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The Honourable Gwen Boniface Mr. Matthew Green Mr. Rhéal Fortin



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• (1835)

[English]

The Joint Chair (Mr. Matthew Green (Hamilton Centre, NDP)): Good evening to the committee members and our guests here today.

I'd like to call this meeting to order and welcome everyone to meeting number nine of the Special Joint Committee on the Declaration of Emergency, created pursuant to the order of the House on March 2, 2022, and of the Senate on March 3, 2022.

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

I'd 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 or any other challenges arise, please advise me, as we may need to suspend for a few minutes to ensure that all members are able to fully participate.

Witnesses should also be aware that translation is available through the globe icon at the bottom of your screens and, of course, on the microphones in front of you.

We have with us today, from 6:30 to 8 p.m., representatives from the Department of Justice. We have François Daigle, who is the deputy minister of justice and deputy attorney general of Canada. We have Samantha Maislin Dickson, who is the assistant deputy minister of the public safety, defence and immigration portfolio. We have Jenifer Aitken, who is the acting assistant deputy minister of the central agencies portfolio; and Heather Watts, who is the deputy director general and general counsel for the human rights law section. Welcome.

You will all have five minutes for your opening remarks. We will begin...

Go ahead, Mr. Clerk.

The Joint Clerk of the Committee (Mr. Paul Cardegna): There's only one opening statement.

The Joint Chair (Mr. Matthew Green): There's only one opening statement. I'm sure you all have done rock paper scissors and will determine who is doing that.

We will allow you to begin, Mr. Daigle. Thank you.

The floor is yours for five minutes.

[Translation]

Mr. François Daigle (Deputy Minister of Justice and Deputy Attorney General of Canada, Department of Justice): Thank you, Mr. Chair.

Good evening, everyone.

[English]

Honourable joint chairs and committee members, thank you for the invitation to speak.

I want to cover three points in my opening remarks. First is the test to invoke the Emergencies Act. Second, I want to speak to the temporary measures. Third, I'll speak to compliance with the charter.

[Translation]

On the first element of the test, I invite you to read sections 3, 16 and 17 of the Emergencies Act. Section 3 states that a national emergency is an urgent and critical situation of a temporary nature that seriously endangers the health and safety of Canadians and that cannot be effectively dealt with under any other law of Canada.

[English]

I want to make two points about that.

First, on February 14, the Governor in Council decided that our country was indeed in such a crisis situation. The reasons for issuing the declaration of a public order emergency were set out in great detail in the public document required by section 58 of the act. It's that document that summarizes the facts that the GIC relied on at the time to come to the conclusions that there were reasonable grounds to invoke the Emergencies Act. I believe that this document is before the committee.

Second, the GIC determined that the situation had exceeded the capacity and authority of the provinces and territories to respond “effectively”, or “*adéquatement*” as it says in the French version.

The test is not whether other laws existed, like other provincial highway traffic acts. The test is whether they were effective at dealing with the emergency. Nor is the test whether they could have been effective. The test is whether they were effective. The government determined that they were not and enacted time-limited measures for law enforcement and financial service providers to use, at their discretion, to deal with the emergency.

[*Translation*]

The Emergency Measures Regulations that were made prohibited certain targeted conduct and gave peace officers the power to preserve and maintain the public peace.

Each of the prohibitions listed in sections 2 to 5 of the Regulations addressed behaviours observed during the unlawful blockades and the occupation of Ottawa streets. The key prohibition is set out in subsection 2(1), which supplements the powers to maintain the peace that police have at common law by prohibiting certain public assemblies. It does not affect all public assemblies, only a very precise, targeted type: a public assembly that may reasonably be expected to lead to a breach of the peace by the serious disruption of the movement of persons or goods or the serious interference with trade, the interference with the functioning of critical infrastructure, or the support of the threat or use of acts of serious violence against persons or property.

The measures also provided that a person must not bring children to unlawful assemblies—conduct that we all observed in Ottawa and Windsor. The measures also provided that a foreign national must not enter Canada with the intent to participate in an assembly referred to in that section, and prohibit providing property or funds to support unlawful assemblies.

The related Emergency Economic Measures Order, which provides for certain bank accounts to be frozen, was also very targeted and limited. The obligations to which financial institutions were subject no longer applied, that is, ceased to apply, if the “designated person”, a term defined in the order, ceased to engage in unlawful activities. It was therefore easy for a person to exempt themselves from the freeze simply by leaving the unlawful assemblies.

[*English*]

The objectives of the measures were clear: to deter the attendance at unlawful assemblies, to bring an end to the unlawful blockades and get people to leave, and to prevent the formation of new unlawful blockades and protests.

• (1840)

Finally, on the charter, as the Minister of Justice said at his appearance on April 26, the measures were consistent with the charter, and the declaration did not suspend the charter. That is clear from the act. The charter continued to protect rights and freedoms as the government took the necessary lawful and proportionate measures to address the blockades.

I want to explain what we do at the Department of Justice when we review new laws, like these temporary measures, for charter compliance. We are not the police deciding whether or how to use existing or new authorities, nor are we prosecutors deciding whether to pursue a prosecution. We review the law on its face, in this case the temporary orders, to understand their objectives and examine whether the measures are inconsistent with the charter.

The examination can include consideration of whether any interference with a charter right is justified in a free and democratic society as allowed by section 1 of the charter. We look at their scope and their relationship to the objectives of the measures. We rely on decisions from the courts, including the Supreme Court of Canada.

While we can't share our legal opinions that we may have prepared for the executive branch, we can explain the position of the government. The minister has already explained that his position was that the measures were targeted, proportional, time limited and charter compliant.

The minister has tabled today a charter backgrounder that sets out the charter considerations that go through sections 2(b), 2(c), 6, 7 and 8. I hope that will help your understanding and deliberations.

[*Translation*]

In conclusion, we found that, overall, the Regulations and the Order prevented the organizing of unlawful protests and enabled the police to get control of the situation. The occupiers left in order to avoid having their accounts frozen. People stopped bringing their children to unlawful protests, and this enabled the police to enforce the law in Ottawa. The measures also deterred other people from joining the blockades. Those were the actual objectives of the new measures adopted under the Emergencies Act.

That concludes my introduction. We are eager to answer your questions.

[*English*]

The Joint Chair (Mr. Matthew Green): Thank you very much. I'll note that we went a bit beyond the five-minute scope, but it's important that those opening remarks were heard. In your remarks, you had mentioned a document that had been prepared. Has that been submitted for distribution at this committee?

A voice: It was distributed earlier today.

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

Before we get into the rounds, I would like you to note that in this committee we're going to be probably moving at a fairly rapid pace, given our time constraints. The member who has the floor controls their time. If you hear members say, “Thank you”, or if they gently interrupt you and interject to move on to the next question, I just want you to know that it's not personal. They would like to move on to the next question to be able to protect their time. I would ask that members do so in a way that is tactful and allows the discussion to flow.

If it is the case that a round comes to a close, but there is information that's being presented, I'll let you know and you can finish your thought. We certainly don't want to be cutting anybody off mid-sentence.

We will begin the first round with Mr. Motz, who will have five minutes.

Mr. Motz, the floor is yours.

Mr. Glen Motz (Medicine Hat—Cardston—Warner, CPC): Thank you, Chair.

Before you start the clock, I will just say publicly thank you for being here as department officials in person. This is one of the first times this has occurred, other than when we have had the ministers, and it says a lot about your willingness to be heard and to be open to what it is that we're doing. Thank you very much for doing that.

Deputy Minister Daigle, I just want to make a comment about your opening remarks. You indicated that the invocation was necessary because the existing laws basically were inadequate. This is not a question but a comment. I suggest that the existing laws were inadequately applied more than anything else.

Let me get into the questions. The Emergencies Act is clear, as you mentioned, sir, that a national emergency is “an urgent and critical situation of a temporary nature” that “cannot be effectively dealt with under any other law of Canada. Given the number of laws we have in this country that could have addressed these protests, the federal government must have reached a very high threshold before invoking the emergency powers.

Can you state categorically, yes or no, that the government exercised every legislative option before invoking the Emergencies Act?

Mr. François Daigle: I can't provide a yes-or-no answer to your question, because the test is not whether we exercised every piece of legislation in the country. The test is whether those laws were being used effectively to deal with the emergency, and our view is that they were not.

Mr. Glen Motz: Is that a law issue, or is that an “application of the law” issue?

Mr. François Daigle: That's an “application of the law” issue. The laws were being applied—

Mr. Glen Motz: That's different.

Mr. François Daigle: —in different places, but they were not dealing effectively with the emergency.

Mr. Glen Motz: I haven't had a chance to go through the document you provided in great detail. Were you or your department asked to produce, obviously, a constitutional review of the legality of invoking the Emergencies Act?

• (1845)

Mr. François Daigle: We provide legal advice to the executive branch of government on all matters, and it's safe to assume that we have in this case. After the minister's appearance on April 26, I asked Heather and her office to prepare this document, because I thought it could be helpful to the committee.

Mr. Glen Motz: Has the minister ever gone against any of the advice he's received from his ministry?

Mr. François Daigle: I'm not going to tell you what the government does with the advice it gets from the Department of Justice. I think they're always happy to get our advice, but ultimately they make decisions with the benefit of that advice.

Mr. Glen Motz: Can you make the review you've done available to the committee?

Mr. François Daigle: We've made this charter backgrounder available to the committee, and we're happy to speak to that document if there are some questions about it.

Mr. Glen Motz: Given your comments in the opening, has your department recommended any new laws to the minister since the invocation of the Emergencies Act that would better suit and address similar situations in the future?

Mr. François Daigle: Whether we've provided legal advice to the government, I think, is not something I can share.

Mr. Glen Motz: In your opening statement, you said that the existing laws weren't adequate. My question is this: Have you suggested to the minister that there are some new laws that we could have?

Mr. François Daigle: I didn't say that the laws were not adequate. I said that the laws were not applied effectively to deal with the emergency.

Mr. Glen Motz: I'm taking it by your kind of non-answer that you really haven't talked to the minister about any new laws that could be implemented in this country. By that, can I then infer that maybe you think the existing laws are actually adequate but they just weren't adequately applied? Would that be a fair statement?

Mr. François Daigle: Our view is that the laws that were on the books were not effective at dealing with the emergency and that we needed new laws—these measures that we implemented, that we enacted—in order to help the police and financial service providers to deal with the emergency.

The government is obviously looking at a “lessons learned” exercise. There is an inquiry going on, and I'm sure the government will take advice from that inquiry and determine whether they want to amend the Emergencies Act or if there are some other statutes they think they should deal with in order to deal with future emergencies.

Mr. Glen Motz: I would suggest, respectfully, Mr. Daigle, that this committee also has a responsibility and that the government needs to take seriously the recommendations that are going to come out of this committee and not just out of the public inquiry.

Mr. François Daigle: I agree with you, yes.

Mr. Glen Motz: There are media reports that came out at the beginning of June saying there were two secret or unpublished orders in council that were adopted during the period of the protests from January to February. The Privy Council Office has declined to release these orders in council or to make them public, citing a section of the federal access to information law that allows the government to keep secret documents as they feel is necessary.

Can you tell us about these orders in council?

Mr. François Daigle: I can tell you that my department drafted all of the orders related to the emergency. There was a proclamation, a declaration, an order and a regulation, and all four were made public. There were no secret orders related to the emergency that were taken.

Mr. Glen Motz: Not from your department...?

Mr. François Daigle: From the government.

Mr. Glen Motz: From all of government...?

Mr. François Daigle: From all of government.

Mr. Glen Motz: Okay.

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

We will now move on to Mr. Virani for five minutes.

Mr. Virani, the floor is yours.

Mr. Arif Virani (Parkdale—High Park, Lib.): Thank you very much.

Thank you to the witnesses.

I'll direct my questions to Deputy Minister Daigle, and it's probably going to be a bit punchy so just quick answers would be great.

[*Translation*]

Thank you in advance.

[*English*]

You talked about the Emergencies Act, and actually in its preamble, it refers to being charter compliant or being “subject to” the charter. Is that correct?

Mr. François Daigle: It does, yes.

Mr. Arif Virani: When the Emergencies Act is enacted it doesn't operate to temporarily suspend charter rights in any way, does it?

Mr. François Daigle: It does not.

Mr. Arif Virani: I want to delve into the charter.

When we talk about the charter itself, section 2(b) protects expression, but the case law and the jurisprudence doesn't extend that protection to anything except for peaceful non-violent expression.

Is that fair?

Mr. François Daigle: Freedom of expression is a freedom under our Charter of Rights and Freedoms but there are necessary limits to that, so hate speech is not protected and violence is not protected. Ms. Watts would be happy to provide more detail on the charter background if you're interested.

• (1850)

Mr. Arif Virani: Let's skip to 2(c). Section 2(c) of the charter protects assembly but it specifically entrenches peaceful assembly. That's what's in the charter itself. .

Mr. François Daigle: Exactly, and that's why our orders are drafted and I went through section 2(a) of the order to explain that it was not any public assembly that was prohibited. It was only some specific types of assembly that create three specific harms.

Mr. Arif Virani: Exactly, in the part that your department helped draft it talks about, in section c(i) of that original declaration, restriction on assembly “other than lawful advocacy, protest or dissent”, and that was deliberate.

Mr. François Daigle: That was deliberate, yes.

Mr. Arif Virani: Nevertheless we know that the regulations that were enacted can have some impact on even what can be construed as non-violent or peaceful expression, but in your view, as you explained in your opening remarks, that impact was justified under what's called the “savings” clause under section 1 of the charter.

Mr. François Daigle: It is, and I think there's a difference to be made in terms of whether a law is charter compliant on its face, and

whether in its application by police or others when they applied the law they did it in a charter-compliant manner.

What we do at the Department of Justice is review the law for charter compliance, with an understanding of how it could be applied, but we're not applying them. Others are applying the new measures.

Mr. Arif Virani: Understood, but some of the things that would have worked into your analysis and the evaluation you gave was the fact that, given the Charter of Rights and Freedoms, they were limited in terms of time and in terms of scope.

Is that—

Mr. François Daigle: Exactly. They were proportional and they were very tied to the objectives, which were to bring an end to these illegal assemblies, the blockades and the occupation in Ottawa. They were proportional to the objectives. They were time limited, and they were very targeted.

Mr. Arif Virani: The invocation of the declaration itself occurred some days—many days—into the protest, and it was revoked after about nine days in total, between the 14th and 23rd if I remember correctly.

Mr. François Daigle: That's correct. February 14 is when the declaration was issued. February 15 is when we took out the orders, and the 23rd is when they were revoked.

Mr. Arif Virani: I want to turn to the constitutionality of the economic measures order now, if I may.

As a general proposition, section 7 of the charter and section 8 of the charter have not been interpreted by the courts to generally protect economic or property rights in this country. Is that correct?

Mr. François Daigle: That's our understanding and that's, I think, set out in our charter background.

Mr. Arif Virani: When something contemplates potential imprisonment, we know that the life, liberty and security process is triggered so we have to embark upon analysis under section 7.

But section 7 also talks about principles of fundamental justice, and some of those basic principles are things like arbitrariness or overbreadth. Is that fair?

Mr. François Daigle: That's fair, yes.

Mr. Arif Virani: In your view, the powers enacted under the Emergencies Act and the regulations that followed therefrom weren't arbitrarily overbroad because they were tailored to a very specific objective that you articulated at the outset, which was ending the blockades and preventing the formation of new unlawful blockades.

Is that fair?

Mr. François Daigle: That is fair. That's what I said earlier, yes.

Mr. Arif Virani: In terms of the targeted objective, in fact there was a very specific targeted objective about those blockades that related to the economic measures order, which was things like providing or making available property that would help maintain the blockades, keep them going, and that's why that was targeted in section 5 of one of the orders.

Mr. François Daigle: It is and the objective was really to bring an end to them, so to the extent that people were financing the illegal blockades, we wanted to find a way to stop people from coming and—

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

Mr. François Daigle: —to stop the financing of those blockades.

Mr. Arif Virani: [*Inaudible—Editor*] that financing, we heard a lot about the freezing of accounts.

It's our understanding that there were about 200 or so accounts that were frozen. The freezing ceases pursuant to the legislation that you have to draft in your department as soon as one's participation in the unlawful blockade ends.

Is that correct?

Mr. François Daigle: That's correct.

The obligation is on the financial institution to cease transactions with designated persons. A designated person is somebody who's participating in one of these illegal assemblies. Once they're no longer participating in the illegal assembly, then there's no longer an obligation to cease transactions.

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

[*Translation*]

Mr. Fortin, the floor is yours for five minutes.

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

Thank you all for being here with us today.

My questions are for Mr. Daigle.

Mr. Daigle, I listened to your testimony and I want to be sure I understood it correctly.

Were you, personally, consulted before the Emergencies Act was proclaimed?

Mr. François Daigle: The Department of Justice and I, in particular, took part in the discussions that led to the Act being invoked.

The Joint Chair (Mr. Rhéal Fortin): Who took part in those discussions, apart from you and the Minister of Justice?

Mr. François Daigle: I think there has been testimony that has already explained that there were necessarily discussions in Cabinet. There were discussions among deputy ministers and with the RCMP. I took part in some of them. Generally speaking, that is how it happened. My colleagues also took part in a number of discussions with their clients, whether it was the RCMP, Public Safety Canada, or others.

• (1855)

The Joint Chair (Mr. Rhéal Fortin): Do you have an idea of the number of discussions you participated in personally?

Mr. François Daigle: Personally, I started to work on it very intensively in mid-February, around February 6 or 7, and up to February 23.

The Joint Chair (Mr. Rhéal Fortin): Did you write any legal opinions relating to the proclamation?

Mr. François Daigle: As I explained, the Department of Justice has the role of giving legal opinions to the government.

The Joint Chair (Mr. Rhéal Fortin): Did you do that?

Mr. François Daigle: You can assume that a number of legal opinions were prepared...

The Joint Chair (Mr. Rhéal Fortin): Forgive me for interrupting you. I don't want to be rude, but we don't have a lot of time and I need a clear answer.

Did you sign a legal opinion or legal opinions relating to the proclamation of the emergency measures?

Mr. François Daigle: You can assume that a number of legal opinions were prepared...

The Joint Chair (Mr. Rhéal Fortin): I don't want to assume anything, Mr. Daigle.

Mr. François Daigle: My minister has already explained that he would not provide you with the legal opinions that we prepared.

The Joint Chair (Mr. Rhéal Fortin): We will see that in due course with Mr. Lametti, but I am asking you a question, and if you don't want to answer it, tell me and that will settle it.

Did you sign legal opinions concerning the proclamation of the emergency measures, yes or no?

Mr. François Daigle: I decline to answer your question directly.

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

You said earlier that to your knowledge, no secret order was made by the government. Is that correct?

Mr. François Daigle: There was no secret order in connection with the order under the Emergencies Act.

The Joint Chair (Mr. Rhéal Fortin): We saw in the media that a number of secret orders had been made, including two during February.

Are you aware of the existence of those two secret orders?

Mr. François Daigle: Like you, I read what was in the newspapers, but I have not seen those orders. However, I can tell you that the orders connected with the Emergencies Act are all public.

The Joint Chair (Mr. Rhéal Fortin): Do you know what the two orders in question dealt with?

Mr. François Daigle: No.

The Joint Chair (Mr. Rhéal Fortin): Did you take part in developing the strategy for dismantling the barricades and so on?

Mr. François Daigle: No, that was the police's work, and the Department of Justice does not give instructions to the police who are handling those issues.

The Joint Chair (Mr. Rhéal Fortin): To summarize, your involvement regarding the emergency measures took place ahead of them. Before the proclamation, you had discussions about it, but once the proclamation was made, you were no longer involved with anything concerning the situation. Is that correct?

Mr. François Daigle: No, we continued to take part in a number of meetings to know how the orders were being applied and what was happening on the ground, and whether the measures were effective. We continued to hold discussions until the government decided to revoke the Act once it was satisfied that things were under control.

The Joint Chair (Mr. Rhéal Fortin): Why did you have discussions?

Was it about amending the proclamation, about adding orders or regulations?

What was your job at the Department of Justice at that point?

Mr. François Daigle: We had to continue giving the government legal opinions based on the situation and the questions that might arise.

The Joint Chair (Mr. Rhéal Fortin): If you tell me that you had to continue giving legal opinions, I understand that you did give legal opinions.

Mr. François Daigle: The Department of Justice gives the government a number of legal opinions every day.

The Joint Chair (Mr. Rhéal Fortin): That is in general. Specifically concerning the emergency situation, you gave legal opinions before and after the proclamation, if I understand correctly.

Am I mistaken?

Mr. François Daigle: Yes.

What I told you is that you can assume that we gave a number of legal opinions.

The Joint Chair (Mr. Rhéal Fortin): I don't want to assume anything, Mr. Daigle. If I need to, I'll read the Act and the regulations.

You are here as a witness. You have to testify to the facts.

Did you give legal opinions, yes or no?

You can tell me that you won't answer the question, but don't tell me that the general rule is this or that. I don't want an expert opinion. I want the opinion of a fact witness.

Did you give opinions, yes or no?

Mr. François Daigle: The answers to the questions about whether we gave one opinion, two opinions, or none, and at what time, are subject to professional privilege. They are not questions that I can answer.

The Joint Chair (Mr. Rhéal Fortin): You just told me that you took part in discussions in order to give legal opinions after the proclamation, so you gave legal opinions.

Mr. François Daigle: What I am telling you is that you can assume that I did my job. That is part of my job.

The Joint Chair (Mr. Rhéal Fortin): I'm not here to evaluate you, Mr. Daigle, with respect.

I understand your discomfort, but understand that I am here to investigate this situation.

[*English*]

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

Monsieur Fortin, I'd like to pass the floor to you for my round.

● (1900)

Mr. Glen Motz: Before you do, Chair, can I raise a point of order?

The Joint Chair (Mr. Matthew Green): You can.

Mr. Glen Motz: It's highly unusual for a witness to indicate—and respectfully, sir—that they will not answer a question to a parliamentary committee, to refuse to answer a question. I think it is incumbent upon witnesses to understand the power of committees and that they have obligations to answer questions. They can answer them in a different way, but refusing to answer a question is not an option. I would ask that the committee compel the witness to answer the question that Mr. Fortin provided to him.

Mr. Arif Virani: On the same point of order, Mr. Chair, I think the deputy minister has indicated where he can.... He has been very forthright, and where he cannot be forthright, he has indicated. Just for everyone's edification, when we talk about solicitor-client privilege and what it covers, it can even cover the fact that an opinion exists or a number of opinions exist. That's what Mr. Daigle was explaining at the very end of his question, so there's a basis upon which certain things cannot be responded to.

I've been at this job for seven years, and I've heard many witnesses not answer certain questions. Sometimes it's because it's out of their realm of understanding or their scope or their expertise, etc., so I'll respectfully disagree with Mr. Motz.

The Joint Chair (Mr. Matthew Green): Mr. Brock.

Mr. Larry Brock (Brantford—Brant, CPC): With all due respect to my colleague Mr. Virani, that is not a legal interpretation of what has just transpired. We had a senior government official—in fact, apart from the Minister of Justice and the Attorney General, the highest senior official from the Department of Justice—refuse to answer a question posed by a committee member, without citing cabinet confidentiality, without citing solicitor and client privilege.

I wholeheartedly disagree with Mr. Virani's interpretation that the mere fact that a legal opinion was prepared and delivered to the government constitutes privilege. It's ludicrous. We are not asking at this stage for the content or the theme. We're not asking whether or not it was delivered in person or by email. We're not asking about the date.

The question posed by Monsieur Fortin was very general: Did you sign a legal opinion before the Emergencies Act was invoked? To which the witness stated very emphatically that he refused to answer the question. I am asking, Mr. Chair, that you direct the witness to respond appropriately, as opposed to a simple refusal.

Mr. Arif Virani: Mr. Chair, if I could just add two very brief points...?

The Joint Chair (Mr. Matthew Green): Very briefly, please.

Mr. Arif Virani: One is that, with respect, the fact that perhaps a member of a committee doesn't appreciate an answer or like an answer doesn't mean that the question wasn't answered. That's my first point.

The second point is that this committee doesn't have the power to compel a witness to answer a question. Only Parliament does. Only the House of Commons does.

The third point is that I find this a bit curious insofar as last week we passed a motion that talked about production of documents, including legal advice that would have been provided. That answer will be forthcoming. I think there was a time window put on that production motion, so perhaps some of the answers my friends are seeking will be provided when those productions are made.

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

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

I just want to intervene briefly. Having been a witness as a deputy minister for 16 years before Senate and House of Commons committees, I appreciate that there are times when questions are asked of a deputy that the deputy is not able to respond to in the fullness of knowledge that the questioner would wish. However, I do believe the question was responded to and that is after all what we're here for.

Therefore, I don't see this as a question of privilege, but a distraction from our hearing.

The Joint Chair (Mr. Matthew Green): Are there any other interventions?

Mr. Daigle, if we were to go in camera, would you be willing to be more forthright in answering these lines of questions?

Mr. François Daigle: I did refer to solicitor-client privilege when invited by Monsieur Fortin to decline to answer his question. That's the reason I'm not answering his question. Whether we're in camera or not, I don't think that's going to change, but I take note of the motion that was passed a few days ago. The government will consider how we can respond by the end of the month, which I think is the time frame for the response.

The Joint Chair (Mr. Matthew Green): Are you familiar with Standing Order 108 that constructs committees and says that there are no bounds to our ability as a committee, duly constituted by the House, to send for people, documents and evidence?

• (1905)

Mr. François Daigle: I am, yes.

The Joint Chair (Mr. Matthew Green): Are you also familiar with—and you may or may not be, but I'll state for the reference of this committee—that in 1891 a witness before a committee of the Senate of Canada objected to answering questions? The witness gave reasons that he was not in any way obliged to give the committee information relating to these affairs.

The committee had ordered the witness to answer, but he refused. The committee reported his refusal to the Senate, and re-

quested action of the Senate thereon. The report of the committee was adopted by the Senate, and the witness was ordered to attend the bar of the Senate. The witness was ordered by the Senate to answer the questions of the committee. After he agreed to do so, he was discharged from the bar.

There is jurisprudence within our system that these committees are supreme in their ability to investigate these issues. I guess I would like—

Mr. Yasir Naqvi (Ottawa Centre, Lib.): Chair, can I—

The Joint Chair (Mr. Matthew Green): I have the floor. I would like to put to you that this committee has been duly constituted under those provisions. The convention of cabinet confidence is just that. It's never been conceded by the House of Commons in any kind of jurisprudence. It's just a convention.

Mr. Naqvi.

Mr. Yasir Naqvi: I was trying to ascertain whether you were asking these questions as a member of this committee or as the chair.

The Joint Chair (Mr. Matthew Green): It's as the chair who's considering the decision of what's before us right now.

Mr. Yasir Naqvi: Thank you.

Mr. Arif Virani: Further to this point, Mr. Chair, that's exactly the point I made. The jurisprudence you referenced showed that it went from a committee to the Senate, which then compelled the witness. That's exactly the operation that would need to be followed here, should this committee wish to pursue it. It has to go from the committee to the House of Commons, to then compel the witness. That jurisprudence is established.

The second point is that cabinet confidence was not raised by Mr. Daigle. Solicitor-client privilege was raised, so please, let's not conflate the ideas.

The Joint Chair (Mr. Matthew Green): Crown privilege, is that what you're—

Mr. Arif Virani: Solicitor-client privilege, which covers not just the advice but also the mere fact that the advice exists, or the number of times the advice has been given—

The Joint Chair (Mr. Matthew Green): That is aligned with Crown privilege. Is that correct?

Mr. Arif Virani: It's solicitor-client privilege.

The Joint Chair (Mr. Matthew Green): Which is Crown privilege.

Mr. Arif Virani: No, it is not

The Joint Chair (Mr. Matthew Green): I'm going to take a moment and just recess. I'm going to come back to this.

Mr. Glen Motz: Chair, before you do that, please, can I suggest that we put this in abeyance for now, and consider it at some point down the road. There are questions we need to ask with limited time, and I want to ask that we just—

The Joint Chair (Mr. Matthew Green): I'll pass the chair and I'll—

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Mr. Chair, Mr. Virani tells us that the witness is invoking solicitor-client privilege. I understand that, but it does not apply in the case before us.

Mr. Daigle is not here as a lawyer for the Minister of Justice. He is here to represent the Department of Justice in his position as Deputy Minister. In his position as Deputy Minister, he does not enjoy solicitor-client privilege when he speaks with his boss.

I'm not going to spend any more time arguing here, but we will continue this debate in the House of Commons or the Senate in due course. I am just saying that solicitor-client privilege, in Mr. Daigle's case, in spite of all the respect I have for him, does not apply. He is not Mr. Lametti's lawyer, he is a Department of Justice official.

[English]

The Joint Chair (Mr. Matthew Green): That's duly noted.

At this time, I will pass the chair over to you, Mr. Fortin, so that I can engage in my five minutes of questioning.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): The floor is yours, Mr. Chair.

[English]

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

Mr. Daigle, are you familiar with the duty of candour as applied in the CSIS Act?

Mr. François Daigle: I am very familiar with the duty of candour, yes, and you have my promise to be as candid as I can be here today.

The Joint Chair (Mr. Matthew Green): In refusing to answer questions as put before you, do you consider that to be in keeping with the duty of candour, as defined?

Mr. François Daigle: Even the Federal Court and the Supreme Court of Canada would recognize that solicitor-client information is confidential and privileged. By claiming solicitor-client privilege, I was not refusing to answer. I was explaining that there are limits to the information I can provide.

The Joint Chair (Mr. Matthew Green): In the lead-up to the declaration of the emergency, how did your department assess the threat to public safety and security posed by the blockades and the convoy?

Mr. François Daigle: As I explained in my opening remarks, the government looked at the definitions in sections 3, 16 and 17 of the Emergencies Act. They summarized, in the section 58 report they tabled in Parliament, the reasons and the facts that led them to come to the conclusion that there were reasonable grounds to believe that the threshold had been met.

• (1910)

The Joint Chair (Mr. Matthew Green): You referenced the government, but when you were a part of these discussions, you would have been privy to the nature of these threats presumably beyond the scope of what has been reported in the summary. Is that correct?

Mr. François Daigle: The government summarized that information in the document, so I would refer you to that—

The Joint Chair (Mr. Matthew Green): My question, through you, Mr. Chair, to Mr. Daigle, is this: Would you have been the recipient of a body of evidence that you would have balanced these risks against to check for proportionality?

Mr. François Daigle: As I said, I participated in discussions that included Commissioner Lucki and others leading up to this. I received oral briefings of what was happening on the ground.

The Joint Chair (Mr. Matthew Green): Were notes taken of those briefings?

Mr. François Daigle: Notes were undoubtedly taken. Notes were taken. I took my own notes of—

The Joint Chair (Mr. Matthew Green): Would you be willing to share those with the committee?

Mr. François Daigle: We took note of the committee's request for documents. There are some documents that are being prepared to be shared with the committee in response to the motion, and—

The Joint Chair (Mr. Matthew Green): Some or all, sir?

Mr. François Daigle: We'll see. I think we have to assemble them and go through them and see which ones we can produce without breaching some laws. Our hope is that by the end of the month we'll be able to pull those together.

The Joint Chair (Mr. Matthew Green): Did you conduct other consultations with departments and agencies to seek advice?

Mr. François Daigle: As I said, I participated in meetings with client departments throughout this, from mid-February—

The Joint Chair (Mr. Matthew Green): Would you be willing to provide the committee with details of the consultations you had with other departments pertaining to this as well?

Mr. François Daigle: As I said, we're going to be pulling documents together we can provide in order to respond to the motion that—

The Joint Chair (Mr. Matthew Green): Which documents could you not provide?

Mr. François Daigle: Excuse me...?

The Joint Chair (Mr. Matthew Green): Which documents are you unwilling to provide or refusing to provide?

Mr. François Daigle: As I explained, my minister appeared on the 26th and said that he wouldn't be providing legal opinions, so those are the instructions I have right now. If the government is going to decide otherwise, before the 30th, we'll let you know.

The Joint Chair (Mr. Matthew Green): Notes on consultations and briefing documents would not be legal opinions, necessarily. Would you be willing to provide those?

Mr. François Daigle: As I said, I am working with Public Safety and other departments to pull those documents together. We will be providing a set of documents to help the committee with their deliberations.

The Joint Chair (Mr. Matthew Green): Will that include security assessments?

Mr. François Daigle: I don't know if it's going to provide security assessments. You'll have to ask Public Safety and the other departments responsible for those reviews.

The Joint Chair (Mr. Matthew Green): Of course, given the stories.... You stated on the record, in your opening remarks, that there were no special orders in council. You said that emphatically. Then, of course, there was a story of two that were within the dates of the Emergencies Act. Is there a possible scenario where secret orders in council wouldn't have come to you, or you wouldn't know about them?

Mr. François Daigle: I can guarantee you that there are no secret orders related to the Emergencies Act.

The Joint Chair (Mr. Matthew Green): Is it just a coincidence that they happened to fall within those?

Mr. François Daigle: As far as I can tell, it's a coincidence. I haven't looked at the other two secret orders, those two orders that are reported, but I can tell you that all of the orders related to this have been made public.

The Joint Chair (Mr. Matthew Green): You haven't looked at them, but you can state with assurance that they're not part of this. How is that so, sir?

Mr. François Daigle: Because I've been involved in all of the orders related to the Emergencies Act.

The Joint Chair (Mr. Matthew Green): A secret order in council wouldn't require your involvement.

Mr. François Daigle: If there were another order related to the Emergencies Act, whether secret or not, I would know about it. I don't know about a secret order and, therefore, it doesn't exist.

The Joint Chair (Mr. Matthew Green): Okay.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): Right.

Thank you, Mr. Chair.

[*English*]

The Joint Chair (Mr. Matthew Green): Thank you very much. We will now go on to Senator Boniface.

Senator, the floor is yours, for five minutes.

The Joint Chair (Hon. Gwen Boniface (Senator, Ontario, ISG)): Thank you very much, Mr. Chair.

To the witnesses, thank you for being here.

I'd like to zero in on the aspect of the proportionality to the public safety threat. Can you tell me how you made the determination, or what factors you took into account to consider the level of public safety threat that took place?

Mr. François Daigle: I refer you to that section 58 report that talks about the nature of the threats that were being reported and that we saw. That included threats of violence and threats not to comply with the law. It included a presence of ideologically motivated violent extremism, and the other things that are referred to in the section 58 report.

• (1915)

The Joint Chair (Hon. Gwen Boniface): Okay.

I assume that some of that information would have come to you through the Department of Public Safety. Is it that kind of what the process was? I'm just trying to figure out the process within government.

Mr. François Daigle: I think the process was mostly—and I think others have talked about this—that we had a group of deputy ministers who met regularly and who shared information. That's the method through which most of that information came to me, anyway.

The Joint Chair (Hon. Gwen Boniface): In that group of deputy ministers, I assume someone would chair. Would that have been you?

Mr. François Daigle: No.

The Joint Chair (Hon. Gwen Boniface): Within the proclamation itself, then, in declaring a public order emergency, the language says, “the special temporary measures that may be necessary for dealing with the emergency”.

If the consultations took place, I expect your table would have had lots of discussions around that. Perhaps you can tell me specifically why the term “may” would be used, as opposed to “shall” or “will”? It's much more temporal.

Mr. François Daigle: It's difficult to know what the emergency is going to be about. It could be any kind of situation. The idea behind “may” would be to provide much discretion to the government to come up with the measures that would fit the particular emergency they wanted to address.

The Joint Chair (Hon. Gwen Boniface): For clarity... I'm just trying to understand what the thought process was at the time. I'm sure the documents will help us with that.

Would that be both what information you had on the table and also any other anticipation or concerns around other information that may come forward and that may influence a shift in terms of what people were doing or what they were up to? Was that taken into consideration as well?

Mr. François Daigle: I think we met almost daily and we got information daily. We adjusted based on the information that we had.

We obviously didn't draft these things in a few minutes. We anticipated the potential of the government deciding to do that. We worked with the RCMP and our legal advisers and drafters, and we tried to sort out what would be helpful in coming up with orders. Then it went through a process of review before they were finalized.

The Joint Chair (Hon. Gwen Boniface): Thank you for that. I think I understand how the operation of it works from the other end of it.

What I was trying to get a feel for was that, in considering all of these things, you would also consider some of the other concerns you had that may not have occurred yet or were anticipated. Weighing risk, I would suspect, was a big part of the decision that was made—and trying to land on the right spot.

Would there be documents, or some considerations that would be in writing, that would help us understand the other issues that you looked at or that you anticipated based on the information and, I'll say, the very soft side of the intelligence you may have had at the time?

Mr. François Daigle: I think what we're hoping to do with this collection of documents that we're pulling together to respond to the motion is to provide a bit of that picture. It will be consistent with what's in that section 58 report. I don't think you'll see something that says, "We think this might happen but we put an X on it." It was a very dynamic and urgent situation.

As you know, under the act, there was always the ability for... Had the act not been revoked, this committee, or a committee like this one, would have been able to look at the orders and revoke them or amend them. It would have been possible for the government to bring in new orders, depending on what was happening on the ground and what needed to be addressed.

The Joint Chair (Mr. Matthew Green): Thank you. It does go by quickly.

[*Translation*]

Mr. Carignan, the floor is yours for five minutes.

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

Mr. Daigle, I want to make sure I understand your testimony correctly. As we know, you are a lawyer. You are telling us that the problem is not because there are no laws, it is because they are ineffective in this particular situation. That is what I have understood.

Mr. François Daigle: That is what I said, yes.

• (1920)

Hon. Claude Carignan: Right.

What laws did you try to enforce that didn't work?

Mr. François Daigle: First, I would note that it isn't the Department of Justice that enforces laws, it's the police forces across the country.

Hon. Claude Carignan: What were you told, in that case?

Mr. François Daigle: We had to observe the situation and see whether the police forces were able to manage it with the laws available to them, whether it was the Department of Transport or the police forces.

Hon. Claude Carignan: Maybe you didn't give any legal opinions; we shall see later. However, you did decide to issue an order together.

What specific laws was the government not able to enforce through the police services or other state agents?

Mr. François Daigle: Since I live in the region, I was following the situation closely. What I saw from watching television was that the Ottawa Police Service was having trouble enforcing even municipal or provincial laws, including laws on...

Hon. Claude Carignan: What laws are you talking about?

Mr. François Daigle: I'm talking about the Motor Vehicles Act and the Highway Traffic Act, in particular.

Hon. Claude Carignan: Do you know that because you watched television or because you had to assess that aspect as part of your job?

Mr. François Daigle: We were receiving information every day from colleagues of Ms. Lucki and other people. So the government was able to determine whether or not the work was enough to effectively manage the situation.

Hon. Claude Carignan: You referred to precise provisions that you weren't able to enforce. What provisions are those?

Mr. François Daigle: I can't refer you to precise provisions of provincial laws. However, it was clear, from what we were seeing, that the emergency was a problem. Things were continuing to happen every weekend and problems were on the rise. The police were having trouble moving the trucks and keeping order in Ottawa and Windsor, for example.

Hon. Claude Carignan: In Ottawa, on February 12, the police service issued a statement in which it said it had a plan. Do you know what that plan was?

Mr. François Daigle: I didn't see the plan. I was told there was one. I know the plan was being worked on with the RCMP.

Hon. Claude Carignan: Was the plan communicated to you?

Mr. François Daigle: Personally, I didn't see the plan.

Hon. Claude Carignan: Right.

Do you know that in its media release on February 12, the police service stated that it had a plan and was awaiting reinforcements? It said it would put the plan into operation once it had the reinforcements. That release is dated February 12.

Do you know whether the reinforcements were provided to the Ottawa Police Service?

Mr. François Daigle: In their testimony, which has already been heard, Ms. Lucki and Mr. Duheme said they had sent reinforcements to Ottawa. I think there were police coming from more or less everywhere.

Hon. Claude Carignan: Was that after February 14?

Mr. François Daigle: It was before and after February 12, but you would have to ask Ms. Lucki about that. I don't have that information, unfortunately.

Hon. Claude Carignan: If I understand correctly, you don't know what specific provisions those people were not able to enforce and you did not take part with police services in discussions dealing with their inability to enforce the provisions.

Mr. François Daigle: Personally, I had no discussions with the Ottawa Police Service.

Hon. Claude Carignan: Right.

Did you have discussions with other police forces?

Mr. François Daigle: I had discussions with the RCMP, but not with other police forces.

Hon. Claude Carignan: What did the people at the RCMP tell you? Did they tell you they weren't managing?

Did they ask for the Emergencies Act to be applied?

Mr. François Daigle: I think you already have the answer to that question that Ms. Lucki gave.

Hon. Claude Carignan: I have Ms. Lucki's answer, but not yours.

Mr. François Daigle: Ms. Lucki didn't ask me the question. The fact is that under the Act, it is the Governor in Council, not Ms. Lucki, who has to make that request and make that decision.

Hon. Claude Carignan: Right.

Was the document on the Charter that you provided to us, that we received today, prepared after the Minister appeared?

Mr. François Daigle: Yes, that's right.

Hon. Claude Carignan: Right.

I want to understand your definition of the word “seizure” correctly. In your opinion, that was not a seizure within the meaning of the Charter, because it's the banks that block the accounts.

Is that what you're telling us?

Mr. François Daigle: First, there was no seizure, because there was no transfer of ownership. No one took someone's account and gave it to someone else.

• (1925)

Hon. Claude Carignan: Surely you're familiar with the Laroche decision.

Hon. Claude Carignan: You're a lawyer, you are the most senior official in the department...

The Joint Chair (Mr. Matthew Green): Forgive me for interrupting you, Mr. Carignan, but your speaking time is up.

Hon. Claude Carignan: No problem, because I'll have other opportunities to ask questions.

[English]

The Joint Chair (Mr. Matthew Green): I know you're on a roll, sir. I do appreciate that. Thank you very much.

Senator Harder, the floor is yours for five minutes.

Hon. Peter Harder: Thank you very much, Chair.

Let me begin by associating myself with Mr. Motz's comments about your willingness to appear in front of us in person. I think that adds to the conversation. I hope you take it in the spirit in which it's offered, in that part of what we are seeking is to understand in a more interactive way than technology allows. Thank you very much.

My second point is simply to say that I welcome the charter statement. I believe it's an important contribution to our understanding. While it's a bit late, it does add to our information.

My question is a follow-up to your comment, and Senator Carignan spoke to it a bit. You said that it was observed that what was happening on the ground exceeded the capacity of other jurisdictions. I certainly share that observation. I'm interested in how you came to that conclusion, and I might have some follow-up questions on your response.

Thank you.

Mr. François Daigle: It was a conclusion of the government, based on all of the information they were seeing, which was being updated basically on a daily basis as we were getting debriefs from law enforcement on what was happening in Ottawa, Windsor, Coutts, Emerson, Fredericton, Halifax, etc.

Hon. Peter Harder: As part of that collective observation, would you have concluded that there were police failures to prosecute the existing legal regimes in place?

Mr. François Daigle: It's difficult for me to say whether they were failures of police, because I—

Hon. Peter Harder: They weren't successes.

Mr. François Daigle: They were having a difficult.... You know, people were not leaving Ottawa. That was the conclusion, despite efforts and several plans they tried to put into effect.

With the help of the OPP, they managed to get people out of Windsor and to open that corridor. They still had difficulty keeping it open, and they needed to expend a lot of resources to make sure that they could keep it open.

Hon. Peter Harder: Exactly. I don't view failures as a moral failing. I simply view them as a practical conclusion from what we were observing operationally. The existing applied resources in the existing legal frameworks were inadequate, as you say, for the capacity of the other jurisdictions.

I'd like to talk to you a little bit about the consultations that you were a party to. I understand that yours is more on the legal and not the operational side. Did you consult or have ongoing discussions with, for example, the attorney general's office in Ontario?

Mr. François Daigle: Personally, I did not, but I know that the department did have some conversations with the city solicitor's office in Ottawa and with the Ontario attorney general—not his office but the ministry.

Hon. Peter Harder: Right, and were there conversations with the city as well?

Mr. François Daigle: Yes...with the city as well.

Hon. Peter Harder: In the consultation process, we've now had public statements from the head of the RCMP and the City of Ottawa's then police chief saying that they did not ask for the invocation of the act.

I don't view that as terribly consequential. I view it as essential that they were consulted with respect to the circumstances that the government was facing and they were facing. Can you confirm that consultation, in fact, took place directly with them?

Mr. François Daigle: That consultation, as we were drafting orders, did take place directly with the RCMP. What we were trying to do was figure out what would be helpful to bring an end to the occupation and the blockades.

Hon. Peter Harder: Was there alignment, as you observed it? Are you prepared to comment that there was broad alignment that the actions the government did take were the logical conclusion to the observations that you stated with respect to exceeding the capacity of the jurisdictions?

Mr. François Daigle: I think what resulted was the orders we did have. You've heard from the commissioner that these were helpful in bringing an end to the occupation and blockades, so yes, they were.

• (1930)

Hon. Peter Harder: My third question, if we have time, Mr. Chair....

The Joint Chair (Mr. Matthew Green): You have 10 seconds.

Hon. Peter Harder: It will be in the next round. It's something to look forward to.

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

I'd like to welcome Senator Campbell back to the committee. He is here with us virtually.

Senator Campbell, you have five minutes, and the floor is yours.

Hon. Larry W. Campbell (Senator, British Columbia, CSG): Thank you, Mr. Chair.

One thing I've realized about being last in the order is that they give all the good questions to the people before you.

I'm concerned about your statement that you were learning about this on TV. Perhaps you can explain to us how much consultation you had with the Ottawa police versus the RCMP. It would seem to me this was an Ottawa problem, and that, certainly, the RCMP would be necessary. However, it seems, from what you've said—and I could be wrong—there was more consultation with the Mounties than the Ottawa police. Is that correct?

Mr. François Daigle: I think it depends who you ask the question to.

I definitely had more conversations with the RCMP than the Ottawa police, but I believe the RCMP had more conversations with the Ottawa police than it had with me. What I participated in were regular briefings that involved the RCMP, which told us what was happening across the country, since the RCMP is in many jurisdictions. There were also conversations with the OPP and Sûreté du Québec, but I wasn't participating in those consultations and conversations, although they were reported to the group of deputies.

Hon. Larry W. Campbell: We're always focusing on Ontario, and I know the sun shines all the time in Ontario, but on that note, Alberta and B.C., in fact, had some difficulties at the border involving firearms. There are a number of police forces there: Delta, as well as the RCMP.

Did you talk to any of those municipal government or provincial officials about what their thoughts were on this?

Mr. François Daigle: No, I did not, but I know the RCMP spoke to those forces.

Hon. Larry W. Campbell: The RCMP seems to be playing a big role in this, but I've been watching these procedures and, quite frankly, if that's any indication of....

Anyway, you did not, in fact, talk to anybody except the RCMP, and they were giving you the information you needed.

Mr. François Daigle: That's not what I said. What I said is that I participated in daily briefings that involved a number of departments and agencies, which briefed us on what was happening on the ground on a daily basis.

Hon. Larry W. Campbell: This is quite a dance.

Thank you very much.

The Joint Chair (Mr. Matthew Green): We will go to the second round. Given the time we have allotted for this section, they will be four-minute rounds.

With that, we will begin with Mr. Brock.

Mr. Brock, the floor is yours for four minutes, sir.

Mr. Larry Brock: Thank you, Mr. Chair.

Thank you to all the witnesses for your attendance today.

I will specifically be addressing questions to you, Mr. Daigle. I mean no disrespect to the ladies on the panel, but my area is focusing on legal threshold and charter compliance.

Before I get to that area, I want to highlight, in my opening remarks, that Perrin Beatty, a former defence minister and the author of this particular legislation, has said that extraordinary government powers require extraordinary accountability. This committee is legislatively constructed to thoroughly examine the government's role in the invocation of the act. We are not here to discuss the protesters themselves or the circumstances behind their arrival, but whether or not the legal threshold was met and was charter compliant. That's going to be my focus.

We know the act itself requires two thresholds to be met. You're aware of those thresholds. We have to establish that there's a threat to the security of Canada, which is largely defined in the CSIS Act. I take it that you're familiar with this act, Mr. Daigle.

• (1935)

Mr. François Daigle: I am.

Mr. Larry Brock: I'm not going to read out each individual paragraph because it will take far too long. Can you tell me what evidence the Department of Justice relied upon to establish relevant and credible evidence that met the definition as set out through subsections (a) to (d), which are espionage; foreign influenced activities; serious violence to achieve a political, religious or ideological objective; and the overthrow of a constitutionally established system of government in Canada?

What evidence did the department rely upon?

Mr. François Daigle: In answer to that question I would point out that we don't have to meet (a), (b), (c) and (d) in order to invoke the Emergencies Act. We only need to meet one of those.

The one that the government seized on was paragraph 2(c), which talks about threats of violence to people and goods. The section 58 report that I have referred to, which has been tabled in Parliament and shared with this committee, lays out the facts and the reasons that set out the threats of violence that the government identified and relied on to invoke the Act.

Mr. Larry Brock: You say threats of violence. The act refers to threats of “serious violence against persons or property for the purpose of”—not independent of—“achieving a political, religious or ideological objective within Canada”.

I agree with you that there was some evidence of some violent acts. There were threats of harassment. There were threats of assault, if not actual, then perceived threats of assault. How does that then go into the further definition of achieving a political, religious or ideological objective within Canada?

Mr. François Daigle: Again, I would refer you to that report, which sets out the reasons the government had to invoke the act.

Mr. Larry Brock: I'm asking you to spell it out right now, sir.

Mr. François Daigle: I can refer you to the threats of violence when police tried to apply the laws and bring order. We have reports of those. There are reports of—

Mr. Larry Brock: Let me stop you right there.

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

Mr. Larry Brock: Is that it?

The Joint Chair (Mr. Matthew Green): I just want to make sure that we're applying the time restraints fairly. We want to make sure that everybody has a chance.

We will now move on to Ms. Bendayan.

The floor is yours for four minutes, please.

[Translation]

Ms. Rachel Bendayan (Outremont, Lib.): Mr. Daigle, I would also like to discuss the test that was done to determine whether it was necessary to invoke the Emergencies Act with you.

I imagine you have a copy of the Act at hand. I invite you to read section 3 of the Act, which you talked about in your opening remarks. You drew our attention to the fact that under that section, the test to be met was that the situation could not be effectively dealt with under any other law of Canada.

[English]

Could I take you back a little bit to the earlier part of section 3 to ask if the intention was to invoke subsection (a) or (b) or both?

[Translation]

I see there are two paragraphs in section 3.

Mr. François Daigle: I'm not sure I understand your question.

Ms. Rachel Bendayan: In section 3, it talks about the possibility of declaring an emergency in two situations, which are set out in

paragraphs 3(a) and 3(b). Do you think that both circumstances existed on February 14, 2022?

Mr. François Daigle: In light of the report that was provided for in section 58, it is clear that the situation seriously endangered the lives and the health and safety of certain Canadians, including the economic health of a number of Canadians, because of the border blockades. Under the Act, it could have been either of the paragraphs, and the government stopped at the first paragraph.

• (1940)

Ms. Rachel Bendayan: You mentioned several facts.

The Minister of Public Safety testified before the committee about the border crossings at Coutts, Alberta, at Emerson, Manitoba, and at Surrey, British Columbia, which were blockaded, when the Emergencies Act was invoked, since, if my memory serves, that Act was invoked on February 14 at about 4:30 p.m.

Is that correct?

Mr. François Daigle: Yes, we were concerned about the border. As well, our American colleagues were wondering what was going on at the border.

[English]

Ms. Rachel Bendayan: Just continuing on the theme of the test, I see that the Canada Gazette refers back to section 17 of the Emergencies Act, subsection 17(1) in particular. Can you elaborate on how subsection 17(1) interacts with section 3 in order to complete that test?

Subsection 17(1) states, “When the Governor in Council believes, on reasonable grounds, that a public order emergency exists”, and it continues to say what may be done in those circumstances. Could you please explain to the committee the reasonable grounds test, and how you view it?

[Translation]

Mr. François Daigle: First, this is an emergencies law, which implies that there is an emergency.

[English]

The government will have to react quickly. Reasonable grounds doesn't mean that you don't need evidence beyond a reasonable doubt. As long as the evidence that you have provides reasonable grounds that an emergency exists, and that emergency is described in section 3, that then allows the government to take some measures to deal with the emergency and to amend them later on.

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

I am affording at the end of rounds time for the witnesses to complete the answer for the benefit of the committee.

We will now go to the four-minute round.

[Translation]

Senator Carignan, the floor is yours.

The Joint Chair (Mr. Rhéal Fortin): I haven't had my turn to speak, Mr. Chair.

The Joint Chair (Mr. Matthew Green): I'm sorry.

[English]

At least you were in good company. We both would have missed the round.

Monsieur Fortin.

[Translation]

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

Mr. Daigle, you said earlier that you were a lawyer and you had meetings on several occasions. Before the emergency measures were proclaimed, were you consulted in connection with the laws and regulations in force that could have been used to put an end to the blockades?

Mr. François Daigle: We were consulted about various situations. For example, we were consulted when the police tried to move a truck, when there were children in it. The police could not use their powers to move the truck, because there was a dangerous situation.

The Joint Chair (Mr. Rhéal Fortin): Mr. Daigle, I'm sorry to interrupt you. I know it's rude, but my speaking time is just three minutes and one of them is already up.

Could the Ontario Highway Traffic Act have been used during the protests?

Could all the laws in force have been used to end the blockades? That was done in Windsor and elsewhere, for example.

Mr. François Daigle: Yes, we consulted the Criminal Code. The RCMP and the other police forces also referred to it and tried to enforce it. We also spoke with Ontario to find out the extent to which the Highway Traffic Act could or couldn't be enforced.

The Joint Chair (Mr. Rhéal Fortin): Why could it not be enforced?

Mr. François Daigle: In light of what we saw, it was very difficult to enforce it.

The Joint Chair (Mr. Rhéal Fortin): Why?

Mr. François Daigle: You would have to ask them, because I wasn't told why they weren't able to do it.

I gave you the example of the truck that was parked where it shouldn't be and when an attempt was made to move it. When the police approached the truck, they saw that there were children inside it. Ultimately, they couldn't move the truck.

The Joint Chair (Mr. Rhéal Fortin): In Ontario, are there laws that allow children to be taken into care, to get them out or...

Mr. François Daigle: Yes, but we were surprised by the situation. So a new plan had to be developed.

When the police returned to the location, they were accompanied by children's services representatives.

• (1945)

The Joint Chair (Mr. Rhéal Fortin): So it was possible to do it without the emergency proclamation.

Mr. François Daigle: Up to February 14, it had still not been done.

The Joint Chair (Mr. Rhéal Fortin): It had not been done. I understand that, and that is what we saw. I agree with you. However, it would have been possible.

In your opinion, was the proclamation of emergency measures necessary? Would there not have been a way to resolve the situation under the laws in force, the Criminal Code, the Highway Traffic Act, and so on?

Mr. François Daigle: As I said at the outset, the test isn't about whether it is necessary...

The Joint Chair (Mr. Rhéal Fortin): Yes, that is what the test consists of. Was it necessary?

Section 3 of the Act states that the Act can be used “[if it] cannot be effectively dealt with under any other law of Canada.” In your opinion, it was not possible to put an end to the blockade other than with the emergency measures proclamation. Is that correct?

Mr. François Daigle: It's not that it couldn't be done, it's that it wasn't being done effectively, to use the words in the text of the Act.

The Joint Chair (Mr. Rhéal Fortin): In the Act, it doesn't talk about what is effective, but what can be done.

Mr. François Daigle: The word “effectively” is used in the Act.

[English]

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

Monsieur Fortin, could I relinquish the chair to you for three minutes?

[Translation]

The Joint Chair (Mr. Rhéal Fortin): The floor is yours, Mr. Green.

[English]

The Joint Chair (Mr. Matthew Green): Through you, I'm going to pick up your line of questioning, in fact.

We've talked about existing laws, but I think what I haven't gotten enough information about is the effectiveness, or the ineffectiveness, of the municipal and provincial declarations of emergency.

In your assessment or in your deliberations on invoking the Emergencies Act, was it determined that the emergency orders issued by the City of Ottawa and the Province of Ontario had been ineffective?

Mr. François Daigle: They were in effect. Yes.

The Joint Chair (Mr. Matthew Green): In terms of what was made available, I particularly feel like the province got let off the hook on this one. When you were doing your assessments, what areas did the provincial emergency act fall short in? It's something that I haven't fully contemplated. What was the difference there?

Mr. François Daigle: What we looked at, when we looked at the Ontario emergency and the city's emergency and the injunctions, was that we didn't look at what just Ontario was doing. We were looking at what was happening across the country in every province. Some other provinces took measures under their emergency acts. In New Brunswick, for example, they took some measures under their emergency act—

The Joint Chair (Mr. Matthew Green): If I could, though, with specificity, we're in Ontario. The nation's capital is being occupied. Doug Ford moves an emergency act and then ostensibly does nothing for weeks. What powers did they claim under that act that failed, and why didn't the municipality of Ottawa consider, as our committee colleague Mr. White had suggested, using the aid to civil power avenue, through which they could have provided the powers for towing away the trucks and everything else?

Mr. François Daigle: I'd have to go back and look at the Ontario order, but I think mostly it significantly increased some fines. I think they were having, from what I saw, difficulty applying fines in Ontario, and it didn't seem to get people out of there.

The Joint Chair (Mr. Matthew Green): How does one have difficulty applying fines?

Mr. François Daigle: They weren't making a difference. People were not leaving.

The Joint Chair (Mr. Matthew Green): Were they writing the fines?

Mr. François Daigle: I don't have a list of what the Ontario government did or what the Ottawa Police Service did, but I know that a lot of charges have been laid and are still before the courts.

The Joint Chair (Mr. Matthew Green): Did your department consider the aid to civil power as a possible outcome that would not require the Emergencies Act?

Mr. François Daigle: That would not be something the Department of Justice would be considering. It would be something that another minister of the Crown would be considering.

The Joint Chair (Mr. Matthew Green): I look forward to having them before us so that I can put that question to them.

Thank you very much.

Mr. Glen Motz: Mr. Chair, can I just clarify something on a point of order?

The Joint Chair (Mr. Matthew Green): I'm not the chair at the moment. It's Mr. Fortin.

Mr. Glen Motz: Mr. Fortin, I have a point of order.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): Mr. Motz, you have the floor.

[*English*]

Mr. Glen Motz: Mr. Green had asked Mr. Daigle whether he believed the emergencies declared by both Ottawa and the Province of Ontario were “ineffective”. I believe Mr. Daigle didn't hear the question properly, because his answer was, “They were in effect. Yes.”

The Joint Chair (Mr. Matthew Green): I heard, “They were ineffective.”

Mr. Glen Motz: No. That's not what he said.

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

Mr. Chair, through you, could I get clarity for the purposes of the record?

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): You have 20 seconds left, Mr. Green.

[*English*]

The Joint Chair (Mr. Matthew Green): I will take those 20 seconds to ask Mr. Daigle if he could please expand upon that.

Mr. François Daigle: I'm sorry. Can you repeat that?

The Joint Chair (Mr. Matthew Green): Do you believe the emergencies declared by the City of Ottawa and the Province of Ontario were ineffective?

Mr. François Daigle: Yes. I believe they were ineffective. That's why the government had to take some extra measures.

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

I'll relinquish the rest of my time.

Could I take the chair back?

• (1950)

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): I will relinquish my turn to you, Mr. Chair.

[*English*]

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

I will now pass it on to Senator Carignan for three minutes.

[*Translation*]

I'm sorry.

[*English*]

Hon. Claude Carignan: Thank you.

[*Translation*]

I'm going to go back to my series of questions about seizure. What you are saying is that because there was no dispossession of property or money, and the money stayed in the bank accounts, there was no seizure. Is that correct?

Mr. François Daigle: Yes, that's what I said.

Hon. Claude Carignan: You know that if your lawyers say that in the Supreme Court, they're going to give you a hard time, right?

Mr. François Daigle: If the case gets to the Supreme Court...

Hon. Claude Carignan: It's going to get there, and you're going to have a hard time.

The other thing you mentioned, to say that it wasn't a seizure, is that it wasn't you who seized the money, it was the bank that froze it. Is that right?

Mr. François Daigle: Yes, that's right. It was the banks that did the... It was the banks that froze the accounts.

Hon. Claude Carignan: Careful, don't say "seized"!

Mr. François Daigle: No.

Hon. Claude Carignan: When a bank freezes or seizes an account, don't you think it is acting as an agent of the state?

Mr. François Daigle: The order creates an obligation for the bank and the bank makes its decision. It's in its discretion to act or not act, based on the information it has.

Hon. Claude Carignan: Once again, that's going to be very difficult in the Supreme Court, I'm telling you.

When I look at the order on financial products, I'm trying to find a financial product that would not be covered. You said it was measured, it was not excessive, and it was reasonable. What are the financial products that could not have been frozen? I'm trying to find one that couldn't be seized, and I haven't found anything.

Mr. François Daigle: I'm going to ask my colleague Ms. Aitken to answer your question.

[*English*]

Ms. Jenifer Aitken (Acting Assistant Deputy Minister, Central Agencies Portfolio, Department of Justice): I think I could give you an example in the order with respect to insurance policies. The order says they are not to be frozen except for insurance policies that apply to motor vehicles, participating or being used in illegal protests or blockades.

[*Translation*]

Hon. Claude Carignan: Do you have any others?

[*English*]

Ms. Jenifer Aitken: Otherwise, there is a list of financial services. I don't have any other exceptions, but that was one I wanted to provide.

[*Translation*]

Hon. Claude Carignan: Right. So all other products were covered by a seizure.

[*English*]

Ms. Jenifer Aitken: They are services provided by the list of entities that are in section 3 of the order.

[*Translation*]

Hon. Claude Carignan: Right.

How was it reasonable to seize virtually everything that moves in an individual's financial products?

[*English*]

Ms. Jenifer Aitken: It's not seizing. It's freezing, and it is only applicable to designated persons as they're defined in the order, which are persons participating in illegal activities.

The financial institutions had an ongoing obligation to review the situation, and if they found somebody was no longer participating, they were to stop the freezing.

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

Unfortunately, Senator Carignan—

[*Translation*]

Hon. Claude Carignan: Are you familiar with the decision in Quebec (Attorney General) v. Laroche?

[*English*]

The Joint Chair (Mr. Matthew Green): Senator Carignan—

[*Translation*]

Hon. Claude Carignan: Did you say you're familiar with it?

I have now asked the question twice, and I can't get an answer.

Ms. Rachel Bendayan: You should ask the question at the start.

[*English*]

The Joint Chair (Mr. Matthew Green): She's not wrong.

[*Translation*]

Hon. Claude Carignan: Because it's law, I assume they are familiar with it.

The Joint Chair (Mr. Rhéal Fortin): It's rare [*Inaudible—Editor*] Supreme Court in questions.

Hon. Claude Carignan: I wouldn't want to be their lawyer in the Supreme Court.

[*English*]

The Joint Chair (Mr. Matthew Green): Let's try to keep all the editorial comments regarding staff to a minimum if we could.

We will now pass the floor to Senator Boniface for three minutes.

The Joint Chair (Hon. Gwen Boniface): Thank you again for being here.

I wanted to look a little closer, following the invocation to the point of revocation. I'll make an assumption, and you can confirm for me whether my assumption is correct. I assume the group of deputy ministers and others that met would have met on a daily basis, if not more regularly.

• (1955)

Mr. François Daigle: Yes, and we continued to be debriefed on what was happening on the ground.

The Joint Chair (Hon. Gwen Boniface): One of the questions that was referred to in terms of the RCMP providing the information to your table.... I appreciate that's the federal police providing to the federal government. Would it be fair to also conclude that the RCMP would be gathering information as part of its role to gather information from other agencies across the country as to who may have been involved in these blockades, or collecting intelligence in relation to these blockades?

Mr. François Daigle: That was my understanding. You can ask the question of the RCMP. I do know that they were very engaged and were working directly with the OPP and the Ottawa Police Service.

The Joint Chair (Hon. Gwen Boniface): I assume also they worked with any other jurisdictions that weren't RCMP in other parts of the country like the Windsor police, for instance.

Mr. François Daigle: Yes, and they engaged with the police in Alberta. As I said earlier, they were in touch with Sûreté du Québec and with the OPP.

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

I'd like to talk a little bit about the point of revocation or the facts that led up to the point of revocation.

Can you enlighten us in terms of process? I realize you won't give us legal advice and I appreciate that, but what's the process that led you to the revocation? At least some of us were in the Senate listening to speeches when it took place.

Mr. François Daigle: The process was getting regular briefings as to what was happening on the ground. Once we received advice that things were under control and that local police forces could manage with their existing authorities, the government considered then whether it was time to revoke the orders.

The Joint Chair (Hon. Gwen Boniface): Particularly with the Ontario emergency declaration, can you advise about those discussions? Is it your sense that there's a limit to the Ontario legislation itself? Was that one of the factors that would have played into it?

I'm trying to understand, too, Mr. Motz's point or others' in terms of the Ontario emergency.

Mr. François Daigle: I think the Ontario's emergency act is pretty broad and allows for a number of things. They took the orders they took under the emergency act.

When you look at emergency legislation across the country, it's very different from province to province. B.C.'s for example deals mostly with natural disasters, or I think only with natural disasters, so they would have been in a difficult situation had they had to rely on their emergency powers to deal with something like this.

We looked at the emergency legislation across the country.

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

I would like to thank our guests for joining us this evening. This is the end of the first round. At this time, we will suspend briefly in order to set up the next panel.

I declare this meeting suspended.

• (1955) _____ (Pause) _____

• (2005)

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

I will recognize Mr. Virani.

Mr. Arif Virani: Thank you.

I have a very brief point of order on something that was raised by Monsieur Fortin in the previous panel. It was the notion of the application of solicitor-client privilege to Crown lawyers or Department of Justice lawyers.

Just for the committee's edification, there is a case citation that I can provide, the case of the *R. v. Campbell*, 1999, 1 SCR 565, where the Supreme Court establishes quite clearly that solicitor-

client privilege also applies to Department of Justice lawyers providing advice.

There is also a reference in Watson and McGowan, pages 1078 and 1079.

I just thought the committee should have that for its benefit. Thank you.

The Joint Chair (Mr. Matthew Green): That will be taken into consideration for future decisions.

Mr. Arif Virani: Thank you.

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

At this time, we have with us here today, between 8 p.m. and 9:30 p.m., representatives from the Department of Public Safety and Emergency Preparedness. We have Mr. Rob Stewart, deputy minister. We have Dominic Rochon, senior assistant deputy minister, national security and cybersecurity branch; and we have Talal Dakalbab, assistant deputy minister, crime prevention branch.

You will be given five minutes for opening remarks.

I believe, Mr. Stewart, you'll be providing those opening remarks.

I'll just tell you now that when we get into our rounds of questioning, as you may have heard in previous rounds, it is within the purview of the committee members to direct and determine their time. If they ask you to move on to the next question, it's certainly nothing personal. You may hear me interject and say thank you to either wrap up the round or to move you on to the next topic.

With that being said, Mr. Stewart, the floor is yours for five minutes.

Mr. Rob Stewart (Deputy Minister, Department of Public Safety and Emergency Preparedness): Thank you, and thank you for having us here.

I'm here today in follow-up to the presentation to this committee by Minister Mendicino to provide support for the study of the public order emergency and the role the Emergencies Act played in bringing it to a conclusion.

My presentation will focus on my role as the deputy minister of Public Safety in the following areas. First, I will address our understanding of the nature of the threats leading to the invocation of the Emergencies Act. Second will be how the Emergencies Act facilitated law enforcement actions, and third is the role we played in communication and coordination with provinces, territories and municipalities.

[*Translation*]

The public emergency in January and February 1922 was rooted in a movement centred on anti-government sentiments connected with the public health response to the COVID-19 pandemic.

[English]

At that time, participants in protests and blockades in the nation's capital and at strategic ports of entry adopted tactics that disrupted the peace, impacted the Canadian economy and engendered national security risks. This included aggressive protest tactics, threatening behaviour, slowing down traffic and creating traffic jams, in particular, near ports of entry.

The freedom and well-being of citizens was negatively impacted, and businesses were forced to close either due to safety concerns or due to the disruption in the flow of goods and services through blocked ports of entry.

We also observed that convoys of large trucks, which were growing in terms of both size and number, were manifesting unpredictably around the country. In many locations, the protest moved beyond a peaceful threshold and became illegal, giving rise to a volatile and unpredictable environment at the protest sites, with an assessed potential to mobilize to violence.

Broadly speaking, and crucially, information about what was happening within protest groups was not easy to obtain. While CSIS did not identify specific IMVE threats, ideologically motivated violent extremism threats, we were aware that some extremist supporters were seeking to link their causes to these protests.

I want to emphasize that CSIS does not investigate, as the director has testified, lawful advocacy, protest or dissent, except when it is carried out in conjunction with activities that constitute a threat to the security of Canada.

That said, assessments provided in a public unclassified space by the integrated threat assessment centre on ideologically motivated violent extremism helped inform our understanding of the complex and evolving nature of the threat environment, one that was spurred by misinformation and harmful rhetoric. It also pointed to the potential for lone actors to find an opportunity within protests—an environment in which determined, disaffected individuals could cause harm in a very short amount of time.

● (2010)

[Translation]

There was also a fear that the measures taken by the police would run up against firm and determined opposition that could cause problems and greater instability.

[English]

The reasons for issuing the declaration of a public order emergency were set in the public document of explanation pursuant to section 58, as has been mentioned to this committee.

Furthermore, the Houses of Parliament were provided with the consultations document. These documents highlight that, between the end of January and February 14, the escalation of the threat across the country had been regularly communicated with and by PTs and police of jurisdiction to the federal government. They requested the federal government's action in supporting police of jurisdiction to address the threat.

Officials from Public Safety, I and my colleagues, engaged with provincial, territorial and municipal partners on multiple occasions

on topics ranging from additional support for law enforcement to reduce illegal crowd gathering to increasing powers to manage the convoys, including infractions, fines, enforcement regimes, tow trucks and possible deployment of additional RCMP materiel and human resources.

[Translation]

That is the context in which the Emergencies Act was invoked in mid-February.

[English]

The act provided tools to bolster law enforcement powers such as access to tow trucks to end the blockades. The act also provided tools to deter the continuing of illegal protests and restore public order such as the prohibition on public assembly and the economic measures on convoy financing.

Within the federal government, Public Safety Canada, the Canadian Security Intelligence Service, the Canada Border Services Agency, Justice Canada, Royal Canadian Mounted Police and Transport Canada all played central roles.

Through the three weeks of this crisis, we communicated and coordinated closely with other partners. Collaboration with provincial and territorial counterparts took place through an already-established ADM-level FPT committee, the crime prevention and policing committee, as well as through conversations I had with my provincial deputy minister counterparts. In addition, as deputy minister, I engaged with the City of Ottawa manager, the RCMP, the Ontario Provincial Police, the Ottawa Police Service leaders and provincial deputy minister counterparts.

In conclusion, the Emergencies Act was invoked in a volatile environment with potential risk to national security across Canada, taking into account the view and advice of many stakeholders.

I look forward to your questions.

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

We will begin the opening round with Mr. Motz.

Mr. Motz, you have the floor for five minutes, sir.

Mr. Glen Motz: Thank you, Chair.

Again, before my time starts, like I asked or suggested to the Justice officials, thank you very much for—

The Joint Chair (Mr. Matthew Green): I'm not sure if that's a thing.

Mr. Glen Motz: —being here in person. We really appreciate your doing that. It means a lot.

I'm going to read you two quotes from your minister: "At the recommendation of police, we invoked the Emergencies Act to protect Canadians". That's quote number one. Quote number two is, "the invocation of the Emergencies Act...was only put forward after police officials told us they needed this special power".

We have heard from police officials at this committee and at other committees in this Parliament. To date, none of them have indicated that they asked for the invocation of the Emergencies Act, or who asked for it?

Mr. Rob Stewart: My understanding is that there is a misunderstanding of the minister's words. The minister was—

Mr. Glen Motz: That's obvious.

Mr. Rob Stewart:—alluding to the fact that police were consulted and were—not just in the case of the RCMP but other police—indicating, as was discussed in the prior session, that their powers were not effective and they, therefore, asked for more powers.

Mr. Glen Motz: That's fair enough.

You indicated during your introduction that you led some of those consultations with the RCMP, with the OPP, with Ottawa and others. Did you brief the minister on those consultations?

Mr. Rob Stewart: Yes, and in some cases, he was involved.

Mr. Glen Motz: Okay, he was there. Can you provide copies of the notes taken in those consultations?

Mr. Rob Stewart: Yes.

Mr. Glen Motz: Thank you.

Do you have briefing notes separate from the conversations with law enforcement? You said you met with the City of Ottawa officials separately from police. Do you have those as well?

Mr. Rob Stewart: I personally have no notes, but we have records of consultations that we undertook in conversation.

• (2015)

Mr. Glen Motz: Thank you. I appreciate that.

In your recollection, do you recall if there was ever any information given to the minister as fact that was later proven to be untrue, which may have influenced his decision to invoke the Emergencies Act?

Mr. Rob Stewart: Which may have been untrue...?

Mr. Glen Motz: No, which was proven later to be untrue, that maybe influenced his decision to invoke the Emergencies Act.

Mr. Rob Stewart: Not to my knowledge.

Mr. Glen Motz: Okay, because he was at committee early on and was still talking like the arson in the apartment building was tied to the protest and the Ottawa Police have made it very clear that it was not. That's one of the instances I'm referring to.

Whose decision was it, ultimately, Mr. Stewart, that the threshold between peaceful protest and a state of emergency was met?

Mr. Rob Stewart: Who was responsible for that?

Mr. Glen Motz: Yes.

Mr. Rob Stewart: The cabinet.

Mr. Glen Motz: The cabinet was. Obviously they got advice from somebody.

Mr. Rob Stewart: Yes.

Mr. Glen Motz: Would that have been the consultations with law enforcement, or would that have been from other officials?

Mr. Rob Stewart: It was a whole range of sources, but included the ones you mentioned.

Mr. Glen Motz: Okay. Obviously the information you relied upon, those documents, will be made available to this committee?

Mr. Rob Stewart: Issues of cabinet confidence are subject to the determination of the Prime Minister so I can't provide a view on that at this time.

Mr. Glen Motz: Fair enough. Of course, they can be provided. The redactions are a different story. Thank you.

You indicate that at the cabinet table, there were obviously officials, government officials there. Were there law enforcement officials there besides Commissioner Lucki?

Mr. Rob Stewart: Again, it would be a cabinet confidence, I believe, to discuss who was in the room.

Mr. Glen Motz: Commissioner Lucki has already said that she—

Mr. Rob Stewart: She was party to discussions with ministers.

Mr. Glen Motz: At that point, who should be providing opinions? You said there were people there advising the cabinet to make that decision, but who do you think should have been there? I guess my question really should be, were the right people in the room to make that decision, to advise cabinet before the Emergencies Act was actually invoked?

Mr. Rob Stewart: As you know, sir, the Emergencies Act was invoked some time after the blockades began and over the course of the two-plus weeks that they were in effect, we were gathering a lot of information and doing a lot of consultation.

Mr. Glen Motz: It was the cabinet's decision to invoke the act. How long before it was actually invoked on the 14th of February did the cabinet make that decision?

Mr. Rob Stewart: Not long.

Mr. Glen Motz: A day, a week, hours...?

Mr. Rob Stewart: It was not long before. It was made over the course of the weekend.

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

We will now pass the floor over to Mr. Naqvi for five minutes.

Mr. Naqvi, sir, the floor is yours.

Mr. Yasir Naqvi: Thank you, Chair, and through you, thank you to the deputy and the ADMs for being here today.

I'm from Ottawa. I represent the riding that was under occupation for three weeks. I saw the mayhem, the chaos, the aggression towards people who live in this community and the many businesses that were shuttered as a result of it. I want to try to get a sense from you, from the inside, as that protest grew into an occupation and there did not seem to be an end in sight, what was the level of activity within the government to understand and grasp the nature of things that were happening on the ground here in Ottawa, for instance?

Mr. Rob Stewart: We were, for the most part, operating in consultation with the Ottawa police, who, in the context of the protests, were the people who were on the ground amidst the trucks and who had liaison teams talking to protesters.

Mr. Yasir Naqvi: Was there fairly regular and constant interaction with Ottawa police, for instance, during that whole period?

Mr. Rob Stewart: Yes. The RCMP was part of an integrated decision centre ultimately, but even before that, it was very closely consulting with the Ottawa police.

Mr. Yasir Naqvi: Did that interaction involve the sharing of information, and of course I'm not talking about operational issues but as to the nature of the protests, some of the challenges in managing that particular protest?

Mr. Rob Stewart: Absolutely.

Mr. Yasir Naqvi: During those conversations with the Ottawa police, for instance, or the RCMP or in case of, let's say, Coultts and Windsor, with the OPP as well, was there, over time, an understanding of where the gaps were in terms of what was required to put an end to these blockades and occupations?

● (2020)

Mr. Rob Stewart: Yes, there was an appreciation of the fact that law enforcement was struggling, in particular in Ottawa, to enforce the law—and I believe the former chief of police readily admits that—because of the unprecedented nature of the protest, but we also learned, through the CBSA, of our challenges of enforcing the law on access to the border.

Mr. Yasir Naqvi: I'm trying to understand the question that is often asked regarding whether a particular police service asked for the invocation of the Emergencies Act, even though there is no requirement in the act or a necessity for that ask. When I look at the order and the regulations, I see very precise powers that have been given to law enforcement. They were all utilized, and that resulted in the end of blockades and occupation. I'm trying to understand how that list was derived.

My impression is that through those engagements and conversations, the government got a better sense of where the gaps may have been that were not sufficiently met with existing laws, and the invocation of the Emergencies Act was used to fill those gaps.

Mr. Rob Stewart: That's absolutely correct. For example, police forces across the country, and particularly in Alberta, Manitoba and Ottawa, were having trouble getting tow trucks to help them enforce the law. The removal of the need to swear in RCMP members, so that they could come to Ottawa and join the force here, was also one of the measures that was specifically suggested.

Mr. Yasir Naqvi: Was there a fair bit of thought provided when decisions were being made as to what powers should be granted in

terms of having a very surgical approach to what was necessary to find an end to the blockades and the occupation?

Mr. Rob Stewart: Yes.

Mr. Yasir Naqvi: As that approach was being developed, was there a fair bit of conversation with law enforcement authorities, like the Ottawa police, the Windsor police, the OPP and the RCMP, to determine whether the federal government was on the right track to give them the powers they needed?

Mr. Rob Stewart: Yes.

Mr. Yasir Naqvi: There was a clear understanding from them, I take it, by the action that was taken post-February 14, that this was the case, and it that would be sufficient.

Mr. Rob Stewart: The federal government was acting in the context of what was deemed to be a public order emergency, where the powers at the national level were not sufficient. The expectation was that the actions taken under the act would be what was helpful to stop the protests and deter further protests.

Mr. Yasir Naqvi: Leading up to the invocation of the Emergencies Act, was there frustration on the part of the federal public service, or others you were communicating with, with the lack of action or the lack of capacity to put an end to this occupation by other governments, like the provincial government?

Mr. Rob Stewart: I would tend to agree that in Ottawa there was intense frustration. Elsewhere, there was a sense of unexpectedness, in the sense that we were dealing with a situation—and I want to emphasize this point—where we didn't know where the next protest was going to happen and we weren't able to have the intelligence, through police channels or social media, that would give us a good sense of that.

We had demonstrations pop up and rolling protests involving large trucks, potentially impairing access to critical infrastructure. For us, it was in part what we knew, but also in part what we didn't know, and that was coming across.

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

[Translation]

Mr. Fortin, the floor is yours for five minutes.

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

I'd also like to thank the three witnesses for being with us today.

My questions are for Mr. Stewart.

Other witnesses before you have been asked this question. Two secret orders were made between the end of January and the end of February. We are wondering whether that was connected with the emergency. Are you aware of those two orders?

● (2025)

Mr. Rob Stewart: No. I have no knowledge of them.

The Joint Chair (Mr. Rhéal Fortin): So that means you don't know what they are about.

Mr. Rob Stewart: That's correct.

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

I imagine you were consulted before the Emergencies Act was proclaimed and you were consulted after that as the situation progressed.

Mr. Rob Stewart: Yes.

The Joint Chair (Mr. Rhéal Fortin): In your opinion, at the time of the proclamation, was there really an emergency, as defined in the Emergencies Act?

Mr. Rob Stewart: Having an opinion is not part of my role. I give the minister advice.

The Joint Chair (Mr. Rhéal Fortin): Nonetheless, you are the Deputy Minister of Public Safety.

Was this the first time you had to manage this kind of situation, with protests and the occupation of a public place?

Mr. Rob Stewart: It was the first time we had seen a protest this serious and this long in which the law could not be enforced.

The Joint Chair (Mr. Rhéal Fortin): In your opinion, was it not possible to put an end to the situation or even prevent it from happening under the laws in force in Canada, whether it be the Criminal Code, the Highway Traffic Act, or any other law in force in Ontario, particularly in Ottawa?

Mr. Rob Stewart: Yes, it was done in other cities that learned lessons from the situation in Ottawa and were able to prevent occupations.

The Joint Chair (Mr. Rhéal Fortin): We all followed the situation, although without participating in the decisions, when the police decided to clear Wellington Street. It took about three days, I believe.

The police arrived and cleared everybody out. I may be wrong, but I didn't have the impression that they used special powers other than the normal powers that all police have.

To your knowledge, was there something done at that time that could not have been done without proclaiming an emergency?

Mr. Rob Stewart: The proclamation helped Ottawa police take measures, particularly concerning tow trucks.

The Joint Chair (Mr. Rhéal Fortin): Does the Ontario Highway Traffic Act not already provide for the possibility of towing vehicles when they impede the public highway?

Mr. Rob Stewart: Yes, but we needed the cooperation of the tow truck drivers.

The Joint Chair (Mr. Rhéal Fortin): Do the police not have the power to force tow truck drivers to tow vehicles?

Mr. Rob Stewart: No.

The Joint Chair (Mr. Rhéal Fortin): Do police forces not have tow trucks?

Is that not part of a police force's equipment?

Mr. Rob Stewart: No.

The Joint Chair (Mr. Rhéal Fortin): No police officer in Canada has control of a tow truck?

Mr. Rob Stewart: I don't know. At least, there would not have been enough tow trucks.

The Joint Chair (Mr. Rhéal Fortin): Was the question looked into before the emergency was proclaimed?

Mr. Rob Stewart: We consulted all the provinces and a lot of municipalities.

The Joint Chair (Mr. Rhéal Fortin): Are there no tow trucks among the army's equipment?

Mr. Rob Stewart: It doesn't have enough tow trucks of the model that was needed.

The Joint Chair (Mr. Rhéal Fortin): Right.

And yet when it was done, when it was decided to clear Wellington Street, tow trucks for towing the trucks away were found.

Was that really the problem? Was the Emergencies Act proclaimed simply because no tow trucks could be found?

Mr. Rob Stewart: No, that wasn't the only reason. It is just an example.

The Joint Chair (Mr. Rhéal Fortin): What situation could not have been resolved properly using the laws in force, including the Criminal Code and the Highway Traffic Act?

What situations could not have been resolved with the legislative tools that are in force?

Mr. Rob Stewart: There were several. It was obvious that the police needed more powers. I gave you an example. There is also access to additional resources. Here in Ottawa, we requested 100 police officers.

The Joint Chair (Mr. Rhéal Fortin): What resources are you talking about?

What was missing, apart from tow trucks, to end the protest?

Mr. Rob Stewart: I could give you other examples.

In the situation in Ottawa in particular, but also elsewhere, we were having trouble deterring people who wanted to participate in the protests. The powers relating to economic measures were in addition to the powers of the police.

The Joint Chair (Mr. Rhéal Fortin): That was preventive, to avoid...

• (2030)

[English]

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

[Translation]

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

Thank you, Mr. Stewart.

[English]

The Joint Chair (Mr. Matthew Green): I will now pass the floor over to you, Mr. Fortin, for my round of five minutes.

Mr. Stewart, I want to thank you for your candour and your answers today.

I want to get a sense in terms of timelines.

At what point in time did you first become aware there was the potential for an occupation in Ottawa and a national-stage convoy?

Mr. Rob Stewart: I think the origin of the situation was in late January. The “freedom convoy” was mobilizing and crossing the country. When it arrived in Ottawa shortly thereafter, we realized it might not be a one-day event. At the same time, borders began to be blocked out west.

The Joint Chair (Mr. Matthew Green): Would that have been pursuant to the reports from the integrated terrorism assessment centre?

Mr. Rob Stewart: No, the integrated terrorism assessment centre was strictly looking at the potential for violent extremism.

The Joint Chair (Mr. Matthew Green): This would have been prior to their arrival, so we would imagine the convoy was coming toward Ottawa.

Was it the case that, from province to province, there were updated reports about the volume of traffic related to the convoy?

Mr. Rob Stewart: Yes.

The Joint Chair (Mr. Matthew Green): There would have been a rough estimate of participants at the outset of their arrival in the nation's capital.

Mr. Rob Stewart: It was very hard to know how many people would show up in Ottawa. There were a lot of potential participants. Not all of them showed up, but as you know, many did.

The Joint Chair (Mr. Matthew Green): In some of the reports that have been made public, there's correspondence between the National Capital Commission and the OPS, which talks about how they hoped this would be handled.

Are you privy to those communications? Have you come across them?

Mr. Rob Stewart: Do you mean between the NCC and OPS?

The Joint Chair (Mr. Matthew Green): I mean the National Capital Commission. I believe these were related to where cars could park, the potential for Wellington Street, and so on and so forth.

Mr. Rob Stewart: There were, I think, discussions between the federal government and Ottawa police about what the Ottawa police could do and where people could—

The Joint Chair (Mr. Matthew Green): Were you privy to those conversations with the Ottawa police, prior to the arrival?

Mr. Rob Stewart: No, I was not.

The Joint Chair (Mr. Matthew Green): In your observation, would it be safe to say that, when they arrived, their logistic supply chain made them a bit of a unique outlier, in terms of direct action against the government? This wasn't a typical protest. Is that correct?

Mr. Rob Stewart: Absolutely. This is what gave rise to our concern about the potential for violence.

The Joint Chair (Mr. Matthew Green): Does this include the distribution of the fuel to trucks and include the crane with a wrecking ball in front of the PMO?

Mr. Rob Stewart: Absolutely.

The Joint Chair (Mr. Matthew Green): In your time, have you ever seen anything like that?

Mr. Rob Stewart: No.

The Joint Chair (Mr. Matthew Green): It was reported earlier... I'll say this. This question was put to the interim and he said it was almost normal or regular. I had never seen anything like that.

Given the unique threat presented here, were you privy to reports that the Ottawa police were in ongoing dialogue with the convoy and occupation, and that they were trying to broker some kind of solution?

Mr. Rob Stewart: That is the normal course.

The Joint Chair (Mr. Matthew Green): Is it also the normal course to help an occupying group of people set up a base camp not far from the city? Is that the normal course?

Mr. Rob Stewart: I can't answer that question, sir. I think the Ottawa police—

The Joint Chair (Mr. Matthew Green): Are you aware that the Ottawa police, in negotiation with the convoy, helped the convoy set up a base camp? Are you aware of that?

Mr. Rob Stewart: I think I am, of course, through public sources. If I were to attribute motivation to the Ottawa police, it was to try to de-escalate the protest right from the start.

The Joint Chair (Mr. Matthew Green): By allowing them to become entrenched with supply chains?

Mr. Rob Stewart: Absolutely. It turned out in a way nobody anticipated.

The Joint Chair (Mr. Matthew Green): If people come here with the express purpose, under an MOU, to overthrow the government, and the Ottawa police set up a base camp for them off-site and allow a logistics supply chain to develop—including fuel and food going to and from the occupiers—would you not anticipate they had no intention to leave?

Mr. Rob Stewart: I believe the reason for offering the Coventry Road ballpark at the start was just as a parking lot for extra trucks. I don't think it was anticipated they would set up a base camp.

The Joint Chair (Mr. Matthew Green): Yet they did.

Mr. Rob Stewart: They did.

The Joint Chair (Mr. Matthew Green): This was municipal property. Was it not?

Mr. Rob Stewart: I believe so, yes.

The Joint Chair (Mr. Matthew Green): Did the municipality have no power to evict people in a base camp that was supplying a three-week occupation?

● (2035)

Mr. Rob Stewart: Again, from public records, I believe they did try.

The Joint Chair (Mr. Matthew Green): They were unable to.

Mr. Rob Stewart: That's correct.

The Joint Chair (Mr. Matthew Green): When we talk about lessons learned and the unpredictable nature of things, the challenge I have is this: Much of it seems, in retrospect, to be fairly predictable. If we allow the trucks to refuel with petrol, as well as food and off-site accommodations, there's a higher likelihood they will stick around.

Would you not agree with that assessment, in retrospect?

Mr. Rob Stewart: Absolutely.

The Joint Chair (Mr. Matthew Green): Does it not seem logical—without needing any kind of special experience—that this course would follow?

Mr. Rob Stewart: I still claim that it was unanticipated and unprecedented, but now—

The Joint Chair (Mr. Matthew Green): This is the last question.

Would you agree it was a failure of local policing to adequately contain and deter what was a three-week occupation of the nation's capital?

Mr. Rob Stewart: I would say, in my own words, that it was an inability.

The Joint Chair (Mr. Matthew Green): It was a failure.

Mr. Rob Stewart: It was an inability of the police to—

The Joint Chair (Mr. Matthew Green): What is the difference between inability and a failure?

Mr. Rob Stewart: A failure is how it ends.

The Joint Chair (Mr. Matthew Green): What is a failure?

Mr. Rob Stewart: It's how it ends.

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

I appreciate your candour. Thank you so much.

We will now pass the floor on to our worthy senators, beginning with Senator Boniface.

You have five minutes.

The Joint Chair (Hon. Gwen Boniface): Thank you very much for being here. As Mr. Green said, we appreciate your candour on the issue.

I would like to zero in a little bit on the role of the provinces. As public safety deputy minister, I assume you would work through what is known as an FPT process?

Mr. Rob Stewart: Yes.

The Joint Chair (Hon. Gwen Boniface): I would assume that through the processes that took place over the weeks leading up to this you would be having discussions with your counterparts in the provinces. Is that correct?

Mr. Rob Stewart: That's correct.

Excuse me, it was I and others.

The Joint Chair (Hon. Gwen Boniface): Yes. I appreciate that. I'm sure having worked in government at one point or another, there are lots of conversations taking place at lots of levels as well.

I'm most interested in, and your colleague in the previous panel referred to it as well, the differences in the provinces' abilities to declare emergencies and what their emergency acts particularly direct to.

Let's start with Ontario because they did, in fact, declare the emergency. Would your discussions have been with your counterpart at public safety in Ontario at the deputy minister level?

Mr. Rob Stewart: Yes.

The Joint Chair (Hon. Gwen Boniface): Would you have within your department what we would know in various provinces as an emergency measures group or people who deal with emergencies that are outside the police agency?

Mr. Rob Stewart: Absolutely, we do.

The Joint Chair (Hon. Gwen Boniface): Does that portfolio fall under you at the federal level?

Mr. Rob Stewart: Yes.

The Joint Chair (Hon. Gwen Boniface): Can you tell me whether or not the same exists currently in Ontario and if that would have played a role as well?

Mr. Rob Stewart: As constructed, the EM authorities in our government and in the Government of Ontario play primarily a role in responding to natural disasters. In our case, Public Safety's government operations centre is a coordinating unit and provides reporting. Some of the documents we will be providing to the committee will show you the role they played in making sure that everybody was informed.

Neither they nor Ontario's EMO played any active role in managing the blockades.

The Joint Chair (Hon. Gwen Boniface): Nobody from an EMO perspective was involved in the discussion.

Mr. Rob Stewart: They were aware. As an authority for emergency management myself, I was there, but this was a policing matter.

The Joint Chair (Hon. Gwen Boniface): I appreciate that. I understand the context.

I'm just trying to figure out, when you create an emergency order at a provincial level, and when you do it a broader level, it's not just law enforcement that would be feeding the information up. I'm assuming there may be other agencies within what would be the solicitor general's department generally involved in that process.

Mr. Rob Stewart: Yes, absolutely. In our case there were multiple agencies.

The Joint Chair (Hon. Gwen Boniface): On a follow-up to Mr. Green's question, in terms of the role of the Ottawa police and how they may have assessed or not assessed the situation, they would probably be the best witness to be able to put that forward to us, given that they would have all the information including the information on which they relied on a day-to-day basis.

Mr. Rob Stewart: Yes. I would agree.

The Joint Chair (Hon. Gwen Boniface): With respect to the emergency order within Ontario as an example, when you look at the capacity of the provincial order and in reflection, do you see that there's a disconnect between the emergency capacity for orders in a province versus the federal level?

From an FPT process, would you be thinking about this going forward in terms of how they link together or create gaps between the two?

● (2040)

Mr. Rob Stewart: Yes. I believe this experience has given us all grounds for reflection on the structure and the nature of our emergency acts.

The Joint Chair (Hon. Gwen Boniface): That's because some of what you said would be that the design is more for natural disasters and not for public order.

Mr. Rob Stewart: Structures inside government are more for that. The emergency acts are probably a little more generic in terms of how they could be applied as acts.

The Joint Chair (Hon. Gwen Boniface): It's clear that the province took the position that it was beyond their capacity as a province, despite the fact that there's a provincial police service and a multitude of municipal forces within the province.

Mr. Rob Stewart: The emergencies order in Ontario—which was obviously invoked shortly before the federal order—primarily attempted to clear critical infrastructure. I have noted that we found in the law that we don't have enough power to protect critical infrastructure.

The Joint Chair (Hon. Gwen Boniface): Right, but particularly to protect critical infrastructure, you would need a certain capacity within police agencies to be able to do that. Is that how you would see it, in terms of the capacity?

Mr. Rob Stewart: In the event...but there is the issue of deterrence as well.

The Joint Chair (Hon. Gwen Boniface): Yes.

Thank you.

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

We will now move on to Monsieur Carignan.

[*Translation*]

The floor is yours for five minutes.

Hon. Claude Carignan: My question will be about the blockade that took place on the Ambassador Bridge. The President of the United States called the Prime Minister of Canada a few days before the bridge was opened.

Did the request from the President of the United States reach your ears?

Mr. Rob Stewart: No, but we spoke with people from the American government.

Hon. Claude Carignan: Right. What did they ask you for?

Mr. Rob Stewart: They didn't ask for anything. They offered support for...

Hon. Claude Carignan: What did they offer?

Mr. Rob Stewart: They offered tow trucks.

Hon. Claude Carignan: Right. Did you accept them?

Mr. Rob Stewart: Yes, I think so, but I don't know the details of the process for ending the protest.

Hon. Claude Carignan: Right.

Did they offer tow trucks because the Prime Minister of Canada had told the President of the United States that our problem was that we didn't have any?

Mr. Rob Stewart: The problem was that we weren't able to move all the people and all the trucks.

Hon. Claude Carignan: Right. The United States offered you tow trucks.

Mr. Rob Stewart: Yes.

Hon. Claude Carignan: Were they American tow trucks that came to tow Canadian vehicles away?

Mr. Rob Stewart: Yes.

Hon. Claude Carignan: Right. At that time, however, the Emergencies Act had not yet been invoked.

Mr. Rob Stewart: No.

Hon. Claude Carignan: Right.

Apart from the tow trucks issue, did you take part in the decision-making process for reopening the Ambassador Bridge?

Mr. Rob Stewart: No. It was a police operation.

Hon. Claude Carignan: What police force was it?

Mr. Rob Stewart: It was the Ontario Provincial Police.

Hon. Claude Carignan: Right.

Did it work with the Windsor Police Service?

Mr. Rob Stewart: Yes.

Hon. Claude Carignan: Did it work with the RCMP?

Mr. Rob Stewart: No.

Hon. Claude Carignan: The RCMP was not involved?

Mr. Rob Stewart: A little, yes. We received a request for assistance from the mayor of Windsor, but I think most of the police officers who participated in the operation belonged to the Ontario Provincial Police.

Hon. Claude Carignan: Right.

Did the dismantling go well?

Mr. Rob Stewart: I believe so.

Hon. Claude Carignan: What is the difference between the operation of reopening the Ambassador Bridge and the one that took place here to unfreeze Wellington Street, we might say, apart from the call from the President of the United States and the fact that it was an international bridge?

● (2045)

Mr. Rob Stewart: You want to know the difference...

Hon. Claude Carignan: Yes. Except for the use of the American tow trucks that came to tow the trucks, what were the different powers that made it possible to resolve the situation there and that could not be exercised on Wellington Street? In fact, I still can't believe that Canada requested help from American tow trucks, but it seems to be true. I understand that there were barbecues and even a hot tub to be moved, on Wellington Street, and that might have called for different methods, in logistical terms.

What was different in the case of the Ambassador Bridge?

Mr. Rob Stewart: I'm not an expert on police operations, I'm a public servant. I think the protest in Ottawa was on a larger scale and more powers and tools were needed to move all the people and trucks.

Hon. Claude Carignan: What tools are you talking about?

Mr. Rob Stewart: I'm talking about Canadian tow trucks and over 2,000 police officers.

Hon. Claude Carignan: But that's not a problem. You don't need the Emergencies Act to get more police.

Do you remember how many police you had at the Summit of the Americas? There were a lot more.

Mr. Rob Stewart: Here, the issue was assembling the police resources to execute the plan that had been made by Ottawa police. It called for moving a number of members of the Royal Canadian Mounted Police to Ottawa. It had to be done fairly quickly, and that is almost always a problem...

Hon. Claude Carignan: Right, but the Emergencies Act didn't offer anything extra...

[English]

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

[Translation]

Hon. Claude Carignan: Mr. Fortin was gentle with you.

[English]

The Joint Chair (Mr. Matthew Green): It's not a different set of five minutes, unfortunately.

We will now move on to Senator Harder.

Senator Harder, you have five minutes, sir, and the floor is yours.

Hon. Peter Harder: Thanks very much, Chair.

Deputy Minister Stewart and officials, welcome. We appreciate your testimony here tonight.

I want to go back to some of the questioning that Mr. Green initiated with respect to your perspective on the events leading up to the invocation of the emergency measures.

Earlier tonight we heard your colleague Deputy Daigle say that the events exceeded the capacity of the jurisdictions in play at the time. That's referred to in section 58 of the measure itself.

When did you come to the view with your colleagues that this was in a sense a collective judgment as to where things were going in this, what you describe as, unprecedented and unpredictable set of circumstances?

Mr. Rob Stewart: When did we come to that view?

Hon. Peter Harder: Was it Valentine's Day or some time in advance of that?

Mr. Rob Stewart: It was in advance of Valentine's Day.

In the course of our consultations with federal and provincial colleagues and police of jurisdiction, it came to our attention that, in some circumstances, there were a lot of challenges in terms of enforcing the law. That related to the number of people who were available to do so and, therefore, their ability to apply the laws and the bylaws.

What we also became conscious of, and I've mentioned this before, is the evolving nature of the protest, including the potential for further blockades. It was in part, as I've suggested, the aim of the act to deter those from occurring.

Hon. Peter Harder: We'll get to the invocation itself, but in the preceding days, as the city invoked their emergency measures in Ontario, were you in your conversations with your counterparts urging the invocation of those emergency measures?

Mr. Rob Stewart: Yes.

Hon. Peter Harder: If I could ask in a more provocative fashion, why did it take so long for you to invoke the emergency measures at the national level? It was clear for those of us observing this on a day-to-day basis, including yourself.... It was almost two weeks of observed circumstance where the capacity of the police to maintain order and reduce the occupation was exceeded.

Mr. Rob Stewart: I'm tempted to say that I think we'd be under more aggressive questioning if we'd invoked it any earlier than we did, but the fact is that it took time to come to a full assessment of the situation.

Hon. Peter Harder: Okay, and as you worked through from February 14 to 23 in the daily—and I'm sure many times a day—assessment of how things were going, did anything provoke you to conclude that the emergency measures were not working as you had expected? Were there surprises in the operationalizing of the emergency measures themselves?

● (2050)

Mr. Rob Stewart: There were certainly some challenges along the lines of implementation of the economic measures, where there was a lot of misunderstanding as to what they were intended to do and how they would operate. That was unexpected. Otherwise, I think it was the opposite. We were fortuitous in having some of the blockades at the border resolved at a similar time. As it evolved, the situation was calmed quite quickly.

Hon. Peter Harder: Yes, I would share that observation.

My sense is that, until the invocation of the emergency measures at the federal level, the police actions were—I would use the phrase—a failure, and I was impressed by how quickly, once the invocation took place, the police actions were a textbook case in how to deal with a large-scale occupation.

I'm perplexed by the night-and-day difference between the operation as we saw it unfold here in Ottawa, at least.

Mr. Rob Stewart: I would suggest that it was in fact surprisingly non-violent when we had fears that it could become violent. I would attribute some of that to the fact that the act was deterring people from joining the protest.

Hon. Peter Harder: As you worked through those days, you were not certain when the revocation would take place. Was the revocation effective as soon as the professionals managing the operation felt it could be revoked, or were you pressured at all to revoke early?

Mr. Rob Stewart: I can't speak to the decision itself, but I can tell you that the advice was that the act was no longer needed.

Hon. Peter Harder: Was the decision taken right after that advice was given?

Mr. Rob Stewart: Shortly thereafter.

The Joint Chair (Mr. Matthew Green): Thank you. You squeezed a couple...but you also concede time on a frequent basis.

We will now go online to Senator Campbell.

Senator Campbell, sir, you have five minutes.

Hon. Larry W. Campbell: Thank you, Chair. I want to thank the witness for coming today.

I want to go back to the inability leading to a failure on the part of the police. If I can ask, how long have you been in your position and working for Justice?

Mr. Rob Stewart: I'm working for Public Safety, sir, and I've been in the position for two and a half years.

Hon. Larry W. Campbell: Okay, so you have some experience there.

We continually hear, for instance, that this act was invoked because the police could not control a situation where there were children. Are you aware that police virtually every day in this country find themselves in the situation where there are children involved and where they have to call upon resources that are outside the police force, i.e., child care workers?

Mr. Rob Stewart: I am aware of that, sir. In the case of Ottawa, they did have Children's Aid standing by.

Hon. Larry W. Campbell: The previous witness said we couldn't move here because it was a dangerous situation and there were children involved. I really think that's a red herring.

Let's move onto something else—the tow trucks. Police don't typically have tow trucks. What they do is they have contracts with tow truck companies and I would say in Ottawa, that contract is probably in the million-dollar range. As a lawyer and being in Public Safety, would the tow truck contract not be enforceable so that they can't just refuse to send tow trucks to a situation where they're needed?

• (2055)

Mr. Rob Stewart: It's not just here in Ottawa, but elsewhere.

Hon. Larry W. Campbell: You're telling me that if I phone the tow truck company as the chief of police and say, if you're not go-

ing to do this, we're cancelling your contract and don't apply again, there wouldn't be some action on the part of the tow truck company?

Mr. Rob Stewart: That's a hypothetical, sir. I would say that what we knew and what the RCMP as the contract police in Alberta knew was that the tow truck drivers they had under contract would not do the work.

Hon. Larry W. Campbell: Okay. Last question, have you ever been to Petawawa?

Mr. Rob Stewart: I have.

Hon. Larry W. Campbell: Have you ever seen the heavy equipment that they have there for moving tanks, moving heavy vehicles? They basically have an engineering division there. Have you seen that?

Mr. Rob Stewart: No, but I think I know what you mean.

Hon. Larry W. Campbell: Why weren't they called upon?

Mr. Rob Stewart: There was a request for assistance from the Government of Alberta for the Canadian Armed Forces' towing capability, and it was declined on the basis that Alberta hadn't fully used its own access to resources and also because the equipment of the CAF was going to damage the trucks.

Hon. Larry W. Campbell: Does that make any sense to you whatsoever? These people are breaking the law. We're in a situation where there are guns involved. The government is considering an emergency order, and we allow somebody to tell us, our military to tell us, that we're not going because we don't think they've used the resources. Is that the state that we're in here? Police cannot do their jobs, and the military cannot do its job. Can you answer that?

Mr. Rob Stewart: I wouldn't see it the way you see it, sir. I think, in the circumstances, the military was going to be inappropriate and insufficient. What we needed at the border at Coutts was dozens of tow trucks for hundreds of trucks.

Hon. Larry W. Campbell: Okay. Forget the border at Coutts. What about Petawawa? It's just down the road.

Mr. Rob Stewart: As it unfolded, the request was for the trucks that exist at the base in the west.

Hon. Larry W. Campbell: I'm not asking about the base in the west. We're talking about Ottawa, the national capital, under siege, and we cannot get military tow trucks to come and tow big trucks because we're afraid they'll be damaged. Are you serious?

Mr. Rob Stewart: I am telling you what happened.

Hon. Larry W. Campbell: Thank you, Mr. Chair.

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

We will now go into the second round. It will be a four-minute round for the Conservatives and the Liberals, followed by three-minute rounds.

We will begin with Mr. Brock.

Mr. Brock, you have four minutes, sir.

Mr. Larry Brock: Thank you, Chair.

Thank you to the witnesses.

Mr. Stewart, I'll start off by saying that, in the words of Perrin Beatty, extraordinary powers require extraordinary [government accountability]. With all due respect to you, sir, to the questions put to you by my colleague Mr. Motz, I do not accept your response that Minister Mendicino did not use his words appropriately, when he's on record as stating that law enforcement asked for the use of the Emergencies Act. Your response was that he chose the wrong set of words, or he was misunderstood.

Minister Mendicino is a senior government official. He's been a member of Parliament for a significant period of time. He is a lawyer. Words matter. He spoke in the House numerous times. He gave speeches in the House numerous times. He responded to questions, did press releases and went on television. Every time he did that, Mr. Stewart, he was consistent in his messaging that law enforcement asked for the use of the Emergencies Act. Only until law enforcement, testifying at this committee and other committees, flat out refuted that statement did we hear a change in Minister Mendicino by stating they were consulting with law enforcement.

My question to you is this: Were you yourself responsible, or members of your office responsible, in terms of giving Minister Mendicino those words that law enforcement asked for the Emergencies Act on numerous occasions?

Mr. Rob Stewart: We don't script the minister, sir.

Mr. Larry Brock: Who does?

Mr. Rob Stewart: The minister speaks for himself.

Mr. Larry Brock: The minister prepares his own notes.

Mr. Rob Stewart: I do believe he was misunderstood, because when you say "on the advice of law enforcement", the advice does not necessarily have to be about asking them about the act—

Mr. Larry Brock: It wasn't on the advice. Listen to my question very carefully. He is on record—I don't have enough time to repeat verbatim what he has stated on the record—that they asked for, law enforcement asked for, the Emergencies Act. It was not that law enforcement consulted with the government as an option to deal with the protest, to deal with the invocation of the act. He said, they had asked for it.

If you knew that he was misconstruing those words, why didn't you inform Minister Mendicino to clarify that in the House or to clarify that with the public?

• (2100)

Mr. Rob Stewart: I serve the minister, and I'm not at liberty to discuss the advice I provide him, but I can tell you that I think he was misunderstood. I believe the intention he was trying to express was that law enforcement asked for the tools that were contained in the Emergencies Act.

Mr. Larry Brock: It wasn't just Minister Mendicino who was misconstrued or misunderstood. It was the Prime Minister. It was Minister Blair. It was Minister Lametti. It was probably members of the Liberal caucus, who all used that same talking point that law enforcement asked for it.

Was the entire government misunderstood, Mr. Stewart? Canadians want transparency here. Who is giving directions to the government if it's not your department?

Mr. Rob Stewart: The—

Mr. Arif Virani: Mr. Chair, on a point of order, I think this witness is here to testify with respect to Public Safety and the advice he would have given to Minister Mendicino—

The Joint Chair (Mr. Matthew Green): He has the ability to answer the questions. He's been doing it quite capably all meeting.

Mr. Arif Virani: I don't think that question is relevant in terms of his expertise.

The Joint Chair (Mr. Matthew Green): I rule it in order. He can answer the question.

Mr. Rob Stewart: The public service does not give direction to the government, sir.

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

We will now go on to Ms. Bendayan for four minutes.

Ms. Bendayan, the floor is yours.

Ms. Rachel Bendayan: Thank you, Mr. Chair. I'll be splitting my time with Mr. Virani.

Mr. Stewart, I'll be going quite quickly through a number of questions. First, are you aware that the RCMP executed a search warrant on the morning of February 14 and seized at the border at Coutts 13 long guns, multiple handguns and sets of body armour, a machete, a large quantity of ammunition and high-capacity magazines?

Mr. Rob Stewart: I am.

Ms. Rachel Bendayan: Are you aware that threats became known to the RCMP days into the protests at Coutts, Alberta, and that the investigation was ongoing for some time before the search warrant was issued on February 14?

Mr. Rob Stewart: I can't speak to the specifics. I don't believe they knew for very long before they executed the search warrant.

Ms. Rachel Bendayan: I believe the investigation is ongoing, but I would like to ask if you are aware of any connection between this heavily armed group at Coutts, Alberta, and any other blockaders or protesters during the period?

Mr. Rob Stewart: We did not identify any direct connection. They were assessed to be members of a particular IMVE group called Diagonal, and there are other members of Diagonal in the country.

Ms. Rachel Bendayan: Can you confirm that the investigation is ongoing and that we are awaiting the results of that investigation?

Mr. Rob Stewart: No, I can't. That's for the RCMP to speak to.

Ms. Rachel Bendayan: Thank you very much.

On February 11, the United States, in particular the Biden administration, offered Homeland Security's help to end the Ambassador Bridge blockade and other protests at the border. This subject was first broached by Senator Carignan.

As the head of Public Safety for the federal Government of Canada, has another country ever made such an offer before?

Mr. Rob Stewart: We have a close working relationship with the Americans. Depending on the situation, we offer each other aid. It's not uncommon.

The Joint Chair (Mr. Matthew Green): Mr. Bendayan, I'm just letting you know that it is two minutes. If you'd like to continue, it's on your time.

Ms. Rachel Bendayan: Thank you very much. I'll move to Mr. Virani.

Mr. Arif Virani: Thank you, Deputy Minister. I'm going to go quickly as well.

In response to Mr. Naqvi, you had said that towing is part of the order we've been examining. The idea of towing was given to you by the people you were consulting with, including law enforcement. Is that correct?

Mr. Rob Stewart: That's correct.

Mr. Arif Virani: Some towing companies in this city were actually receiving death threats if they dared to tow some of the immobilized trucks. Is that correct?

• (2105)

Mr. Rob Stewart: I can't speak to that as a matter of fact.

Mr. Arif Virani: Okay. The House of Commons statement, under section 58, references death threats being uttered.

Mr. Rob Stewart: Okay.

Mr. Arif Virani: Officers were provided, but what this tool—the Emergencies Act—gave you was the ability to swear in those officers very rapidly. Instead of taking days, it took minutes to swear them in en masse.

Mr. Rob Stewart: That's correct.

Mr. Arif Virani: Mr. Green had put to you this idea about supply chains. Another component, which I don't think you addressed with Mr. Naqvi, was that the Emergencies Act powers gave you the ability to not only freeze assets but also disrupt supply chains by preventing people from giving fuel to stationary trucks that were idling outside of Parliament.

Mr. Rob Stewart: That's correct.

Mr. Arif Virani: It also gave the government the ability to stop the flow of people coming up here for the purposes of protesting, not just into this area but actually into this country, including people who might have participated in the January 6 insurrection in the United States.

Mr. Rob Stewart: That's correct.

Mr. Arif Virani: That gave the ability, from a law enforcement perspective, to reduce the number of people who are actually participating in the illegal blockade, which allows you to have a more reasoned and pragmatic logistical approach. You know how many people are there. Therefore, you know how many officers you need

to execute a safe and non-violent removal of the blockade. Is that correct?

Mr. Rob Stewart: Yes. Indeed, some trucks left Ottawa after those financial orders were put in place.

The Joint Chair (Mr. Matthew Green): That is your time.

Mr. Arif Virani: Thank you.

The Joint Chair (Mr. Matthew Green): We will now move on to Monsieur Fortin for three minutes.

[*Translation*]

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

My question is for you again, Mr. Stewart.

I heard what you said about the tow trucks. If I understand correctly, their contracts allow them to refuse or to not refuse—that point isn't clear—to do the work. One thing is certain, however: they did it.

To your knowledge, were there any sanctions for the tow truck operators, such as cancelling contracts, fining them, or other penalties?

Mr. Rob Stewart: I don't know anything about that.

The Joint Chair (Mr. Rhéal Fortin): Do you know whether the tow trucks that towed the trucks were in fact Canadian?

Mr. Rob Stewart: Yes.

The Joint Chair (Mr. Rhéal Fortin): How many tow trucks were there, to your knowledge?

Mr. Rob Stewart: I don't know.

The Joint Chair (Mr. Rhéal Fortin): Did you sign a document to order the tow trucks to come to Wellington Street and tow the trucks?

Mr. Rob Stewart: Do you want to know whether I did it myself?

The Joint Chair (Mr. Rhéal Fortin): Yes.

Mr. Rob Stewart: The answer is no.

The Joint Chair (Mr. Rhéal Fortin): Did you see orders like that coming from a police officer or another authority?

Mr. Rob Stewart: No.

The Joint Chair (Mr. Rhéal Fortin): If I understand correctly, you can't tell me under what order, what injunction or what legal provision the tow trucks decided, that morning, to tow the trucks.

Mr. Rob Stewart: I have only the testimony of the police.

The Joint Chair (Mr. Rhéal Fortin): What did the police tell you?

Mr. Rob Stewart: They confirmed that it was the case. The order gave them the power to...

The Joint Chair (Mr. Rhéal Fortin): Who ordered the tow trucks to tow the trucks?

Mr. Rob Stewart: The Commissioner of the Royal Canadian Mounted Police...

The Joint Chair (Mr. Rhéal Fortin): That's Ms. Lucki, if memory serves.

Was it Ms. Lucki who gave the order to the tow trucks to come and tow the trucks?

Mr. Rob Stewart: No, but she knew that someone in the police had given the order.

The Joint Chair (Mr. Rhéal Fortin): In your opinion, that couldn't have been done before the proclamation?

Mr. Rob Stewart: No.

The Joint Chair (Mr. Rhéal Fortin): Why?

Mr. Rob Stewart: As I said, from what I know, the truckers refused to move their vehicles. It was impossible to...

The Joint Chair (Mr. Rhéal Fortin): If some truckers decided to come back to Ottawa tomorrow morning and block Wellington Street, and if there were more protests where there were children, we would then have to invoke the Emergencies Act. Do I understand correctly?

Mr. Rob Stewart: No.

The Joint Chair (Mr. Rhéal Fortin): What would be done differently?

Mr. Rob Stewart: The first thing that would be done would be to prevent the protest.

The Joint Chair (Mr. Rhéal Fortin): Why wasn't it prevented last February?

Mr. Rob Stewart: Simply because it was not foreseen.

The Joint Chair (Mr. Rhéal Fortin): It was foreseen; it was announced in advance.

Everyone knew that hundreds, even thousands of trucks were en route to Ottawa.

[English]

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

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Did you tell me that my speaking time was up?

[English]

The Joint Chair (Mr. Matthew Green): Yes, and I will pass the chair on to you.

For my intervention, Mr. Chair, I'm happy to concede my time after I move the motion, of which the notice was put. I move:

That, in light of recent reports that numerous secret Orders in Council have been adopted, this committee demand the production of all secret Orders in Council adopted in relation to the convoy occupations and blockades across Canada, the invocation and/or revocation of the Emergency Measures Act, and that the documentation be provided to the committee within 30 days of the adoption of this motion.

• (2110)

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Do you want to present that motion now, Mr. Green?

[English]

The Joint Chair (Mr. Matthew Green): I'm tabling my motion in my time. That's correct.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Right.

Ms. Rachel Bendayan: Mr. Chair, I'd like my name to be on the list of speakers.

The Joint Chair (Mr. Rhéal Fortin): Yes, Ms. Bendayan.

Ms. Rachel Bendayan: Is Mr. Green finished?

The Joint Chair (Mr. Rhéal Fortin): I think so.

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

I would like to propose an amendment to Mr. Green's motion.

The Joint Chair (Mr. Rhéal Fortin): I want to clarify something.

If I understand correctly, Mr. Green is relinquishing his three minutes of speaking time; he doesn't want to ask the witness questions.

Ms. Rachel Bendayan: He doesn't have three minutes...

The Joint Chair (Mr. Rhéal Fortin): He is relinquishing his three minutes of speaking time and wants to present his motion.

[English]

Hon. Larry W. Campbell: There's a loss of audio.

Ms. Rachel Bendayan: Senator, the chair is just consulting the clerk on a matter of procedure.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Mr. Green, I gather that you want to present a motion and Ms. Bendayan wants to speak.

I'm going to ask committee members whether they agree to continue the round of questions, knowing that Mr. Green will not be asking questions. After the round of questions, Mr. Green will be able to present his motion. So we will release the witnesses at the point when we debate the motion, which may take some time.

[English]

The Joint Chair (Mr. Matthew Green): Respectfully, as a point of order, that direction is not in order. I am duly entitled, given the notice of motion. It is a properly moved motion. It's in order. I have time. I'm able to do it. I'm moving the motion.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): I agree with you, Mr. Green.

[English]

Hon. Larry W. Campbell: Mr. Chair, could I—

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Just a minute, Mr. Campbell.

Mr. Green, I understand that you want to present your motion. What I'm asking committee members is whether they want you to do it now or they want us to finish the round of questions. I believe there are still three...

[English]

The Joint Chair (Mr. Matthew Green): There's a motion on the floor, respectfully, Mr. Chair. The motion is on the floor.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): I understand that you are opposed to us finishing the round of questions, but I'm asking the other committee members the question.

Do the members want us to finish the last three questions from senators before discussing Mr. Green's motion or do they prefer that we discuss it right away?

[English]

The Joint Chair (Mr. Matthew Green): This whole intervention just took up the time that it could have been passed.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): I understand that you object to us continuing the round of questions, Mr. Green. You want to present the motion right away.

[English]

The Joint Chair (Mr. Matthew Green): Yes, the motion's on the floor.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Right.

Because we don't have unanimous consent, we will study Mr. Green's motion. It may be that the three senators' three minutes of speaking time won't get used.

Mr. Green, I understood.

I think it was Ms. Bendayan's turn to speak to your motion.

Ms. Rachel Bendayan: I'll be very brief, Mr. Chair.

I want to thank people for their patience.

I propose to amend Mr. Green's motion by adding "*dans le cas où ils existeraient*" at the very end of the sentence.

I'm going to read my amendment in English.

[English]

At the very end of the sentence that is before you, members, I propose to amend the motion by adding the words "should they exist". The reason for this amendment is that, as we heard in earlier testimony this evening during the meeting from the deputy minister of justice, no such secret orders in council exist. That is his testimony, and the motion, as written, presupposes the existence of secret orders in council.

We are happy to vote in favour of the motion and have an official response given to the question. However, we would ask that the amendment be added in order that we don't presuppose the existence of any such documents.

• (2115)

[Translation]

The Joint Chair (Mr. Rhéal Fortin): According to the list of speakers, only Mr. Campbell and Mr. Carignan want to come back to it.

Before I continue, Mr. Green, just tell me whether you would accept...

[English]

The Joint Chair (Mr. Matthew Green): I don't have to accept. It's on the floor. It's good to go.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Do you accept the proposed amendment?

[English]

The Joint Chair (Mr. Matthew Green): Yes.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): So we will continue to debate Mr. Green's motion as amended by Ms. Bendayan. Is that alright with everyone?

Mr. Campbell, the floor is yours.

[English]

Hon. Larry W. Campbell: Thank you, Chair.

It's okay. You've answered my question. I appreciate it, and I'm sorry I interrupted.

Thank you.

[Translation]

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

I now give the floor to Senator Carignan.

Hon. Claude Carignan: I just wanted to point out that this is Tuesday, June 7, 2022.

The Joint Chair (Mr. Rhéal Fortin): Notice was given on June 3, 2022.

Hon. Claude Carignan: That's right. Today is the first time we have seen it.

The Joint Chair (Mr. Rhéal Fortin): Notice of the motion was filed on Friday, June 3.

Hon. Claude Carignan: But the motion is being presented now.

The Joint Chair (Mr. Rhéal Fortin): It is being presented...

Ms. Rachel Bendayan: The motion is being presented today, but it was circulated on Friday.

The Joint Chair (Mr. Rhéal Fortin): The date of the motion is June 3.

Hon. Claude Carignan: Right.

The Joint Chair (Mr. Rhéal Fortin): Is that okay?

I give the floor to Mr. Virani. It will then be Mr. Motz's turn.

[English]

Mr. Arif Virani: I have two notes. If any secret orders were ever passed, they would have to have been tabled with this committee by operation of the statute within two days of their passage in secret, and it would have required this committee to be sitting in camera. I think that underscores the fact that these things don't exist. I would put that out there for people to mull over.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Since there are no other speakers, we will call the question on Mr. Green's motion.

Mr. Clerk, will you call the roll?

Ms. Rachel Bendayan: Are we calling the question on the motion as amended, Mr. Chair?

The Joint Chair (Mr. Rhéal Fortin): Yes, the question is being called on the motion as amended by Ms. Bendayan.

Do you want me to read it?

[English]

The Joint Chair (Mr. Matthew Green): I read it into the record when I moved it.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Right.

In that case, Mr. Clerk, you can go ahead with calling the roll.

A voice: It's unanimous.

The Joint Chair: Perfect.

(Motion as amended agreed to unanimously)

The Joint Chair: Mr. Green, I turn the meeting chair back over to you.

[English]

The Joint Chair (Mr. Matthew Green): Thank you. I will take the chair back.

I'll cede my time although, procedurally, I'm not required to. I did that as a bit of a courtesy, hoping we could have moved through that quickly. I apologize. It took more time perhaps than necessary, given the guests.

We'll move on to Senator Boniface for three minutes.

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

I just want to go back to some of the questions around the tow trucks. I appreciate that you aren't in the operational capacity, but you would be receiving information.

My understanding, watching it, would be that it was not just a few tow trucks. There were many tow trucks. From a police operational perspective, the operation would have to be done in tandem with a number of trucks. It's not as simple, as I observed it, as needing one truck at a time to move and move out.

I would assume that in your briefings you would have—from the RCMP and you would have had it from other agencies—an idea of

the complexity of the type of operation that would be required. Am I correct?

Mr. Rob Stewart: Yes, you are correct in the general sense. We were not privy, of course, to the plans of the police or the number of tow trucks they required, but we were well aware that many were required.

The Joint Chair (Hon. Gwen Boniface): Can you tell me, as it went on, about the role of CBSA? I assume it falls under your portfolio.

Mr. Rob Stewart: It falls under the Minister of Public Safety.

The Joint Chair (Hon. Gwen Boniface): Yes.

Mr. Rob Stewart: They were actively involved in these consultations. They were actively involved in monitoring, obviously, the borders that they man, and they were providing advice about the convoys as they appeared.

The Joint Chair (Hon. Gwen Boniface): I assume that the CBSA would also have a role in sharing information with law enforcement agencies, and that at least some of the information they would have been picking up from their own sources. Would that be correct?

Mr. Rob Stewart: Absolutely. They work in close concert with the police of jurisdiction, and the police of jurisdiction work together to gather intelligence.

The Joint Chair (Hon. Gwen Boniface): With respect to the part of the order that would have dealt with people coming from outside of the country for the convoy, I would expect some of that information would have come through or been brought to the attention of CBSA. Would that be correct?

Mr. Rob Stewart: To the extent that it was known by the police, yes.

The Joint Chair (Hon. Gwen Boniface): Okay.

Mr. Rob Stewart: They were able to discern it, though, themselves by questioning at the border.

The Joint Chair (Hon. Gwen Boniface): Sure. You hit where I was going. Thank you.

Particularly around the length of the protest for the people who were living here in Ottawa—and I think Mr. Naqvi talked about this—we started to see, if I remember correctly, some counter-protests taking place, which I would have thought would also make trying to manage the event much more difficult from the police perspective.

● (2120)

Mr. Rob Stewart: That may be the case. I didn't receive that as information. There was the possibility that the counter-demonstrations could clash, but I believe they were separated.

The Joint Chair (Hon. Gwen Boniface): Yes, but as you look forward, I would think—and I'll ask the police this because, as you indicate, it is an operation they would know—the more people you draw with opposing opinions against each other, you would certainly be looking down the road at a more complex situation. Would you not agree?

Mr. Rob Stewart: Indeed, although I would emphasize the point that I made earlier, which is that the risk as we assessed it in the context of Ottawa in particular, but elsewhere with the blockades as well, was the threat of mobilizing to serious violence in the convoys themselves.

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

In our final round we have Senator Carignan.

You have three minutes, sir.

[*Translation*]

Hon. Claude Carignan: On February 12, the Ottawa Police Service said the following on its website:

All available officers were deployed last night. We have a plan to end this unlawful occupation and await the necessary reinforcements to do so.

Here, the Ottawa Police Service says “we have a plan”. Were you informed of this plan?

Mr. Rob Stewart: No.

Hon. Claude Carignan: Did you ask any questions when you saw this statement by the police service on February 12? Did you ask what the plan was?

Mr. Rob Stewart: No, because it was neither usual or appropriate to intervene in police operations.

Hon. Claude Carignan: I find that statement bizarre. You say it is not in your nature to intervene in their operations. However, when it is observed that they aren't able to tow vehicles, the Emergencies Act is applied.

That's a somewhat substantial intervention, don't you think?

Mr. Rob Stewart: Yes, but obviously the plan was determined to be insufficient.

Hon. Claude Carignan: How could you determine that the plan was insufficient if you had neither asked for it nor seen it?

Mr. Rob Stewart: I'm talking about up to that point.

Hon. Claude Carignan: On February 12, the Ottawa Police Service said “we ... await the necessary reinforcements to do so.”

Do you know how many additional police it requested?

Mr. Rob Stewart: Initially, I think it requested 1,800 officers, according to the former police chief.

Hon. Claude Carignan: Right.

Mr. Rob Stewart: Ultimately, nearly that many police were sent.

Hon. Claude Carignan: Right.

Did you send those police?

Mr. Rob Stewart: The RCMP sent about 1,000 officers.

Hon. Claude Carignan: What was the date when they were sent?

Mr. Rob Stewart: It was the middle of the following week.

Hon. Claude Carignan: So it was after February 14.

Mr. Rob Stewart: Yes.

Hon. Claude Carignan: Those police had been requested before that, though.

Mr. Rob Stewart: Yes. They were requested almost at the beginning.

Hon. Claude Carignan: Right.

Were you aware that the City of Ottawa would not ask the Canadian army for tow trucks?

Mr. Rob Stewart: No. I'm not aware of that.

Hon. Claude Carignan: Right.

So you have no knowledge of the fact that on February 10, the general manager of emergency and protective services for the City of Ottawa, Kim Ayotte, said that he would not ask the army for tow trucks because it was like asking the army to come to Ottawa.

Mr. Rob Stewart: No, I'm not aware of that.

Hon. Claude Carignan: You don't read *Le Soleil*?

Mr. Rob Stewart: I was aware that there were discussions concerning the army in general.

Hon. Claude Carignan: However, concerning the army tow trucks...

Mr. Rob Stewart: No.

Hon. Claude Carignan: You didn't hear that comment by Kim Ayotte, a City of Ottawa official, on February 10?

Mr. Rob Stewart: No, I had no conversations with...

Hon. Claude Carignan: It wasn't brought to your attention? It wasn't highlighted in your media review?

[*English*]

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

That brings our rounds to a close. I'd like to thank all the witnesses for being with us this evening. You are certainly free to go. I appreciate your contribution to the discussion tonight.

We do have a matter before the committee that needs to be resolved. It has come to our attention that Interim Chief Bell of the Ottawa Police Service is unable to attend our next meeting. I would like to propose that we invite former police chiefs Peter Sloly, Charles Bordeleau and Matt Torigan for that particular session to provide us with...

I'm sorry. It's the 21st. I should remind us that the next meeting we have is on June 14.

Yes, Senator Boniface.

● (2125)

The Joint Chair (Hon. Gwen Boniface): Just so you are aware, before you adjourn, I need to put another one on the...

The Joint Chair (Mr. Matthew Green): Okay, I just want to make sure we have agreement by the committee.

We're going to go to Mr. Motz and then Mr. Naqvi.

Mr. Glen Motz: Thank you, Chair.

If we look back at our work plan from before, we felt that former chief Sloly needs a panel of his own for an hour and a half at the very least. I'm just trying to find the actual—

The Joint Chair (Mr. Matthew Green): We could split them up. We could have Mr. Sloly in the first session and the other two in the second.

Mr. Glen Motz: Who are the other two gentlemen you mentioned, Mr. Green?

The Joint Chair (Mr. Matthew Green): I've just been informed that the OPP is confirmed for the first section, so we'd have them in and we now have a choice between Mr. Sloly for an hour and a half or the other folks who were involved in a tangential way.

An hon. member: We want Sloly by himself.

The Joint Chair (Mr. Matthew Green): Okay. Mr. Motz, is that all?

We'll go to Mr. Naqvi.

Mr. Yasir Naqvi: Thank you, Chair.

I was going to suggest we definitely have Mr. Sloly. It is important that he present to this committee.

I'm not too sure about Mr. Bordeleau and Mr. Torigian in terms of the value. However, I think a person we should also invite and hear from is Mayor Watson, who was very central to all of this.

The Joint Chair (Mr. Matthew Green): He's on the list.

Mr. Yasir Naqvi: I was going to suggest that, if we were going to invite two people, then perhaps the other person could be Mayor Watson, but I hear that....

You had mentioned three names, so I just wanted to suggest that. Thank you.

The Joint Chair (Mr. Matthew Green): It sounds like we have worked it out.

In summary, on the 21st we'll be having the OPP in the first hour, and then we will invite Mr. Sloly. We will know at the next meeting if he cannot avail himself to the committee for whatever reason, and then we'll make adjustments accordingly. Do we have consensus around the table on that?

Mr. Yasir Naqvi: Can I make a suggestion?

If Mr. Sloly is not available, can we then consider Mayor Watson instead and see if he's available?

The Joint Chair (Mr. Matthew Green): It works. We'll put him on as a backup for the clerk's consideration at the time.

For the record, that's by unanimous consent for that part of the schedule.

Excellent. I'll now turn the floor over to Senator Boniface.

The Joint Chair (Hon. Gwen Boniface): I've spoken to all members and I am wondering if I could put a motion forward moving that the clerk consult with all members to see if we would have availability in September.

The thought has been to put two full days together prior to returning on September 19. It will depend on availability, so I thought perhaps we should canvass that to start with and then we can seek approval of the leadership if that's the next step.

The Joint Chair (Mr. Matthew Green): Members, you've heard the proposition put forward by Senator Boniface.

Mr. Motz, did you want to intervene?

Mr. Glen Motz: Yes.

We've talked about it amongst our group. We certainly want to get at the business of this committee. We're amicable to that. I'm not sure where my Liberal colleagues are in relation to their caucus meetings prior to the return of session. Ours are that Wednesday and Thursday, September 14 and 15.

An hon. member: Ours are one day before that.

Mr. Glen Motz: So yours are the Tuesday and Wednesday.

The Joint Chair (Mr. Matthew Green): Why don't we have the clerks work that out? We obviously have that as well. I think the motion is just the intention to work out the availability.

An hon. member: At the very least, we have Monday.

Mr. Glen Motz: Yes. Monday for sure we can have—

The Joint Chair (Mr. Matthew Green): If we just agree to it in....

I'm sorry. Go ahead, Ms. Bendayan.

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

I was going to suggest September 15 and 16. To Mr. Motz's point, we are in meetings until September 14, end of day.

I think September 15 and 16 would work well for us, but I understand that September 15 might be difficult for you, colleagues.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): September 15 and 16 aren't possible for me.

[*English*]

The Joint Chair (Mr. Matthew Green): Perhaps I can bring things back, because we do have a hard stop.

I think the motion is wise. The senators have their considerations as well. It allows our analyst and clerk to go away and come back with a date. We'll be meeting next week and the week after that to make sure we zero it in.

If we can get agreement around the table that we'll take that approach, which I think is a very wise and sound approach, of really getting back into this in the fall, then the direction will go out and we'll come back in the next meeting. Do we have any objections to that?

Some hon. members: Agreed.

The Joint Chair (Mr. Matthew Green): That being said, let the record show that it's unanimous consent on that.

That's not for the dates. They're going to go to you with the dates, and we're going to come back in the next meeting to confirm it.

That being said, I'd like to thank everybody for their participation in this evening's meeting.

I will now adjourn this meeting.

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