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Co-Chairs:
The Honourable Gwen Boniface Mr. Matthew Green Mr. Rhéal Fortin



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• (1840)

[English]

The Joint Chair (Mr. Matthew Green (Hamilton Centre, NDP)): Good evening. I would like to call this meeting to order.

Welcome to meeting number three of the Special Joint Committee on the Declaration of Emergency, created pursuant to the order of the House of March 2, 2022, and of the Senate on March 3, 2022.

Today's meeting is taking place in a hybrid format, pursuant to the House order of November 25, 2021.

I would like to remind all those present in the room to please follow the recommendations of the public health authorities, as well as the directives of the Board of Internal Economy, to maintain health and safety.

Should any technical issues arise, please advise me, as we may need to suspend for a few minutes to ensure that all members are able to participate fully.

Witnesses should also be aware that translation is available through the globe icon at the bottom of their screen or through the earpieces that are provided here in the room.

Before I turn it over for the first round of opening remarks, I would like to offer, for the benefit of the witnesses, that each time allocation to the members of this committee is strictly timed. It may be the case that from time to time, a member may intervene in order to request that they move on to their next question. Please know that this interruption is merely meant to protect their available time in order that they may gain insights they require for the purpose of the study. Should you not have the appropriate time to respond in full, I invite you to provide any supplementary remarks to the committee in writing.

To the members of this committee, this is a gentle reminder to place all questions through the chair, so as not to engage in any debate directly with the witnesses.

With that being said, I would like to welcome our first witnesses this evening.

From the Senate, we have Mr. Philippe Hallée, Law Clerk and Parliamentary Counsel; and from the House of Commons, we have Mr. Philippe Dufresne, Law Clerk and Parliamentary Counsel.

You will each have five minutes for your opening remarks.

Mr. Hallée, the floor is yours.

Mr. Philippe Hallée (Law Clerk and Parliamentary Counsel, Senate): Thank you, Mr. Chair.

[Translation]

Honourable senators, members of the House, I am pleased to be here this evening to support the work of the Special Joint Committee on the Declaration of Emergency, in the aftermath of the motion adopted on March 24. I hope to be able to answer your questions about the committee's mandate and the scope of its work.

As you know, on February 14, the Governor in Council declared that a public order emergency existed across Canada and necessitated the taking of special temporary measures. This declaration was subsequently revoked nine days later, on February 23.

Like other federal statutes, the Emergencies Act provides an explicit role for Parliament in its administration. This role is described in Part VI of the act, entitled "Parliamentary Supervision". Subsection 62(1), under the heading "Parliamentary Review Committee", specifically provides that "the exercise of powers and the performance of duties and functions pursuant to a declaration of emergency shall be reviewed by a committee of both Houses of Parliament designated or established for that purpose". The motion to establish this committee, passed by the House of Commons on March 2 and the Senate on March 3, uses essentially the same wording as the act: your committee was established to examine "the exercise of powers and the performance of duties and functions pursuant to a declaration of emergency", which has since been revoked.

Section 62 provides a number of details relating to the committee's role. However, as the motion establishing your committee passed after the declaration of emergency had been revoked, some parts of that section are no longer relevant to your work. For instance, no orders or regulations will be referred to you for revocation or amendment. Your committee will therefore focus on reviewing the government's exercise of its powers during the state of emergency.

As some members of this committee have already noted, the wording of the act is quite broad. What needs to be determined is its scope, in practice. Neither the motion establishing the committee, nor the act itself, provide any further clarification of what is meant by "review". Nor do they contain any guidelines or limitations as to the kind of information the committee must or must not consider or the kinds of inquiries it may or may not conduct in its review.

[English]

Were this simply a matter of statutory interpretation, I would suggest that the committee's role is to examine how any powers, duties or functions assigned during the emergency were exercised. The powers of the committee as set out in subsection 62(5) to revoke or amend an order or regulation tend to support a mandate that is focused on how the powers, duties or functions assigned during an emergency were exercised. This would include their conformity with the Charter of Rights and Freedoms and international human rights instruments, which are referenced in the act's preamble.

In addition, I would note the different language used in the act in sections 62 and 63. The former describes the work of this committee, and the latter describes the inquiry that the executive is obliged to convene into the circumstances that led to the declaration being issued. In section 63 the inquiry is explicitly required to examine the circumstances that led to a declaration of emergency. Section 62, by contrast, makes no mention of those circumstances.

As I mentioned, however, the committee's mandate is not simply a matter of statutory interpretation. One must always keep in mind the role of parliamentary privilege when considering committees and their work. Parliamentary privilege is a fundamental tenet of Canadian constitutional law, as you well know. It constitutes the sum of rights that the House of Commons, the Senate and their members possess, without which they could not discharge their functions. One such right is the right of each House of Parliament to regulate its own internal affairs without outside interference. This right is extended to committees, including joint committees like this one.

Accordingly, this committee is master of its own affairs, subject to any direction from the House and the Senate. It can determine what information may or may not be relevant and necessary to the task it has been assigned, and it can determine whether a given line of inquiry is or is not within the scope of its mandate. In other words, the committee is within its rights to determine, on its own, whether any given line of inquiry or piece of information is relevant and necessary to its work.

I thank you for your time. I'm looking forward to taking your questions.

The Joint Chair (Mr. Matthew Green): Mr. Dufresne, the floor is now yours.

[Translation]

Mr. Philippe Dufresne (Law Clerk and Parliamentary Counsel, House of Commons): Thank you, Mr. Chair.

Members of the committee, thank you for your invitation to appear today. I am pleased to be here along with my colleague, the law clerk and parliamentary counsel of the Senate, to discuss the scope of the mandate of the committee and address any questions that the committee may have.

As the law clerk and parliamentary counsel of the House of Commons, I am the chief legal officer of the House and my office provides comprehensive legal and legislative services to the Speaker, the Board of Internal Economy, the House, its committees, members of Parliament and the House Administration.

As counsel to the House, its committees and members, my staff and I serve the interests of the Legislative Branch, and provide similar types of legal and legislative services to the House as the Department of Justice provides to the government.

I hope that my remarks and my answers today will assist the committee in its important study.

[English]

The Emergencies Act authorizes the Governor in Council to take special temporary measures that may not be appropriate in normal times in order to secure the safety and security of the individual and to preserve the sovereignty, security and territorial integrity of the state during a national emergency. The act expressly provides that the taking of these measures by the Governor in Council is subject to parliamentary supervision and to the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights.

With respect to parliamentary supervision, the act contemplates that both Houses play an important role in the review of government action pursuant to the act. Shortly after a declaration of emergency is issued, both Houses of Parliament are to be called upon to confirm the declaration of emergency. Any continuation of a declaration of emergency must be confirmed by both Houses of Parliament. A declaration of emergency may always be revoked by either House. Published orders and regulations made under the act can also be revoked or modified with the agreement of both Houses.

• (1845)

[Translation]

Importantly, the act provides for the creation, by both Houses, of this committee, as the Parliamentary Review Committee, with the mandate to review “the exercise of powers and the performance of duties and functions pursuant to a declaration of emergency”. The act mandates the committee to table certain reports before both Houses, and provides that the committee may also revoke or amend any unpublished order or regulation within 30 days of their referral.

While the act itself sets out certain features of the committee and the process in both chambers for the confirmation of a declaration of emergency and its continuation or revocation, the interpretation and application of these provisions are to be made by Parliament and not the courts, as these matters of parliamentary procedure fall under parliamentary privilege. This was demonstrated in the House of Commons on February 17, 2022, when the Speaker of the House rendered a ruling on the meaning of the expression “debated without interruption” found in subsection 58(6) of the act.

[English]

I understand that questions have been raised with respect to the mandate of this committee, and how it compares to that of the inquiry that the Governor in Council shall cause to be held “into the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency” pursuant to subsection 63(1) of the act.

The act requires that the inquiry be caused to be held within 60 days after the revocation of the declaration and that its report be laid before each House of Parliament within 360 days after the revocation of the declaration. As the inquiry made by the Governor in Council falls under the responsibility of the executive branch, the committee may wish to hear from counsel from the Department of Justice with respect to their interpretation of its mandate. From my perspective, it would cover both the issuance of the declaration and the measures taken to deal with it.

With respect to this committee, its mandate—which derives from the orders of reference of both Houses and the Emergencies Act—is “to review the exercise of powers and the performance of duties and functions pursuant to the declaration of emergency that was in effect from Monday, February 14, 2022, to Wednesday, February 23, 2022”.

[*Translation*]

Pursuant to subparagraph (m)(ii) of the House order, the committee may “report to the Houses from time to time, including pursuant to subsection 62(6) of the act,” which provides for a report “at least once every sixty days while the declaration of emergency is in effect” and “within seven sitting days after” the revocation of the declaration, which was done on Tuesday, March 22, 2022.

In my view, the committee clearly has the authority to review the exercise of powers and the performance of duties and functions pursuant to the declaration, which includes the making of the Emergency Measures Regulations and the Emergency Economic Measures Order by the Governor in Council, as well as the performance of duties and functions that the regulations and orders authorized.

[*English*]

While the mandate of the committee does not explicitly include “the circumstances that led to the declaration being issued”, it will be for this committee to determine whether and to what extent a consideration of such circumstances would be relevant and necessary to its review of the exercise of powers, and the performance of duties and functions that took place pursuant to the declaration.

While the committee may be able to deal with certain matters in a more specific manner, other matters may require a consideration of the broader context. The key question for this committee, in my view, would be whether the information is necessary to the committee to fulfill its mandate pursuant to the House's order and the act.

[*Translation*]

With that, I would be pleased to answer any questions.

[*English*]

The Joint Chair (Mr. Matthew Green): Thank you, both. We will now proceed to our rounds of questioning.

Mr. Motz, the floor is yours.

Mr. Glen Motz (Medicine Hat—Cardston—Warner, CPC): Thank you, Chair, and thank you both very much for being here and providing us that overview.

Mr. Dufresne, we normally speak of committees being the masters of their own proceedings, as long as they act within the scope and the mandates provided by the House.

In striking this committee, did either house impose any limitations on the scope of our work, or did they simply recycle the words from the Emergencies Act, that “The exercise of powers and the performance of duties and functions pursuant to a declaration of emergency shall be reviewed”?

Mr. Philippe Dufresne: Those are the words used in the House's order. I understand it's the same for the Senate's order. It's “review the exercise of powers and the performance of duties and functions pursuant to the declaration of emergency that was in effect from Monday, February 14, 2022, to Wednesday, February 23, 2022”. There's a little more specificity to the dates in the House order.

Mr. Glen Motz: What I'm saying, though, is they didn't confine the mandate; they basically quoted the act.

Would it be fair to say that this committee shares in and enjoys the House's parliamentary privileges, as has already been mentioned by you and Mr. Hallée, to interpret the statutory provision without any outside interference and to determine the appropriate scope for its mandate as it sees fit?

That's for both of you gentlemen.

Mr. Philippe Dufresne: I would say that it is for this committee to interpret the scope of its mandate in light of the House's order and in light of the language in the act. Ultimately, it would be for the houses if there are any issues raised about that.

We have seen certain instances where concerns were raised following committee reports, when it was argued in the House that a committee had gone beyond its mandate. However, it's not something that would be for the courts. It would be for the committee and the houses.

• (1850)

Mr. Glen Motz: Thank you.

I have one more question. The House of Commons has a well-recognized role as being the grand inquest of the nation. Would it not, therefore, behoove us as a committee mandated by that House to take a broad and very generous interpretation of our review mandate in order to adequately discharge our responsibilities to Canadians to hold their government to account?

That's for both of you.

Mr. Philippe Dufresne: In terms of “the grand inquest of the nation”, that has certainly been cited and included by the Supreme Court of Canada in recognition of the important work of the House and committees in holding the government to account and being able to do its work. The House itself, though, has said in Speaker's rulings that it is important for committees to look to the ambit and the mandate that has been given to them by the House, so it's up to the committee, and ultimately the House, to make those determinations and to do what they can so that they can get to their mandate and fulfill their mission.

Mr. Glen Motz: Fair enough, but as we've seen in the order by the House, it does not limit that scope. It just basically repeats the Emergencies Act in section 62 as being “the exercise of powers” and “the performance of duties”, and that's what it's the responsibility of the committee to review.

To ask again, in order to do that and to do that appropriately, to make sure this committee understands that the discharge of its responsibilities is not just to the House, but to the nation and to Canadians who are watching this, and it's a matter of having full transparency and full accountability for the actions of government, for the actions of the House, would it not then seem reasonable that we would take a very broad approach to a scope and mandate to ensure that there was nothing left out, to ensure that no questions were unanswered?

The Joint Chair (Mr. Matthew Green): Thank you. Unfortunately, time does go by. Four minutes go by quickly. This time is a little shorter than some of our House committees, so as was referenced earlier on, if there's an opportunity for supplementary information to be provided in writing as it relates to the questions from Mr. Motz, I would encourage the witnesses to give it contemplation and provide it to this committee accordingly.

We will now turn to Mr. Naqvi for his four minutes.

Mr. Yasir Naqvi (Ottawa Centre, Lib.): Thank you very much, Chair.

I want to thank both witnesses for being here today and assisting us in understanding the scope of this committee and the manner in which the act is laid out.

I'll ask this question of either one of you.

When we look at section 62, we see language that talks about “exercise of powers and the performance of duties and functions pursuant to a declaration of emergency shall be reviewed....”

In your view, is that a more contemporaneous review of the powers that were invoked as a result of the Emergencies Act?

Mr. Philippe Hallée: It is really an appreciation of the whole context that is needed for the.... I mean, the context is really the exercise of the powers that have been granted to the government for this purpose, so it is indeed an appreciation of the whole context. I would say the contemporaneous.... I'm not very clear.

It is essentially an appreciation of the whole context, including what has led to the adoption of the measures, but it's focused only on the exercise of the power and how. As I was mentioning in my notes, it's really about how this power, those powers, have been exercised.

• (1855)

Mr. Yasir Naqvi: Mr. Hallée, when you talk about how those powers are exercised, am I to understand that it's more an oversight function in the manner in which those powers are being exercised or have been exercised?

Mr. Philippe Hallée: If I understand your question, I think it's how they have been exercised, indeed, especially given that the declaration has been repealed now—

Mr. Yasir Naqvi: Yes, and I am talking the more general statutory.... Even if that were not the case, if this order were still in place and we were sitting right now, we would have been performing perhaps an oversight function on how those powers were being exercised as they were being exercised. Am I correct in that interpretation?

Mr. Philippe Hallée: You're right.

Mr. Yasir Naqvi: When you juxtapose the language in section 63, it says very distinctly “cause an inquiry to be held into the circumstances that led to the declaration being issued”.

Is it correct to assume that it's being looked at more from a retroactive perspective as to what were the circumstances that caused the government to invoke the Emergencies Act?

Mr. Philippe Dufresne: I can perhaps speak to this, Mr. Naqvi, in the sense that, as I said in my opening remarks, if we look at the language for the inquiry, there are certainly the two elements. One is the circumstances that led to it, which is retrospective and, second is the measures that were taken. There are those two elements in terms of the inquiry.

In terms of this committee, the language used is “the exercise of powers and the performance of duties and functions pursuant to the declaration”. That's the starting point for this committee.

To what extent additional context—including the circumstances that existed—is necessary and useful in assessing how the powers were used is for this committee to determine.

The Joint Chair (Mr. Matthew Green): Thank you very much. As mentioned, four minutes goes by very quickly.

We will now move on to Mr. Fortin for his round of questions.

If it's helpful for the members of this committee, I'm happy to put up one finger for one minute remaining, so you get a sense of how quickly that round goes by.

Mr. Fortin, the floor is yours, before we get into any other points of order.

[Translation]

The Joint Co-Chair (Mr. Rhéal Fortin (Rivière-du-Nord, BQ)): Thank you, Mr. Chair.

Mr. Dufresne and Mr. Hallée, thank you for being here. Your insight will certainly be invaluable to us in the work we're doing.

I'd like to go over some specifics with you.

In your opening remarks, you talked about the fact that the Canadian Charter of Rights and Freedoms continued to apply after the Emergencies Act was invoked. That wasn't the case in the context of the previous act—the War Measures Act—since at the time there simply wasn't a charter, as we know. Now that there is a charter, it applies.

Does the application of the Canadian Charter of Rights and Freedoms need to be taken into consideration when we interpret, for instance, the limits of our mandate? Our mandate includes reviewing the exercise of powers and performance of duties and functions set out in the act. Don't we also have a duty to look at whether the exercise of those powers is consistent with the charter?

Mr. Philippe Hallée: That is indeed my understanding. Among other things, the role of the committee is precisely to look at whether the exercise of powers that were put into place is consistent with the charter and other instruments.

The Joint Co-Chair (Mr. Rhéal Fortin): I'd like to ask you a second question.

I understand that based on how the act is divided, sections 62 and 63 deal with two different types of inquiries. On the one hand, section 62 deals with the review of “[t]he exercise of powers and the performance of duties and functions pursuant to a declaration of emergency”, which is what our committee is concerned with. On the other hand, section 63 refers to “an inquiry to be held into the circumstances that led to the declaration being issued”.

Do the review and the inquiry occur in silos, each one automatically excluding the other? For example, when the Governor in Council conducts the inquiry into the circumstances, will they be barred from determining that there should have been seizures, or that tow trucks should have been hired to clear the trucks from Wellington Street, in Ottawa, but that it was impossible to do that? Will all of that be excluded from the Governor in Council's work? And on the other hand, is it out of the question for us, in our review, to look at the circumstances that led to the exercise of these powers?

• (1900)

Mr. Philippe Dufresne: I would say that the work doesn't necessarily have to occur in silos, to use your expression.

The committee and the Governor in Council will have to do their jobs. They both have a mandate, and they'll have to determine the scope of their mandates, the work that needs to be done and the information that needs to be gathered, and then focus on that. Obviously, if we see that some of the work is being duplicated, then the committee and Governor in Council would be free to make adjustments. Having said that, they each have their own mandate and can conduct their inquiry as long as the scope of that mandate is respected.

The Joint Co-Chair (Mr. Rhéal Fortin): Mr. Dufresne, I will give an example to confirm that I understand your answer.

If a witness appears before the committee and we need clarification of some of their answers, and that leads us to look into some things that might be considered part of the circumstances having led to the declaration being issued, will we not be permitted to ask those questions? Will this instead be handled on a case-by-case basis?

As you said at the outset, we're not working in silos, so we have no formal limitations on addressing issues that fall under either mandate, right?

[*English*]

The Joint Chair (Mr. Matthew Green): Mr. Fortin, thank you very much.

Of course, with any questions that are left unanswered...

We find ourselves in an interesting place. I'll just let the members know that, based on what we've passed, we'll actually fall a bit short, so we will have some time in additional rounds. Also, as has been suggested, there is the opportunity for the witnesses to provide, in reflection of this meeting, fuller answers to the best of their ability. We want to have a scenario in which we have as much information as possible to help guide the scope.

With that being said, we will go on to the next round, which is mine.

I am looking to my co-chairs. I am happy to pass the chair over, if that's....

Mr. Glen Motz: I'll time it for you, Matthew.

The Joint Chair (Mr. Matthew Green): Yes, I bet you will, Glen, with a 60-second clock.

I have a clock here. Feel free to match yours to mine, and we'll take it from here. That being said, the clock has begun.

Mr. Dufresne, in your remarks you talked about legislative interpretation. I think you referenced the Supreme Court. My remarks reflected on a similar principle, that if legislation was “ambiguous”—and in fact, I said it so many times that I couldn't even pronounce the word correctly—we ought to have a liberal interpretation of it.

Would both of you care to comment on what I think is an important principle of law that we're wrestling with right now, since we have before us legislation that provides some ambiguity?

Mr. Philippe Dufresne: When we talk generally in terms of large and liberal interpretation—and we talk about that sometimes in the human rights context and in other contexts—we talk about what is the purpose and what is the interpretation that is going to support the ultimate purpose of the legislation.

As the Speaker of the House pointed to in his ruling on the interpretation of uninterrupted debate, I would point to the modern rule or principle of interpretation, that

The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

Those are all the things you look to, including—as was stated—the purpose of this legislation.

We know this legislation has a number of purposes, but one of them is parliamentary supervision and one is compliance with the charter and other instruments.

The Joint Chair (Mr. Matthew Green): Mr. Hallée, is there anything you'd like to add to that?

Mr. Philippe Hallée: No. I agree.

The Joint Chair (Mr. Matthew Green): With that being said, then, would it not be a logical conclusion that, given that the orders of this committee were presented and passed by the House after the conclusion of the Emergencies Act, we would be provided with the avenue via which a liberal and broad interpretation would allow for us to contemplate the preconditions leading up to the use of these powers in order to gain a kind of social and political context, given that we will likely be the only parliamentary intervention reflecting on this particular order?

Mr. Philippe Dufresne: What I'd say is that the anchor for the committee's work is going to be the language of the order and the language of section 62, so

The exercise of powers and the performance of duties and functions....

Some of them you may be able to do in complete isolation; many you may not. You may find that you need to understand and have information on the context and the circumstances that led to the exercise of those powers. Those are the types of questions you'll be dealing with.

• (1905)

The Joint Chair (Mr. Matthew Green): You referenced this being a starting point. In your contemplation of that phrase, what would that leave us open to in terms of our ability to adequately deal with the information at hand?

Mr. Philippe Dufresne: Are we talking about the exercise of powers and the performance of duties and functions? We mention the regulation. We mention the order. Then, to what extent will this committee feel that it needs to understand the broader scope of the circumstances in which those powers were exercised to assess the manner in which they were exercised?

The Joint Chair (Mr. Matthew Green): Mr. Dufresne, in closing, with 45 seconds left, how would you care to comment on proportionality? In order for the public to look at and reflect on what the government constituted over the course of the order, would it not make sense that proportionality would have to be contemplated through the preconditions leading up to the invocation of the act?

Mr. Philippe Dufresne: When we review the exercise of powers in the performance of duties, some of the questions will be what those powers were, what they were for, what the situation in which they were utilized was, and what the outcome was.

The Joint Chair (Mr. Matthew Green): Thank you very much.

I have eight seconds to go. I will call that a wrap.

I will hand the floor over to Senator Boniface for her intervention.

The Joint Chair (Hon. Gwen Boniface (Senator, Ontario, ISG)): Thank you both very much for being here. It's really important in terms of clarifying how the act is interpreted.

Many of the questions I had in mind have been covered, but perhaps you can tell me a bit more about section 63, to do with the inquiry, because, as you said in your response to Mr. Fortin, they're not silos.

I know you can't speculate, but what would be the normal process of naming a commissioner to head the inquiry and so on? Would there normally be further information provided within that edict that would lay it out, or would the commissioner be in the same position we are, relying on a section in the act?

Mr. Philippe Dufresne: I'd hesitate to go too far in that direction, because this is really for the executive to assess, and for counsel from the Department of Justice. There's no prescription in this act, other than talking about causing a review, so is it going to be one under the Inquiries Act? If so, there are powers that flow from that, and there's a structure. Is it going to be something else? I don't know, so I wouldn't go further.

The Joint Chair (Hon. Gwen Boniface): For clarity, then, in the Inquiries Act, there will be certain specifics laid out that would guide the commissioner of the inquiry, or whatever title is provided.

Mr. Philippe Dufresne: It would provide the inquiry with some powers for subpoena and so on that it would be able to use.

The Joint Chair (Hon. Gwen Boniface): If you look at the two sections, as you indicate, would it then be wise for this committee to start with going to the core of section 62, as you say, the "duties", the "powers", and looking at that, in order to not go back to the House and find out that we've gone way outside of our scope? It's to focus on those, and then, as we work along, determine—to Mr. Fortin's point—that if you have certain information and you need the information in that regard to understand that piece, then you would do it then.

Mr. Philippe Dufresne: I think both of us have said here today that the focus on the regulation, on the order that was adopted, and how it was exercised and used, seems to be squarely within the language of the order and the language of section 62. Then, going beyond that, looking at the circumstances and perhaps what led to that, may still be within the ambit. However, if your starting point is the regulation—what it is, what it does, etc.—then it seems that you would be starting from the core of that mandate.

The Joint Chair (Hon. Gwen Boniface): Okay. That's good enough for me.

Thank you, Mr. Chair.

The Joint Chair (Mr. Matthew Green): Thank you very much.

We now have Mr. Carignan.

[*Translation*]

Hon. Claude Carignan (Senator, Quebec (Mille Isles), C): Thank you, Mr. Chair.

I've read the documents, listened to Mr. Fortin's question and heard your response, Mr. Dufresne. Just to make sure I understand, I'm going to rephrase what was said and you can tell me if it sums up your thinking.

Basically, you're saying that the Governor in Council must investigate the circumstances that led to the declaration, but that doesn't mean the committee can't hear evidence related to the circumstances to give itself more context and carry out its review of the exercise of powers. We can consider the circumstances, can't we?

• (1910)

Mr. Philippe Dufresne: Yes.

Hon. Claude Carignan: All right. I think that sums it up nicely. Thank you.

I have a second point.

We have a mandate to review the exercise of powers. There are many ways to do that. We can ask whether powers were exercised unreasonably or for inappropriate purposes, for example. I also understand that in reviewing the exercise of powers, we can look into the legal basis for taking on those powers. Take the freezing of bank accounts, for instance. We can look into what the legal basis was for those powers, because we do have the incidental authority to go and check whether or not the legal authority was there to exercise those types of powers. We're free to do that as part of our review of the exercise of powers, right?

Mr. Philippe Dufresne: I would say that the committee doesn't have the same role as a court of law would have dealing with these types of issues.

Hon. Claude Carignan: We still need to review those powers to determine if they were appropriate or not. If the powers were taken on illegally, that may mean they were exercised inappropriately.

Mr. Philippe Dufresne: That will definitely be part of how you interpret your mandate. You will be able to ponder these questions, that is, try to determine whether the powers were exercised appropriately, the situation in which the powers were taken on and whether it had been anticipated, while also keeping in mind the separate roles played by the committee and the courts.

Hon. Claude Carignan: However, determining the legal basis for the exercise of powers is part of reviewing the exercise of those powers, is it not? In other words, the authority to take on the powers and the manner in which the powers are exercised are part and parcel of the exercise of powers.

Mr. Philippe Dufresne: I think that's part of what led to this regulation being adopted, actually.

Hon. Claude Carignan: Okay. We're on the same page.

Thank you.

[English]

The Joint Chair (Mr. Matthew Green): Thank you very much.

We will now go on to Senator Harder.

Hon. Peter Harder (Senator, Ontario, PSG): Thank you very much, Chair.

I'm going to be on the same theme. It seems to me that you've given us good advice with respect to starting our consideration of scope with section 62. Your question of "how", I think, is very relevant to us.

You've also opened up the door to "how plus", in the sense of privilege and how the deliberations of the committee need to be informed by the preinvocation of the emergency in the context of what we were dealing with at the time.

Is that a correct interpretation? In other words, we should start with the "how" in the period of exercising the responsibilities, and only revert to earlier in the context of particular testimony or a particular issue emerging.

Mr. Philippe Hallée: I think that would be a good interpretation of the mandate. Indeed, it is to really look at the use of the power and how it has been used. Has it been used in proportionality? Has it been used abusively in the context that it was meant to address?

To have a better sense of the use of those tools, of course, indeed, looking into the broader context is sometimes essential. However, the main focus of the committee, as I understand it, is really to look into how it has been exercised.

Hon. Peter Harder: In that look back for context, I presume it's not to determine whether the House of Commons was correct in invoking the Emergencies Act.

Mr. Philippe Dufresne: I think you mean to say "whether the government was correct".

Hon. Peter Harder: Yes, the government, but the House of Commons invoked it.

Mr. Philippe Dufresne: If we look at the inquiry's role, the circumstances and so on, if we look at this committee, we are focusing on the powers and the performance of duties and functions that took place. In the House's order, we're talking about during the declaration, when it was in effect.

Hon. Peter Harder: Yes. I think that's a very important point and one where section 63 is much broader in scope and in timeline for consideration.

In fact, concerning my final question, a close reading of the act would suggest that the parliamentary review committee would be *functus* with the revocation of the act.

Now, I know the mandate of this committee from the Senate and the House is otherwise, but the act itself would suggest that the review committee ceases its work with the revocation.

• (1915)

Mr. Philippe Hallée: Not quite. I think there is still a role, as I mentioned in my comments. There is a portion of the function of the mandate in section 62 that is not applicable anymore. You would not be provided with regulations to consider whether they should be repealed.

However, to look into whether those regulations that were in place, the instruments that were taken, were used effectively and reasonably in the context is still something that this committee can look into and report to both Houses.

Hon. Peter Harder: Thank you.

The Joint Chair (Mr. Matthew Green): Given the expediency of our friends from the Senate, we've actually reclaimed some time. I would like to put to members of this committee that we are running ahead of schedule and I would present perhaps two options—

My apologies. Thank you. I will now recognize Senator White, who can redeem the 11 seconds from Senator Harder, if he so chooses.

Hon. Vernon White (Senator, Ontario, CSG): Thank you very much, Mr. Chair. It's truly appreciated.

I feel like the "beating of the dead horse" person here, because I think we've gone through the same discussion, but it seems to me that section 62 is extremely prescriptive, and that's where we come in.

The inquiry, under section 63, has much more latitude for growth and can expand the role based on what the inquiry hears. Is that really what we're talking about here?

Mr. Philippe Dufresne: What we've been discussing is that the inquiry has a twofold element to its mandate in terms of the act: the circumstances that led to the declaration being issued, and the measures taken for dealing with it.

In terms of this committee, it is talking about exercise of powers, performance of duties and function pursuant to a declaration, and that this committee has certain powers, in particular when it's in effect. However, I think we have both said that if the committee feels that it needs to consider the context in order to do its work, then that falls within its mandate.

Hon. Vernon White: Understanding that we may wish some information to assist us, we're still limited back to those guardrails under section 62, regardless of what we want. This isn't about our wants, right? At the end of the day, we still are limited back to the guardrail of section 62.

I might not like how it reads, but it is pretty clear to me that we're back in the same room.

Mr. Philippe Dufresne: You would have to fit yourself into the language of the orders of the Houses, which talk about "exercise of powers" and "performance of duties and functions" pursuant to the declaration.

Hon. Vernon White: Thank you very much, Mr. Chair.

The Joint Chair (Mr. Matthew Green): The rounds have now gone a little more quickly than anticipated. When we first contemplated our routine motions, we understood our meetings would be held to two hours. We now are in a three-hour meeting.

The two choices that I would like to put to the committee are to either add more time to the second round or to take the order and provide a fullness of four minutes per person.

Mr. Arif Virani (Parkdale—High Park, Lib.): Add more time to the second round.

The Joint Chair (Mr. Matthew Green): Are you saying to add more time to the second round?

So that we're clear, you would still be the speaker for that slot.

Mr. Fortin, please go ahead.

[*Translation*]

The Joint Co-Chair (Mr. Rhéal Fortin): If I may, Mr. Chair, I'd like to make a suggestion.

Since the time isn't divided the same way among the members in the second round of questions, I don't think it would be a good idea to simply add time to the second round, because that might put some of us at a disadvantage.

We could do another round with the same time distribution as the second round and then go back to the time distribution we used in the first round.

Anyway, it's not like we're doing an investigation and we have specific things to learn from witnesses. We're all here to learn more. I'm equally interested in the answers that Ms. Bendayan,

Mr. Brock, Mr. Motz or Mr. Carignan will receive. We want to hear from the experts we invited to appear.

I therefore recommend that we do another round with the same time distribution we used in the second round. Then, if we still have questions, we can do another round with time distributed as it was in the first round.

[*English*]

The Joint Chair (Mr. Matthew Green): The second round will have the Conservatives at three minutes, the Liberals at three minutes, the two-minute rounds for the remainder, and then we'll decide after that. Is that the wish of the committee?

Some hon. members: Agreed.

The Joint Chair (Mr. Matthew Green): Okay. We will carry on as planned, and we will go to Mr. Brock, for three minutes.

● (1920)

Mr. Larry Brock (Brantford—Brant, CPC): Thank you, Mr. Chair, and thank you, gentlemen, for your attendance today, and providing us with some much-needed clarity and some direction. We really appreciate your legal experience and interpretation of this statute, which has more questions, ultimately, than clarity.

With the time that I have, I want to get to very specific points. I'll open it up to both of you to answer. If one of you wants to take the lead, that's fine.

Would you agree with me that the Emergencies Act sets out particular thresholds that must be met before the Governor in Council may proclaim a public order emergency?

Mr. Philippe Dufresne: There are definitions and requirements in the act, so I would agree with that.

Mr. Larry Brock: Would you also then agree with me that if those legal thresholds were not actually satisfied, the Liberal cabinet's subsequent exercise of powers and performance of duties and functions, or, put another way, the legislative authority delegated by Parliament to adopt sweeping and powerful regulations, flowing from the emergency proclamation, was, in lawyers' parlance, *void ab initio*, or, put plainly, null and void?

Mr. Philippe Dufresne: You're describing a situation of a legal test if it's not met. In the scenario of any piece of legislation, if there is a requirement to be met, and it's not met, then the statute has not been complied with.

Mr. Larry Brock: Would you further agree with me, given your interpretation of the scope of our mandate—ultimately, in my view, you both reach the same endgame in terms of a very small "I" liberal interpretation of the act—that the determination of whether a legal threshold was met, and the circumstances by which that threshold was met, would entirely be within the purview of this committee?

Mr. Philippe Dufresne: There is a difference between the role of this committee, or any committee, and the role of the courts. The courts will be called upon, in appropriate cases, to make those types of interpretations in terms of compliance with statutes and legal consequences.

In this instance, the committee has a mandate to look at the exercise of powers and functions, so in the context of this mandate, if the committee looks at the criteria, with respect to the orders and the regulations and so on, that's something that would seem to be within the mandate or the ambit of the review, but it would be distinct from the role of a court of law, which would make a finding of legal—

The Joint Chair (Mr. Matthew Green): Thank you, Mr. Dufresne.

I'm sorry, but you're out of time. You'll be able to reclaim it, I'm sure, in the next round.

We will now go to Mr. Virani.

Mr. Arif Virani: Thank you very much. I'm going to go quickly here.

Would you agree with me, Mr. Dufresne, that one of the principles of statutory interpretation is to read it harmoniously, and that the role of Parliament, which you mentioned in your opening statement, was exercised in section 58, when Parliament had a debate that was uninterrupted and then cast a vote about the continuance of the invocation of the declaration?

Mr. Philippe Dufresne: Yes. That was part of the parliamentary supervision.

Mr. Arif Virani: Once the invocation is made by the Governor in Council, it is ratified by Parliament, for want of a better phrase. We then get to a situation, such as in subsection 62(1), where the exercise of the powers and functions pursuant to that invocation are the subject of review by the parliamentary committee.

Is that fair?

Mr. Philippe Dufresne: That's the sequence in the process.

Mr. Arif Virani: In Mr. Hallée's submissions, he said that when you don't have any current or ongoing regulations that are operative, some of the aspects of the parliamentary review aren't at issue, such as subsection 62(5) of the statute.

Is that correct, Mr. Hallée?

Mr. Philippe Hallée: Yes.

Mr. Arif Virani: Can you tell me, is it also a fair principle of statutory interpretation—I believe you may have touched on this, Mr. Dufresne—to look at the intentions of those who were in Parliament at the time of enactment? It's in the same way, sometimes, you refer to witness testimony or the evidence in Hansard, to ascertain the intentions of the legislators.

Mr. Philippe Dufresne: The intention of Parliament is an element that's looked at in statutory interpretation, and courts, from time to time, will rely on Hansard debates and so on. They do so with caution, because it's not always easy to identify in one statement of one parliamentarian what the intention of Parliament is, but courts have done this from time to time.

• (1925)

Mr. Arif Virani: I want to ask you something about reading a statute such that it is not just harmonious but prevents possible duplication or inconsistency.

Something that's troubling me is this: If you look at section 63, it talks about this retrospective but also contemporaneous piece, because it looks at the circumstances of the invocation, as well as the measures undertaken. Compare that to section 62, which talks about the measures.

What I'm curious about is, if we open up the section 62 piece—which this parliamentary review committee is doing—much wider than it seems to be written, we have the potential to have two simultaneous investigations into the same subject matter, which could render opposite results.

Is that something we should be alive to and trying to avoid?

Mr. Philippe Dufresne: I would say that in looking at Parliament's intention, you'd look at the act and you'd look at whether this is an outcome that Parliament would have wanted. Is this something that leads to a contradiction or something that it seems Parliament wanted to avoid? You'd have to look at the statute to find that.

Mr. Arif Virani: To clarify, in response to Mr. Brock, you indicated that there are certain legal thresholds and analyses that are done by court, but we are a committee, not a court.

The Joint Chair (Mr. Matthew Green): That's the round.

We will now go to the two-minute round of the second round. I'm handing the floor over to Mr. Fortin.

[*Translation*]

The Joint Co-Chair (Mr. Rhéal Fortin): I only have two minutes, so I will go quickly. I apologize in advance for that.

I want to check one thing with you, Mr. Dufresne and Mr. Hallée. Section 63 stipulates that “the Governor in Council shall... cause an inquiry to be held”... Do either of you know who the Governor in Council could commission to hold the inquiry? Do you have an opinion on this?

Mr. Philippe Dufresne: As I said earlier, the act does not prescribe a specific mechanism to be used by the Governor in Council. One possibility would be to use the Inquiries Act, but that's not required under the Emergencies Act.

The Joint Co-Chair (Mr. Rhéal Fortin): Would you agree that, under normal circumstances, no one investigates themselves, and no one chooses the police officer who investigates them either?

By implication, when we say that the Governor in Council, which is really the government, is having an investigation done, am I correct in thinking that the investigation should be done by a third party, that is, someone who has no connection to the Government of Canada?

Mr. Philippe Hallée: The very fact that the government is creating a commission of inquiry proves that it can form bodies to investigate its own actions and ensure that it's done in a highly independent manner. We saw several examples of this not too long ago. As my colleague Mr. Dufresne said, this mechanism was used under the Inquiries Act. Other mechanisms have been provided for in a more specific way. The government always has the option to create a body to investigate its actions in a transparent manner, according to well-established rules.

The Joint Co-Chair (Mr. Rhéal Fortin): I had a question in mind to ask you earlier, but I can't remember it. I have another one I'd like to discuss with you, but I'm going to need more than 30 seconds. So I will wait.

I really can't recall my question from earlier, so I'll let it go. It's pretty close to unbearable to have only a few seconds to speak.

Thank you.

[English]

The Joint Chair (Mr. Matthew Green): Thank you very much, Mr. Fortin. I can certainly appreciate that.

I'll now take my two-minute round. I'll pick up with the line of questioning from Mr. Fortin, which juxtaposes the inquiry's being a creature of the executive with the fact that we're a legislative branch. It's slightly different. I heard that there is a battle of considerations between statutory guardrails and parliamentary privilege.

I'll put the question to Mr. Dufresne. In the battle between statutory guardrails and parliamentary privilege, in your opinion, who wins?

Mr. Philippe Dufresne: I think it's not necessarily a question of winning in a sense that it's really who decides. If it's a matter of parliamentary privilege, the houses decide. So, in this instance it's for this committee and ultimately both houses to decide their interpretation of those statutory provisions and of the House order.

The Joint Chair (Mr. Matthew Green): Given the descriptions of the inquiry in terms of who it would be composed of and some of the reflections around this room, would it be safe to assume that this potentially could be the only avenue through which the legislative body can contemplate the invocation of this act, given that the inquiry would likely be composed of people outside of the parliamentary realm?

Mr. Philippe Dufresne: What I'll say is the Emergencies Act explicitly contemplates the Governor in Council creating a commission, an inquiry to look into these matters. That is certainly Parliament's decision.

This committee exists. It is clearly a parliamentary committee composed of parliamentarians, and so it's important for this committee to be able to do its work and to fulfill its important mandate, and its mandate is found in the orders of the House and in the act.

• (1930)

The Joint Chair (Mr. Matthew Green): Excellent. Thank you very much.

With that being said, I will now hand the floor over to Senator Harder for his two-minute round.

Hon. Peter Harder: Thank you very much.

Witnesses, I want to reference the word “pursuant” under subsection 62(1). We've all quoted this, “The exercise of powers and the performance of duties and functions pursuant to a declaration”, and it suggests a period of time from the declaration going forward during the period of time at which the Emergencies Act was invoked, again understanding that there may be questions that require some investigation in circumstances before that date in the nature of asking how.

Would you agree that it would be important for this committee to adopt terms of reference that made very clear how we were exercising the scope of our work, so that we didn't run into the debate that we're having now on a regular basis with individual witnesses, or indeed the work plan of the committee?

Mr. Philippe Dufresne: I'd hesitate to tell the committee how best it will be doing this. I think ultimately the question will be the outcome, what the committee reports on and whether the committee stays within its mandate, whether it has to be done at the front end with terms of reference or whether it's done throughout. That would be for the committee to determine.

Hon. Peter Harder: Thank you.

The Joint Chair (Mr. Matthew Green): We will now move on to Senator White.

Hon. Vernon White: Thank you very much, and thanks again for being here.

One of you discussed earlier that really the review into the invocation already began in the House of Commons, with the debate. It's not really necessarily fair to suggest no parliamentarians were involved in the debate about why it was invoked—it's already occurred.

Mr. Philippe Dufresne: I would actually say it not only began; it actually concluded—

Hon. Vernon White: Because it did vote—

Mr. Philippe Dufresne: —and the House did confirm the declaration.

Hon. Vernon White: Thank you. Good.

Mr. Philippe Dufresne: The Senate did not. I think the Senate interrupted—

Hon. Vernon White: We would have.

Voices: Oh, oh!

A voice: That's for the record.

The Joint Chair (Mr. Matthew Green): We are now back to the first round of four-minute interventions. I would suggest we leave it to the parties to decide how they want to split up their time. If somebody wants to split time or share the clock, they're welcome to do so.

Keeping the same order, we'll go back to the official opposition side. Mr. Brock will take his four-minute intervention, starting now.

Mr. Larry Brock: Thank you, Chair.

With all due respect to my colleagues, some of them may use arguments that a broader mandate in this committee might prejudice court proceedings and the subsequent inquiry. As witnesses at this committee will enjoy the same freedom of speech as members of Parliament, pursuant to the Bill of Rights of 1689, I'd like your legal opinions that evidence given by those witnesses before this committee could not be used to impeach a witness, or used in any way before the actual inquiry.

Mr. Philippe Dufresne: That's correct. As a matter of parliamentary privilege, the evidence given before this committee by witnesses is protected and cannot be reviewed in other bodies or in other courts.

I think what you perhaps are referring to is the issue of "sub judice" and sometimes the concern of not having discussions in a parliamentary body when there are court proceedings or other proceedings. That is also an element of consideration.

Mr. Larry Brock: Mr. Hallée, do you agree with that approach?

Mr. Philippe Hallée: Yes.

Mr. Larry Brock: Thank you.

In terms of advancing the argument for a broader approach by this committee to look at a number of circumstances that led up to the invocation of the act, do you also agree that it would be prudent to provide a fulsome report to the House, since members didn't have the privilege of attending committee, to include evidence relied upon, decisions made, the constitutionality and the actions taken by the government?

• (1935)

Mr. Philippe Hallée: The mandate of the committee is narrower than that, as we've mentioned. It is up to this committee to decide how much it wants to have in the report, but, as Philippe mentioned earlier, if it really goes way over the mandate, it's possible for the House or the Senate to intervene and basically raise comments about the fact the report goes beyond the order and the act in this case. However, as we said, the committee has the freedom to report on whatever it wants in this case.

Mr. Larry Brock: We discussed a possible mandate for this committee prior to your request to attend to give evidence. I'd like to get your thoughts on this approach: mandate to include events leading to the invocation of the act, the rationale for invoking the act and the alternative courses of action available, the legality of invoking the act, the choice and necessity of the regulations and orders adopted under the act, the constitutionality of those regulations and orders and the use made of those regulations and orders.

Would any of you gentlemen like to comment on that proposed scope?

The Joint Chair (Mr. Matthew Green): You have 30 seconds.

Mr. Philippe Dufresne: Looking at each of these and any other potential topics, I would really always go back to the orders of the House and ask: Is this a consideration of the use of powers pursuant to the declaration? If you look at the use made of the regulation and orders, that certainly seems to be there. If you're talking about constitutionality, there were discussions about the role of courts and the role of committee, but this talks about the regulations and orders. That's how I would look at each of these line items.

The Joint Chair (Mr. Matthew Green): Thank you.

We will now give the floor over to Ms. Bendayan.

Ms. Rachel Bendayan (Outremont, Lib.): Thank you, Mr. Chair.

Mr. Dufresne, you mentioned several times during your testimony that Parliament and the Senate have a certain amount of authority in providing the mandate to this committee. Would you agree that that stems from the motion in the case of the government House leader?

Mr. Philippe Dufresne: There are the motions of March 2 for the House and March 3 for the Senate, which created this committee.

Ms. Rachel Bendayan: Those motions refer back to section 62. Do you agree with that?

Mr. Philippe Dufresne: They do, and they add the specific dates of the specific declaration.

Ms. Rachel Bendayan: I guess I would ask you first if you agree with the principle that the legislator does not legislate in vain. It's a common principle of interpretation.

Mr. Philippe Dufresne: That's a principle that's been recognized.

Ms. Rachel Bendayan: You also said earlier in your testimony that the mandate of this committee does not explicitly include "the circumstances that led to the declaration being issued..."

Mr. Philippe Dufresne: That's correct.

Ms. Rachel Bendayan: If the legislator had intended that to be part of the mandate of our committee, they would have included that in section 62.

Mr. Philippe Dufresne: That's a principle of statutory interpretation that's raised from time to time, *expressio unius est exclusio alterius*, which means that stating one thing means it's ruled out elsewhere. However, in statutory interpretation, to use that, you have to have a clear intention that Parliament intended it to be that way, intended that it would apply only when it was explicitly referenced. Ultimately, I'd look at the overall intention.

Ms. Rachel Bendayan: Wouldn't you agree that, by having specifically included it in section 63, the legislators turned their mind to that specific question and decided to vest the inquiry with those powers, not this parliamentary committee?

Mr. Philippe Dufresne: That's a determination this committee is going to have to make. I think it shows that Parliament gave the inquiry that mandate.

Ms. Rachel Bendayan: The intent.

Mr. Philippe Dufresne: Whether that means the committee lacks that mandate would be a different question.

Ms. Rachel Bendayan: My final question is this: Would you agree, when it comes to subsection 62(6), which refers to the results of this committee's review under subsection 62(1), that, if our report and the results of our review go beyond our powers as provided in subsection 62(1), that report and those findings could be ultra vires?

Mr. Philippe Dufresne: My concern would be with being ultra vires the House orders. If the committee goes beyond the House orders, that could be raised in the House.

• (1940)

Ms. Rachel Bendayan: Just to confirm, those House orders that we have discussed refer back to section 62?

Mr. Philippe Dufresne: They do.

Ms. Rachel Bendayan: Thank you.

The Joint Chair (Mr. Matthew Green): You still have a minute and 30 left.

Ms. Rachel Bendayan: Oh, that's because of our four minutes. That's wonderful.

Gentlemen, based on the questions here today and your answers, I don't think anybody doubts your impartiality. We appreciate that very much.

I would like to confirm your roles, if I may.

I'm reading from *House of Commons Procedure and Practice*, which says, "the Law Clerk and Parliamentary Counsel [is] responsible for providing legal counsel services to the Speaker, the Board of Internal Economy, [all] Members", regardless of party, and to the clerk, officials and House of Commons administration.

It is also my understanding that you in particular, Mr. Dufresne, have provided independent legal advice to committees in the past, including the finance committee. Is that correct?

Mr. Philippe Dufresne: That's correct.

My office and I serve the House.

Ms. Rachel Bendayan: Clerk Walsh provided advice to the OGO committee in 2010, as well.

Mr. Philippe Dufresne: Yes, I understand that to be the case.

Ms. Rachel Bendayan: You regularly provide independent, impartial advice to members of committees and to committees as a whole. You do so in the context of your salary, which is paid already by taxpayers.

Is that correct?

Mr. Philippe Dufresne: I do. It's very important for me and for my office to do this work in an impartial way.

Ms. Rachel Bendayan: Excellent.

Thank you, sir.

The Joint Chair (Mr. Matthew Green): Thank you.

Mr. Fortin, you now have four minutes.

[*Translation*]

The Joint Co-Chair (Mr. Rhéal Fortin): Thank you, Mr. Chair.

Mr. Dufresne and Mr. Hallée, I'm going to discuss a completely different topic with you.

Subsection 62(4) of the Emergencies Act reads as follows: "Every meeting of the Parliamentary Review Committee held to consider an order or regulation referred to it pursuant to subsection 61(2) shall be held in private."

Subsection 61(2) deals with orders and regulations which, for various reasons, are exempted from publication in the Canada Gazette. The exemption usually has to do with national security.

Am I to understand that, in principle, our proceedings are public and will only be in camera when we are dealing with cases under subsection 62(4), that is, when we are considering orders or regulations that are not subject to publication in the Canada Gazette?

Mr. Philippe Dufresne: I think when you're dealing with those regulations, your proceedings will have to take place in camera. However, that doesn't preclude you from in camera proceedings as determined by the committee. Your committee has the authority to manage its proceedings.

The Joint Co-Chair (Mr. Rhéal Fortin): I understand that we can always decide to go or not go in camera, if the majority of the committee agrees. My point is that, in principle, our proceedings are public, unless the committee decides otherwise or unless the proceedings are subject to subsection 62(4) and we're dealing with orders or regulations exempted from publication.

Mr. Philippe Dufresne: I agree. Ordinarily, the core principle of committees is to be open and transparent. Some circumstances do warrant meeting in camera, however.

The Joint Co-Chair (Mr. Rhéal Fortin): Thank you.

I have another question for you.

Subsection 61(2) deals with the referral of those fabled orders and regulations to the Parliamentary Review Committee, that is, our committee. It specifies that the order or regulation must be "referred to the Parliamentary Review Committee within two days after it is made or, if the Committee is not then designated or established, within the first two days after it is designated or established".

Our committee was established on March 14. I remember the date because it was my birthday. Am I to understand that the reason we have not received an order or any other document of that nature so far is that there have not been any orders?

Mr. Philippe Dufresne: I think that's a defensible interpretation. The government could confirm it. Yes, it does seem that they would have already been sent to the committee.

The Joint Co-Chair (Mr. Rhéal Fortin): Given your answer to my second question, I'd like to come back to my first question.

Would it be accurate to say that all proceedings will always be public, unless a majority of the committee decides otherwise?

Mr. Philippe Dufresne: I agree. Your proceedings would not be public either in the event that regulations like those were finally sent to you.

The Joint Co-Chair (Mr. Rhéal Fortin): Thank you, Mr. Dufresne.

Mr. Hallée, I assume you agree.

Mr. Philippe Hallée: I totally agree.

The Joint Co-Chair (Mr. Rhéal Fortin): Thank you.

I have no further questions, Mr. Chair.

[*English*]

The Joint Chair (Mr. Matthew Green): That's excellent. I'll proceed with my four minutes.

I'm really interested in hearing your thoughts around the intention or the spirit of the legislation.

Mr. Dufresne, we've heard interpretations that when this legislation was first contemplated, it would have rightly been considered during an emergency as a check and balance to the extraordinary powers granted within the provisions.

Is that correct?

Mr. Philippe Dufresne: I'm sorry. I did not hear the end of your question.

• (1945)

The Joint Chair (Mr. Matthew Green): In its initial drafting, this legislation would have been provided to the House and the Senate as a way of providing a check and balance on the government during an enactment of the Emergencies Act.

Mr. Philippe Hallée: Yes, that seems to be the goal of the legislation. Is that what you're talking about?

The Joint Chair (Mr. Matthew Green): Correct, in its initial intention—

Mr. Philippe Hallée: That seems to be the purpose.

The Joint Chair (Mr. Matthew Green): We heard reference to the debates that happened within the House after the confirmation of the act, and I think it is safe to say that the order of the House on March 2 clearly provides an intention that this process be a retrospective and retroactive process, looking back later, not during, on the powers that were granted. That is an obvious statement. Is that right?

Mr. Philippe Dufresne: I think the order of the House indicates that the House mandated this committee to do its work beyond the date when the declaration was revoked, but it nonetheless used the mandate language that's been discussed today, with reference to the exercise of powers pursuant to the declaration—

The Joint Chair (Mr. Matthew Green): —but in an obvious observation, that was after it had already been confirmed and revoked within 48 hours.

Mr. Philippe Dufresne: That's right. The March 2 order occurred at the end.

The Joint Chair (Mr. Matthew Green): When we are talking about the intention that set the orders of the House that would give us parameters, we would enter into this with the understanding that it was a retrospective contemplation of the orders, and thus would require information that may not have been available at the debate. It would be safe to say, given the prescriptive nature of our being sworn in to see certain documents that might not be made available to the public, that in our consideration of the proportionality of the orders carried out under the act, we would be doing it with a deeper contemplation than would have been had in the House in debate. Is that safe to say as well?

Mr. Philippe Dufresne: All I can say is that the House order on March 2 reiterated the mandate of this committee and gave instructions to this committee to look into a review of the exercise of powers and performance of duties.

On your reference to information that would have come after as opposed to earlier, I don't know that the House order addresses that point.

The Joint Chair (Mr. Matthew Green): It is safe to say that 338 MPs weren't sworn to secrecy and provided with private and confidential information for the prospect of supporting the confirmation of the Emergencies Act.

I'll use myself as an example, to be fair, because I can speak only to my own intention. I made a vote confirming the invocation of the act, given the information that was made publicly available. Given that the House order was provided after its revocation, it's now my intention to retroactively reflect on the proportionality, including the circumstances leading up to the invocation of the act, to fully understand and contemplate the spirit and the intention through which the House sent us here.

I don't expect you to comment on my intention. I just think it's an important reflection that we separate the original drafting of this and its contemplation with the set of circumstances that are before us, given how unique this legislation is.

My time is up. We will now go back to the Senate side, and I would ask if it would be okay that we keep the same order. Is that fine with the Senate side for this round?

Some hon. members: Agreed.

The Joint Chair (Mr. Matthew Green): With that being said, we will go to Senator Boniface, for four minutes.

The Joint Chair (Hon. Gwen Boniface): Thank you again, and thank you very much for answering various derivatives of similar questions.

I want to pursue Mr. Fortin's comments, because I just want to be clear on subsection 62(3) and what the purpose of the oath of secrecy was, what it pertains to, and how that connects or doesn't connect to being in camera by necessity or legality.

Mr. Philippe Dufresne: Subsection 62(3) requires that all persons employed and all members take the oath of secrecy. If we look at the oath of secrecy in the act—and you have all taken it—it says, "I...swear that I will not, without due authority, disclose or make known..." I read this as, if it's an in camera discussion, discussed in confidence, that cannot be disclosed.

If it's a public discussion, then you have the authority to disclose it, because it has been done with the acceptance that it is a public discussion. That is how I would interpret the oath.

• (1950)

The Joint Chair (Hon. Gwen Boniface): However, if I look at regular Senate committees, from our perspective, anything in camera would have the same rules.

I'm trying to understand the intentions behind the extra layer of the oath of secrecy in this act.

Mr. Philippe Hallée: I don't think that this is an additional layer necessarily. We have a legislative scheme that has been put in place here, and the creation of a committee by legislation, which is really the prerogative of Parliament. The legislation can have it.

In creating that body, Parliament decided to have this safety aspect, if you will, that since the committee might have to look into some confidential information, then all of the staff and the members would have to take an oath. Otherwise, it could be something left to the committees to go with individually, at least on different sides of the Parliament.

In this case, it was to be consistent with the business at hand, if you will, that in some cases it might be confidential. So from the get-go, everybody will take an oath.

The Joint Chair (Hon. Gwen Boniface): When you think about the committee's decision—and I understand it's the committee's decision—on the balance between what's public and what's in camera, the lens we'd be looking through is the type of information you intend to get from that particular witness or documents coming forward.

Am I understanding that correctly?

Mr. Philippe Hallée: Yes, I think you are.

The Joint Chair (Hon. Gwen Boniface): Thank you. That's the clarification I require.

The Joint Chair (Mr. Matthew Green): Thank you, Senator.

We will now go to Monsieur Carignan.

[Translation]

Hon. Claude Carignan: Thank you, Mr. Chair.

My question is about section 3 of the Emergencies Act, which states the following:

For the purposes of this act, a national emergency is an urgent and critical situation...that cannot be effectively dealt with under any other law of Canada.

Does “law of Canada” refer to federal laws, but also provincial laws, as well as orders or regulations adopted under the auspices of provincial or federal law, therefore the entire legal framework? This law applies in the event of a legal vacuum. In other words, emergency measures are being taken because the emergency cannot be dealt with using existing laws in the entire legal framework of Canada. Is that correct?

Mr. Philippe Dufresne: That strikes me as an accurate interpretation. It applies when existing laws in Canada, at every level, are inadequate to deal with the situation.

Hon. Claude Carignan: I see. Under Ontario's Highway Traffic Act, for instance, a towing company cannot be forced to tow a vehicle on Wellington Street.

Mr. Philippe Dufresne: I think that's the sort of question that arises. In other words, is it necessary to invoke the Emergencies Act or can other laws be enforced?

Hon. Claude Carignan: That brings me back to Mr. Fortin's question about the Governor in Council's inquiry.

In order to comply with public law, or administrative law, what features should the body, organization or individual conducting the

inquiry have? Independence and impartiality come to mind, in terms of both the organization and the individual.

Mr. Philippe Dufresne: I would say administrative law provides for a range of possibilities when it comes to inquiries. In terms of specific cases, the body looks more like a classic administrative tribunal, so a quasi-judicial tribunal. In the case of a commission of inquiry into issues that are far-reaching, the process is more polycentric with different requirements around independence and impartiality. Earlier, we talked about the Inquiries Act, which provides for a certain regime. It's not the same in every circumstance.

Hon. Claude Carignan: Generally speaking, then, the person or group conducting the inquiry should come from outside the government, for example, a retired Supreme Court judge or someone who has previously led an inquiry.

Mr. Philippe Hallée: Yes, judges are traditionally chosen to carry out inquiries, as we've seen in the past. Normally, the idea is to look for the element of independence, and no one embodies that more than judges, so that is why they tend to be selected to carry out inquiries. That gives the process credibility. Conversely, if a deputy minister were to conduct the inquiry, it would present more complications from an independence standpoint.

• (1955)

Hon. Claude Carignan: Let's just say that the process wouldn't have the desired institutional independence or that the person might have an economic relationship that would make it hard for them to satisfy that requirement.

Mr. Philippe Hallée: I would say perception probably comes into play as well. I'm referring to the public's perception of the credibility of the inquiry process. The inquiry has to be carried out with full independence, and that's usually the quality judges bring to an inquiry.

Hon. Claude Carignan: Have resources been set aside to conduct the inquiry? It's one thing to ask someone to conduct an inquiry, but they need resources to look into the matter and determine whether the decisions that were made were the right ones.

Mr. Philippe Hallée: Funding is traditionally allocated for commissions of inquiry to do their work. Commissions oversee their own budgets. Access to resources that are entirely independent of the government poses challenges. Obviously, the money comes out of public funds. As Mr. Dufresne said, and rightfully so, various models are possible, depending on what the situation calls for. Some are especially complex, and we've seen examples of that in recent years.

[English]

The Joint Chair (Mr. Matthew Green): Thank you very much.

[Translation]

Mr. Philippe Hallée: In those cases, the funding—

[English]

The Joint Chair (Mr. Matthew Green): Thank you, Mr. Hallée. We will try to stick to the time.

We will give the floor over to Senator Harder.

Hon. Peter Harder: I cede my time to Senator White.

The Joint Chair (Mr. Matthew Green): Go ahead, Senator White.

Hon. Vernon White: Thank you very much. I won't use it all myself, but others will.

I'm trying to get my head around the meetings and private discussions, because, again, this appears to me to be an area that's very prescriptive. It says that every meeting of the PRC held to consider an order referred to in subsection 61(2) "shall be held in private".

I'm trying to understand. I think you explained why that can be changed, but I can't see how we can come to a decision...why we're not in private now, to be fair. Explain to me how you think that's appropriate for this committee.

Mr. Philippe Dufresne: The act provides that certain regulations adopted pursuant to a declaration are going to be registered, published, in the normal course. That's what happened with the two regulations. Those are then tabled before the Houses of Parliament. That's where the process can take place if there's a motion to revoke.

Others will not be published. Generally, as was stated, it's because they deal with certain matters that would be prejudicial to the security of Canada and so on. They're not published. They would be referred to this committee, and then they would be looked at by this committee in camera to ensure that they remain confidential.

Hon. Vernon White: I don't know where it gives us the...“held to consider an order or regulation”, as an example. I'm just trying to figure out how we are stepping away from that, when we're here to consider an order like the invocation.

Mr. Philippe Dufresne: The orders that are covered by the in camera mandate are only the unpublished regulations and orders. The two that we have had issued so far are not those types of regulations. They were published in the Canada Gazette.

Hon. Vernon White: Okay. Thank you.

Next, I think one of you referred to proportionality. Would you agree that proportionality, how something was done, really would be a measure of an inquiry rather a measure of this committee? You're looking at before invocation and then what actions were taken. Our job is to look at what actions were taken.

Mr. Philippe Hallée: I think you have a good point. I think it could be in both, as a matter of fact, when you look at it. However, I would focus on the mandate of this committee. To me, there is an element of proportionality that you can look into, looking at the instruments that have been put in place: Have they been used in proportionality with what they were supposed to do?

In the context of section 63, the inquiry that I think you were referring to, that also could be something that the government in its inquiry will look into, whether the circumstances leading up to the declaration are sufficient, but it's a different element of proportionality, if you will. One is the proportionality and the exercise of the powers given by the legal instruments, in this case. The other one is whether the declaration itself is proportional to the circumstances leading up to the declaration of emergency.

Hon. Vernon White: I agree.

My next question is this. When you look at this legislation, do you believe it anticipated that the invocation would still be in effect when we were sitting? Is that the way you would read this—that we would be walking in step with the order that's still in place and asking the difficult questions about what's happening?

Mr. Philippe Dufresne: That's certainly a possibility that's contemplated in the legislation. It talks about regular reports while...for the duration of the declaration. It also gives this committee the power to revoke certain regulations. All of that would be during, but it's not only during.

● (2000)

Hon. Vernon White: It's certainly not that this committee, while the order was invoked, would be challenging the “why” it was invoked at the same time as we're looking at what is occurring while it is invoked. Obviously that's not what we would be doing.

Mr. Philippe Dufresne: I think what this committee is mandated to look at, in the language of the order and the act, is the exercise of powers and performance of duties pursuant to a declaration.

Hon. Vernon White: So that's day one and going forward. It's not day one minus one day or day one minus two; it's day one going forward.

Mr. Philippe Dufresne: I think you have the link to the “pursuant to the declaration”—

Hon. Vernon White: Look, at the end of the day I understand that we will make decisions, but I think it's important that for clarity, at least from your perspective, this is day one moving forward from invocation, not day one minus one or day one minus two. Is that right?

Mr. Philippe Dufresne: I think I would focus more on whether you're dealing with a duty and function. Are you dealing with the exercise of a duty made pursuant to a declaration?

Hon. Vernon White: Okay, that's great.

I have six minutes left, right? Oh, oh!

The Joint Chair (Mr. Matthew Green): You have three minutes and 41 seconds.

Hon. Vernon White: At the end of the day, when we look at this as well, I think it's clear that the inquiry has much more latitude and breadth, obviously just in the language alone, and that they could open a much greater inquiry into some of the areas that are being raised even by members here.

Is that correct? Is the inquiry limited, I guess—?

Mr. Philippe Dufresne: I think the language described in the inquiry is broad, in the sense that it's talking about the circumstances leading to and the measures taken to deal with.

Hon. Vernon White: Okay, thank you. I'm good.

The Joint Chair (Mr. Matthew Green): It's 8:01. If everybody got through on the Senate side, I'd like to take this time to thank both of the witnesses, who performed outstandingly over the last hour and a half. I think there's been a really substantive debate.

We will now suspend for five minutes, to allow us to prepare for our second round.

I would just close with how I opened, which is that if you feel there were questions through which you weren't provided with the opportunity to give the fullness of the answers, you are invited to provide supplementary comments to this committee for consideration.

Thank you. The meeting is suspended.

• (2000) _____ (Pause) _____

• (2005)

The Joint Chair (Mr. Matthew Green): I call this meeting back to order.

I would like to welcome the Honourable Perrin Beatty for our second panel this evening.

Hon. Beatty, thank you for being here. I understand you have a detailed statement.

With the indulgence of this committee, and given that it's an hour and a half session, I'm wondering if we would allow you more time than your regular five minutes for the opening remarks, notwithstanding you're the only guest.

We will allow that extension for up to 10 minutes. You will likely have subsequent time in your rounds of questioning to fill out whatever comments you feel may have been restricted in your 10 minutes of opening remarks.

With that being said, we will now provide you the floor.

• (2010)

Hon. Perrin Beatty (CP, OC, As an Individual): Thank you very much, Mr. Chairman, and thank you for the invitation to speak to the committee.

At the outset, I want to stress that I'm not here as president and CEO of the Canadian Chamber of Commerce, but as a private citizen and a former minister who was responsible for the creation of the Emergencies Act. Any opinions that I express are solely mine.

I hope I can help the committee by explaining our motivation in replacing the old War Measures Act with modern emergencies legislation, by describing the principles that guided us, and by offering some questions for you to consider. I won't offer an opinion on whether invoking the act was justified. I have not seen sufficient evidence to reach a conclusion.

I note that the commissioner of the OPP stated last week that the province's intelligence bureau considered the blockades a national security threat a week before Ottawa invoked the act. I hope you will insist on seeing that assessment, and will evaluate the quality of the intelligence on which it was based.

Indeed, the committee should press for any information to help Canadians understand the rationale for invocation, and test against both the facts of the situation and the deliberately high threshold that is required.

Let me briefly provide some history.

In 1988, Parliament voted unanimously to replace the War Measures Act with legislation that was designed to help the government respond quickly and effectively to a range of emergencies that went well beyond war, or insurrection, while safeguarding the basic rights of Canadians.

The War Measures Act was enacted during World War I in the heat of a crisis, when safeguarding civil liberties was not a priority. It was used in both world wars, partly due to the perceived threats from enemy aliens. The government used it to arrest, incarcerate, deport, and seize the property of thousands of Canadians of Ukrainian, Japanese, Italian and German heritage.

The act's third and only peacetime invocation was during the October Crisis of 1970, when the FLQ kidnapped the British trade commissioner in Montreal and the deputy premier of Quebec, Pierre Laporte.

The War Measures Act suspended civil liberties across the country. It retroactively made FLQ membership a crime, and required those who had ever attended any of its meetings to prove that they were not members. It authorized arrests without a charge or access to a lawyer, and confinement for up to 21 days, as well as property searches without a warrant. It was outside of the Canadian Bill of Rights, and the Charter of Rights and Freedoms did not exist.

We needed a flexible tool to deal quickly and effectively with a range of potential emergencies, and to safeguard the rights of citizens of the provinces and of Parliament. While no one could predict the exact circumstances, Canada would inevitably face future crises, where we would have to protect the lives and safety of Canadians and even the existence of the country itself.

However, any powers would be strictly limited and overseen by the courts and Parliament. The declaration of an emergency does not absolve Parliament of its responsibilities. Instead, it makes Parliament's role even more important.

Even the most carefully written emergencies legislation is a blunt instrument. It must be, because it needs to cover a wide range of contingencies that can't be managed effectively in any other way. Even if you find that invoking the act was warranted, you should work to make it unnecessary if we face similar circumstances again.

Now that it has been used, it becomes easier to invoke. You must not define down the threshold in which extraordinary powers are used to curtail civil liberties. You will want to scrutinize the arguments for invocation to ask if the order should have been revoked earlier, and to examine the benefits cited as flowing from it.

That it made law enforcement easier is clear. However, the issue is whether the deliberately high threshold was met, not whether the powers given were useful.

Let me touch on this threshold for a moment. The War Measures Act was applicable to war, invasion or insurrection, real or apprehended. Most importantly, an invocation of the War Measures Act was considered conclusive evidence of the existence of an emergency. It could not be challenged in court. In contrast, Section 3 of the Emergencies Act defines a national emergency as:

an urgent and critical situation of a temporary nature that

(a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it, or

(b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada....

● (2015)

Part II of the act adds a further test for public order emergencies, which it defines as “an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency”. It specifies that “threats to the security of Canada has the meaning assigned by section 2 of the Canadian Security Intelligence Service Act.”

We used the CSIS act definition because of the care that had gone into writing it. I don't have time to read that definition to you tonight, but I urge you to do so. It's very important.

A public order emergency must meet two stringent tests. The first is to establish the existence of a severe emergency that cannot effectively be dealt with under any other law of Canada. The second is that it must meet a definition of threats to the security of Canada that was drafted to protect Canadians' rights and that specifically provides for “lawful advocacy, protest or dissent”.

The committee needn't waste time proving that the border blockades and the occupation of downtown Ottawa were illegal, infringed on the rights of thousands of citizens or cost tens of millions of dollars. The authorities had the responsibility to restore the rule of law and to prevent further damage. It would be hard to credibly argue anything else.

The authorities have cited several ways in which the act helped. For example, unlike other provinces' emergencies acts, Ontario's didn't let it press towing companies into service. Additionally, the act made it easier to cordon off downtown Ottawa and significantly cut the time to authorize police from other jurisdictions to assist. Of course, the government used it to freeze the bank accounts of people participating in or financing the blockade in Ottawa.

The act clearly made the work of the authorities easier. The issue, however, is not whether it helped the police, but whether the powers they already had could have resolved the problem. The concern is necessity, not efficiency.

It's also said that while law enforcement had plenty of legal authority to end the blockades, they chose not to use it. Invoking the act sent a clear message that our political leaders expected the police to do their jobs, but does that make the act's invocation primarily political, instead of to provide law enforcement with essential powers that they previously lacked? Would that meet the criteria for invoking the act?

I have three other brief observations. First, I hope you will propose ways to ensure that the act won't be needed in similar circum-

stances in the future. For example, if Ontario requires powers to order companies to provide services in a crisis or if it must be made easier for other police forces to help, that's where to change legislation.

Similarly, the most novel use of the act was to freeze the bank accounts of people associated with the blockades. Parliament needs to consider the rationale for such a power and the ways in which the government might use it. There are serious issues about foreign interference in our politics and about how to control the financing of illegal activities, but we must carefully weigh the implications. Any new power should be conferred in a time of calm, not by a regulation drawn up in a crisis.

Second, there's this obvious question: If you assume that the invocation was legal, did the act meet the twin goals of allowing the authorities to respond quickly and effectively in a crisis while limiting the impact on civil liberties?

My answer is that it did. We've heard much heated rhetoric directed at how the authorities used the act, but we should consider how these blockades would have been dealt with in other democratic capitals, like Washington or Paris. We've all seen how the right to orderly protest has been brutally suppressed in Moscow. These international comparisons provide a benchmark for judging Canada's treatment of civil liberties.

I have one final comment. Parliament's responsibilities go beyond judging whether invoking the act was appropriate and if the specific measures were warranted. Our leaders of all political backgrounds need to ask how we got to this point. The police were called upon to deal with a breakdown in our political system. We can criticize how they did their job, but it should never have been necessary for them to fill the breach in the first place. If we're to avoid much more serious emergencies in the future, we must restore a civility to our politics that allows us once again to disagree strongly on issues without seeing one another as enemies.

Thank you once again for inviting me to participate. I'll welcome your questions and your comments.

● (2020)

The Joint Chair (Mr. Matthew Green): Thank you very much, Mr. Beatty. Those were certainly welcome opening remarks.

We will go back to our rounds of questions, beginning with Mr. Motz for four minutes.

Mr. Glen Motz: Thank you very much, Chair.

Thank you, Mr. Beatty, for being here. It's a pleasure having you here.

You indicated in your opening remarks that you're not going to comment on whether the act should have been invoked and that you don't have enough information. That's a fair statement.

What types of information would you have needed to be able to make that assessment, and would it be reasonable for this committee to have access to all the documents the government used or relied upon in order for them to make that invocation decision?

Hon. Perrin Beatty: Barring, Mr. Motz, the information being something that would prejudice, for example, a criminal investigation or that would damage national security in some way, my answer would be yes. The goal would be to be as transparent and open as possible.

What sorts of information? I cited, for example: What is the basis on which Ontario decided there was a threat to national security?

It is appropriate for you to ask whether the threshold for invoking the act was met. You need to look at the evidence that justified invoking the act.

When I wrote the act, I was affected by the experience of the War Measures Act in 1970. At the time we were told that there was information that we didn't have and, if we knew what it was, we would all support the invocation of the act. Ultimately, it turned out that wasn't the case and that the criminals who kidnapped Mr. Cross and Mr. Laporte were found through ordinary police methods.

You need to know on what basis it's decided that there was not sufficient other power that the authorities had to act. Also, was the emergency so grave that it was essential to invoke the act?

Mr. Glen Motz: Thank you very much, sir.

This is your statement: "The goal in drafting the act from start to finish was to create as much accountability and scrutiny as possible, and if you want people"—I think this is so key, sir—"to be satisfied that the right decisions were made, then you have to have processes that are completely transparent."

Thank you for that statement.

Would it then be reasonable to assume that, if we limit the scope of this committee in our mandate to just, as has been mentioned, simply narrowing it to the exercise of authority pursuant to the declaration of the act, we will be limiting our transparency and something the Canadian public demands of us?

Hon. Perrin Beatty: I want to choose my response to you, Mr. Motz, carefully, as I don't want to be drawn into any sort of partisan debate.

This was a national emergency. It was declared so by the Government of Canada. It was a crisis by any standard. If we're going to heal the wounds that there are in the body politic, it's going to be important for us all to operate in as transparent, fair and as open a way as possible.

Barring there being good reasons for not doing so, my prejudice always is that the default position would be to be as open as possible and share as much information as possible.

Mr. Glen Motz: Thank you very much. I appreciate your candour.

You appeared before the legislative committee many years ago—34 years ago, to be exact—and you said the following:

To decide about invoking exceptional measures, judgements 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.

Thus the decision to declare an emergency is an exercise of political judgement and the Parliament of Canada is obviously an appropriate forum for questioning that judgement.

Based on your opening comments, I believe you still stand by those words, so would it be right for me to assume that parliamentary committees, this particular committee, would be the natural and right place for that to occur?

The Joint Chair (Mr. Matthew Green): Thank you, Mr. Motz.

Mr. Beatty, in the previous round, I made a statement that provided context to the way in which these rounds are the purview of the individual members, but we keep them to a fairly strict timeline. I would like to invite you that, if you don't have the ability to provide an answer to Mr. Motz's final question, you can reflect on the minutes and perhaps provide a supplementary answer in writing, if you so choose.

We will now go on to the next round, which will be four minutes for Ms. Bendayan.

• (2025)

Ms. Rachel Bendayan: Thank you, Mr. Chair, and thank you, Mr. Beatty, for appearing before the committee. I would also like to thank you for your work as president of the Canadian Chamber of Commerce, but obviously my questions are addressed to you as the drafter of this legislation.

I would like to take you back to February 23, 1988, when you stated before the legislative committee the following: "under the Bill, the grounds for declaring an emergency will be subject to comprehensive parliamentary scrutiny."

I assume you're referring there to the vote, which did take place in the House of Commons.

You continued by saying:

The CCLA has raised the very important question of whether this is enough. Whether, should there be any doubt or uncertainty about the government's justification for declaring an emergency, the decision should be subjected to independent review outside the arena of politics. The natural place to seek such further objective review and confirmation would be in the judicial system.

I take this to mean that should there be a question about the government's justification for invoking the Emergencies Act in this particular case, this particular year, the judicial system remains the appropriate forum for such a debate and decision.

Do you agree with that, Mr. Beatty?

Hon. Perrin Beatty: The judicial system remains the final arbiter of whether or not what the government did was within the confines of the act. That doesn't preclude other scrutiny by Parliament or by other groups in looking at whether it was appropriate. That would include, for example, the review committee that gets established after the fact and has to respond within 360 days. It's not exclusive, but clearly should the courts find that the government acted in a way that was not legal, that didn't meet the threshold of the act, then obviously their decision is final.

Ms. Rachel Bendayan: The review committee to which you just referred that has to report within 360 days is the inquiry provided at section 63—

Hon. Perrin Beatty: Yes.

Ms. Rachel Bendayan: Thank you for confirming. Section 63 does provide specifically that it is tasked with reviewing the circumstances that led to the declaration being issued. Those are the terms of section 63.

Sir, do you agree with the rule, which is common in legislative interpretation, that the legislature does not act in vain, or the rules of internal coherence, if you will, that each individual section of a piece of legislation has a purpose?

Hon. Perrin Beatty: Yes, and indeed I heard you posing that question previously, and my answer would be the same.

Ms. Rachel Bendayan: That is why I am curious. As the drafter of this legislation, sir, had you intended to vest the parliamentary review committee, which is provided under an entirely different section of the act, with those same powers, I assume that you would have done so explicitly, would you not?

Hon. Perrin Beatty: No. I think what I would say is that had I intended not to permit you to look at those issues, I would have ruled it out in the act.

It's for you folks to decide what the scope of your mandate is. If I could simply offer an opinion, it would be this: If you were looking at the actions taken by the government flowing from the invocation and if you uncover evidence indicating that the invocation of the act was inappropriate, then everything that flowed from it was inappropriate, as well. It seems to me that they're part and parcel of the same thing.

Ms. Rachel Bendayan: Why did you not specify it in section 62? Why were you so specific in section 62 so as to exclude the terms that you used in section 63?

Hon. Perrin Beatty: It wasn't a matter of being so specific as to exclude the terms. We didn't say this could not be done, but we wanted to make sure that the final review that was done by the ex post facto review would be as comprehensive as possible.

What is anomalous here and—

Ms. Rachel Bendayan: If it would be as comprehensive as possible in terms of the mandate of this committee, then why is there a double standard?

Hon. Perrin Beatty: There's not a double standard, but let me talk about this committee. What we didn't anticipate was that the emergency would end as rapidly as it did in this instance.

The Joint Chair (Mr. Matthew Green): Thank you, Mr. Beatty.

I actually got caught up in the exchange and perhaps provided a little more time than usual.

• (2030)

Hon. Perrin Beatty: I'd be glad to elaborate in a further round.

The Joint Chair (Mr. Matthew Green): I'm sure you'll have that time. Thank you so much.

Mr. Fortin.

Hon. Perrin Beatty: Mr. Chairman, I am getting feedback back through my earphones here. I don't know whether it's possible for committee staff to help on that.

The Joint Chair (Mr. Matthew Green): We will pause for a moment to make sure that we remedy that.

• (2030)

(Pause)

• (2030)

The Joint Chair (Mr. Matthew Green): I've heard direction from staff and I think it actually pertains to my previous statement before the last witnesses.

Mr. Beatty, I don't know if you were privy to that, but I stated that, from time to time, given the nature of the rounds, members have the ability to interject and move to the next question, just to protect the timing of their round.

For the members who are around this committee, it's important to note that when you proactively press your button concurrent with the floor, there will be feedback. If we interrupt or if we intervene with the witness, that will cause feedback. I just want members to be aware of that.

Mr. Beatty, from time to time, there will be the need for members to nudge you on to another question, to protect their very limited time.

Hon. Perrin Beatty: That's fine. Thanks, Mr. Chair.

The Joint Chair (Mr. Matthew Green): I do appreciate the experience you bring to us here today.

We will now go to Mr. Fortin for four minutes.

[Translation]

The Joint Co-Chair (Mr. Rhéal Fortin): Thank you, Mr. Chair.

Thank you for being here today, Mr. Beatty, to help give us insight into this act.

As you pointed out, the act had never been invoked prior to this. The last time the act was invoked, in its previous iteration—the War Measures Act—was about 52 years ago, in October 1970. This is clearly an exceptional situation. As you know, we're here to find out just how far we can go in our examination and to determine how we should proceed.

In light of your remarks today, Mr. Beatty, and comments the committee has heard to date, we could call the Emergencies Act the heavy artillery of Canadian legislation, so to speak. Do you agree with me that it's the sledgehammer in the government's legislative toolkit when it comes to dealing with exceptional situations?

[English]

Hon. Perrin Beatty: It is, and that's why it's designed as a last resort. It's why we built so many levels of protection into it.

[Translation]

The Joint Co-Chair (Mr. Rhéal Fortin): Is it fair to say, then, that, ideally, it should never be used? In an ideal world, it would never be necessary to invoke the Emergencies Act. Its use should be limited to extreme circumstances, and even then, it must be used sparingly, carefully and wisely. I repeat, ideally, it would never be used.

Am I right about that, Mr. Beatty?

[English]

Hon. Perrin Beatty: Yes, sir, but we don't live in an ideal world, and we need legislation like this for that reason. There will be in future, inevitably, unforeseen emergencies that result in special powers being necessary, but we have to counterbalance those powers with protections for Parliament and for civil rights.

[Translation]

The Joint Co-Chair (Mr. Rhéal Fortin): It's clear from your comments that you are very wise. I think you're absolutely right.

Therefore, when our committee carries out its mandate to review the exercise of powers and the performance of duties pursuant to the act, should we not question the wisdom behind the exercise of such exceptional powers?

[English]

Hon. Perrin Beatty: Sir, do you mean the invocation of the act?

[Translation]

The Joint Co-Chair (Mr. Rhéal Fortin): Our job is to review the exercise of powers and the performance of duties. The act gives the government a certain number of exceptional powers. We must subject the exercise of those powers to verification, scrutiny and review.

In reviewing those exceptional powers, the committee should also determine whether those powers were exercised wisely, sparingly and carefully, should it not? Is that part of our mandate, in your view?

• (2035)

[English]

Hon. Perrin Beatty: In my view, it is.

[Translation]

The Joint Co-Chair (Mr. Rhéal Fortin): All right, it is.

Thank you, Mr. Beatty.

The next person can have the floor.

[English]

The Joint Chair (Mr. Matthew Green): Thank you very much. I will take my time.

Mr. Beatty, thank you for your sober reflections.

I would share many of the points in your analysis of the need for this committee to hopefully provide for Canadians some recommendations that will provide future instances of emergencies with clear parameters through which this emergency order should be invoked. In those remarks, I'm reflecting on this committee's task of trying to contemplate the difference between the inquiry, which would likely be more judicial in nature, and that of the legislative process.

Being a former legislator yourself, would you agree that in the full contemplation of the conditions leading up to the emergency, it would be appropriate for us at this committee to contemplate those things, to hear those testimonies, in order to be able to provide at the end of this process a fulsome set of recommendations and report back to the House and to the Senate, and that they may then become future frameworks for legislative amendments that might better guide the government?

Would you agree with that?

Hon. Perrin Beatty: Yes, sir.

The Joint Chair (Mr. Matthew Green): In that space, I think you touched on the nature of politics.

I'm going to share that our early experience here has been one that is very collegial between the different houses—to unpack this, in a way—but there are some core differences. With regard to the spirit of having you here, from my perspective, we hear a lot about the intention and the spirit, and I feel that prior to your testimony, there were members of this committee who were ascribing to you in that time very prescriptive definitions.

I would like for you to continue your line of answering from when the assertion was made that, in its contemplation, by not including explicitly the parameters of this under section 62, we were somehow providing a narrow definition. If I recall, you said that was not the case, that if you wanted narrow definitions, you would have explicitly put that in, and not vice versa.

If you could, with a minute and a half remaining, please provide further context to that, given that there's been much discussion about the original spirit and intention of this act as it was drafted.

Hon. Perrin Beatty: Yes, sir. First of all, you correctly described my view.

Secondly, what I was starting to explain was that one of the anomalies of the situation we're in today was that we anticipated that an emergency would probably continue for a considerable period of time. What wasn't raised at the time is what happens if the declaration is revoked before the committee ever meets.

I think somebody in the earlier section raised the point that when we envisioned this committee, we anticipated that the emergency would be ongoing and that this committee would play a supervisory role. There would be that constant parliamentary scrutiny of the government's actions. In this instance, the government withdrew the declaration before the committee was ever struck.

Indeed, the government might very well have withdrawn the declaration before Parliament ever voted on it, and an argument could be made that they should have done that. As a result, then, you are indeed defining, for the first time, what the role of this committee would be.

The Joint Chair (Mr. Matthew Green): That's an important reflection, and I thank you for that.

It became clear to me within those seven days that there should have been perhaps—retrospectively, looking back at it now—language within section 62, which would have an almost immediate effect, that as soon as it was invoked, there would be a review process in place. Again, though, we are looking back at it.

That is my time.

I will now pass it on to Senator Boniface.

The Joint Chair (Hon. Gwen Boniface): Thank you very much, Chair, and thank you, Mr. Beatty, for being here.

I want to just step back, since you made considerable reference to the predecessor act, the War Measures Act. Can you give me some of the principles that you walked through in order to modernize, as you said, in 1988, the Emergencies Act?

• (2040)

Hon. Perrin Beatty: I'd be glad to do that, Senator. Thank you.

First, the old War Measures Act was very limited in its scope. It had to be war or apprehended insurrection. Indeed, the October 1970 crisis was based on apprehended insurrection.

We recognized the fact that in the future there would be a wide range of emergencies that might require the government to assume extraordinary powers to save people's lives or to protect the integrity of the country. We needed to have legislation in place, considered in a period of calm, that would give the government the ability to respond very rapidly and effectively, but that would be counter-balanced by having adequate scrutiny by the courts and by Parliament, and would ensure the civil liberties of Canadians. At its root, that was the most fundamental element.

The old War Measures Act was used to suspend the civil rights of Canadians in 1970, right across the country, even though the situation was concentrated in Quebec. It suspended the right of habeas corpus. It allowed people to be held without charge for up to 21 days. It allowed censorship. There were any number of abuses that took place as a consequence. Mr. Trudeau, when he invoked the act, immediately said that he wished he had something else and that he would replace what he had with other legislation that was more nuanced and would better protect civil liberties. That's what we ultimately ended up doing, so many years later.

The Joint Chair (Hon. Gwen Boniface): When you did your consultations and you thought through some of the scenarios, were

there consultations with the provinces? Was it taken into consideration what the provincial emergency legislation would have been across the country at the time?

Hon. Perrin Beatty: Yes, and we consulted very closely with the provinces, because many of the authorities that would be taken on would be responsibilities that ordinarily would be discharged by the provinces. We wanted to make sure that as we introduced this legislation, we reflected the situations as they existed in the provinces and had the support of provincial governments as a result.

So yes, we did. Of course, that legislation has evolved over the course of the years as well.

The Joint Chair (Hon. Gwen Boniface): With respect to section 63 and the inquiry, what did you anticipate the inquiry's broadest mandate would be? I know it says it in the act, but I'm wondering what was behind the thinking for the inquiry.

Hon. Perrin Beatty: The purpose was to have one more layer of protection there after the fact, when things had calmed down and we could take a look at a whole range of questions. What were the circumstances leading up to the invocation of the act? How was the act used? What are the lessons learned as a result of this, and how do we avoid having to use the act in the future?

An example of the sort of thing, Senator, that I would like to see as part of that inquiry, but which is probably beyond the scope of yours, is looking at how we police in the national capital. Is the arrangement that we have today to provide security services for the national capital appropriate, or should it be rethought? I think most of you would feel that is beyond the scope of your particular inquiry. I believe it would be appropriate for the inquiry that takes place after the fact to look precisely at that question, among many others.

The Joint Chair (Mr. Matthew Green): Thank you.

We now have Monsieur Carignan for four minutes.

[*Translation*]

Hon. Claude Carignan: Thank you, Mr. Chair.

Mr. Beatty, we've all read your previous public statements on this issue. I imagine you did the same to help you refresh your memory.

On November 16, 1987, you gave a speech in the House of Commons, at second reading of the bill. Here is part of what you said:

Unlike the War Measures Act, part II of Bill C-77 confers no new powers relating to search, seizure, arrest or detention. The provisions of the Criminal Code in these areas are considered to be entirely adequate to deal with the instigators of public disorder, even under unusual and exceptional circumstances.

It must have surprised you, then, that the government used the Emergencies Act to seize people's bank accounts. According to you, it was clear that the legislation did not give the government any new powers and that the Criminal Code should be used when searches needed to be performed. Isn't that right?

• (2045)

[English]

Hon. Perrin Beatty: Sir, I think you're referring to my second reading speech on November 16, 1987, in which I made that point. The goal was to ensure that, wherever possible, we used ordinary law to be able to deal with the circumstance.

Yes, the power to seize bank accounts was novel. It was not one that had been used previously. That's why I'm suggesting that one of the things the committee may want to do is to look very closely at that, and that Parliament may want to study under what circumstances the government should have that sort of authority to freeze people's bank accounts. What do we want to use it for? What are the implications? If Parliament decides that it wants to convey that authority on government, should we do it through ordinary legislation, as opposed to having the government proclaim it as part of an order in council?

[Translation]

Hon. Claude Carignan: Again, I would think you were surprised to see that happen. As a lawmaker sponsoring a bill like this one, you mustn't have anticipated that it would be invoked in your lifetime. I imagine you were a bit surprised that the government invoked the Emergencies Act to exercise powers such as compelling the towing of vehicles parked on Wellington Street.

[English]

Hon. Perrin Beatty: Sir, I'm not sure I would say that when we passed the act I never expected it would be invoked in my lifetime. I prayed that it would never be invoked in my lifetime, that it would never be necessary to use it, but I felt it was essential that we have it on the books in case it was necessary.

Could we anticipate the exact circumstances under which it would be invoked in the future? No, we couldn't. That's why it's important for us to have this sort of review.

[Translation]

Hon. Claude Carignan: Ontario's Highway Traffic Act gives a peace officer the power to order a vehicle to be towed. Furthermore, the mayor of Ottawa has the power to declare a state of emergency, giving the city the authority to take all measures necessary to deal with the situation. Court injunctions can also be sought to give police the authority to move vehicles or to arrest people for breaking the law or for contempt of court. In your mind, when the Emergencies Act was passed, Canada's body of legislation provided for those powers, such that the Emergencies Act would not have to be invoked. Is that correct?

[English]

The Joint Chair (Mr. Matthew Green): Thank you.

Mr. Beatty, I would invite you to contemplate that, or the senator may have the opportunity in future rounds to revisit that question.

We will move on to Senator Harder.

You have four minutes.

Hon. Peter Harder: Thank you, Chair.

Welcome, Mr. Beatty. It's nice to see you. You haven't aged at all in 34 years.

Hon. Perrin Beatty: You're a politician, Senator Harder.

Voices: Oh, oh!

Hon. Peter Harder: Earlier this evening, you said that you hadn't, in contemplating the review committee's work under section 62, expected the committee to be meeting for the first time only after the revocation of the Emergencies Act. I can see that logic in the legislation, particularly in how sections 61, 62 and 63 play out.

Under section 61, you anticipated a vote taking place in the House of Commons very quickly, and that the debate should not be interrupted, etc. I'm not going to review the Speaker's ruling on that, but it is surprising to me that the House of Commons got to its vote only a week after the invocation of the act, and that, therefore, this committee couldn't be established as quickly as I believe your act contemplated.

In that context, the mandate of this committee, which was very specific and proscriptive with respect to pursuing how the measures were being implemented, is and continues to be a very useful guide.

You've also, though, suggested that we should be broader than simply proscriptive and forward-looking from the date of invocation to look at some of the preconditions. I can accept that, as long as our starting point is in fact the mandate of the parliamentary review, as you've scoped out so well in subsection 62(1), and we don't get into a repeat of section 63 and the inquiry.

I wonder if you can comment and give us any reflections on how you saw sections 62 and 63 interrelating, because I think you've conflated in some of the comments what we could expect one to do and the other to be less focused on.

• (2050)

Hon. Perrin Beatty: Senator, is there apt to be some overlap between the two? Yes, there is. Does that offend me? No, it doesn't. Could you find that your committee reaches different conclusions from an independent inquiry? Yes. I'm not offended by that either. I think that's healthy in a democracy.

I think what is important as you look at your work is that we deliberately wrote in the need for Parliament to immediately deal with the proclamation of the emergency. That was to ensure that Parliament was engaged, and we wanted it to act very quickly.

What we had learned, though, from the War Measures Act was that much information came out after that time about the nature of the crisis in Quebec and how it was being handled by the authorities.

You have access today to information that Parliament didn't have at the time that it voted. For example, the statement of the commissioner of the OPP that a week before the act was invoked, the provincial government had found that there was a threat to the security of Canada. That wasn't common knowledge at the time that Parliament voted. It's appropriate for you to look at that and to examine the basis on which that finding was made.

If you find, as a result of that, that it justifies what the government did, that's good. If you find that the government made this decision based on fallacious information, then that's appropriate for you to look at as well in my view. It's also appropriate for the courts to consider and for the ex post facto review to look at as well.

The distinction I would make about the ex post facto review is that it was designed to be...after all the dust had settled. You could pull back and have some perspective and look at a very wide range of issues such as, for example, the structure of policing in Ottawa, which I mentioned earlier.

The Joint Chair (Mr. Matthew Green): Thank you.

We will now finish this round with Senator White.

Senator White, you have four minutes.

Hon. Vernon White: Thank you very much, Mr. Beatty, for being here tonight.

I appreciate the fact that you stated that the expectation is that this committee would be sitting at the same time that the Emergencies Act would have been in the invocation period, because I anticipate as well, then, that you would expect that we would not be looking at the rationale for invoking in that case. Is that correct?

Hon. Perrin Beatty: No, sir.

Hon. Vernon White: Do you think we would be looking or we would not? I'm sorry.

Hon. Perrin Beatty: I think you would look at it particularly if evidence was turned up as a result of your hearings or as a result of anything coming into the public domain that cast questions about the rationale for invoking the act in the first place and whether or not actions flowing from that indication were appropriate.

Hon. Vernon White: In essence, you anticipated that we could have two, an inquiry committee and a review committee, that did the exact same work. I guess my question is why the legislation doesn't say that clearly.

Hon. Perrin Beatty: It's not the exact same work, Senator, but will an inquiry be looking at much of the same information that you're looking at? Yes, they will. Will they make recommendations possibly in areas that you'll be making recommendations? I hope so. Might they be different from the recommendations you make? They could be. It's the nature of democracy itself.

What we were trying to do was build in several layers of protection to ensure that there was the closest possible scrutiny, that civil liberties were protected and that Parliament was fully engaged.

Hon. Vernon White: Thank you.

I'm trying to see in section 62, sir, where you allow us that latitude. I'm not suggesting we can't look for that latitude ourselves, but I'm trying to figure out where that latitude is left in section 62,

because it's very clear from my perspective on what the expectations are, whereas section 63 has much more conservative thinking, I think, around allowing them to move forward in different areas.

I just can't see that latitude given to us.

Hon. Perrin Beatty: What I would suggest to you, Senator, is that if you find that the criteria and the threshold were not met on the basis for invoking the act in the first place, then everything that flowed from the decision of invoking the act was improper as a consequence as well, as you're looking at how those powers were used. It's entirely appropriate for you to do that.

In addition, you have information today that Parliament didn't have at the time that it voted to support the invocation of the act. It's appropriate for you to look at that. You can choose how extensively you want to do that.

I do want to be clear about this. We anticipated that the primary role of the committee was going to be to provide continuing parliamentary oversight, throughout the time of the crisis, of how the government was using its authority. What we certainly did not preclude was the ability of the committee to look at whether or not the authority that the government had given itself was appropriate.

• (2055)

Hon. Vernon White: Thank you.

The Joint Chair (Mr. Matthew Green): We will now move into our second round, beginning with a round of three minutes with Mr. Brock.

Mr. Brock, you have three minutes.

Mr. Larry Brock: Thank you, Chair.

Thank you, Mr. Beatty, for your attendance today and your helpful evidence as we work as a committee to frame the ambit of this very important study.

I want to start with some basic issues here, to wrap my head around them. Perhaps you can opine as well.

In my view, there was probably a very good reason that in the last 34 years, this Emergencies Act was not invoked. You'd agree with me, Mr. Beatty, that Canada has seen its fair share of crises, with numerous blockades with respect to pipelines, forms of infrastructure or railway lines, which substantially impacted the livelihood of Canadians from coast to coast to coast.

We've seen all kinds of insurrections. In fact, not too long ago, we had the storming of Centre Block and the killing of Corporal Nathan Cirillo at the veterans memorial. We had someone storming into Centre Block trying to gain access to parliamentarians. We had a shootout. We've had this worldwide crisis under COVID.

No Canadian government, in those 34 years, took the most drastic of measures, as you've indicated—the gravest of actions—to invoke the Emergencies Act.

Did you even contemplate, as a legislator and a government in 1988, that a protest outside of Centre Block on Wellington Street by way of truckers honking their horns, demonstrating their love for Canada, flying flags and singing and dancing would ultimately rise to the level of a national emergency? Was it even contemplated that such an action would give rise to that?

Hon. Perrin Beatty: Sir, I think that would be what is known as a leading question and it drags me perilously close to a partisan comment. I want to avoid that.

I do agree with the first part of your question, though. Emergencies legislation is designed to be legislation of last resort, if possible. It's explicit on that. It is designed to be used when there is no other legal authority available to be able to adequately resolve an emergency.

I'll leave it at that.

The Joint Chair (Mr. Matthew Green): It is a three-minute round on this one.

We will likely have an opportunity to cycle back through as we did in the last session, but I want to give the floor to Mr. Virani.

Mr. Virani, you have three minutes.

Mr. Arif Virani: Thank you very much for being here, Mr. Beatty.

You have mentioned a number of times that parliamentary oversight is important. I think all of us would agree with that. It is important. That's why we're here and why we were elected.

Sections 58 and 59 of the statute that you helped to enact talk about Parliament either confirming or potentially revoking a declaration order. Is that parliamentary oversight, from your perspective?

Hon. Perrin Beatty: That's part of parliamentary oversight. Yes.

Mr. Arif Virani: We've talked a lot about the statute. I want to talk to you about what is and isn't in the statute.

Section 62(1) talks specifically about the "exercise of powers and the performance of duties and functions". It doesn't explicitly use the term "the circumstances that led to the declaration being issued".

Can we agree that this language is not in 62(1)?

• (2100)

Hon. Perrin Beatty: Yes. I think we've agreed to that already.

Mr. Arif Virani: You made reference to this notion that if the declaration of the invocation was itself flawed, then everything that flows from it is flawed. You started your opening statement by talking about what constitutes the legal definition of an emergency. You cited section 3.

The language of section 3 is not cited in section 62(1) either, is it?

Hon. Perrin Beatty: I'm sorry...?

Mr. Arif Virani: The language of section 3, which is the legal definition of an emergency, is not referenced in section 62(1), which talks about the parliamentary review committee.

Hon. Perrin Beatty: No it isn't, but it has to be met—if that's what you mean—before the government can invoke the act.

Mr. Arif Virani: I guess we're having some discussions here quite actively this evening about some legal maxims, and this came up with the law clerk. You said yourself that you listened to the law clerk's testimony.

There was talk about a legal maxim called *expressio unius est exclusio alterius*, which basically means a principle of statutory construction, that when one or more things of a class are expressly mentioned, others of the same class are excluded. That's something that many of us learned in law school, and that we use to apply to different statutes when we're trying to interpret them.

It seems to me, with all due respect, Mr. Beatty, that your position is somewhat the inverse. You're saying that what that maxim would indicate is that by expressly not referencing circumstances that gave rise to it in 62(1), we shouldn't be looking at it. However, you are saying, conversely, that had you wanted that to be excluded, you would have been very deliberate in the exclusion in 62(1). Do I have that correct?

Hon. Perrin Beatty: Yes, sir. I would make the point, as well, that my legal opinion is worth what you pay for it. You have lawyers on the committee, and you have access to lawyers.

What I can talk to you about is what our intent was in writing the law. It was to ensure as broad parliamentary scrutiny as possible. That certainly would mean that anything flowing from an improper invocation of an emergency would obviously have to be looked at in that context.

The Joint Chair (Mr. Matthew Green): Thank you.

Monsieur Fortin, you have two minutes.

[Translation]

The Joint Co-Chair (Mr. Rhéal Fortin): Thank you, Mr. Chair.

I have just two minutes, Mr. Beatty, so I hope you don't mind if I do this quickly.

I'd like to hear your opinion on subsection 17(2) of the Emergencies Act, which states that the declaration of a public order emergency shall specify the three things listed at paragraphs 17(2)(a), 17(2)(b) and 17(2)(c). I'll jump right to paragraph 17(2)(c), which reads as follows:

(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.

Am I right to say that the application of the act can be limited to specific places, for instance, one or two provinces, a particular city or a given area? In other words, it's not necessary to apply the act to the entire country.

[English]

Hon. Perrin Beatty: Yes, sir, and that was deliberate.

[Translation]

The Joint Co-Chair (Mr. Rhéal Fortin): Mr. Beatty, am I right to say that, when the act is invoked and its application extended to a given area or the whole country, the emergency must affect the entirety of that area?

In this case, an emergency was declared in the whole of Canada. If I go by the definition in the act, that means that there was an emergency right across the country, does it not?

[English]

Hon. Perrin Beatty: I want to make sure that I'm actually answering your question.

It has to meet the standards of the national emergency. The consequences have to be so severe that the welfare of the country as a whole is affected. However, that does not mean that an emergency has to take place in all regions of the country.

In the case of the October 1970 crisis, the crisis was essentially limited to Quebec, yet the civil liberties of Canadians right across the country were suspended. Censorship was used in Guelph, Ontario, with the University of Guelph student newspaper. In Vancouver, there was a threat to use the act, as well, although it was not necessary to have it there.

We wanted to have legislation that would allow the government to say, "There's a grave crisis here. It meets the definition of a national emergency, but we aren't going to suspend everybody's rights; we're going to target it."

• (2105)

[Translation]

The Joint Co-Chair (Mr. Rhéal Fortin): I don't want to be rude, Mr. Beatty, but I have to stop you there.

I'm being told that my time is up anyways. Two minutes goes by very fast.

Thank you.

[English]

The Joint Chair (Mr. Matthew Green): Given the fact that we still have some time here, we should be able to revisit that.

I'll begin my round now, and I want to pick up in the spirit in which I'm engaging in this. You touched on some of the stuff. You talked about the political climate.

I'm hoping for an opportunity for Canadians to heal from what happened in what was a protracted...It was, I think we agree, very divisive, sometimes filled with rhetoric around violence.

We had a group of people who provided a logistical occupation of the nation's capital, including an MOU that spoke explicitly about overthrowing a democratically elected government. This is all public, and what we know to be true. We had a situation in Coutts where munitions were found in large quantities—enough, in my opinion, to constitute a threat to national security.

However, one of the critiques I have—even being somebody who supported this, given the information that I had, Mr. Beatty—

is that the actual declaration in and of itself, I felt, was overly reliant on the blockage of goods and services.

Could you comment on whether or not this committee should contemplate all circumstances as related to the CSIS Act—under 2(d), in particular, but all the definitions—when contemplating the invocation of this act, or is it strictly prescribed to what was written in the invocation?

Hon. Perrin Beatty: Sir, I've gone over, and thank you for mentioning, the definition in the CSIS Act. I hope the committee will look at it very closely. I've gone over it several times myself to try to look at what the application would be in this case. It's not self-evident to me in looking at it.

I believe it's appropriate to look at economic damage that was done to Canada as a result of the blockades, as well as the damage that was done to Canada's international relationship with the United States.

Again—

The Joint Chair (Mr. Matthew Green): To myself, I spoke too long in my questions and I limited your answers. If you would like to provide a response....

I will chair myself and cut this session short. It got me.

Hon. Perrin Beatty: The problem wasn't the question. It was the length of the answer.

The Joint Chair (Mr. Matthew Green): I appreciate your grace.

We will now turn it over to Senator Boniface for a two-minute round.

The Joint Chair (Hon. Gwen Boniface): Thank you very much.

Mr. Beatty, I just want to follow up on your comments, in which you referred to the layers of oversight necessary for the invocation of the act. I'm trying to get clarity, but I'm not sure I'm there yet, in terms of how you saw the complementary nature of the inquiry versus the parliamentary review.

You indicated that they may overlap, and I don't disagree with you, but in your vision and putting it together, how did you see them differ from each other?

Hon. Perrin Beatty: Senator, it was belt and suspenders. We wanted to just build in as many protections as possible, but the parliamentary review, this committee, was expected to be doing its work while the proclamation was still in force.

The review that would be done ex post facto would take place after it was over. We'd be able to stand back from the events, take a look at all of them and have a quite a different perspective.

However, we wanted this committee in particular, if there was an ongoing emergency that ran for weeks or months.... We wanted Parliament to have that continuing daily scrutiny of how the government was using the authorities and what the impacts were on civil liberties.

The Joint Chair (Hon. Gwen Boniface): Thank you.

[Translation]

The Joint Co-Chair (Mr. Matthew Green): Thank you.

Mr. Carignan, go ahead. You have two minutes.

Hon. Claude Carignan: Thank you, Mr. Chair.

I'm going to repeat the question I asked you earlier, but this time, you'll have a chance to answer.

The government has the power to arrest people, to ticket people for parking their vehicles in the street and to seek court injunctions to move vehicles. On top of that, mayors have the authority to declare a state of emergency in their cities and to take all necessary measures to deal with the problem and restore order. Those are powers that can be exercised without the invoking of the Emergencies Act.

• (2110)

[English]

Hon. Perrin Beatty: Yes.

[Translation]

Hon. Claude Carignan: When seven provinces state that they did not need emergency powers because they had sufficient powers, how can the declaration of a public order emergency in all provinces and territories be warranted?

[English]

Hon. Perrin Beatty: The requirement of the act is that there be full consultation with each of the provinces, not that they each agree.

If the act is going to be invoked and directed to only one jurisdiction, one province, then the province would have to agree to that before it could be invoked. However, in this instance, I have no quarrel with the ability of the government, having done consultations with all of the provinces, to move ahead. Indeed, the province primarily affected supported the invocation of the act.

[Translation]

Hon. Claude Carignan: Which body do you think the Governor in Council should task with the inquiry?

[English]

Hon. Perrin Beatty: You raise a very important question. That came up in the earlier session that you folks had.

That's not spelled out in the act, but my recommendation would be that the government appoint a group that is at arm's length to the government. That's not required in the act, in my reading of it, but it should be, to satisfy the public that there's a full, fair and transparent review.

I wouldn't necessarily recommend that it be a judge who does it. It could be, but you could very well be taking people with other backgrounds and competencies to look at questions such as the nature of policing the capital, or a whole range of other issues.

In my view, it should be as broad-ranging as possible. It should definitely be independent of government. It should be able to look at all aspects of how we ensure that if there were a similar situation in the future, we wouldn't have to resort to the act again.

The Joint Chair (Mr. Matthew Green): Thank you. I wanted to ensure that with the fullness of the answer, you were provided time.

Mr. Beatty, we have come to the conclusion of the rounds and we are left with only 20 minutes.

To the members of this committee, I would put it to you there are still some administrative matters pertaining to our work plan, our witness lists and motions that have been adjourned to contemplate for future meetings. I don't know that we're going to have time to get in another round, so I want to put it to the committee and see what you would like to do in this moment.

I would also like to say that I have found both sections, but particularly this one, to be of great value to the committee. I wouldn't want to predict, Mr. Beatty, given your schedule, that this would be the only opportunity to have you come down should we, in our reflections, wish to further understand what it was like when this was drafted.

Hon. Perrin Beatty: I'm in the committee's hands, Mr. Chair.

The Joint Chair (Mr. Matthew Green): Thank you.

We now have on the speakers' list Mr. Virani and then Mr. Motz.

Mr. Arif Virani: We have about 17 minutes left. I believe it might be helpful if we had a situation where the different entities that have been given turns thus far could be given two minutes each for one further question.

The Joint Chair (Hon. Gwen Boniface): You want a quick-fire round.

The Joint Chair (Mr. Matthew Green): Okay. Here we go.

We're going to go with a quick-fire round of questioning, beginning with two minutes for Mr. Motz.

Mr. Glen Motz: Thank you very much, Chair.

Thank you, Mr. Beatty. I have one quick question for you.

If I heard you correctly over the course of this evening, your testimony is that, as a legislator, it would behoove this committee...it would be negligent of this committee if we did not review all the evidence that was available to the government to make the decisions on the invocation. That should be part of our purview.

Am I correct in making that assumption, based on your testimony today, sir?

Hon. Perrin Beatty: Sir, it's for the committee to decide, but if I were on the committee, I would argue that it is appropriate to look at the basis on which the government invoked the act.

Mr. Glen Motz: Thank you.

The Joint Chair (Mr. Matthew Green): Thank you.

We will go with two minutes to the government side.

Mr. Yasir Naqvi: I think it's going to be me.

The Joint Chair (Mr. Matthew Green): Mr. Naqvi, you have two minutes. The floor is yours.

Mr. Yasir Naqvi: Thank you.

Thank you, Mr. Beatty.

As I understand it from listening to you, what you contemplated back in 1988 was a scenario where the emergency order was in place for at least 30 days, or even longer, and this parliamentary review committee oversaw or supervised the implementation of that Emergency Act.

Am I correct?

• (2115)

Hon. Perrin Beatty: Yes.

Mr. Yasir Naqvi: I looked at the Hansard. You and your parliamentary secretary back then also spoke about continuous oversight by this parliamentary review committee.

Am I correct?

Hon. Perrin Beatty: Yes.

Mr. Yasir Naqvi: The view you're expressing at this moment, because you did not contemplate a shorter emergency order, is more your view today and not what the intention was back then, when you wrote the particular provision.

Hon. Perrin Beatty: My view of what, sir?

Mr. Yasir Naqvi: What the role of this committee should be in this particular context.

Hon. Perrin Beatty: If you're referring to whether or not it's inappropriate for the committee to look at the grounds on which the act was invoked, my answer would be no. That is not my view, and it was not my view at the time.

It is absolutely correct that we anticipated this would be the constant daily overview while the emergency was taking place, but it was never inappropriate for this committee to look at whether the act should have been invoked in the first place.

Mr. Yasir Naqvi: However, the primary function was an oversight function.

Hon. Perrin Beatty: Yes, sir.

Mr. Yasir Naqvi: Thank you.

[*Translation*]

The Joint Co-Chair (Mr. Matthew Green): Go ahead, Mr. Fortin. You have two minutes.

The Joint Co-Chair (Mr. Rhéal Fortin): Thank you, Mr. Chair.

Mr. Beatty, I want to revisit subsection 17(2) and the designation of the affected area.

According to a document annexed to the proclamation declaring a public order emergency, Ontario, Newfoundland and Labrador and British Columbia were in favour of invoking the Emergencies Act, but Quebec was not because doing so, in its view, would be divisive. Alberta was against invoking the act, Saskatchewan was not in favour of invoking it, and Manitoba was not convinced that it was necessary to invoke the act at the time. New Brunswick, Nova Scotia and Prince Edward Island all stated that it was not necessary to invoke the act. That means that seven of the 10 provinces consulted did not consider it necessary to invoke the Emergencies Act and did not want the government to do so.

In a situation like this, the government has an obligation to consult the provinces. Obviously, it is under no obligation to respect their wishes—I agree. Nevertheless, seven out of 10 provinces consulted were against invoking the Emergencies Act and did not want the government to declare a public order emergency in the whole country. In your view, then, doesn't the government have an obligation to explain why it extended the application of the act to the area in question, in other words, the entire country?

[*English*]

Hon. Perrin Beatty: It indeed does have to justify to you and to the Canadian public.... However, I would make the point that your legitimacy as a legislator in representing Canadians is every bit as great as that of any provincial legislator. The federal government does have responsibility, for example, for the protection of the border and the protection of federal facilities, which were under challenge during these blockades.

There is no veto given to provincial governments in the declaration of that national emergency. They must be consulted, but if it's an emergency that extends across the country, it's a decision that the federal government makes, ultimately.

[*Translation*]

The Joint Co-Chair (Mr. Rhéal Fortin): Thank you, Mr. Beatty.

[*English*]

The Joint Chair (Mr. Matthew Green): Mr. Beatty, in your remarks you used very important notions: the principles of transparency and accountability.

Given what you've heard here—and I know each of us has argued our points of principle around the scope of this meeting—in your opinion, given that transparency and accountability are going to be important for a report, could you explain whether or not you believe in the value of looking at the whole scope of the failures? You mentioned policing. I talk about a royal commission on policing. There are some other important threats within our security frameworks, including ideologically motivated violent extremists and the rise of white supremacy in the far right and for undemocratic ends, i.e., overthrowing the government.

Can you comment, in closing, on how you feel this committee can best conduct itself in a way that will provide the greatest transparency and accountability to Canadians, ultimately, when we report back?

Hon. Perrin Beatty: Mr. Green, the first thing I would say is that it's by conducting yourselves as you have tonight. There have been elements of partisanship perhaps, but I've been encouraged by what I've seen is a genuine desire on the part of members of the committee to try to understand what your responsibilities are and to try to discharge those responsibilities to the best of your ability. That's how you'll most serve Canadians.

It comes back to the final comments that I made in my opening remarks. Our body politic is wounded at the present time. We need to heal those wounds. We need to do it by treating each other, as Canadians, with respect. We need to do so in a way that sets aside partisan differences and puts the national interest first.

We can debate whether or not the act should have been invoked, but there was a crisis. The obligation of Parliament at this point is to do everything it can to try to heal the divisions that have been created. That means transparency and collaboration, and a lack of partisanship is critical.

● (2120)

The Joint Chair (Mr. Matthew Green): Thank you. I appreciate that reflection.

We'll now close with the Senate side. If they can draft somebody from among their ranks, they have two minutes.

We have Senator White.

Hon. Vernon White: Thank you very much, Mr. Chair.

Thanks again, Mr. Beatty.

You made a comment earlier about amendments to legislation that would better ensure that the Emergencies Act would not be invoked in the future. Can you walk us through what that would look like?

Hon. Perrin Beatty: Senator, you're better informed on this than I am, because of your background. To give one example, my understanding is that in jurisdictions other than Ontario, their emergencies legislation gives the power to authorities to be able to press companies into providing services during a crisis. Ontario's legislation did not. It did not allow them to require tow truck drivers to do it. My argument would be that this should be dealt with at the level of the Ontario legislation, and if that power is needed, give it there.

Similarly, if the argument is made that it would have taken too much time to swear in police officers in Ottawa who were coming in from other jurisdictions and that's an issue, amend whatever other statute is necessary to deal with that. Don't require the government to invoke the federal emergencies legislation to deal with that sort of situation.

You can serve the public really well if the recommendations that this committee makes are for ways that would ensure that, if there were similar circumstances in the future, there would be no need to invoke the act.

The Joint Chair (Mr. Matthew Green): Thank you.

With that being said, we have come to the conclusion of our rounds of questioning, including the final—

[*Translation*]

Hon. Claude Carignan: Mr. Chair, I simply want to thank Mr. Beatty for all of the wisdom he has imparted to us today. The government needs him. Had he been a minister in the current cabinet, I don't think the Emergencies Act would have been invoked.

[*English*]

The Joint Chair (Mr. Matthew Green): Thank you so much, Mr. Carignan, for those poignant remarks.

Mr. Beatty, thank you for your time and attention and for your service to the country, both in your previous roles and today. It was very important having you here.

Hon. Perrin Beatty: Thank you, Mr. Chairman.

Thank you to all members of the committee for your important work.

The Joint Chair (Mr. Matthew Green): Go ahead, Mr. Motz.

Mr. Glen Motz: I just want to wrap up about our next session and work issues.

The Joint Chair (Mr. Matthew Green): We're going to get to that. I just wanted to make sure Mr. Beatty was sent off with the words he certainly deserves here and to recognize the value of the other witnesses.

At this point, in the last remaining minutes of this committee, it would be good for us to contemplate a few things.

We have analysts who have been listening intently to the work at hand. There is, I think, a need for us, understanding that we don't have witnesses currently applied for the next meeting, to submit our witness lists, hopefully by no later than Thursday at noon, which would then allow our analysts to provide us a draft working plan for contemplation in our next meeting, on Tuesday.

I can certainly take some perspectives around the table. We have Mr. Motz, followed by Mr. Virani.

Go ahead, Mr. Motz.

Mr. Glen Motz: Thank you, Chair.

Let's not get ahead of ourselves. We may not want to suggest witnesses just yet. We determined at the last meeting that we would do this particular meeting to develop scope and help us with some of the mandate. We had great testimony today from the law clerks from both houses, and from Mr. Beatty.

May I suggest that at our next meeting we return to committee business? We have a number of motions we haven't finished yet. We haven't finalized a number of outstanding things. We need to determine our scope completely so we can wrap it up here. Then we can start working on our witness lists.

I would suggest that maybe we have a witness list available for next Tuesday's meeting. Then, at Tuesday's meeting, we have a number of substantive issues to go through. I think we need to take that time so that our committee is properly constituted, we know exactly what we're going to do and how we're going to do it, and we haven't left anything out, so that the witnesses we have, moving forward, are in a logical process, and we're using their testimony because we know exactly the direction we want to go in.

That would be my submission.

● (2125)

The Joint Chair (Mr. Matthew Green): Thank you, Mr. Motz.

We have Mr. Virani followed by Ms. Bendayan.

Mr. Arif Virani: I'm just tangled up in all this stuff.

Thank you very much, Mr. Chair. Thank you for policing yourself so judiciously. It was quite remarkable. Alistair and I both commented on that.

In terms of this, taking a cue from Mr. Beatty, I'm absolutely in agreement with Mr. Motz—no partisanship here. I don't think we can determine things like the witness lists until we've determined our scope, our mandate and our terms of reference. Call it what you want, but I think we need to figure out what we're looking at. Then we feed in the witnesses, the kinds of witnesses we want based on an agreement as to what we're looking at as a committee.

I think committee business makes eminent sense to deal with at the next meeting. In our back pocket—I would agree with Mr. Motz—we should have a general sense of the types of witnesses we'd like to have. If we get through the committee business and are able to hammer out the terms of reference, great. Then we can start working on proposing witnesses.

The Joint Chair (Mr. Matthew Green): Thank you.

Ms. Bendayan.

[*Translation*]

Ms. Rachel Bendayan: I have a suggestion. I, myself, am not necessarily convinced that this is the best approach, but perhaps an hour and a half will be enough to discuss the motions, come up with a workplan and decide on how we're going to proceed.

At the last meeting, we had already agreed on a motion to have the ministers appear before the committee. I think everyone was in favour of that.

Either way, I'm just throwing out the idea. We could spend the first hour and a half discussing the motions and the second part of the meeting, hearing from witnesses.

[*English*]

The Joint Chair (Mr. Matthew Green): Thank you for that. I'll put myself on the list to be able to provide my respective remarks to that.

I feel that we may fall into the same problem, in that if we don't have the appropriate scope, then the questions may be limited to the ministers. While I think there's a general intention for all of us to get about the business and I don't think anybody is trying to slow down the business, I think that for me, getting the terms of reference right would make sense. It certainly would give much more support to the joint chairs.

I suggest that it would actually be more beneficial to use that time accordingly. I say this with the utmost tender care and love in my heart for everybody around the table. If we were to have an hour and a half of those discussions, or more if there were more time available—provided we not find ourselves in unnecessary filibusters or things of that nature, where we come to an impasse—we could use that time judiciously to get to the framing of the scope. I'm just going to put that out there.

I think we've heard some very compelling testimony today. I'm also not naive enough to think that we're not all going to go away with different opinions on what we've heard. That being said, it may be wise for us to take Tuesday simply as a committee business day. If it means we finish a bit early and then have our witnesses and get prepared, we could do that in the next weeks after that. I think there's also an opportunity for us to give consideration at some time to the frequency with which we sit in order to catch up

on whatever business might be made available, given our constituency weeks and other things.

We have Senator Harder, and then we'll come back to Mr. Motz.

Hon. Peter Harder: Thank you, Chair.

I would concur with what you've just said, as well as what Mr. Motz and Mr. Virani have said. I would suggest that we meet next week as the coordinating committee of this committee, and therefore do this in camera.

Mr. Glen Motz: Thank you, Chair.

I wouldn't disagree. I think that's appropriate.

On what we did last meeting with our ministers, we agreed on the division of how they should come, but we didn't set a date. With that in mind, I think we can arrive at a consensus around the table that we would probably be better served in the long term on this committee if we did just that: committee business next week in camera to finish off the motions we have to deal with.

• (2130)

The Joint Chair (Mr. Matthew Green): Next is Ms. Bendayan.

Ms. Rachel Bendayan: Thank you, Mr. Chair.

I'm hearing consensus around a number of issues.

The committee business that we will engage in on Tuesday will be in camera. I agree with that proposal from my colleagues.

I'm also hearing that perhaps we should have witnesses at a subsequent meeting. I leave it with you, Mr. Green, in talking about the importance of moving along rapidly. I would perhaps ask the clerk to verify if it would be possible to meet twice next week.

I would suggest that given that we would like witnesses to appear in person, perhaps meeting twice next week would avoid having to meet in a constituency week, during which it would probably be difficult to hear directly from witnesses in person. I know my colleagues opposite care quite a great deal about that.

The Joint Chair (Mr. Matthew Green): Just to be clear, Ms. Bendayan, there was a question though you to the clerk. There will have to be some reflection on that.

I am also on the list, and then I'll go to Mr. Motz.

I just want to be clear that I didn't say “rapidly”. I said “judiciously”. Those are different things.

The other thing I want to go on the record to state is that when we talk about accountability and transparency, while I appreciate how the theatre and the spectacle of politics are very different in camera than they are in public.... I just want to go on the record and state right now that I'm actually against going in camera for the discussion. I think there will be Canadians following along quite closely. Unless absolutely necessary, it's just my personal position that we will carry on all business in public view so as not to further add to any kind of conspiratorial rhetoric that's already floating around.

We have Mr. Motz and then Senator White.

Mr. Glen Motz: Thank you, Chair.

I wish to withdraw my recommendation for in camera. I remember back to when we first started talking about our parameters around this meeting and the notices of motion. We talked about being in camera. We talked about that being potentially for those sensitive witnesses and the sensitive documents that we might have to review.

Being that we've already done two public meetings dealing with committee business, I would think that our Tuesday meeting should be public and not in camera, and then we reserve the sanctity of in camera for the sensitivities that we know we're going to deal with down the road.

The Joint Chair (Mr. Matthew Green): Go ahead, Senator White.

Hon. Vernon White: Thank you very much. I appreciate the comments of all.

Because we don't have a steering committee, which would normally operate in camera and allow us to deal with committee business, my argument is that if we're going to act as we are, as a steering committee of the whole, then we ought to be holding some of this business in camera to allow us to get through it quickly. I think we would actually finish it in one meeting.

I do not believe we'll finish it in one meeting if we have the glare of the lights and the cameras on us. I would rather see us go in camera. If we have to, let's have a vote on it now to decide.

The Joint Chair (Mr. Matthew Green): Thank you, Senator White.

I would share with you that the composition of the committee of the whole was a routine motion that was adopted by this committee in our first meeting. There were no parameters around what would be in and out of camera at that time. It would have been a good consideration.

If what I'm hearing from you is that you're putting a motion on the floor—

Hon. Vernon White: I am.

The Joint Chair (Mr. Matthew Green): Okay. If you would, please concisely state your motion, so that we can contemplate it for a vote.

Hon. Vernon White: I move that the next meeting, April 5, be held in camera for its entirety.

The Joint Chair (Mr. Matthew Green): Is there any discussion on that motion?

Voices: Question.

Hon. Vernon White: Question.

The Joint Chair (Mr. Matthew Green): Well, you can't call the question. That's not actually a thing.

Hon. Vernon White: What?

The Joint Chair (Mr. Matthew Green): It's not a thing.

Voices: Oh, oh!

The Joint Chair (Mr. Matthew Green): We debate in the House until the debate is done. I will respect that we are here—

Mr. Arif Virani: Didn't you mention not filibustering?

The Joint Chair (Mr. Matthew Green): I did, but I also am stuck on parliamentary privilege.

With that being said, the motion has been put on the floor. Are there any comments on the motion? The motion has been put.

The Joint Chair (Mr. Rhéal Fortin): Will the vote be recorded?

The Joint Chair (Mr. Matthew Green): We will do a recorded vote.

● (2135)

Ms. Rachel Bendayan: Mr. Clerk, can you read the question?

The Joint Clerk of the Committee (Mr. Mark Palmer): The motion on the floor is that the next meeting be held in camera in its entirety.

(Motion agreed to: yeas 6; nays 5)

The Joint Chair (Mr. Matthew Green): It is the direction of this committee that the meeting for Tuesday, April 5, be held in camera in its entirety, at which time our work plan will be discussed.

Do we have agreement that we now are at a point at which we can adjourn the meeting?

Voices: Agreed.

The Joint Chair (Mr. Matthew Green): The meeting is adjourned.

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