated to police and government, within their appropriate spheres of decision making; and**
- h. promote objective, evidence-based risk assessments that are written to both acknowledge information deficits and avoid misinterpretation.**

Recommendation 2: The stakeholders identified in Recommendation 1 should consider the creation of a single national intelligence coordinator for major events of a national or interprovincial or interterritorial dimension.

2.2 Seeking police resources

There are significant inconsistencies in how, by who, and to whom requests for additional policing resources are made by municipal police services in relation to major events. Having a variety of individuals direct multiple requests for resources in Ontario to various levels of government was confusing and counterproductive. There was conflicting evidence on the extent to which municipal police services must first request provincial resources before requesting RCMP resources. In Ontario, the *Police Services Act* and its successor legislation do not adequately address how requests should be made. To be clear, in the majority of cases, the informal processes that currently exist work effectively. The challenge is to address the exceptional scenarios in which the magnitude of the assistance needed is as large or complex as it was in the case of the Freedom Convoy protests.

There was widespread support at the Inquiry for greater clarity surrounding requests for additional law enforcement resources. OPP Commissioner Thomas Carrique said that formalizing the OPP's "informal" leadership role might ensure a greater level of collaboration between all police services in Ontario. This could also entail regular reporting by all police services to the OPP on the number of officers working or available for duty, to better enable a rapid response to similar events. The National

Police Federation recommended that a clear statutory process be developed for municipal police services to request assistance from the RCMP.

Recommendation 3: Police and other law enforcement agencies should develop, in conjunction with affected governments, protocols around requests for additional law enforcement resources, where a police service is unable to respond on its own to major events, including certain protests. Such protocols should address:

- a. whether a municipal police service should request additional resources in Ontario through the OPP or concurrently directly with other police services and/or the RCMP;
- b. whether and when such requests should prioritize provincial policing resources before calling on the RCMP or other federal agency resources;
- c. to whom such requests should be directed and in what circumstances;
- d. to what extent governments should participate in these requests for resources;
- e. what, if any, circumstances (such as a plan acceptable to the agency providing substantial resources or the creation of an integrated or unified command) should exist before external resources are provided and to what extent such circumstances should be memorialized in writing;
- f. in situations involving limited resources that cannot be deployed at the same time to multiple jurisdictions, what factors inform the jurisdiction given first or primary access to such resources, and

to what extent can government be involved in the prioritization of limited resources to specific events; and

- g. in Ontario, whether the OPP commissioner should be given formal authority to address the provision and allocation of policing resources where other police services require external assistance.**

In item (f), rather than weighing in on a resolution, I identify an issue for future study. It raises an important systemic issue about the interplay between governments and the OPP. During the protests in Ottawa and Windsor, Ontario, issues arose regarding the priority to be given to each situation. I heard that the resource allocation was informed by the relative readiness of police in each jurisdiction to engage in enforcement action. Nonetheless, it was clear to me that resource allocation might also have been affected by other considerations, such as the relative economic impact of the protests. Deputy Solicitor General Di Tommaso indicated that this prioritizing (at least within Ontario) was exclusively the responsibility of the OPP commissioner because he regarded it as operational decision making. I believe that this issue is more nuanced. Insofar as police resources may be allocated based, for instance, on policing needs (e.g., to ensure adequate and effective policing throughout the province, or based on relative readiness for enforcement action), the allocation may well constitute an operational decision to be made exclusively by the police. However, when the allocation might involve economic considerations, I would expect some direction or guidance from government in setting priorities. This is consistent, for example, with how police services boards set the priorities for their police services.

2.3 Civilian oversight and governance of police


The Ottawa Police Services Board (OPSB) had inadequate information upon which it could exercise its oversight and governance responsibilities pertaining to the Freedom Convoy. Further, both OPS Chief Sloy and the OPSB misunderstood, in different ways, the scope of activities a board can and should engage in. This was based, in

part, on an unduly broad interpretation of the prohibition against a police services board interfering with day-to-day police operations. In Ontario, police services boards and chiefs of police have been informed of the findings and recommendations of the *Independent Civilian Review into Matters Relating to the G20 Summit* (the Morden Report). Further, in *Missing and Missed – Report of the Independent Civilian Review into Missing Person Investigations* (the Epstein Report), those findings and recommendations were adopted and amplified. Both of these reports describe best practices around the relationship between police services boards and police leadership.

The time is long overdue for all police services boards and chiefs of police to be bound to follow these best practices through legislative reform and detailed policies and procedures. However, this is not the complete answer. The OPSB had in place, at the time, a policy that incorporated features of the Morden Report. Nonetheless, its actions with relation to the Freedom Convoy did not conform to that policy or to best practices. Nor did the OPSB understand how to apply the principles from the Morden Report in practice. It is therefore imperative that police services boards and chiefs of police be trained and educated on these principles and best practices.

I note that in Ontario, the successor to the *Police Services Act*, the *Comprehensive Ontario Police Services Act, 2019*, which was not yet in force at the time of writing this Report, provides for mandatory training for police services boards. It also addresses diversity within boards, and cultural competencies related to marginalized and vulnerable communities. Diversity and cultural competencies are also important to effective oversight and governance.

Recommendation 4: All police services boards in jurisdictions that may be the subject of or adversely affected by major events including large-scale protests should create policies, consistent with the Morden and Epstein reports and their statutory-defined responsibilities, that delineate their oversight and governance roles in addressing those events. Such policies should, at a minimum:

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- a. **articulate what constitutes a “critical point”²;**
 - b. **articulate what kinds of activities constitute best practices, including what they can and should do to ensure adequate and effective policing in their jurisdiction — such as setting priorities, asking questions, and providing non-binding advice in relation to operational matters — and obtaining such information as may be needed for them to facilitate resourcing issues. These activities might well include post-event evaluations of lessons learned, particularly in connection with unplanned major events, and the identification of best practices in policing, going forward;**
 - c. **differentiate, where appropriate, between planned and unplanned events insofar as this distinction may affect the nature and timing of civilian oversight when an event rises to the level of a “critical point”;**
 - d. **articulate the scope and meaning of prohibitions against interference or direction of day-to-day operations and when directions to the chief of police should be memorialized in writing;**
 - e. **articulate the role of boards in supporting requests for additional resources or an integrated command and control to address major events;**
 - f. **ensure that information conveyed outside of board meetings is shared with all board members;**

² Not every operation, however minor, needs to be disclosed to a police services board to enable it to perform its oversight and governance responsibilities. The Morden Report referred to the threshold or “critical points” for disclosure and provided guidance on what constitutes a “critical point.” The Epstein Report provided additional important guidance on the circumstances under which “a critical point” is reached.

- g. provide for training and education of board members and senior police leadership on the contents of such policies and best practices; and**
- h. where appropriate, require that the police service create complementary procedures and practices to support these policies.**

Recommendation 5: Governments should consider incorporating the points in Recommendation 4, in whole or in part, in policing legislation and/or mandating the creation of board policies that incorporate these points.

In my view, work in this area should be informed by the perspectives offered by the experts who participated in the Commission’s Police – Government Relations Policy Roundtable.

Kate Puddister, Associate Professor at the University of Guelph, described the value in establishing, through public policy, the responsibilities of both government and the police to articulate accountability mechanisms, and define communication procedures, information sharing, and direction. Clear rules can articulate lines of accountability and oversight that can not only guide police – government relations in the future but also enhance public confidence. Dr. Puddister urged us to think about the distinction between accountability and answerability versus control. Police independence should not be interpreted in a broad manner to cover all things operational. Codified definitions of police independence can make it less likely that political or partisan interests on behalf of the government will come into play.

Toronto Police Service Chief James Ramer pointed out that boards cannot provide robust oversight and governance if they are poorly funded.

Ryan Teschner, Executive Director of the Toronto Police Services Board, described a robust model for board oversight. He observed that while core law enforcement

decisions should not be made by elected officials, neither should there be a bubble of immunity that prevents governance and oversight of police plans, actions, or inactions, or which impedes the flow of information essential for governance and oversight. Independence and accountability must be balanced in a way that avoids both political inference and political shirking of responsibility. His description of how boards should interact with the police in relation to operational matters bears repetition:

When a particular event is being planned or unfolded, it's the board's role to establish, in consultation with the chief, what are the priorities for the policing of this event? What are the objectives that the police service should be seeking to fulfill? And what policy infrastructure is going to be put in place in order to carry out those functions?

Once the board defines those priorities, objectives, and policies, the police service does its work. It develops the operational plans required to carry out that mission and achieve the identified objectives.

I would argue, though, that the board's role is not over then. The board should stay engaged in the life of the operation. It should review what has been put in place by the chief, not for the technical elements, for which it really doesn't have the expertise, but to confirm that the plans are consistent with the priorities, objectives, and policies, and importantly, that the board is satisfied that adequate and effective policing will be delivered in the municipality or jurisdiction for which it is legally, that is, the board is legally responsible.

And of course, the board should ask questions about the plan. Was anything else considered? Why are you confident that this plan will work? If Plan A doesn't work, what is your Plan B? These are all kicking the tires that boards should do.³

³ Evidence of Ryan Teschner, Transcript, December 1, 2022, pp. 34 and 35.

University of Toronto Faculty of Law Professor Malcolm Thorburn drew important distinctions between police independence in the context of criminal investigations and large-scale protests. In the latter case, there are important public policy considerations engaged that allow some role for government in the decision-making process, albeit one that is itself open, transparent, and subject to public scrutiny.⁴

University of Ottawa Department of Criminology Professor Michael Kempa agreed, and like Professor Thorburn, emphasized that any directions establishing priorities for police during major events should be in writing and publicly visible.⁵

2.4 The Ontario solicitor general police services advisor

In Chapter 8, I discuss the Ministry of the Solicitor General’s policing oversight responsibilities. In other chapters, I have reviewed several issues respecting the interplay between the Ministry and the OPSB. In my view, some additional clarity is needed respecting the role of the Ministry’s police services advisors *vis-à-vis* both the boards they advise and the Ministry.

Recommendation 6: The Ontario Ministry of the Solicitor General should consider formalizing the responsibilities of its police services advisors in interacting both with police services boards and the Ministry. The process of doing so should be informed by the issues identified in this Report.

2.5 Ensuring integrated or unified command and control for major events, where required

The evidence disclosed systemic issues pertaining to the command and control of major events. In Ottawa, everyone agreed that the OPS required resources from other services to address the Freedom Convoy. However, there were ongoing issues over

⁴ Evidence of Malcolm Thorburn, Transcript, December 1, 2022, pp. 18 – 21.

⁵ Evidence of Michael Kempa, Transcript, December 1, 2022, pp. 26 – 28.

what that assistance would entail, what the command and control structure would look like, whether a municipal police service could or should be compelled to accept an integrated or unified command and control structure, and how these decisions should be made in a timely way.

It is beyond the scope of my mandate to examine policing legislation across Canada that may address, directly or indirectly, situations where local police may be unable to provide adequate and effective policing in its own jurisdiction without external assistance. However, I am familiar with the Ontario legislation, both current and pending, because events in Ontario figured prominently in the work of this Commission. In my view, the Ontario legislation and the related Regulations and Policing Manual do not adequately address this topic. I hope that my recommendations might assist the Ontario government in its work in developing the Regulations to the pending *Comprehensive Ontario Police Services Act, 2019*.

The current Ontario *Police Services Act* addresses several situations in which police services boards can agree with each other, or with the OPP, to have police services provided by another board or the OPP. There are also several scenarios in which action may be taken to address inadequate police services being provided in a jurisdiction. These include the ability of the Ontario Civilian Police Commission (OCPC), the chief of a police service, and the local Crown Attorney to ask the commissioner of the OPP to give assistance in various situations. The Act also addresses situations where police services boards may agree with each other to have one board provide services to another board or boards, or with the OPP to provide services to a municipality. Further, section 55 permits the Solicitor General to authorize the RCMP to provide policing services in certain emergency situations.

There is an important distinction to be drawn between two very different scenarios. The first is where the police of jurisdiction appropriately plan for and respond to a major event but recognize the need for the assistance of other police agencies. That

was the situation in Windsor. The Windsor Police Service (WPS) acted appropriately throughout, and the transition to unified command and control was largely seamless.

The second scenario, as occurred in Ottawa, is where it is alleged that the municipal police service or its chief of police fail to recognize, in a timely way, the need for integrated command, and where its initial planning and response to a major event is regarded as deficient. In this scenario, the chief of police may delay a decision or be disinclined to seek the assistance of the OPP, or his or her request for mere “assistance” may fall short of what is required. The OCPC may not be able to make the necessary findings before asking for OPP assistance, particularly in circumstances of true urgency. Depending on the information that has been shared with the police services board, it too may or may not be well situated to make this request. The power of the Crown Attorney to request assistance is archaic and, in practice, is unlikely to be used. The issues are compounded by the vague references in the Ontario legislation to the OPP “providing assistance,” which could encompass a range of actions.

Any approach to policing assistance must recognize the valued presumption that — absent exigent circumstances — policing is done by the police of jurisdiction, and the equally valued principle that operational policing decisions are ultimately to be made by police, not politicians or third parties.

There was widespread support at the Inquiry for these issues to be addressed. OPP Chief Superintendent Carson Pardy emphasized that it is important to integrate or unify command and operations as soon as an event overwhelms the capacity of a single agency. He thought it could be useful to enshrine in legislation a requirement to integrate or unify once a single agency has been overwhelmed.

Recommendation 7: The Province of Ontario should create protocols to be potentially incorporated into its policing legislation, regulations, or policing manual that:

- a. articulate criteria for the exercise of the powers set out in sections 9 and 55 of the Ontario *Police Services Act* and in Ontario's successor legislation;**
- b. articulate the structure of an integrated or unified command and control model, and best practices around how it is created and operationalized; and**
- c. create criteria and a clear process for compelling, in exceptional circumstances, a municipal police service to accept an integrated or unified command and control model for managing a major event. The authority to compel a municipal police service may be conferred, for example, on the OPP commissioner or the inspector general of policing.**

Recommendation 8: The federal government, other provincial and territorial governments, and Indigenous governments should create similar protocols or memoranda of understanding to address either major events other than in Ontario or territories, or major events of a national or interprovincial / territorial dimension.⁶

⁶ During the policy roundtables, I was advised of the legislative approach taken in Quebec to these issues. At the risk of oversimplification, Quebec has developed a six-tiered policing model that provides direction as to when, for example, the provincial police service is to respond to a public order event. Cal Corley provided positive commentary on its use in Quebec. This is one option that might be further explored by other governments, although I express no views on its potential applicability elsewhere.

Recommendation 9: All governments and their police services should work cooperatively to create, to the extent possible, national standards on how these issues are addressed.

2.6 Major event management

Pursuant to the Ontario *Police Services Act*, the Province of Ontario has created regulations respecting the adequacy and effectiveness of police services (O.Reg. 3/99) and respecting major case management (O.Reg. 354/04) for certain categories of investigations.

For example, section 11(4) of O.Reg. 3/99 requires chiefs of police to establish procedures for obtaining assistance in conducting criminal investigations when it does not itself have officers with the necessary knowledge, skills, and abilities. Other provisions address obtaining other specialized assistance, emergency response services, and the creation of an emergency plan.

Ontario Regulation 354/04 incorporates the Ontario Major Case Management (MCM) Manual, which creates standards for major case investigations and their management. MCM standardizes how interjurisdictional investigations are to be conducted. The MCM system facilitates information sharing and coordination between all law enforcement agencies involved in multijurisdictional investigations. The MCM model emphasizes accountability and a multidisciplinary approach to complex and serious investigations.

At the policy roundtable on the policing of public protests, there was support for the adoption of an MCM model for policing large-scale protests. Cal Corley, former RCMP Assistant Commissioner and current CEO, Community Safety Knowledge Alliance, noted that responding effectively to major public order events requires skillful leadership and structured coordination. The importance of common tools, methodology, and methods cannot be overstated.

Recommendation 10: The Province of Ontario should consider the creation of a major event management unit, analogous to the unit created for major case management of investigations. A major event management coordinator could ensure that integrated command and control is immediately initiated where identified criteria are met and could facilitate the sharing of intelligence and other information, as well as the accumulation of resources. Requirements to notify the coordinator when certain criteria are met would also promote accountability and a seamless transition to integrated command, where appropriate.

Recommendation 11: Other jurisdictions in Canada should consider analogous changes to existing legislation, regulations, policies, and procedures to provide for the creation of such units.

Recommendation 12: The federal government should similarly consider the creation of a major event management unit or major event management coordinator to address and coordinate policing responses across the country to major events of a national dimension.

A national major event management unit or major event management coordinator could take the lead in developing protocols for a fully integrated approach to major events of a national dimension, including coordinated, consistent communications strategies.

I note that Recommendation 25 addresses consultation by the Federal Government with primarily affected law enforcement agencies before invoking the *Emergencies Act*. A national major event management coordinator could also facilitate that consultation or serve to assist the RCMP commissioner in providing relevant information to the government decision makers.

2.7 National standards

Several parties urged me to recommend national policing standards, protocols, frameworks, or legislation to address how police respond to major events, such as protests, that increasingly have national dimensions. For example, the OPS recommended the development of a national framework to address large demonstrations aimed at creating common terminology and definitions, best practices, and thresholds relating to information sharing and communications; gathering and sharing of intelligence products; guidance on establishing integrated or unified commands; standardized incident command models; and the creation of a national table to assist with communications and coordination before, during, and after a multijurisdictional event.

Former OPS Chief Sloly also recommended national standards for all areas of policing, with specific reference to emergency preparedness, incident command systems, critical incident command, and integrated command.

In a related submission, three police services urged that all levels of government should coordinate and agree on an interjurisdictional framework for the protection of critical infrastructure.

As reflected in several of my recommendations, I strongly endorse a coordinated approach to the policing issues identified in this Report, whether captured through frameworks, national standards, regulations, policing manuals, policies, or procedures.

Recommendation 13: Federal, Indigenous, provincial, and territorial governments should consider either the creation of national standards for policing a major event, or changes to existing legislation, regulations, policing manuals, policies, and procedures that identify essential elements of strategic, operational, and tactical planning for major events, such as protests.

Recommendation 14: Based on the lessons learned at this Inquiry, such standards, frameworks, legislation, policies, procedures, or manuals should include, but not be limited to:

- a. processes to identify strategic, operational, and tactical commanders together with succession planning;**
- b. building redundancies in command to ensure 24/7 coverage and address continuity of command;**
- c. identifying lawful alternate sites for continuing protests, where applicable;**
- d. health and wellness planning for officers;**
- e. ongoing assessment of community impact;**
- f. pre-event planning and ongoing dialogue with protesters by trained and, where applicable, culturally competent officers; and**
- g. coordination with non-policing first responders and relevant public authorities or agencies (for example, through the creation of executive tables).**

2.8 A single command and control model

During the Inquiry, I learned about several of the models that exist for policing command and control regarding major events. There appear to be more similarities than differences between them. But the different nomenclature used for each model is confusing and may, in some instances, make timely integration and planning more difficult. Moreover, the model adopted by the OPS was complicated, particularly the two-tiered operational structure that fell within a three-tiered (strategic, operational,

and tactical) structure. I had difficulty understanding why, in relation to the Freedom Convoy, it was necessary to create a separate event commander and incident commander. OPS Chief Sloy and others, on occasion, confused the positions and the roles to be played by each participant.

There was widespread support at the Inquiry for standardizing Incident Command Systems (ICS) models across Canada. This might be done, for example, by entrenching ICS models in statutory and regulatory policing standards. The national ICS standards could include provincial flexibility. OPS Interim Chief Steve Bell believed that a single standard model would eliminate the need to rely on relationships to build command structure. OPP Commissioner Carrique pointed out that officers are being used from across Canada to resolve situations, reinforcing the benefits of a common model.

During the policy roundtables, Winnipeg Police Service Superintendent Bonnie Emerson indicated that common training and language would facilitate a better understanding of information across systems and police. It would clear up ambiguity and provide the transparency and accountability that the public expects.

Recommendation 15: The RCMP should consider leading an initiative, working with other police agencies, for police services across the country to adopt a single command and control model, with shared nomenclature to facilitate integrated operations in appropriate situations.

2.9 Use and training of Police Liaison Team officers

Many witnesses accepted that enforcement action against protesters engaged in illegality should only take place within a framework such as the OPP Framework for Indigenous Critical Incidents. This framework was developed in the aftermath of the death of Dudley George at Ipperwash Provincial Park and was recognized by Ipperwash Commissioner Justice Sidney Linden as a best practice. It is utilized in responding to both Indigenous and non-Indigenous protests. I was advised that the OPP took leadership in the development of a similar, national framework through the

Canadian Association of Chiefs of Police (CACP). Both frameworks emphasize the importance of dialogue with protesters and de-escalation techniques.

OPP Provincial Liaison Team (PLT) officers are trained to communicate with protesters and community members, convey reasonable expectations and consequences for certain unlawful conduct, negotiate within parameters set by command, and facilitate de-escalation. In Ottawa, their role was, at times, marginalized, as I discuss in Chapter 9.

A number of witnesses supported the use of properly trained liaison officers within the context of a measured response to major events, including during planning. The Union of British Columbia Indian Chiefs also recommended that the CACP Framework be reviewed and updated in light of the United Nations Declaration on the Rights of Indigenous Peoples, particularly because it is utilized for standardized training for police, and that it be re-evaluated periodically by external civilian auditors, including First Nations, Inuit, and Métis experts and representatives. While I am not well situated to recommend the precise mechanisms for ongoing evaluation of the framework, I certainly agree that ongoing evaluation is always important, and that because it extends to Indigenous protests, training on the framework should ensure a full understanding of the unique considerations that should inform a police response to Indigenous-based protests and the need for cultural competencies in responding to them. Such mechanisms should be developed together with Indigenous leadership.

Recommendation 16: Where feasible, police services should have a contingent of trained PLT officers or have entered into an agreement with another service to access such officers or appropriate expertise, as needed.

Recommendation 17: Police services should create procedures, if they do not already exist, that clearly articulate the role of PLT officers within the context of major events. The procedures should adopt, with appropriate modifications

for local conditions, frameworks such as the OPP Framework for Indigenous Incidents Protests and/or the CACP National Framework.

Recommendation 18: PLT officers and major event commanders, as well as senior leadership, should receive specialized training and education on, among other things, the OPP Framework and/or the CACP National Framework, and the role to be played by PLT officers and leadership in relation to major events.

Recommendation 19: In relation to Recommendation 18, police services should recognize the unique considerations that should inform a policing response to Indigenous-based protests, including the need for cultural competencies in addressing such protests. This recognition should also extend, more generally, to the development of national policing standards, frameworks, legislation, policies and procedures, and manuals.

2.10 Accreditation of RCMP and interprovincial officers

Police officers from the RCMP and provincial and municipal forces outside of Ontario had to be sworn in to participate in certain enforcement activities in Ottawa because they did not otherwise have legal authority to enforce provincial offences or municipal by-laws. Assuming that such officers have the requisite training to exercise such authority, there appears to be little rationale to embark on a swearing-in process for individual officers.

There was widespread support for a recommendation to address this issue, although I was presented with several formulations for doing so.

One option is to create a memorandum of understanding that would permit provincial public safety and/or justice ministers to issue orders deeming officers from other provinces to be police officers in that province. The memorandum of understanding could address police oversight and accountability mechanisms during deployments, such as the role of Ontario's Special Investigations Unit.

The National Police Federation suggested that the RCMP be given full policing authority in all Canadian jurisdictions for the purposes of a municipal, provincial, or federally declared emergency. In my view, an expedited accreditation process need not be confined to declared emergencies — indeed, the timely use of RCMP officers with appropriate legal authority may make the exercise of emergency powers unnecessary.

Recommendation 20: The federal government, working together with other affected governments, should develop an expedited accreditation process for RCMP or interprovincial officers to exercise legal authority to enforce provincial legislation or municipal by-laws where applicable, and where their training and education ensure that they are competent to exercise such authority.

Recommendation 21: Any expedited accreditation process should address police oversight and accountability mechanisms.

2.11 Information provided to the public

In Ottawa, the public messaging from City officials, the OPSB, and the OPS was, at times, inconsistent and counterproductive. This inconsistent messaging is to be contrasted with the approach taken by City officials and police in Windsor.

Recommendation 22: Municipalities, police services boards, and police services should, when dealing with major events, provide the public with accurate, useful, and regularly updated information.

2.12 Lawful police powers

As I explain in Chapters 8 and 9, the OPS was unclear on what they were and were not lawfully entitled to do in responding to the anticipated and ongoing protests. The lack of clarity on legal issues relating to protests was a theme expressed by multiple police witnesses. It was most pronounced on five interrelated topics:

- whether, when, and to what extent the police can prohibit vehicles — particularly heavy vehicles — from entering the downtown core;
- whether, when, and to what extent the police can create exclusion zones;
- whether and when the police may obtain injunctive relief, and what type of injunction enhances police response to unlawful aspects of a protest;
- the nature, scope, and interrelationship of police powers conferred by municipal, provincial, and federal emergency and critical infrastructure legislation, traffic safety and traffic management laws, the *Criminal Code* of Canada, and at common law; and
- how, in the context of protests, these various powers intersect with freedom of expression and freedom of peaceful assembly pursuant to sections 2(b) and 2(c) of the *Charter*, including the scope and limits on such freedoms.

I heard conflicting evidence and submissions on existing police powers. For example, I was advised that a legal opinion provided to the OPS on January 28, 2022, persuaded the OPS executive that convoy vehicles could not be prevented from entering the downtown core. I am not convinced that the legal opinion truly addressed that question. In any event, many witnesses and parties disagreed with that conclusion.

Similarly, I received different views on when the police can create exclusion zones at common law, including the size and nature of these zones, and whether they need to be created through the use of provincial or federal emergency powers.

Several policy papers prepared at the request of the Commission provided valuable contributions to the discourse around these issues, as did several experts at the policy roundtables. However, I have not received the benefit of a full legal argument on these issues, and so they remain unresolved.

Former OPS Chief Sloly acknowledged that, despite seeking legal advice before, during, and after the protests, he never had a clear understanding of whether the *Charter* allows police to intervene before a demonstration becomes an occupation. Interim Chief Bell felt that the OPS lacked clear authority to stop the flow of people and

vehicles into an area before a federal emergency was declared. OPP Commissioner Carrique urged an examination of the laws available to be enforced in the context of unlawful protests. Deputy Solicitor General Di Tommaso recommended that a task force be created on the right to protest and its limits. The OPS recommended that there be statutory clarification of the authority, propriety, and scope of exclusion zones.

In the closing submissions, the OPP outlined its views on the scope of existing common law and statutory police powers and, with several other parties, jointly recommended that governments and legislative bodies analyze and consider whether existing laws are sufficiently responsive to modern protests and provide an appropriate balance between *Charter* rights, public safety, and other interests.

In my view, the *status quo* — particularly the lack of clarity over the scope of existing police powers — is unacceptable. That lack of clarity may undermine the ability of police services to respond to protests in an appropriate and *Charter*-compliant way. In the context of section 3 of the *Emergencies Act*, this lack of clarity also makes it more difficult to determine whether an urgent and critical situation exists that “cannot be effectively dealt with under any other law of Canada.”

In “*The Policing of Large-Scale Protests in Canada: Why Canada needs a Public Order Police Act*,” Professor Robert Diab, Faculty of Law at Thompson Rivers University, said this:

Police lack clear authority in Canada to employ a common tactic to maintain order at large public events: the creation of exclusion zones around large portions of public space. Limited exceptions to this include powers in emergency law and a federal statute on intergovernmental conferences – powers that are unclear in scope. The common law does not authorize a large exclusion zone.

...

The use of emergency law in 2022 was only the most recent in a series of attempts on the part of governments and courts in recent decades to address the gap in the law authorizing large exclusion zones in an *ad hoc*, temporary, and reactive fashion. Each case involved confusion among police, plans for the zone formulated in secret, and significant infringements of core rights and freedoms. Rights would be better protected and policing more effective by drawing on law from the UK and Australia. Lawmakers there have created comprehensive frameworks for policing large gatherings and events. Legislatures in Canada and its provinces should do the same and pass a bill dealing, respectively, with events of a national or provincial scope.

At the policy roundtable on policing protests, Professor Colton Fehr, Faculty of Law, Thompson Rivers University, echoed this view, predicting continued confusion and disorder until there are clear rules on what police powers exist for different types of major events.

In my view, the time has come for a comprehensive examination, led by the federal government, in conjunction with all levels of government and police services, of police powers as they relate to protest activities. This examination should include consideration of existing and potential provincial legislation relating to critical infrastructure. To be clear, I am not suggesting, without the benefit of such examination, that additional police powers are required. Nor am I advocating for an expansive view of police common law powers. Instead, my emphasis is on the urgent need to clarify existing police powers.

Recommendation 23: The federal government, in conjunction with other governments and with police services and other stakeholders, should comprehensively examine the scope and limitations on police powers in relation to protest activities. This examination should ultimately result in the

clarification of such powers, whether in legislation or through the development of policing protocols that draw upon the lessons learned at this Inquiry.

Such protocols should, among other things, articulate the extent to which the police may lawfully restrict access to an area within or outside a city, or at or adjacent to a border crossing, by protesters and/or certain types of vehicles; and criteria for the exercise of such restrictions that remain compatible with the lawful rights under the *Charter* to protest and peacefully assemble.

2.13 Policing the Parliamentary Precinct

As I discuss in Chapter 8, policing jurisdiction in the National Capital Region is exercised by multiple agencies. During the public hearings, it was clear that a number of government officials — and undoubtedly Ottawa’s citizens — were unsure about the respective roles of these agencies when a major event takes place in close proximity to Parliament Hill. In my view, the current divisions of responsibilities are, at best, inefficient. Even when integrated command and control existed, the jurisdictional divisions made the police response in Ottawa unnecessarily complicated.

In its closing submissions, the National Police Federation severely critiqued the *status quo* and recommended that existing jurisdictional boundaries be examined to re-establish the RCMP as police of jurisdiction in and around Parliament Hill.

I agree that these jurisdictional boundaries should be re-examined in light of the issues identified during this Inquiry. However, I also recognize that this discussion must also be informed by a range of considerations unrelated to my mandate. Indeed, the National Police Federation’s recommendation is that this issue be referred for further study or review.

One such study has already taken place. In December 2022, the House of Commons Standing Committee on Procedure and House Affairs tabled its report, “Protecting the Parliamentary Precinct: Responding to Evolving Risks.” The Committee’s mandate

was to study the expansion of the federal jurisdiction for the operational security of the Parliamentary Precinct.

The Committee's majority makes eight recommendations. The most prominent is that the federal jurisdiction for the operational security of Parliament Hill be expanded to include sections of Wellington and Sparks streets. Another recommendation is to close Wellington Street to vehicular traffic from the National War Memorial to Kent Street, while keeping it open to traffic related to Parliamentary business, public tramways, pedestrians, and other forms of active transportation. The recommendations also contemplate an expanded role for the Parliamentary Protective Service (PPS), and that it be provided the necessary resources to secure Parliament Hill and the Parliamentary Precinct. The Committee further recommends that the government and its partners create a working group of the main security officials around and inside the Parliamentary perimeter (the PPS, the OPS, the OPP, and the RCMP) to establish an effective and consistent plan in the event of incidents on Parliament Hill.

The report recommends that the government and its partners continue the current consultations and discussions with stakeholders regarding the potential expansion of Parliament Hill onto Wellington and Sparks streets, along with the potential development of those streets. The relevant Indigenous groups should be included as partners in these consultations and discussions.

The Official Opposition dissented in Committee on the basis that the majority goes too far, too fast with some of its recommendations calling for the assertion of federal jurisdiction for security in downtown Ottawa and Wellington Street before security and policing professionals have crafted a joint proposal for consideration.

The Committee's report reinforces my earlier point that the division of responsibilities for policing and security in the National Capital Region must be informed by considerations beyond those addressed at this Inquiry. It also confirms that there is a divergence in views as to how this issue should be addressed.

Recommendation 24: Consultations and discussions should continue, through a working group, led by the federal government but including other governments, police agencies, and the Parliamentary Protective Service, to study, on a priority basis, whether changes should be made to the division of responsibilities for policing and security in the National Capital Region. The working group's discussion should be informed, in part, by the contents of this Report.

2.14 Consultation and information sharing prior to emergency declaration

Both OPP Commissioner Carrique and former OPS Chief Sloly expressed concern that the Federal Government did not consult them before declaring an emergency. An issue also arose during the public hearing as to whether RCMP Commissioner Brenda Lucki adequately ensured that her own views were clearly conveyed at meetings of the Incident Response Group.

In his submissions, former OPS Chief Sloly asked that before it declares an emergency, the Federal Government be required to expressly consult with the police of jurisdiction involved in a major event. The OPP submitted that it should be consulted by the RCMP in situations where the OPP may be impacted by the declaration of a national emergency. In the OPP's view, there should be a required record of consultation with law enforcement that will ensure accountability and that police perspectives are understood and considered by Cabinet.

I recognize that in an emergency, the Federal Government may be unable to consult, in a timely way, with all affected law enforcement agencies. In some cases, it may not even be able to consult with those law enforcement agencies that are primarily affected. This places a higher responsibility on an appropriate intermediary, such as the RCMP commissioner, to ensure that the views of primarily affected law enforcement agencies, including the RCMP, are clearly articulated to the government.

Recommendation 25: Where the Federal Government proposes to declare a public order emergency and introduce law enforcement measures, it should, circumstances permitting, obtain, through direct consultation or through an appropriate intermediary such as the RCMP commissioner, the views of those law enforcement agencies likely to be primarily affected by these proposed decisions.

Such consultation should be specifically directed to what, if any, law enforcement-related measures are needed to address the emergency, and whether the consulted agencies have any concerns about the consequences of declaring a public order emergency.

Recommendation 26: The perspectives of affected law enforcement agencies should, circumstances permitting, be summarized in writing and made available to decision makers.

Recommendations 25 and 26 contemplate that the Government will obtain the views of law enforcement agencies relevant to its decision making. The flow of information between the police and government raises two related issues: the extent to which government can seek information from the police to gain situational awareness without compromising police operational independence and, reversely, the circumstances in which the police, when dealing with a major event, should on their own provide information to elected officials or to senior government officials.

The Commission heard from senior public servants that they were unclear as to what they were allowed to request or expect from the police relating to information, and what police were obligated to provide. They were aware, in general terms, of the principle of operational independence, the concerns identified during the Ipperwash Inquiry, and that government had infringed on this principle in the past. However, a number of them expressed a sense of real frustration that there was information they should have received in January and February 2022 but did not. They were very cautious for

fear of crossing a line that neither they, nor law enforcement, fully understood. As I explain earlier, several policy experts suggested that operational independence has been misinterpreted to prevent important legitimate, non-partisan discourse.

Recommendation 27: The federal government should develop, on a priority basis and in consultation with subject matter experts, publicly available guidelines that set out, in clear and accessible language:

- a. **First:**
 - i. **the basic principles that operate to limit information that can be requested of police;**
 - ii. **the “lines” differentiating, with scenario-driven examples, what is permitted from what is not permitted; and**
 - iii. **the extent to which distinctions should be drawn between the circumstances in which it is acceptable for elected officials (and exempt staff supporting them) or for public officials to request information from the police.**
- b. **Second:**
 - i. **whether there are circumstances in which the police, when dealing with major events, should on their own initiative provide information to elected officials and/or senior government officials; and**
 - ii. **if so, the types of information that should be provided.**

2.15 Final comments on policing recommendations

I have not adopted some of the recommendations proposed by witnesses or parties, often because they fall outside the scope of my mandate or because I have an insufficient evidentiary basis upon which to make them.

For example, several witnesses and policy experts proposed that civilian oversight boards be created to oversee provincial police services and the RCMP. The oversight of provincial and federal police forces was not a central focus of this Inquiry to the same extent that civilian oversight of the OPS was. Similarly, the Morden and Epstein reports that I discussed earlier concern municipal police governance, and it is unclear whether, to what extent, and how the oversight mechanisms they contemplate might be applied to oversight of provincial and federal police services. Moreover, the issues pertaining to oversight of the OPP and the RCMP transcend the issues considered at this Inquiry. For example, the RCMP contracts with multiple provinces, municipalities, and First Nations to provide policing services, and it performs a variety of unconventional roles that are directly linked to the federal government. At a policy roundtable, Professor Christian Leuprecht, Political Science and Economics, Royal Military College of Canada, articulated some of these challenges that may make the board model ill-suited for the RCMP. Others have examined and continue to examine the responsibilities of the Civilian Complaint and Review Commission, as they relate to RCMP accountability. All this to say, civilian oversight of provincial police services and the RCMP are worthy of further consideration by others, rather than in this Report.

The OPS's submissions stated that it is inadequately funded to assume responsibility to police large-scale protests of a national dimension. It recommended that the OPS be provided with federal funding for a dedicated, full-time, specially trained team tasked with monitoring, planning for, and responding to protests and demonstrations in Ottawa. I am not well situated to determine whether the deficiencies in policing identified in this Report should be addressed in Ottawa through such a team or otherwise. Nor can I make specific recommendations on funding models. Of course, I do support the

availability of adequate financial resources to implement the recommendations made in this Report.

Finally, I wish to acknowledge that the OPS has identified changes that it indicates have already been made to address the issues that came to light as a result of the events that took place in Ottawa. These changes, which it summarized in its closing submissions, include:

- co-operating with the City of Ottawa in creating vehicular exclusion zones for subsequent events (e.g., Rolling Thunder, Canada Day 2022);
- having full-time employees engaged in the monitoring and analysis of open-source intelligence;
- training additional PLT officers and having some members perform PLT functions on a full-time basis;
- providing training on the ICS;
- committing to ongoing succession planning; and
- improving coordination of intelligence and information intake, analysis, and dissemination relating to protests and demonstrations.

Of course, appropriate changes to policing based on self-reflection and lessons learned are welcome, although in fairness, I have not had the opportunity to evaluate the adequacy or completeness of these changes. Later in this chapter, I address the implementation of the recommendations contained in this Report.

3. Federal intelligence collection and coordination

3.1 The “intelligence gap” associated with social media

The planning and organization of the Freedom Convoy protests frequently took place — sometimes openly and in detail — on social media, but no federal government department or agency had the necessary authority and/or capability to effectively

monitor the digital information environment. This was often referred to as a social media “intelligence gap.”

The collection and analysis by government of information from social media raises obvious concerns about privacy and state intrusiveness. Reservations were expressed about the wisdom of having intelligence agencies collecting or analyzing information from social media unless it is directly tied to threat-related activities. I accept that even the idea of governmental monitoring of social media risks a chilling effect on the free expression of views.

At the same time, the Commission heard, both during the fact-finding hearings and the policy roundtables, that social media is a significant contributor to misinformation, disinformation, and the radicalization of individuals toward extreme views and violence, and that the government should have some capability for monitoring it. The Commission also heard that open-source intelligence is an increasingly important aspect of the intelligence environment, and that two recent reports have called for enhancements to the national security and intelligence community’s open-source intelligence capabilities.⁷

Recommendation 28: The federal government, while mindful of concerns related to privacy and government intrusiveness, should examine the question of whether a department or agency of government should have the authority and responsibility to monitor and report on information contained in social media for appropriate purposes and with appropriate safeguards.

⁷ Wesley Wark, *The Role of Intelligence in Public Order Emergencies*, pp. 17-9 to 17-13 (this paper is found in Volume 5 of this Report); Report of the Task Force on National Security, *A National Security Strategy for the 2020s* (Graduate School of Public and International Affairs, University of Ottawa, May 2022), pp. 16 and 17; Greg Fyffe, “Prepared: Canadian intelligence for the Dangerous Decades”, *Centre for International Governance Innovation, Report no. 6, Reimagining a Canadian National Security Strategy* (2021), pp. 8, 9, and 17.

3.2 Coordination of intelligence collection at the federal level

Following the 9/11 terrorist attacks, Canada initiated changes designed to better coordinate and share the results of its security intelligence collection. Changes included the creation of the Integrated Terrorism Assessment Centre (ITAC) and the office of the National Security Intelligence Advisor (NSIA).

Despite these changes, the Commission heard evidence that there was a proliferation of free-standing intelligence reports from multiple federal, provincial, and municipal governments and police agencies. They were not always shared effectively, and some did not originate from the expected sources. I note that Project Hendon, which monitored the Freedom Convoy, was run by the OPP. Given the national scope of the Freedom Convoy, one could ask why this project was not run by the RCMP instead. The evidence before the Commission indicated that federal government agencies, notably Public Safety and the Privy Council Office (PCO), did not appear to have received intelligence that was generated by police forces, including the Hendon reports. This meant that potentially useful intelligence about the intentions of the protesters did not always reach senior Federal Government decision makers.

While it may seem repetitive to issue yet another recommendation that various levels of government coordinate the collection and sharing of intelligence, I have no hesitation in noting that more work is needed on this front at the federal level.

It seems logical that a central entity such as the office of the National Security and Intelligence Advisor has a role in this coordination. However, that office is not established by statute, and any expansion of its role might best be accomplished in conjunction with a broader examination of its mandate, structure, oversight, and role within the national security and intelligence community.

Recommendation 29: The federal government should initiate a review to ensure that the federal government agencies with a responsibility for the collection or analysis of security intelligence are fully coordinated among themselves.

The overall goals to be achieved are to minimize duplication, and to promote integration and effective and timely sharing at the federal level and among stakeholders at other levels of government.

This recommendation should be read together with my earlier recommendation on the coordination of information sharing between different levels of government.

4. Critical trade corridors and infrastructure

Several parties suggested that establishing protocols by which various levels of government could respond to disruptive protests in Ottawa, and in locations where the protests affect the operation of ports of entry (POEs), could have avoided the need to resort to the *Emergencies Act*. I have already addressed an aspect of this issue in my recommendations on policing the Parliamentary Precinct.

Another example of the coordination problem arose in the context of blockades of POEs. The federal government has jurisdiction over international trade and immigration and is thus responsible for keeping POEs operational. Yet all levels of government have an interest in properly functioning POEs.

The federal government has jurisdiction over only the small area of land that comprises the actual border crossing buildings and vehicle marshalling areas. However, as demonstrated by the events in Windsor, Ontario and Coutts, Alberta, passage through a POE can be fully obstructed by a blockade at any point along the roadway that serves the POE. Those activities would be subject only to municipal and/or provincial jurisdiction. If the municipal or provincial policing resources are not effective in keeping the POE open, the Federal Government might consider it necessary to take extraordinary action, including possibly resorting to the *Emergencies Act*.

It would be preferable if the federal government could, through collaboration with Indigenous governments, the provinces, territories, and affected municipalities, assign

responsibilities and develop protocols across all relevant levels of government to keep trade transportation corridors and infrastructure clear without resorting to emergency legislation.

Public Safety Canada, in collaboration with the provinces and territories, has already begun work on the development of the *National Strategy for Critical Infrastructure* and its associated action plans. The evidence I heard during the Inquiry demonstrates that consultation with affected municipalities will also be important for the development of an effective approach to this issue.

Recommendation 30: The federal government should initiate discussions with provincial and territorial governments, in consultation with Indigenous governments and affected municipalities, to promptly identify critical trade transportation corridors and infrastructure, and establish protocols to protect them and respond to interference with them.

5. *The Emergencies Act*

The declaration of a public order emergency gives the Cabinet, on its own, the power to enact wide-ranging legislative measures that would normally require the assent of Parliament, and which may encroach on provincial jurisdiction. Though the *Emergencies Act* does not override the *Charter*, its use may nevertheless result in serious limits on the exercise of fundamental rights and freedoms.

It is therefore appropriate that the conditions that must be met before Cabinet may use the Act are stringent. It is also essential that comprehensive review, control, and accountability mechanisms are in place. The existing provisions set out in the *Emergencies Act* appear largely adequate to the task. However, some of them can be improved. In this section, I set out my recommendations and advice for how this should be done.



5.1 The threshold for declaring a public order emergency

Witnesses, parties, and policy experts who participated in the Inquiry gave considerable support for re-examining the threshold for the declaration of a public order emergency.

Currently, section 16 of the *Emergencies Act* defines a “Public Order Emergency” as “an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency.” The *Emergencies Act* specifies that “threats to the security of Canada” has the meaning assigned by s. 2 of the *Canadian Security Intelligence Service Act*.

The incorporation of the *CSIS Act* definition means that “threats to the security of Canada” has the same meaning in the two Acts. The definition was nonetheless the source of much controversy and misunderstanding in the course of the Inquiry. This was, in part, because CSIS had not assessed that the Freedom Convoy posed a threat to the security of Canada for the purposes of its mandate.

The link between the *Emergencies Act* and the *CSIS Act* should be eliminated. First, the determination of whether a public order emergency should be declared is one for the Governor in Council to make, based on all the inputs and information it receives. Hinging the definition of a public order emergency on the *CSIS Act* accords outsized importance to CSIS’s determination of whether its intelligence mandate should be engaged, which is a different question.

Second, the threats to Canada that constitute public order emergencies have evolved in the 35 years since Parliament chose to set the threshold by reference to the *CSIS Act*. In today’s world, public order emergencies could take forms that do not fall under the *CSIS Act*’s definition of a threat to the security of Canada. For example, it is possible that a public order emergency could arise out of cyberattacks or other technological events that could not even have been envisioned when the *CSIS Act* was drafted.

In the circumstances of the Freedom Convoy and the associated blockades of ports of entry, the government identified the following serious short- and long-term adverse impacts on the economy: the disruption of the supply chains as well as shortages of essential goods such as medical supplies; the potential loss of jobs that could flow from that; the damage to Canada's relationship with its trading partners; and damage to Canada's ability to attract much-needed foreign investment. The extent to which such adverse impacts on the economy should be taken into account when assessing whether a public order emergency exists should be examined in the context of the in-depth review I recommend later in this section.

The white paper that preceded the adoption of the *Emergencies Act* stated that the statute intended to allow the government to deal with “a full range of possible emergencies.”⁸ Parliament should consider whether, nearly 40 years after the Act was introduced, it continues to accomplish this objective. This should include overhauling the definition of a public order emergency, following a thorough review by Parliament.

I wish to emphasize that I am of the firm view that the safeguards contained in the current *Emergencies Act* should not be weakened; the threshold, even if modernized, should remain high to reflect the exceptional nature of the authority given to Cabinet under the Act. Furthermore, revision of the threshold for the declaration of a public order emergency should not be an occasion to expand the potential use of emergency powers in ways — such as might arise if such powers were used in response to short-term, limited economic disruption — that unreasonably interfere with or suppress protests that are an important part of our democracy, such as the many peaceful protests against public health measures that occurred throughout the COVID-19 pandemic, or those sometimes engaged in by Indigenous Peoples, environmental groups, or others.

⁸ Canada, Emergency Preparedness Canada, *Bill C-77: An Act to Provide for Safety and Security in Emergencies* — [Working Paper](#), p. 55.

Recommendation 31: The incorporation by reference into the *Emergencies Act* of the definition of “threats to the security of Canada” from the *CSIS Act* should be removed.

Recommendation 32: There should be an in-depth review of Part II of the Act dealing with public order emergencies with a view to:

- a. ensuring that the definition of a public order emergency is modernized in order to capture the situations that could legitimately pose a serious risk to the public order, now and in the foreseeable future;
- b. providing the government with the tools necessary to address these situations; and
- c. ensuring that the threshold remains high, the invocation of the Act remains exceptional, and all appropriate safeguards are put in place to maintain Parliament’s ultimate and effective control over the steps taken by the Government in response to a public order emergency.

A number of parties, witnesses, and policy experts suggested that the *CSIS Act* itself, including its definition of “threats to the security of Canada,” is also in need of modernization. There certainly appears to be merit in this suggestion. Professor Wesley Wark, Senior Fellow at the Centre for International Governance Innovation, remarked that Canada’s national security apparatus has struggled to keep up with a rapidly changing threat environment:

The role that national security and intelligence organizations play in defending the state and society against threats has been torqued by new challenges. These include foreign interference, the malicious spread of disinformation, rampant espionage, cyber threats, and the undermining

of Canadian economic security. Democracy itself is being challenged by a new threat environment in which authoritarian movements are on the rise globally and anti-government conspiracy theories flourish across the internet. Transnational threats to security posed by pandemics and climate change impacts are imposing increasingly stiff costs domestically and internationally.⁹

The modernization of the *CSIS Act*, and the national security landscape more broadly, is a complex topic that is beyond the mandate of this Commission. As such, I decline to make a specific recommendation on this point. However, in my view the calls for reform are well-founded. The evidence presented during both the factual and policy phases of the Commission show that there is a need to consider whether Canada's national security and intelligence system is properly suited to modern realities.

5.2 The consultation process

When the Federal Government introduced the *Emergencies Act*, it recognized that emergency measures might intrude upon areas of provincial jurisdiction established in our Constitution.¹⁰ The obligation under section 25 for the federal government to consult with provinces prior to the declaration of a public order emergency is intended to respect Canadian federalism to the extent possible in emergency circumstances.

In the white paper, the Government of the day stated:

[L]egislation dealing with peacetime emergencies could enshrine the principle that federal-provincial consultations shall take place, to the extent that circumstances permit, before any declaration of emergency

⁹ Wesley Wark, *The Role of Intelligence in Public Order Emergencies*, p. 17-5. This paper is found in Volume 5 of this Report.

¹⁰ *House of Commons Debates*, 33rd Parl., 2nd Sess. [Vol. 9](#) (November 16, 1987), pp. 10807 – 10809 (Hon. Perrin Beatty). See also Canada, Emergency Preparedness Canada, *Bill C-77: An Act to Provide for Safety and Security in Emergencies* — [Working Paper](#), pp. 50 – 53.

is made and prior to the formulation of the federal response. This would provide an opportunity for negotiations and compromise consistent with the spirit of federalism.¹¹

Consultations can allow for sharing information between levels of government, with a view to resolving an arising emergency co-operatively, using existing legal tools. If those tools are exhausted or insufficient, consultation can result in tailoring the emergency measures as necessary and with minimal infringement on provincial interests. For these ends to be achieved, consultation must provide the engaged parties with an opportunity to be heard and an assurance that their input has been considered in good faith.

That said, not all emergencies allow for the same degree of consultation, and for that reason, it would be a mistake to recommend rigid rules. The urgency of the situation, the speed at which events unfold, and the possible need to ensure confidentiality of discussions may all influence the way that consultations are carried out.

Provinces should, circumstances permitting, receive ample notice that they will be consulted about a potential invocation of the *Emergencies Act*. This would allow them to develop appropriate advice for the Federal Government's consideration.

Currently, the Federal Government only has the obligation of consulting the provinces. That is not sufficient. The Act should go further and require consultation with the territories on an equal footing with the provinces. I note that the Federal Government did invite the territorial premiers to take part in the February 14 First Ministers' Meeting. The legislation should formalize the requirement to do so.

Recommendation 33: Section 25 of the *Emergencies Act* should be amended to include a requirement to consult with the territories.

¹¹ Canada, Emergency Preparedness Canada, *Bill C-77: An Act to Provide for Safety and Security in Emergencies* — [Working Paper](#), pp. 44 and 45.

The federal government should also engage in discussions with Indigenous communities to come to an understanding as to how and when they should be consulted regarding possible recourse to the *Emergencies Act*. I would note that I received detailed submissions from the Union of British Columbia Indian Chiefs on this point. Many of the observations they made were pertinent and should be considered by the government when it develops amendments to the *Emergencies Act*.

Recommendation 34: The federal government should engage in discussions with Indigenous communities to establish the appropriate parameters for consultations regarding possible recourse to the Act.

The federal government, when dealing with a situation that might develop into a public order emergency, should take all steps to ensure that all relevant federal – provincial – territorial tables are engaged to maximize the use of existing legal tools and to make sure that those tools are appropriately resourced. The work of these tables should be conducted with a view to ensuring that, should invocation of the *Emergencies Act* be necessary, it will be because all other avenues have been fully explored and are found lacking. In other words, invoking the Act must be the tool of last resort.

Measures adopted by the Cabinet to deal with a public order emergency must be based on reasonable grounds to believe that such measures are necessary. This requirement imposes an obligation on Cabinet to craft measures tailored to the particular circumstances prompting the declaration, including, but not limited to, the specific locations within Canada that are affected.

Recommendation 35: Should invocation of the *Emergencies Act* be necessary and to the extent that circumstances permit, the federal government should cooperate with the provinces to ensure that the measures it adopts to deal with the emergency comply with the requirements of subsection 19(3) of the Act so as to mitigate any infringement on provincial jurisdiction.

Recommendation 36: Although not determinative, the views of provincial, territorial, and Indigenous governments that such measures are not needed within their jurisdictions should be considered in the development of the measures and the jurisdictions to which they are made applicable.

5.3 The Inquiry

5.3.1 Legal foundation and mandate

The *Emergencies Act* required that this Inquiry be held regarding “the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency.” Having spent the last ten months immersed in this work, I propose a number of recommendations to address issues the Commission struggled with and, more generally, to improve the structure of the inquiry process.

I begin with the Commission’s statutory foundation. Although the Order in Council establishing this Commission provided that it be conducted pursuant to Part I of the *Inquiries Act*, this is not actually a requirement of the *Emergencies Act*. It is evident that it should be. This would assure that any future inquiry would have the authority required to thoroughly address the matters assigned to it. Any form of inquiry that does not confer at least the powers set out in Part I of the *Inquiries Act* would seriously hamper the credibility of the process.

Recommendation 37: Section 63 of the *Emergencies Act* should be amended to require that the inquiry be called pursuant to Part I of the *Inquiries Act*.

In the course of its work, the Commission encountered two interpretive problems related to the scope of its mandate: the generality of the mandate under section 63 of the *Emergencies Act*, and the particular points of direction added by the Order in Council establishing the Commission.

The *Emergencies Act* provides relatively little legislative guidance on the mandate of an inquiry such as this. Subsection 63(1) provides only that the inquiry be held “into the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency.” There was, however, broad consensus among the parties, including the Federal Government, that one of the objectives of this Inquiry was to assess whether Cabinet acted appropriately when it declared a Public Order Emergency. At the outset of my mandate, and throughout the Inquiry, I indicated that I intended to examine and assess the basis for the declaration and the measures imposed. This constituted an important objective and a critical component of my mandate.

It would be preferable if the Act explicitly identified the objectives of the inquiry, consistent with the approach taken here.

On this point, a question that has been raised in this Inquiry is whether the invocation of the Act was “lawful,” in the sense of having met the legal requirements for the declaration of a public order emergency. That question is not expressly posed by the Act, or by the Order in Council establishing this Inquiry. The fact is that this Inquiry is not a court and does not have a mandate to sit in review of the Federal Government’s decision, nor should it. In this particular case, the very question of the legality of the declaration is the subject of applications for judicial review in the Federal Court.

While an inquiry called following the declaration of an emergency is likely to hear a great deal of evidence about the attendant circumstances, this evidence will not be presented in the context of an application for judicial review of the decision. The evidence will be called by the commission — not by parties who challenge the declaration and the government that defends it — and the parties will necessarily have a limited (that is, time-constrained) ability to tender evidence, cross-examine the witnesses, make submissions, or otherwise challenge the evidence called by the commission.

The role of a commission of inquiry into the declaration of a public order emergency is distinct from that of a court, and the commission does not have the legal authority to adjudicate the “lawfulness” *per se*, of the declaration. The effect or significance of the commission’s findings and conclusions in judicial review proceedings is a matter for the Federal Court to determine.

Nonetheless, as I have noted throughout this process, this Commission should examine and assess the basis for the invocation of the Act and make findings and draw conclusions about the appropriateness of the invocation and the exercise by the Government of its powers under the Act.

Recommendation 38: The *Emergencies Act* should be amended to provide greater direction to the commission of inquiry established in consequence of the declaration of a public order emergency and, at a minimum, direct it to examine and assess the basis for the declaration and the measures adopted pursuant thereto.

The Order in Council creating this Inquiry replicated the language contained in the *Emergencies Act* but added five additional matters to examine, to the extent relevant to the Commission’s statutory mandate. Some parties took issue with the relevance or appropriateness of some of these items and, in effect, challenged their inclusion.

In many contemporary commissions of inquiry and independent systemic reviews, prospective commissioners are involved in the design of their terms of reference. This seems to me to be an effective way of promoting the independence of the commission and dispelling concerns that its terms of reference have been manipulated by government.

Recommendation 39: The prospective commissioner of a commission of inquiry pursuant to the Act should be consulted as to the substance of the terms of reference for the inquiry.

5.3.2 Production of materials by Government

Section 58 of the Act requires that when the Government tables its motion for confirmation of a declaration of emergency in Parliament, it must also table an explanation of the reasons for issuing the declaration. This is an essential part of the process by which Parliament conducts its deliberations.

However, the necessarily short time within which the section 58 explanation must be prepared may result in a relatively cursory articulation of the Government's reasons. This makes it more difficult for a commission of inquiry to subsequently review and evaluate the Government's decision. This is especially so when the legal advice given to Cabinet by the minister of justice is subject to solicitor – client privilege.

In order to provide early focus for the commission, the Government should provide, at the time the commission of inquiry is created, a detailed statement setting out the factual and legal basis for the declaration. The minister of justice should be required to express their view as to whether the decision to proclaim an emergency was consistent with the purposes and provisions of the *Emergencies Act*, including whether the threshold for the invocation was met, and whether the measures taken under the Act were necessary and consistent with the *Charter*. This statement would not limit the Government in its final submissions to the commission.

Recommendation 40: The *Emergencies Act* should be amended to require that, at the time a commission of inquiry into the declaration of a public order emergency is established, the Government deliver to the commission a comprehensive statement setting out the factual and legal basis for the declaration and measures adopted, including the view of the Minister of Justice of Canada as to whether the decision to proclaim an emergency was consistent with the purposes and provisions of the *Emergencies Act*, and whether the measures taken under the Act were necessary and consistent with the *Charter*.

The Commission heard evidence to the effect that, when the Federal Government approached the decision to declare a public order emergency, senior officials were instructed to make and retain careful records of their deliberations and actions. The effectiveness of this instruction was evident: the Commission and the public obtained a substantial documentary record of the Federal Government’s decision-making process. Going forward, this should be a legal requirement, and should be broad enough to cover both elected officials (and their exempt staff) and public servants.

Recommendation 41: Amendments should be made to the *Emergencies Act* to impose upon the Government the obligation to create and maintain a thorough written record of the process leading to a decision to declare a public order emergency. That obligation should apply to both elected officials (and their exempt staff) and public servants.

While the Federal Government went to great lengths to produce its documents to the Commission, the work of the parties and the Commission was made more difficult by delays in production. In the future, the Federal Government should commence the work of collecting and organizing its documents as soon as the decision to declare a public order emergency is made.

Recommendation 42: The Government should commence the work of collecting and organizing its documents and information as soon as the decision to declare a public order emergency is made. Such records should be produced to the commission at the outset of its work or as soon thereafter as is feasible.

The work of this Commission would not have been nearly as productive as it was if the Federal Government had not waived Cabinet confidence over the inputs to Cabinet associated with the invocation of the Act. Again, that should not be a matter of choice. A government that has declared a public order emergency must produce to the resulting commission of inquiry all of the inputs to Cabinet on the topic. Lest there be any doubt, the category of “inputs to Cabinet” should encompass all information, advice, and

recommendations provided by officials, including exempt staff, to Cabinet, Cabinet committees, and individual ministers. The only acceptable exclusion from production should be the actual deliberations of ministers. Even there, the Government may still choose to waive Cabinet confidence.

Recommendation 43: A Government that has declared a public order emergency should be bound to produce to the resulting commission of inquiry all of the inputs to Cabinet and to ministers on the issue. “Inputs to Cabinet” should be understood as encompassing all information, advice, and recommendations provided to Cabinet, Cabinet Committees, or individual ministers.

The work of this Commission was only possible within its time frame because the Federal Government produced its documents to the Commission without redaction on grounds of national security confidentiality or public interest privilege. This allowed Commission counsel to know what the Government had redacted in the versions of documents provided to the parties, and to challenge those redactions, where necessary. In most cases, these disputes were satisfactorily resolved. This process should not be subject to the choice of the Government of the day. A commission of inquiry into the declaration of a public order emergency must receive government documents without national security or public interest immunity redactions.

In a few instances, the Federal Government did apply redactions to documents given to the Commission on the basis of “irrelevance.” When requested, the un-redacted versions of those documents were then produced to the Commission. This two-step process had no benefits and caused several difficulties. Just as Commission counsel were able to see beneath national security and public interest privilege redactions, they should have been able to do the same with redactions for irrelevance without the need for specific requests. It was important for the Commission to be able to ensure the parties and the public that it was able to see beneath the redactions for national security and related privileges, and the same should have been true for redactions made on the basis of alleged irrelevance. The onus should not have been on the

Commission or the parties to query redactions made on account of irrelevance, one at a time. This information should have been visible to the Commission from the outset.

Recommendation 44: The government should have the obligation to provide a commission of inquiry with all of its documents and information holdings without redactions on account of irrelevance, or on account of national security confidentiality and similar public interest privileges.

Before I close on this topic, I would like to make a final comment. The Commission established a working group of Commission and Government counsel to work through challenges to claims of national security and related privileges. Co-operation and prompt availability made this a highly effective mechanism for the timely resolution of such challenges.

Recommendation 45: Should a future commission of inquiry create a working group to work through challenges to claims of national security and related privileges, the Government should actively engage in the working group with a view to resolving issues expeditiously.

5.3.3 Process for adjudicating privilege disputes

There are cases where, despite best efforts, the government and commission counsel cannot resolve disputes about redactions, and some form of adjudication is necessary. There were cases where I made orders for the Federal Government to produce certain documents with redactions removed. However, there are some types of redactions, such as those based on solicitor – client privilege, that are beyond the jurisdiction of a commissioner under the *Inquiries Act* to resolve. Litigating these disputes in an alternative forum could cause unacceptable delays. This is a particular problem for an inquiry under the *Emergencies Act* with a strict, statutory deadline. Indeed, for all practical purposes, it would be impossible to litigate these types of privilege claims before the courts quickly enough to obtain un-redacted documents in time to use

them during the inquiry. This reality may create incentives to assert privilege claims for improper purposes.

The *Emergencies Act* should be amended to stipulate that the commissioner has the authority to designate an individual, for instance a retired judge, to resolve any claim of privilege that would normally be within the jurisdiction of a superior court judge, as it arises in the course of the inquiry. Such a third party should be permitted to adopt expedited procedures at their discretion.

There is also the potential for unacceptable delays from assertions of privilege over which the Federal Court has exclusive jurisdiction, such as national security privilege under section 38 of the *Canada Evidence Act*. An individual appointed by the commissioner would not be able to deal with such disputes. However, it may be possible to obtain the assistance of the Federal Court in assigning a judge to be available to manage and hear such privilege claims on an expedited basis.

Recommendation 46: The *Emergencies Act* should be amended to allow the commissioner appointed for the inquiry to appoint an individual who will have jurisdiction to resolve any claim of privilege that would normally be within the jurisdiction of a superior court judge in accordance with such expedited procedures as adopted by the adjudicator.

Recommendation 47: Where it can reasonably be anticipated that claims will be made by the government pursuant to section 38 of the *Canada Evidence Act*, a request should be made to the chief justice of the Federal Court to appoint a judge to determine all challenges to such claims on an expedited basis.

5.3.4 Powers to compel production of documents and attendance of witnesses

Currently, under the *Inquiries Act*, a commission has the power to order witnesses to appear before it and to require them to produce such documents and things as the

commission deems requisite. It seems to me that this is not sufficient. A commission may need, especially in its preparatory phase, to obtain information or documents from individuals who have not yet been called, or who do not need to be called as witnesses. In addition, a commission may need information and documents from corporations and other legal entities that, of course, cannot be called as witnesses. I note that Ontario's *Public Inquiries Act 2009* grants this power more clearly.¹²

Recommendation 48: The *Emergencies Act* should be amended to give the commission the power to order a person to produce any information, document, or thing under the person's power or control.

A commission of inquiry into the declaration of an emergency will almost inevitably need the testimony of Parliamentarians, particularly Cabinet ministers. Their evidence might be among the most important received by the commission. In this instance, federal Parliamentarians waived Parliamentary privilege and chose to appear. It cannot be taken for granted that this will be the case in the future. The ability of Parliamentarians to refuse to testify by invoking Parliamentary privilege could severely affect the ability of a commission to accomplish its mandate.

Recommendation 49: The *Emergencies Act* should be amended, subject to any constitutional constraints, to clarify that a federal Parliamentarian may not claim Parliamentary privilege to refuse to testify before a commission of inquiry into a public order emergency.

5.3.5 Timing and duration of the inquiry

My last set of recommendations related to the inquiry process deals with its timing and duration. The *Emergencies Act* requires that the commission file its report 360 days after the end of the emergency — in this instance, by February 20, 2023. The fact that the Federal Government did not pass the Order in Council creating this Commission

¹² *Public Inquiries Act 2009*, S.O. 2009, c. 33, Sch. 6, ss. 10(1)(b), (2).

until April 25, 2022, meant that, effectively, this Commission had only 300 days to complete its work, draft its Report, and have it translated.

It is clearly in the public interest that a commission of inquiry such as this one publishes its report as quickly as possible. However, if the commission is to carry out its mandate properly, it requires sufficient time in which to do so. In my view, two changes should be made to the Act to ensure that any future commission has adequate time to complete its work.

First, I would propose that the 360-day period only start to run once the commission has been established by Order in Council.

Second, 360 days may prove totally insufficient for a particular inquiry. A number of different scenarios may arise that would require more time for a full inquiry to be completed.

For that reason, it should be possible for the mandate of the commission to be extended for a limited period. I would therefore propose that, where the circumstances so require, the date by which the commission's report must be produced could be extended for a maximum period of six months. To avoid the risk, or the appearance, that a commission's work was being constrained improperly by the Government, it seems important to me that the decision as to whether the mandate should be extended be made not by the Government, but by the commissioner.

Recommendation 50: The *Emergencies Act* should be amended such that:

- a. **The 360 days within which an inquiry must complete its work should start to run on the day that the Order in Council creating the commission is made.**

- b. The commissioner heading a public order emergency inquiry should have the power to extend the time within which the commission’s report must be produced by up to six months.**

5.4 The Parliamentary Review Committee

Section 62 of the Act provides that the Parliamentary Review Committee is to review “the exercise of powers and the performance of duties and functions pursuant to a declaration of emergency.” It also has the power to review, revoke, or amend certain categories of regulations and orders.

My reading of the Act suggests that Parliament intended for the Committee to oversee the government’s exercise of its powers and duties while an emergency declaration remains in effect. This is not the way that the Committee has understood its own mandate in this case. As this Report is being finalized, the Committee has not yet completed this work.

Some witnesses who had been called before the Commission had difficulty with timing, as the Committee was trying to schedule hearings with them on the same days or in the same week as they were to appear before me. Other witnesses who had already spoken to Commission counsel or testified before me were confused about why they were later being asked to appear before the Committee.

In order to clarify matters, I would recommend that the *Emergencies Act* be amended to specify that the mandate of the Committee is to perform its oversight role while a declaration of emergency is in effect, and not to serve as a parallel process to the commission.

I also note that, in this case, the Committee was not established until March 2022, more than two weeks after the declaration had been issued. If the Committee is to perform its work as intended, I think that it must be set up promptly.

Recommendation 51: Section 62 of the *Emergencies Act* should be amended:

- a. **to clarify that the mandate of the Parliamentary Review Committee is to oversee how the government is exercising its powers and performing its duties and functions while a declaration of an emergency is in effect; and**
- b. **to provide that the Parliamentary Review Committee is to be struck as soon as possible, and no later than seven days after the proclamation of the emergency.**

5.5 Judicial review

In the paragraphs that follow, I set out views that are not required by my mandate but have been informed by my experience in conducting the Inquiry. I make these observations because I consider them important in the pursuit of two key objectives: the need to bring legal challenges to quick resolution and to ensure proper use of scarce judicial resources.

The findings and conclusions reached in a report such as this one may be judicially reviewed on various legal grounds. This could be initiated by the government or by one of the parties directly affected by the report. There is a strong public interest in ensuring that, if the conclusions of an inquiry are challenged, such a challenge should be decided quickly.

Currently, if a party decides to challenge the conclusions of an inquiry such as this one, the application is heard in the Federal Court. An appeal may be taken against the decision of that Court to the Federal Court of Appeal and then, with leave, to the Supreme Court of Canada. This means that a long period of time could elapse before a challenge to a report is finally determined. To minimize the length of that period, the initial judicial review application should be made directly to the Federal Court of Appeal.

The decision of the Governor in Council to proclaim the existence of a public order emergency may also be challenged before the courts. For essentially the same reasons as I have previously outlined, this type of matter should be resolved as quickly as possible. The public expects and has the right to know, as soon as is feasible, whether the Government erred with respect to a matter as significant as the proclamation of a public order emergency. I note that some other decisions of the Governor in Council can be reviewed directly by the Federal Court of Appeal, such as certain decisions made under the *Canadian Energy Regulator Act*.

I add that not only would these recommendations ensure a speedier resolution of those challenges by removing one level of review, but they would also do so in a way that would be less resource-intensive and less costly.

Recommendation 52: Subsection 28(1) of the *Federal Courts Act* should be amended to add: (1) a commission of inquiry established pursuant to section 63 of the *Emergencies Act*; and (2) the Governor in Council when it issues a proclamation pursuant to subsection 17(1) of the Act among matters the Federal Court of Appeal has jurisdiction to hear applications for judicial review.

6. Other areas for further study

6.1 Social media, misinformation, and disinformation

In Chapter 6, I discuss the important role that social media played in the organization of the Freedom Convoy. In this Report, I also discuss how social media contributed to the dissemination of misinformation, and possibly disinformation, before and during the protests. For example, in Chapter 5, I review the expert evidence of Professor Ahmed Al-Rawi, School of Communication, Simon Fraser University, on social media narratives during the Freedom Convoy protests, including the dynamics of conspiracy theories and disinformation. I also note the role that misinformation played in beliefs about COVID-19, and how those views contributed to increasingly aggressive forms of

protest. In Chapter 9, I discuss how various convoy organizers — including Benjamin Dichter, Patrick King, and Brigitte Belton — used social media to label the deal that was struck between a different set of organizers and Ottawa Mayor Jim Watson to move trucks out of residential areas and onto Wellington Street as “fake news.”

Even this Commission was the subject of misinformation (and perhaps disinformation), including false claims that I was related to the prime minister, or that Bill Blair — as President of the King’s Privy Council for Canada — was directing the Commission’s work. These types of claims, which were easily spread on social media, could serve to undermine public confidence in the work of the Commission. Of course, good faith criticism of a commission of inquiry is not just acceptable; it should be encouraged. Ironically, criticism based on misinformation and disinformation works to undermine the voices of those who might wish to raise more meaningful critiques.

I have already noted that social media is ultimately a tool, and like all tools, it can be used for both constructive and destructive purposes. In the roundtable session on misinformation, disinformation, and the role of social media, Dr. Dax D’Orazio made a similar observation:

There are costs and benefits with this advent of social media, and a huge one on this front, as it relates to traditional gatekeepers, is that we have potentially more access to accurate and also more valued information.

That said, we also see potentialities for a greater influence of things like conspiracy, rumour, hate, and also propaganda.¹³

The roundtable, as well as the Commissioned Paper prepared by Professor Emily Laidlaw,¹⁴ Faculty of Law, University of Calgary, have made it abundantly clear to me that issues surrounding misinformation, disinformation, and social media are both

¹³ Evidence of Dax D’Orazio, Transcript, November 29, 2022, p. 5.

¹⁴ Emily Laidlaw, *Mis- Dis- and Mal-Information and the Convoy: An Examination of the Roles and Responsibilities of Social Media*. This paper is found in Volume 5 of this Report.

critical to modern society, and incredibly complex and nuanced. Regulatory changes risk undermining freedom of expression and producing unintended consequences. Inaction risks allowing the corrosive influence of online misconduct to erode democracy itself. I do not think that this Commission — given its limited time and relatively narrow focus — would be the right place to make any sweeping recommendations in this area. Rather, I hope that the evidence presented during both the factual and policy phases of the Commission provide policy makers with useful inputs as they continue to grapple with these complex issues. I note that the federal government has engaged in initiatives to promote a healthy information ecosystem such as the Digital Citizen Initiative, which seeks to build citizen resilience to online disinformation, and that it is in the process of consulting regarding legislation to address harmful online content.

Recommendation 53: All levels of government should continue to study the impact of social media, including misinformation and disinformation, on Canadian society, with a focus on preserving freedom of expression and the benefits of new technologies, while addressing the serious challenges that misinformation, disinformation, and other online harms present to individuals and Canadian society. Governments should coordinate their work in this area to ensure that any jurisdictional issues may be addressed.

6.2 Crowdfunding and cryptocurrencies

In Chapter 13, I review in some detail how the Freedom Convoy raised funds, and how those funds were both blocked and distributed through a variety of means. Much of this evidence dealt with financial matters that are well known to regulators and courts. My discussion of bank accounts and *Mareva* injunctions will be familiar to most policy makers. However, the funding of the Freedom Convoy also employed a range of more novel technologies, including crowdfunding and cryptocurrencies.

Both of these modern technologies present complex questions for government. The Commissioned Papers produced by Professor Michelle Cumyn,¹⁵ Faculty of Law, Université Laval and Professor Ryan Clements,¹⁶ Faculty of Law, University of Calgary, on crowdfunding and cryptocurrencies, respectively, demonstrate just how complex the legal issues surrounding these two tools are. It is clear, however, that these are technologies that governments will need to grapple with. Crowdfunding platforms allowed millions of dollars to be raised within a matter of days to support the Freedom Convoy. An expert analysis prepared for the Commission¹⁷ demonstrated that cryptocurrencies were able to raise significant amounts of money outside of the control of traditional financial institutions and, in at least some cases, apparently evade court orders.

I am aware that the federal government has recently begun a study of cryptocurrencies. I also know that various other entities, including provincial securities regulators, have examined and continue to examine this technology. I would encourage them to do so, and hope that the evidence obtained through the work of this Commission will aid them in their efforts.

Recommendation 54: The federal government should continue with its study into cryptocurrencies. This study should be informed by the findings of this Commission. Federal officials should seek to collaborate with counterparts at other levels of government to benefit from existing study in this area and to ensure that any jurisdictional issues may be addressed.

With respect to crowdfunding, I do not offer any specific recommendations. However, I do wish to make one observation. Much as been said about the spectre of “foreign funding” of the Freedom Convoy — a concern that was arguably overblown. During

¹⁵ Michelle Cumyn, *Donation-Based Crowdfunding: Legal Framework for Crowdfunding and Governance of Online Platforms*. This paper is found in Volume 5 of this Report.

¹⁶ Ryan Clements, *Cryptocurrency: Challenges to Conventional Governance of Financial Transactions*. This paper is found in Volume 5 of this Report.

¹⁷ Kroll, *Investigative Analysis*, COM00000932.

the Commission’s roundtable on Financial Governance, Policing, and Financial Intelligence, a variety of views on foreign funding were put forward. For example, Jessica Davis, President at Insight Threat Intelligence, recommended limits on foreign funding of political activities in Canada, both overt and covert.¹⁸ Professor Michelle Gallant, Faculty of Law, University of Manitoba, emphasized that many states use limits on “foreign funding” to stifle domestic civil society movements and undermine privacy.¹⁹

In my view, it is important to recognize that the concept of foreign funding is a broad one that captures a wide range of conduct. Both clandestine financial efforts of foreign states to influence elections and grassroots individual donations to human rights organizations could be labelled as foreign funding. I accept that there are types of foreign funding that are harmful, and others that are benign and even desirable. I would add that “foreign” funding can also include money contributed by Canadian citizens living abroad. Any initiative by the government to intervene in this area should keep this in mind and not assume that all forms of foreign funding are problematic.

7. Follow-up and accountability

The use of the *Emergencies Act* is an extraordinary and far-reaching decision. That is why Parliament has built in such an elaborate set of accountability measures in the Act. However, for there to be the required degree of accountability, I believe there is an important piece missing.

If the full benefits from a commission of inquiry are to be drawn, there is obviously a need for the Government to account, publicly and transparently, for how it deals with the recommendations made by the commission. The Government needs to communicate what recommendations it accepts and should provide periodic reports

¹⁸ Evidence of Jessica Davis, Transcript, November 28, 2022, p. 101.

¹⁹ Evidence of Michelle Gallant, Transcript, November 28, 2022, pp. 121 – 125.

on how it is implementing them. If the Government rejects recommendations, in whole or in part, it should publicly explain why.

Recommendation 55: Within twelve months following the tabling of the commission's report, the Government should issue a public response identifying which recommendations it accepts and rejects. For the recommendations the Government accepts, it should provide a detailed timeline for their implementation. For the recommendations the Government rejects, it should provide a detailed explanation of its refusal to implement them.

Recommendation 56: The Government's response should be referred to an implementation committee, the mandate and composition of which are to be determined by Parliament.

Acronyms, Initialisms, and Other Abbreviations



Acronyms, Initialisms, and Other Abbreviations

Abbreviation	Full Title
ADM NS Ops	Assistant Deputy Ministers' Committee on National Security Operations
APMA	Automotive Parts Manufacturing Association
ASI	Advanced Symbolics Inc.
BIA	Business Improvement Area
BLRS	By-law and Regulatory Services (Ottawa)
BOC	Border Operations Centre (CBSA)
CACP	Canadian Association of Chiefs of Police
CAF	Canadian Armed Forces
CBA	Canadian Bankers Association
CBSA	Canada Border Services Agency
CCLA	Canadian Civil Liberties Association
CCMG	Consultative Conflict Management Group
CCUA	Canadian Credit Union Association
CEA	the <i>Canada Evidence Act</i>
Cell (the)	Integrated Planning Cell
CIC	Critical Incident Command(er)
CIG	Combined Intelligence Group
CME	Canadian Manufacturers & Exporters
CN Rail	Canadian National Railway
CSE	Communications Security Establishment



Acronyms, Initialisms, and Other Abbreviations

CSIS	Canadian Security Intelligence Service
<i>CSIS Act</i>	<i>Canadian Security Intelligence Service Act</i>
CVOR	Commercial vehicle operator's registration
DHS	Department of Homeland Security
DLT	Divisional Liaison Team
DMOC	Deputy Ministers' Committee on Operational Coordination
DND	Department of National Defence
DSC	Deputy Secretary to Cabinet
<i>EA</i>	<i>Emergencies Act</i>
<i>EEMO</i>	<i>Emergency Economic Measures Order</i>
<i>EMCPA</i>	<i>Emergency Management and Civil Protection Act</i>
<i>EMR</i>	<i>Emergency Measures Regulations</i>
EOC	Emergency Operations Centre (Ottawa)
EPCRS	Emergency Preparedness and COVID Recovery Secretariat
FINTRAC	Financial Transactions and Reports Analysis Centre of Canada
FMM	First Ministers' Meeting
FPT	federal – provincial – territorial
FPT CPPC	Federal, Provincial, and Territorial Crime Prevention and Policing Committee
Freedom Corporation	Freedom 2022 Human Rights and Freedoms Non-Profit Corporation
GAC	Global Affairs Canada
GDP	Gross Domestic Product



GIC	Governor in Council
GOC	Government Operations Centre
IAS	Intelligence Assessment Secretariat
ICS	Incident Command System
IGA Secretariat	Intergovernmental Affairs Secretariat
IMCIT	Ideologically Motivated Criminal Intelligence Team (RCMP)
IMVE	ideologically motivated violent extremism
IRG	Incident Response Group
ITAC	Integrated Terrorism Assessment Centre
JCCF	Justice Centre for Constitutional Freedoms
JIG	Joint Intelligence Group
MCM	Major Case Management
MLA	Member of the Legislative Assembly
MOU	memorandum of understanding
National Framework	National Framework for Police Preparedness for Demonstrations and Assemblies
NCC	National Capital Commission
NCR	National Capital Region
NCRCC	National Capital Region Command Centre
<i>NDA</i>	<i>National Defence Act</i>
NSIA	National Security and Intelligence Advisor
OCPC	Ontario Civilian Police Commission
OPP	Ontario Provincial Police



Acronyms, Initialisms, and Other Abbreviations

OPS	Ottawa Police Service
OPSB	Ottawa Police Services Board
<i>PCMLTFA</i>	<i>Proceeds of Crime (Money Laundering) and Terrorist Financing Act</i>
PCO	Privy Council Office
PIU	Protective Intelligence Unit (RCMP)
PLT	Police Liaison Team (OPS)*
PLT	Provincial Liaison Team (OPP)*
PMO	Prime Minister's Office
POE	Port of Entry
POGG power	Peace, Order, and good Government power
POU	Public Order Unit
PPS	Parliamentary Protective Service
PS	Public Safety
<i>PSA</i>	<i>Police Services Act</i>
PSPC	Public Services and Procurement Canada (department of)
RBC	Royal Bank of Canada
RCMP	Royal Canadian Mounted Police
RE	reporting entity
RFA	Request for Assistance
SIRA	Strategic Intelligence, Research, and Analytics Unit (FINTRAC)
SJAM	Sir John A. Macdonald Parkway
SPVG	Service de police de la Ville de Gatineau
SQ	Sûreté du Québec



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SSE	Safety, Security, and Emergencies (Cabinet Committee)
TBOF	Taking Back Our Freedoms
TD	Toronto-Dominion Bank
TIMG	Traffic Incident Management Group
TPS	Toronto Police Service
TPSB	Toronto Police Services Board
<i>WMA</i>	<i>War Measures Act</i>
WPS	Windsor Police Service**
WPS	Winnipeg Police Service**
WPSB	Windsor Police Services Board

* PLT can refer to either Police Liaison Team or Provincial Liaison Team, depending on the context.

** WPS can refer to either Windsor Police Service or Winnipeg Police Service, depending on the context.