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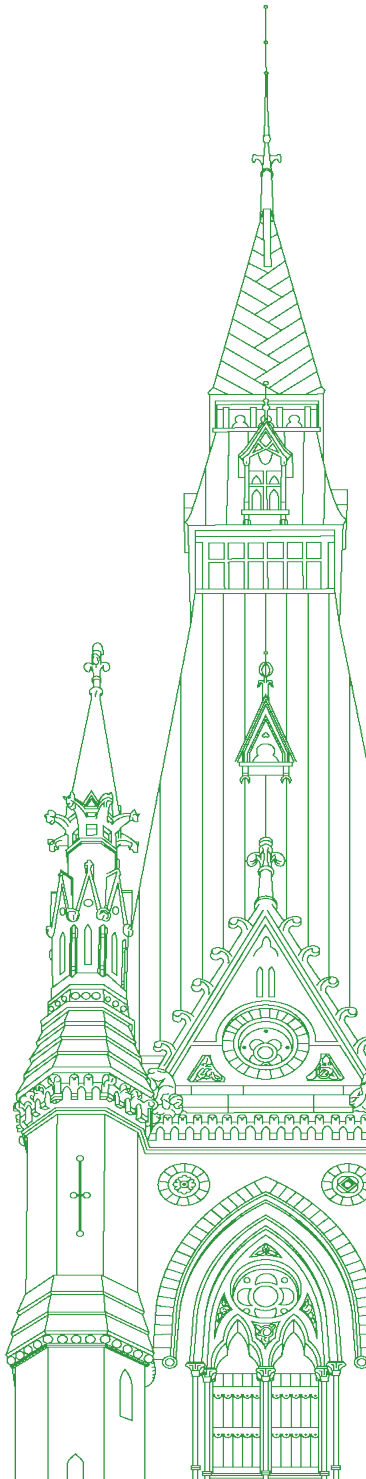

Co-Chairs:
The Honourable Gwen BonifaceMr. Matthew GreenMr. Rhéal Fortin

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Thursday, December 8, 2022

● (1845)

[*English*]

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

Welcome to the 21st meeting of the Special Joint Committee on the Declaration of Emergency created pursuant to the order of the House on March 2, 2022 and the Senate on March 3, 2022.

Today's meeting is taking place in a hybrid format, pursuant to the House and Senate orders.

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

Witnesses should be aware that translation is available through the globe icon at the bottom of the screen.

I wish to inform members that Professor Roach has undergone all technical tests successfully, and both witnesses have been informed of their duty as it pertains to responding to questions.

I always like to provide a bit of a preamble to the witnesses that, given the nature of the committee, you may find from time to time that a parliamentarian may interject to take back their time. They may interrupt you. Please don't take that personally; it's not a personal affront. They have a long list of questions and a very short period of time in which to conduct them. We ask that you acknowledge, if a senator or an MP interjects, that it's not a personal affront to you.

For our first panel this evening, we have with us, by video conference, Kent Roach, professor in the faculty of law at the University of Toronto. Here in the room, we have Leah West, assistant professor at the Norman Paterson School of International Affairs at Carleton University.

You will each have five minutes for your opening remarks. We'll begin online.

Professor Roach, the floor is yours.

Prof. Kent Roach (Professor, Faculty of Law, University of Toronto, As an Individual): Thank you very much for this invitation to assist with the important work of this joint committee.

Although I am a member of the Public Order Emergency Commission's research council, I should stress that I am speaking only in my individual capacity and, indeed, I am not privy to the commission's internal deliberations as it prepares it report.

I have written about the events leading to the declaration of emergency, both in my book *Canadian Policing: Why and How it Must Change* and in an article in a special issue, volume 70, number 2 of Criminal Law Quarterly, where Professor West also has an article.

In both of these venues, I suggest that the use of emergency powers was related to policing and policing governance failures. This is an important matter even when the Emergencies Act is invoked, because section 20 of the Emergencies Act preserves the existing and, I would submit, fragmented and dysfunctional governance silos of the local, provincial and national police.

Let me make three points. One is that, if you compare the police responses in Ottawa and Toronto, you will see that the Toronto response was more effective and reflected the lessons of the Morden report that there should not be watertight compartments between policy and operations, something that was inelegantly referred to more than once in the emergency commission as "church and state".

This lesson should have been learned long ago, at least since the 1981 McDonald commission, which, like the Supreme Court in its 1999 decision in Campbell and Shirose, stressed that police independence is limited to the ability of every police officer to make law enforcement decisions about whom they will arrest and investigate. Everything else, in my view, is potentially a matter that the responsible governing authorities, the democratically accountable authorities, can assume responsibility for. In a democracy, the police should not be self-governing.

My second point is to address Bill C-303, which is before Parliament. It is a good idea, in that it recognizes that the responsible minister can direct RCMP policies in the form of public directions. It has the potential to clarify police governance. Unfortunately, it continues to define police independence too broadly by exempting RCMP operational decisions, including day-to-day operations, from the ministerial directives. The term "operational" only occurs in policing laws in Ontario and Manitoba, and has indeed caused much confusion and the sort of under-governance that led to the Ottawa police board's having no published policies before the convoy arrived about how to police protests on Wellington Street. They had policies on labour protests and on indigenous protests, but no public policy on Wellington Street.

My final point is that we need such policies. We need to think creatively about these policies, including how to use barriers as a means to reconcile the right to peaceful protest with human safety.

I would urge this committee to be creative and to explore the suggestions of former Senator Vernon White about a redesign of Wellington Street. I would also urge you to consider giving the RCMP a clear lead in policing the parliamentary precinct and border crossings, but only if its governance and resource policies are addressed.

Bill C-303 could be part of this reform, but only if its overbroad definition of police operational independence is rejected through an amendment, one limiting police independence. Police independence should also be defined so that it does not impede the ability of police leaders to control and manage their organizations. Again, this can be done if we limit it to law enforcement discretion.

I would be happy to answer any of your questions. I have particular concerns addressed in my Criminal Law Quarterly article about some of the elements of the events with respect to the Emergencies Act.

Thank you very much.

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

We will now go to Professor West for five minutes.

The floor is yours.

Dr. Leah West (Assistant Professor, Norman Paterson School of International Affairs, Carleton University, As an Individual): Thank you very much, Chair, for the invitation.

In the short time I have with you today, I'd like to focus on two issues of statutory interpretation that I think are exceptionally important to this committee's work.

The first is a reference to the CSIS Act and the definition of "public order emergency". The second I may not get to, I admit. It's the "any other law of Canada" criterion in the definition of "national emergency".

Before getting into the specifics, I think it's important to set the stage with the modern principle of statutory interpretation and a few core rules.

The leading and well-established Supreme Court precedent on statutory interpretation comes from Rizzo—

● (1850)

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin (Rivière-du-Nord, BQ)): Mr. Chair, could you ask the witness to speak a little more slowly, please? I have the feeling that the interpreters are having trouble keeping up.

Thank you.

[*English*]

Dr. Leah West: Sure.

The Joint Chair (Mr. Matthew Green): Did anybody else have issues with the interpretation?

Feel free to back it up a little bit if you want. You're only a minute in.

Dr. Leah West: It's all right.

Mr. Larry Brock (Brantford—Brant, CPC): Chair, I have a point of order.

Can the witness back it up a little bit, so we have the proper context, please?

The Joint Chair (Mr. Matthew Green): Would you mind starting from the beginning?

Thank you.

Dr. Leah West: The first point I would like to address is the reference to the CSIS Act definition of a public order emergency, and the second, which I hope to get to—but if not, in questions—is the definition of "any other law of Canada" and those criteria in the definition of national emergency.

Setting the stage, the principle of statutory interpretation, or the modern principle we apply, was set by the Supreme Court in 1998 in a case called Rizzo & Rizzo Shoes Ltd. It has really become a mantra. The quote reads:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

There are a few assumptions that underlie statutory interpretation using this principle. One of the clearest is the presumption against tautology, meaning that every word in the act must be given meaning. Every feature is deliberately chosen to play a role and there is no unnecessary or meaningless language in statutes. The legislature does not make the same point twice.

A second presumption is that of consistent expression. It is presumed that the legislature uses words and patterns of expression in a consistent way. Once the legislature adopts a particular way of expressing something, it avoids variations and prefers to express the same meaning in the same way.

Of course, undergirding all of this is the concept of the rule of law, which means, in part, that the law as written has to mean something tangible, articulable and discernible to those who read it and are subject to it, and those tasked with interpreting it, so that those who exercise power given to them through the law cannot do so by whim, abuse or prejudice.

This brings me to the definition of a public order emergency. The plain text of section 16 states that a public order emergency "means an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency." "Threats to the security of Canada" is then defined in the act for the sake of that portion of the Emergencies Act. Section 16 states that the phrase "has the meaning assigned by section 2 of the Canadian Security Intelligence Service Act", the CSIS Act.

Just looking at this provision, the statute tells us not only that the EA incorporates the words in section 2 of the CSIS Act, but that it also incorporates the meaning assigned to it under that act. As we know, and as I just said, every word used in a provision has meaning and its use is deliberate.

This understanding is consistent with the clear intention of Parliament. During the debates over the act, much of the concern around the Emergencies Act was the ability to invoke the act to quell public dissent under a public order emergency. Moreover, we know that during the FLQ crisis, the War Measures Act was deployed against politically motivated terrorism, so, not surprisingly, this section of the act got a lot of attention.

In response to those concerns, it was made clear that only protest and violence that meet the definition of a threat to the security of Canada as defined in the CSIS Act, and then only those threats that also meet the definition of a national emergency, could form the basis for a declaration. This is what the bill's sponsor, Perrin Beatty, referred to as a "double test". He also reminded members of the House who were concerned with how broad and vague the CSIS Act definition is that this definition had received exhaustive scrutiny by Parliament.

Thus, we know from both a plain reading of the text and the clear intention of Parliament that the meaning of "a threat to the security of Canada" comes from how it is understood and applied in the CSIS Act, and the breadth of the CSIS Act definition—which is, I would argue, quite broad—is then narrowed through the definition of a national emergency.

I would also put forth that there is nothing in the other elements or provisions of the Emergencies Act that is inconsistent with this understanding or calls into question this interpretation.

Additionally, the incorporation of section 2 of the CSIS Act is actually not unique to the Emergencies Act. The same move is made in the Security Offences Act, the Access to Information Act, and the Privacy Act. In each of those acts, who is doing the interpreting, in terms of what meets the threshold, is not necessarily CSIS. In the case of the Security Offences Act, for example, it is the Attorney General, when deciding when to seize jurisdiction from the provinces.

Finally, I want to reiterate that the requirement is that the national emergency arises from a section 2 threat. This is a causal requirement, meaning that what is a national emergency of an urgent, temporary and critical nature, and beyond the provinces, arises from threats of serious politically motivated violence—meaning that economic or reputational harm and all the other things that we certainly saw as a result of the crisis in Ottawa and across this country have to be the result of serious threats of violence as understood in the CSIS Act.

● (1855)

I know that I'm now over time. Hopefully, in questions, I can talk about what "any other law of Canada" means.

Thank you.

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

We will now begin our five-minute segments of interventions with Mr. Motz.

Mr. Motz, you have five minutes. The floor is yours.

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

Thank you, Dr. West and Dr. Roach, for being here.

Since you didn't get to complete your opening remarks, could you table those with the committee at the end of today so we could have access to those, please? Thank you so much.

Dr. West, you indicated publicly that a national emergency is a public order emergency that can't just arise from incompetence in various municipalities or provinces. It has to arise from a threat to the security of Canada, which typically means terrorism or violent extremism, to meet the threshold to invoke the act.

Have you seen any documents, anything you've looked at since the invocation, that this threshold was met?

Dr. Leah West: Well, I don't think it's fair to ask me that, because I haven't seen all of the intelligence that was relied upon by CSIS or the cabinet—especially the cabinet—to make that decision.

My point was then—and I would make the same point now—that the key is that the threat to the security of Canada has to be what drives the emergency, rather than it being the by-product of the emergency. That was really the key of what I was trying to say. There should be a causal connection there—that's how I interpret the statute—rather than it being something that happens as a result of another reason for the emergency.

Mr. Glen Motz: That's fair enough.

One of the things that I find very concerning, and that I think many Canadians do, is the precedent that will be set once Justice Rouleau releases his final report. He essentially will either agree with or disagree with the government's expansion of the CSIS definition and the threshold that served as a foundation for the rationale for invoking the Emergencies Act.

Dr. West, can you speak to why it's so important that future governments be constrained by law—like the CSIS Act—when it comes to using the Emergencies Act?

Dr. Leah West: Yes. I think the rule of law requires, especially where the legislature speaks and does constrain the power of the executive, especially in times of crisis, that the executive adhere to those constraints imposed by the legislature.

I think the Emergencies Act has incredible amounts of discretion for the executive, and that would be how anyone would interpret it: whether or not they had reasonable grounds to believe a threat to the security of Canada existed and then whether it was necessary. They have incredible amounts of discretion there, but when Parliament has chosen to be very narrow—in this case, in its use and the definition of threats to the security of Canada—it's important that be respected because it was a deliberate choice, and the rule of law is the backbone of what makes us a liberal democracy that thrives on the rule of law.

Mr. Glen Motz: Okay. That's fair enough. Thank you for that.

One of the things I found interesting was that at one point you actually tweeted that in your opinion there were holes in the Prime Minister's legal analysis. Can you expand on what you meant by that or on what that means in your opinion?

Dr. Leah West: My understanding of what the Prime Minister said when he testified before the POEC was that he took into account different considerations than CSIS did when making the determination as to whether or not the definition of paragraph 2(c) was met, and he also viewed paragraph 2(c) to be more broad.

I don't think he said that. I think he said something to the effect.... I think the CCLA had him acknowledge that the thresholds were the same, but then subsequently, when asked what factors led him to believe that paragraph 2(c) was met, he listed a variety of threats, violence and weapons, etc. that he relied on to make that decision. I suspect that CSIS would have also relied on all of those factors when making its assessment. It didn't seem to be anything that would not have been subject to CSIS's consideration.

● (1900)

Mr. Glen Motz: Okay. If I'm understanding you correctly, the broader interpretation that we are left with—that we haven't seen—could include the same sorts of things that CSIS was reasonably looking at. Is that what your assessment would be?

Dr. Leah West: Yes. It was the fact that he suggested that he viewed the standards to be the same between the CSIS Act and the Emergencies Act, but that he relied on different factors. But then the factors listed are factors that would have been considered by CSIS.

Mr. Glen Motz: And what CSIS said was that there was no threshold under section 2...to meet the threshold to invoke the Emergencies Act.

Dr. Leah West: Yes, that's my understanding.

Mr. Glen Motz: Thank you very much.

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

We'll now move on to Mr. Virani.

Mr. Virani, you have five minutes, sir. The floor is yours.

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

Thank you to both witnesses for their testimony. I'm going to direct my questions to Professor Roach.

First of all, it's nice to see you, Professor Roach. By quite a coincidence, we have two U of T law alumni here at the committee, at least two.

I'm going to ask you about three areas of questioning.

You mentioned some of the things you've written about. There are a couple of things of yours that I've read. I'm going to quote to you some of the passages in an article called “The Dilemma of Mild Emergencies that are Accepted as Consistent with Human Rights”, which appeared in a German publication. It touched upon something that you identified a bit in your opening. I want to take you to it.

It's about this idea of possible areas for improvement and the idea that policing is multi-jurisdictional, particularly in a federation like Canada. What you said in that article is this:

> One limit of the inquiries triggered by...the Emergencies Act is that they are limited to examining the federal government’s actions, whereas the roots of the Ottawa occupation and the Windsor blockade are in failures of local policing, including planning for protests. There is no requirement that Ontario, which has ultimate jurisdiction over the local Ottawa and Windsor police, will call a similar inquiry. This is an omission given that emergencies are defined as something that exceeds the capacity of the province.

I know you're intimately familiar with the inquiry that Justice Rouleau was leading. We actually saw an effort to have the Premier of Ontario come before that inquiry, which was then subject to some litigation that was successful from the perspective of the premier's not being interested in participating.

Can you tell us, from your perspective, what you would recommend that we should be doing as a committee to try to rectify this situation, given the constitutional parameters that we're operating under or the division of powers? Going forward, how would you see future inquiries involving by necessity all three levels of government when there is an emergency such as this that gets triggered?

It's over to you, Professor Roach.

Prof. Kent Roach: Thank you very much.

You're quite right that the premier and the solicitor general did not testify and successfully invoked parliamentary privilege, so that's obviously a problem going forward, but I was actually surprised at the level of provincial and municipal buy-in at the Rouleau commission.

It seems to me that the only way the federal government can control that is by giving the federal government and federal policing a lead role in those areas, whether it be the parliamentary precinct or border areas. I think that's really the only way the federal Parliament can respond to this interjurisdictional nature.

Professor West mentioned the Security Offences Act, which is not well known enough, but we actually do have precedent for federal pre-emption of provincial areas in the national security area. This might be an area for you to consider if you want to ensure there will be full accountability for future emergencies should they develop around these same areas of federal interest.

Mr. Arif Virani: Let me explore that with you. I have about a minute and a half left, I believe.

Your article also talks about intelligence failures and policing failures, and links the two in that same article. It talks about underestimating right-wing extremism to the detriment of...overestimating things like “al Qaeda and Daesh”, for example, and then the policing failures that might follow therefrom, because ultimately this was a policing issue.

What would you recommend in terms of what we should be doing with respect to policing failures? I note that your article also talks about how indigenous or racialized protesters are sometimes treated versus how these blockaders were treated for three weeks in Ottawa and perhaps some of the biases that were involved. Could you elaborate on that point?

● (1905)

Prof. Kent Roach: Yes, the OPP operational handling has actually gotten a lot of praise. I'm not going to join that bandwagon. My concern is that intelligence operations started with respect to indigenous occupations. Also, some of the product we've seen uses phrases like “the patriot movement”, which don't really seem to me to strike down.

Although the RCMP and CSIS are subject to fairly rigorous scrutiny by NSIRA, the OPP and municipal forces, when they collect intelligence, are subject to very limited scrutiny, only by the Ontario independent police review director, if that person has enough resources to do systemic reviews. My understanding is that they don't.

Again, this may be another reason for the federal arms to play a lead role, because we cannot guarantee adequate levels of accountability at the provincial level.

[*Translation*]

The Joint Chair (Mr. Matthew Green): That concludes this round of questions.

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

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

Hello, Ms. West, and thank you for being here today.

I heard your answers to the questions from my colleague Mr. Motz regarding the justification for declaring an emergency. I thought I understood that you were not in a position to determine whether it was justifiable or not, given that you did not have all the evidence.

Ms. West, some people have stated the hypothesis that this was an emergency that justified invoking the act based on a legal opinion that is supposed to have been given. Do you consider it essential to read the legal opinion? Is your knowledge of the events sufficient alone to determine whether there was a threat to the security of Canada or not?

[*English*]

Dr. Leah West: To read the legal advice would help me understand if my interpretation of the act has any holes in it. I came to watch what happened, the invocation, and adjudge everything from it based on my reading of the act. As someone who's written about it before it was invoked, as someone who has advised on it during COVID, I have a clear understanding, in my mind, of what it means.

I'm not saying that there could not be some sort of legal precedent out there that could potentially change my mind. I would have to read that to see whether or not I would concede anything. That would be the value in reading the legal opinion, to see whether or not the common understanding of the act, and especially section 16, could give way to a different interpretation, as suggested by the government.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin) : Based on what you already know about the situation, do you believe that there was a threat to the security of Canada, yes or no?

● (1910)

[*English*]

Dr. Leah West: No.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin) : It is often argued that the definition of an emergency has to be interpreted more broadly than the text of the present act.

What do you think should be the biggest difference in how that definition could be interpreted, keeping in mind that it is in a situation where there is a wish to declare an emergency? There is the text as it stands, which you are familiar with, but if we interpret it very broadly, in your opinion, how far can we go in drawing valid and justifiable conclusions?

[*English*]

Dr. Leah West: That's an interesting question.

I think the definition, as it stands, is already quite broad. I think that reflects the concerns of opposition MPs, the Canadian Civil Liberties Association and the Canadian Bar Association when the act was first introduced.

The definition of “threat to the security of Canada” is intentionally broad and somewhat vague, because CSIS is an agency that needs to be able to interpret potential threats, things that are not quite there yet and things that are hard to discern. Having very firm lines around what is and is not up for a potential investigation, as in the context of a criminal investigation, is something that is avoided by having more broad and vague language, as is used in the CSIS Act. It's not so vague as to not denote anything, but it is quite vague.

To say how broadly we can interpret it.... I have a hard time with any broadening of it, especially when we talk about paragraph (c) under the definition of “threats to the security of Canada” in section 2. What we're talking about here is terrorism and violent extremism. These things are already quite hard to put your hands around, to understand what is or isn't violent extremism, for example. To say that as we currently understand it we could interpret it even more broadly, I don't see where there is a limit. I think we have to rely on the text.

Where there is discretion is in that weighing of the factors to decide whether or not that definition is met. It's not what the words themselves mean.

The Joint Chair (Mr. Matthew Green): I did allow the intervention to go longer, because I think it was important. That was five minutes.

Professor Roach, could you please lift your mike up a little bit, for the purpose of the sound?

Senator, would you be able to take the chair while I do my intervention for five minutes?

The Joint Chair (Hon. Gwen Boniface (Senator, Ontario, ISG)): I would, absolutely.

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

Professor West, you acknowledged that your legal opinion is based only on the information that's been made publicly available. You suggested that further scrutiny to know what the government knew and how they reacted to it would help in your legal analysis on whether or not the government made the right choice. Is that correct?

Dr. Leah West: That's correct.

The Joint Chair (Mr. Matthew Green): Professor Roach, do you share that same opinion?

Prof. Kent Roach: Yes. For example, it's been mentioned that the OPP had undercover operatives in the Ottawa protest. We don't know what they came up with. I really think that you can only fully investigate this if you do so in a manner that is in camera, subject to national security confidentiality.

I would add that I think that, moving forward, you should consider that an inquiry would have powers to go behind solicitor-client privilege. NSIRA, for example, has those powers.

The Joint Chair (Mr. Matthew Green): I would put to you that Parliament has those powers, that the convention of cabinet confidence is only a convention and that ultimately we're the grand inquisitors of the nation.

The point I want to make is more on the legal opinion. This has been a challenge, even for this committee with our parliamentary privileges. It's getting access to the legal understanding in order for our own process to take due course to be able to provide analysis.

I'll put the question to you and ask if you can answer it briefly.

Professor West, would you benefit from having the internal legal opinions of the government made public for scrutiny by subject matter experts like you and by the public?

● (1915)

Dr. Leah West: Yes.

The Joint Chair (Mr. Matthew Green): Professor Roach, would you agree that a legal opinion would be valuable in terms of looking forward on this topic, regardless of what side the issues are on?

Prof. Kent Roach: Absolutely.

The Joint Chair (Mr. Matthew Green): You mentioned the notion of “any other law of Canada”. I do want to give you the opportunity to speak to that, Professor West. I'm curious as to why you brought it up. I'm not clear about where you were going with it.

Dr. Leah West: Yes, “any other law of Canada” means any other federal law. It does not literally mean any other law of Canada. This was decided by the Supreme Court in Roberts, in 1989. That case involved interpreting section 101 of the Constitution. It includes federal statutes or federal common law.

Typically, federal legislation says any law of Canada or of a province or “any other law” if it's used to denote wider application. The reading of “any other law of Canada” makes more sense in this if you look at paragraphs 3(a) and 3(b) of the definition as well. Paragraph 3(a) would become redundant, because it already says it has to be beyond the authority and capacity of a province. Paragraph 3(b) doesn't have anything to do with provincial jurisdiction.

Realistically, once the executive has decided that the criteria under the chapeau of paragraphs 3(a) and 3(b) are met, all they need to look to, then, is whether or not there are other federal statutes for them before they invoke the Emergencies Act.

The Joint Chair (Mr. Matthew Green): I have to say that I regret not inviting you to this committee earlier, because that is a significant interpretation that I don't think we had been made aware of.

Just so we're clear, and for the purpose of the record, you're suggesting in that analysis and that legal opinion that regardless of the fact that there was a breakdown municipally with the local police here and regardless of the fact that provincially they had tools, both through the Ministry of Transport and perhaps some other incentives for the truckers to leave the occupation, that really doesn't matter. Even if those remedies were available but not used, as you understand the act it is only the federal laws or regulations that had been exhausted.

Dr. Leah West: That first part goes to.... If you're invoking under paragraph 3(a), that goes to the authority and capacity of the province. You should be looking to see whether or not there are other authorities for the province to remedy the situation.

Once you've decided that the province or the municipality doesn't have those authorities and you've decided that the definition is met, the federal government only needs to look at its federal tool belt.

The Joint Chair (Mr. Matthew Green): I want to get very clear about that first point. Even if they have the authority, is it your opinion that if they have the authority, but don't use it, it's the same thing? This, for me, is the practical crunch of the matter. Having the law and then having an effective failure of policing I don't think was contemplated by Perrin Beatty when this was. Would you agree with that assessment?

Dr. Leah West: I would agree that the Emergencies Act contemplates everyone doing their jobs. It does, however, say “authority” or “capacity”. If for some reason they don't have the capacity to fulfill their duties or use their authorities, that's a separate question, because it does say “authority” or “capacity”. It does not need to be both.

The Joint Chair (Mr. Matthew Green): Got it. Thank you very much for that. That's great for my own analysis on this.

Senator Boniface, you have five minutes. Oh, you were timing me too.

We have great co-chairs at this committee, by the way.

Thank you so very much and thank you for the little bit of extra time. I noted that.

Senator Boniface, you have five minutes. I have taken back the chair and the floor is yours.

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

Thanks to both of you for being here. I agree with the chair. It's important to have your presence and your views, so thank you for taking the time.

I'm going to address my first comments to Professor Roach.

First of all, thank you for your comments. I'm particularly interested in some of your references to police and police jurisdiction and the role of the province. I'd be interested in your giving a better sense, if it had been a perfect world, of what you would have expected in terms of the role of the province.

Prof. Kent Roach: I would look to the Toronto example, where there were barriers put in place that protected the critical infrastructure of the hospital. There was a full briefing by a police board, which the mayor actually sat on, and there wasn't the sort of disarray that you saw both in the Ottawa police and in the Ottawa Police Services Board.

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

When it comes to directing operations, which you're very familiar with and which I think you covered in your book as well, we heard that here as well, in terms of what I think is a misunderstanding by people in political areas of the role of the operations of police and where they can intervene and when they can't. Can you elaborate a little on that? That's a fundamental question here in terms of responsibility.

● (1920)

Prof. Kent Roach: Absolutely. I mean, if the police have complete operational independence, then they're essentially self-governing, and they're restrained only by the fact that we have good police that are generally restrained.

To go back to the McDonald commission, they always said that policy of operation was a matter for the responsible minister, but it's too easy for the responsible minister or the police service board to say, no, that's a matter of operation. That's why I was quite distressed to see again in Bill C-303, which I think is a worthy effort, this mantra of operational independence, which is extremely confusing. Justice Morden had to devote 100 pages of legal analysis to try to elucidate it, and his messages obviously didn't make it to the Ottawa Police Services Board.

The Joint Chair (Hon. Gwen Boniface): You will agree with me that certainly in the Ipperwash Inquiry, which you and I are both familiar with, this was actually one of the fundamental questions—the ability of politicians to direct the police. Some information out of that may have been helpful to this issue.

Prof. Kent Roach: Exactly. The part of Bill C-303 that I think is good is that it picks up Justice Linden's recommendation with respect to how this is going to be an area that will change over time, and when the responsible political authority assumes responsibility, they should do so in writing and there should be a presumption that what that direction is will be made public. I think Bill C-303 is going down the right route.

One of the things Justice Linden said was that there's no one-time solution between policy and operation or church and state. It really is a dynamic contextual issue. In a democracy, we have to make sure that ultimately policies are set or not set, as the case may be, by those over whom we can have some democratic accountability.

The Joint Chair (Hon. Gwen Boniface): I want to pick up on your comments around intelligence—particularly, in this case, intelligence collected by the police. Because that is shared among three levels, what would you suggest in terms of oversight or review that might be beneficial in terms of those sorts of issues?

Prof. Kent Roach: I think if there was some formal coordination that included the federal involvement, then you would ensure that NSIRA and the National Security and Intelligence Committee of Parliamentarians could at least have some review over that. The problem is that there is nothing like NSIRA or the National Security and Intelligence Committee of Parliamentarians at the provincial or municipal level. Therefore, you have an accountability gap.

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

[*Translation*]

Senator Carignon, the floor is yours for five minutes, please.

Senator Claude Carignan: My question is for Professor Roach.

It has been said that the measures taken under the Emergencies Act were subject to the Canadian Charter of Rights and Freedoms and there was nothing to worry about since the Charter applied.

What do you think about the restraint order freezing the bank accounts of people who participated in the convoy in Ottawa? Did those seizures violate section 8 of the Charter? In the Supreme Court of Canada judgment in Laroche, it was held that a restraint order was a seizure.

● (1925)

Prof. Kent Roach: Thank you for your question.

[*English*]

Anyone can say that things are charter-proof. I've written extensively about how the charter sets only minimal standards, but there were many aspects of the emergency order, not only the financial aspects, that I think could be charter-suspect. Being able to seize or freeze assets without any discernible due process is something that could be vulnerable. There is also the use of the “breach of the peace” concept in the second part of the regulation, but we actually don't have an offence of breach of the peace, and it is vague. So I would not be willing to write a clean bill of health, with respect to the charter, for either the financial or the protest-related measures.

Similarly, the definition of interfering with trade as an offence is staggeringly broad. I think it's important that we apply the charter standards, but the fact is, that's never going to happen before a court, and just because the government says something is consistent with the charter, that doesn't mean it is.

[*Translation*]

Hon. Claude Carignan: I heard an argument that made my hair stand on end.

Prof. Kent Roach: Me too.

Hon. Claude Carignan: I imagine!

Obviously, there has to be some action by the state or the government. However, people have said that because they were not the ones who seized the accounts, it was the banks, this was not a search or seizure.

What do you think of that argument? Does it have the same effect on you as on me?

[*English*]

Prof. Kent Roach: Yes. It is technically true that the charter only binds the state, but there are section 8 decisions under the charter where the fact that the nurse got the blood sample as opposed to the police officer does not immunize something from the charter.

Of course, in the area of financial sanctioning, the use of financial institutions at the direction of the state, I think, could very well be subject to charter scrutiny. I think the courts will be sensitive to the fact that if they hold the opposite, then it really does create a pretty large accountability gap, because so much in the area of financial sanctions or indeed surveillance is now done by the state directing the private sector.

I think our courts are aware of this and interpret the charter in a broad way, in part because they don't want to provide governments with incentives to basically say, “Here's someone not subject to the charter. Why don't you go and do our dirty work for us?”

The Joint Chair (Mr. Matthew Green): That does conclude the five minutes.

[*Translation*]

I'm sorry.

[*English*]

We will now go to Senator Harder.

You have five minutes, sir, and the floor is yours.

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

My first question is for Professor Roach.

Professor, you've argued that Canada has not taken the threat of far-right extremism seriously enough. In the wake of the convoy protest, can you elaborate on where we've fallen down, what threats we must consider going forward, and whether or not we have the legal tools to deal with the threats as you see them?

Prof. Kent Roach: Thank you, Senator Harder, for that question.

I think CSIS came very late to recognizing that violent extremism, particularly from the far right, was taking far more lives than terrorism inspired by al Qaeda or Daesh. Again, when we evaluate CSIS's determination that there was not a threat to the security of Canada, we have to recognize that it was coming fairly late to that game. I'm not saying whether that means they were right or wrong, but I think it is relevant.

Since that time, there has been.... Again, in Operation Hendon, you see in references to the “patriot movement” an assumption that the far right in Canada will be very similar to the far right in the United States. There are certainly transnational dimensions to this that we've unfortunately seen in New Zealand, Buffalo and elsewhere, but I think we need to develop a much more sophisticated understanding of ideologically motivated extremism.

I would expect that to come mainly from CSIS, as opposed to the police. From the lessons of the McDonald commission, police are not trained to have the sort of political skills to do intelligence, and particularly saying when extremism, which I think is something we shouldn't necessarily be extremely concerned with, passes into violent extremism. That's not necessarily a call that I would expect the police to be best suited to make. I would rather have CSIS making that call, subject to ministerial direction and subject to all the oversight that comes with it.

Do we need more legal tools? I think that really remains to be seen. I don't think.... I agree with Professor West that there are lots of people in the security establishment in the federal government who want to expand section 2 of the CSIS Act. Well, you're supposed to do that before, not through interpretation. I agree with Professor West that this is kind of basic in a rule of law state, but I also think this is not something that should be undertaken on the fly. It is extremely serious, especially given the new powers we've given to CSIS to engage in threat reduction. Maybe we need to go back and really rethink the entire CSIS-police distribution.

We also know through the RCMP's institutional report to the commission that it has four different intelligence sections, including on ideologically motivated extremism. The civilian review board is not going to be able to keep up with that, especially when it has to deal with CBSA. I hope NSIRA and the National Security and Intelligence Committee of Parliamentarians are taking a hard look at that from both a rights perspective, that we're not branding extremism as something that should be subject to intelligence, but also from the efficacy point of view, that we're actually doing it with the needed resources and skills that are required.

I'm sorry for the long answer.

● (1930)

Hon. Peter Harder: It was a long answer, but it was very worthwhile.

Mr. Chair, do I have time for another question?

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

Hon. Peter Harder: Very quickly, then, I'll turn to Professor West.

Director Vigneault testified before the committee, as you well know, with respect to his view of the legal framework for the action that was undertaken. Are you disputing his testimony?

Dr. Leah West: No. Director Vigneault said that he was not of the view that what he witnessed was a paragraph 2(c) threat. He was provided legal opinion that told him he could take a broader view of paragraph 2(c), and then, based on that, provided his advice as an adviser on national security. I think that's permitted.

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

Since Senator Patterson is not here, we will go on to the next round, which is a four-minute round.

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

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

I'd like to thank both professors for their attendance today.

Dr. West, the Prime Minister promised Canadians, when he formed government, that he would run an open and transparent government. He agreed to co-operate fully with Justice Rouleau when asked to testify, yet he and his cabinet have hidden behind the principle of solicitor-client privilege in not releasing the legal advice he received.

A "just trust us" argument is unacceptable to Canadians. Without the benefit of that opinion, you opined in a legal article—which was co-authored by yourself, Michael Nesbitt and Jake Norris—in the Criminal Law Quarterly that:

> to have properly justified the declaration of a public order emergency, the government needed to base its invocation on three novel, unconventional, and previously unanticipated ways of interpreting this legal threshold

Can you opine on that? My secondary question to that is with regard to how this article was written before all of the evidence was heard. Does your opinion still stand? If not, how does it differ?

● (1935)

Dr. Leah West: It changed slightly, because we wrote that on the basis that paragraph 2(c) of the CSIS Act was being interpreted as we would interpret it. That's what we were assuming, that when cabinet read paragraph 2(c), it read it the same way that we would have. Not having any evidence at the time the article was written that there was such serious violence or threats of violence that would amount to paragraph 2(c), we said that there must be some novel way of interpreting what "serious violence" means. Based on the section 58 justification, we looked at what was there, and it was serious economic harm in particular.

Now we've heard that it wasn't the serious economic harm, that it wasn't intelligence or evidence that wasn't available to the public, but that it was a different definition of paragraph 2(c) that was relied upon, and that was something we had not anticipated when we wrote that article.

Mr. Larry Brock: Okay.

You appeared on CBC's *Power & Politics* on a number of occasions during the Rouleau commission, and a question put to you and another professor asked what we learned from the Prime Minister's testimony.

I also looked at your Twitter feed, and in a tweet around that same time frame—this was probably during the day or perhaps a day after the Prime Minister testified—you said that Trudeau, the Prime Minister, was making a compelling argument if you're not a lawyer. Please expand on that.

Dr. Leah West: It's a lot to unpack. Basically—

The Joint Chair (Mr. Matthew Green): You have one minute, Dr. West.

Dr. Leah West: Yes, thank you.

What I heard and what I've heard all the way through—as someone who's trying to take the facts and the understanding and apply them to the law—is a lot of facts being applied to different elements of the definitions, but they're not ever necessarily in the right order. You don't meet the first hurdle before you get to the next one before you get to the next one. They're all kind of just applied as if there isn't a structure to the act, so you get facts that talk about one element of the definition and then facts that talk about another. However, they don't really lay it out in terms of "you have to meet this threshold, then this one and this one".

So, I think if you're just reading the act and aren't someone who's a statutory interpretation nerd, you look at it and think, "Oh, well, all of the things here match up with all of the things that are in the act, so that makes sense", but that's not the way the statute is laid out. There's a series of thresholds that need to be met, and each word matters. That's why I found it compelling, but not if you're looking at it through the eye of someone who is keen on statutory interpretation.

The Joint Chair (Mr. Matthew Green): For those who may be keeping track, I am allowing the witnesses to finish their thoughts and their answers.

Your intervention has been completed.

We will now pass the floor over to Ms. Bendayan, who has four minutes.

The floor is yours.

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

I'll continue along this line of questioning, Professor West.

Earlier in your testimony, you indicated that you obviously don't have all the facts, because you're not privy to a lot of the security and intelligence information, among other things. Just now, you testified that you're applying the facts to the law, but you would agree that you don't have all the facts.

Dr. Leah West: I don't.

Ms. Rachel Bendayan: I also looked at your Twitter, and we seem to have picked up on the same article of November 30, last week, where CBC reported more details about the murder plot in Coutts, Alberta, where pipe bombs and more than 36,000 rounds of ammunition were seized by the RCMP there.

In the CBC story were mentions of unsealed search warrants that included text messages between those charged and "the bosses", who told the charged men that "the real goal for the protests included altering Canada's political, judicial and medical systems."

You tweeted about this story. In your tweet, you say, "Curious as to why these men are not charged with terrorism offences." I was wondering if you could provide us with your insights into what you were referring to and, in particular, the danger of ideologically motivated extremist violence.

● (1940)

Dr. Leah West: Certainly. The definition of "terrorist activity" is the basis for a number of terrorism offences in the Criminal Code—which is different, I would say, from what is in the CSIS Act definition. It's much narrower in the Criminal Code and requires three things: an intent, a motive and a certain level of action.

I think, based on the information obtained and conveyed in those articles, that it seems there is evidence to support all three of those requirements. That's why I asked why terrorism offences weren't added to the charges, subsequently, after they were laid.

Ms. Rachel Bendayan: Thank you, Dr. West.

I'll move now to Professor Roach.

There are two articles—among many more, I'm sure—you published on this topic, Professor. I would like to refer to your May 12 article, where you state, "One issue that should be examined is whether CSIS failed to collect and share intelligence on whether there were links between the protests and far-right violent extremism. Canada's intelligence agency has been slow to accept far-right terrorism as a security threat", and you go on. I wonder whether, in connection with this article and that statement, you could provide your recommendations about how we might address that—perhaps in writing to the committee, because my time is very limited.

I will also point you to your February 14, 2022 article, which was, of course, at the height of the occupation. You stated, "The RCMP acting as federal police only has jurisdiction over actual federal property. It is the local police that is responsible for the public street...that runs in front of the Parliament building and the main highway in Windsor leading to the Ambassador Bridge. Such arrangements should now be reconsidered."

Again, thinking towards the recommendations this committee will make, could you provide your thoughts to the committee on those statements, as well as your statement—if I understand your testimony here correctly—to the effect that all of this is, essentially, the result of a failure in policing?

I'm not sure whether you would like to expand on any of those points in the short amount of time I have left. Again, if I could get your commitment to provide your thoughts in writing to the committee, we may benefit from them.

Prof. Kent Roach: As I suggested in my opening statement, thought should be given to giving the RCMP primacy with respect to both the broader parliamentary precinct and border crossings.

On the issue of far-right violent extremism and whether CSIS's response was adequate, I think that is something NSIRA or the National Security and Intelligence Committee of Parliamentarians should examine.

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

That concludes the round.

[*Translation*]

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

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

Ms. West, I am going to continue where I left off on the question of interpretation.

I don't want to criticize or support the legal opinion that some interlocutors have seen, since I have not seen it. In fact, it does not exist for us. Given that you and Professor Roach are here, I would like to verify a principle of interpretation.

As I understand things, when a statutory provision grants rights, it will be given a larger and more liberal interpretation, and when a provision instead takes away rights, it will be given a more restrictive and limited interpretation.

Am I correct in thinking this, Ms. West, or am I mistaken?

[*English*]

Dr. Leah West: Generally, that's correct, that if you're interpreting rights that are depriving someone of their liberty, their property, etc., you will read that more narrowly than if you are creating a positive obligation or a positive right for others.

I'll let Professor Roach—

● (1945)

[*Translation*]

Ms. Rachel Bendayan: Mr. Chair, I have a point of order. I didn't want to interrupt my colleague, I wanted to wait for the witness to answer.

My colleague seems to have insinuated in his question that members of the committee had seen legal opinions. I don't know whether he is alluding to my questions to the witnesses or to what other members have said, but no one has seen any legal opinion.

[*English*]

The Joint Chair (Mr. Matthew Green): When you call a point of order, it has to be specific to a standing order. That is not specific to a standing order. That is debate.

We will go back. You will have another round if you want to refute anything that's been said here in debate.

Thank you.

My apologies, Mr. Fortin. The time was stopped.

[*Translation*]

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

I was not presuming anything. I am simply saying that for the purposes of our work, there is no opinion, because everyone refused...

[*English*]

The Joint Chair (Mr. Matthew Green): We're into debate on a point of order. It's not necessary. I've ruled on the point of order.

Let's get back to it. Here we go.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): I will continue.

A provision had to be interpreted restrictively when it takes away rights.

With respect to invoking the Emergencies Act, which obviously leads to various orders and regulations in its wake, is it your opinion that this is a provision that takes away rights?

[*English*]

Dr. Leah West: Yes, certainly there were limitations on people's rights with the proclamation of the Emergencies Act, but I think it's important to take a step back and talk about what we are actually interpreting, which are the words under paragraph (c) of the definition of "threats to the security of Canada" in section 2 and then how that applies to the declaration of emergency.

That specific provision isn't giving somebody a right or taking their rights away. The typical rule in that context is not one that I think would have a lot of sway in either direction, because it's not that element that is either giving a right or taking it away.

I agree that it's the general context of the act, so you might want to consider that when you're thinking about the context of the act, which is to potentially deny people's liberties.

[*Translation*]

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

I will ask you the same question, Professor Roach.

In your opinion, must a statutory provision that takes away rights be interpreted restrictively? If so, in your opinion, must the provisions of the Emergencies Act that allow it to be invoked be interpreted as depriving people of rights?

[*English*]

Prof. Kent Roach: I agree that it did deprive them of their rights.

I also think it is jarring that CSIS didn't think the threshold in paragraph (c) under the definition in section 2 was met. Nevertheless, its director and subsequently the cabinet recommended the proclamation of an emergency.

I really think that—and again, this may lead to the legal opinion—much of it really depends on subsection 17(1)—

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): I'm sorry, Mr. Roach, I have only a few seconds left.

If I understood correctly, in your opinion, the opinion that the provisions of the Emergencies Act must be given a large interpretation is not a good thing.

[*English*]

Prof. Kent Roach: I think, generally, it wouldn't be a good thing, but you also have to remember subsection 17(1) of the Emergencies Act, which says, "When the Governor in Council believes, on reasonable grounds". To me, that may build in a margin of appreciation, but my basic point was that CSIS interprets paragraph (c) under section 2 rather strictly because it does infringe on people's rights.

I think CSIS is well aware of that, and I think that's quite appropriate.

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

The Joint Chair (Mr. Matthew Green): Okay. That does conclude the round.

Thank you very much.

I'll pass the chair to Senator Boniface for my five minutes. I mean four minutes. See, I was being generous.

The Joint Chair (Hon. Gwen Boniface): Go ahead.

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

It's important, for me at least, to get crystal clear about finding recommendations coming out of here. Having both of you here as subject matter experts is a very valuable source of that primary information that, ultimately, our committee will deliberate on.

Just to be clear, do you believe that the Emergencies Act, in its current context, adequately serves its intended purpose?

Professor West, go ahead.

● (1950)

Dr. Leah West: No.

The Joint Chair (Mr. Matthew Green): Professor Roach, go ahead.

Prof. Kent Roach: No, I don't. I would decouple the definition of "emergency" from "threats to the security of Canada". I think it's apples and oranges, because—

The Joint Chair (Mr. Matthew Green): I want to get into specificity, Professor. I appreciate it, but I don't have time in that regard. I want to know specifically what amendments you would propose to this committee.

Prof. Kent Roach: I would propose getting rid of paragraph 2(c) and going with a different definition of "public order emergency", keeping section 3. I would propose ensuring that the inquiry—and I know you believe that it's within your powers—would have access to solicitor-client privilege.

The Joint Chair (Mr. Matthew Green): For the record, we are the grand inquest, not inquisitors—I think that's Star Wars. I digress.

Professor West, in your opinion, what recommendations should we make?

Dr. Leah West: I would change the definition of “public order emergency” to remove emergencies caused by threat actors, which is essentially what it is now. If Parliament wanted to have the ability to respond to emergencies caused by terrorism, subversion, espionage, etc., I would think that you would still need to keep that tied to paragraph 2(c), but if you wanted a public order emergency to actually deal with public order emergencies and issues around potentially critical infrastructure, I would change the definition of “public order emergency” to meet those requirements.

Alternatively, you could have a public order bill like the one the United Kingdom has introduced in its legislature. That provides specific powers and different offences around critical infrastructure and threats created by public order disturbances.

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

You may have heard me, even in this meeting and other studies, talk about the practical failure of policing. It is not within our mandate or within our scope here to delve into that, but there hasn't been a royal commission on policing since 1962.

Professor Roach, I know you've written about unequal policing. I think it's fair to say, for many people on the outside looking in, that there was certainly a double standard applied to this particular group. Do you agree with my assessment that we ought to embark on a royal commission on policing to be able to unpack the responsibilities of police?

Prof. Kent Roach: Absolutely, I would agree. I would also look at reforming the riot act provision in the Criminal Code, which is archaic.

The Joint Chair (Mr. Matthew Green): In the dying seconds here, would you also support a royal commission on policing to be able to look at the mandates and the—

Prof. Kent Roach: Absolutely, and—

The Joint Chair (Mr. Matthew Green): I'm sorry. My apologies, Professor Roach. I want to quickly get Professor West on the record.

Prof. Kent Roach: I'm sorry.

Dr. Leah West: Oh yes. I think especially the structure of the RCMP needs to be reviewed.

The Joint Chair (Mr. Matthew Green): Do you mean just the RCMP?

Dr. Leah West: I mean the RCMP in particular.

The Joint Chair (Mr. Matthew Green): Would you agree with the statement, as it relates to the state of national emergency or the declaration, that it was all levels of policing that practically failed?

Dr. Leah West: Oh yes. The comment with respect to the RCMP wasn't tied directly to the Emergencies Act. It's just in general.

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

We now have Senator Carignan for four minutes.

The floor is yours.

[*Translation*]

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

My question is for Professor West and relates to the territorial nature and the difference between a localized emergency and an emergency that affects Canada as a whole.

I was reading the speeches by Perrin Beatty and he said, on November 16, 1987: "The emergency in question must affect the whole of Canada or be so great as to exceed the capacity of the provinces to cope with the emergency."

According to this, a localized crisis or localized situation would not meet the definition of a national crisis that would lead to the declaration of an emergency.

Can you explain your thinking on this subject?

[*English*]

Dr. Leah West: I would agree that's the case. I think that if we look to the definition of “national emergency”, either paragraph 3(a) or paragraph 3(b) is where that is made clear. It has to be an emergency that's beyond the authority or capacity of a province to deal with it. Second, paragraph 3(b) has to deal with something within federal or national jurisdiction that threatens “the sovereignty, security and territorial integrity of Canada”, writ large.

Could you have a national emergency that is more regional in nature and isn't truly all across the country? I think so, but the issue is that it has to rise to the level of something that is of national concern. That takes it beyond the provincial jurisdiction and concern up to the national level.

● (1955)

[*Translation*]

Hon. Claude Carignan: I'm sorry. Given that I don't follow you on Twitter, I can't use your tweets to ask you questions.

The mayor of Ottawa said he had declared a state of emergency, but that did not really give him any powers and it was symbolic. I don't know whether you are familiar with those comments. I know you are not an expert in municipal law, but according to your CV, you have a lot of experience with emergencies.

In your opinion, that declaration? Those measures, were they symbolic only or did they confer important powers?

[*English*]

Dr. Leah West: I didn't get the interpretation. I'll try to answer your question.

The measures are supposed to be necessary to end the emergency. I don't think anyone could make the argument that a measure or a symbol is necessary. Even using it as a communications tool of the severity of the issue and how we're preparing to deal with it.... I don't think that is what would rise to the level of necessity as required in the act.

[*Translation*]

Hon. Claude Carignan: The mayor said that declaring a state of emergency at the municipal level did not give him any powers. However, there are still powers to seize and confiscate. The mayor has a number of powers when he declares a state of emergency.

Can you tell us any more about that?

[*English*]

Dr. Leah West: That's fairly typical. Most municipal emergency powers are limited to what would typically fall within the jurisdiction of the municipality.

Where you really see the most teeth, all across the emergency legislation, is with the provinces. The provinces' emergency powers are by far the beefiest, compared to the municipalities and to the federal government, and that makes sense, because the tools to respond to what we think of as a typical emergency rest with the provinces. For example, policing, health services and emergency services are held at the provincial level.

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

We will now move on to Senator Boniface for four minutes.

The floor is yours.

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

Professor Roach, I wanted to go back to subsection 17(1), because you didn't get a chance to expand on that. We have not heard much about that at this committee.

Could you give us a little more information around that, and how it interacts with the balance of the act?

Prof. Kent Roach: Sure. I agree with Professor West that you need to have paragraph 2(c), plus section 3, but then subsection 17(1) says, "When the Governor in Council believes, on reasonable grounds, that a public order emergency exists and necessitates the taking of special temporary measures". It seems to me that the issue for cabinet, and the issue that may be explored in that legal opinion, is whether they have reasonable grounds to believe that a public order emergency exists.

My own view is that 2(c) is 2(c). It doesn't mean something different through the Emergencies Act if it's incorporated as it is in the Emergencies Act, whether that is a good idea or not. I think you've heard from me. What I would like to know is how the Attorney General of Canada interpreted that. There is this increasing deference to government decision-makers and expertise. I would like to see how the belief on reasonable grounds in section 17 was interpreted, but I also wish it was Christmas.

● (2000)

The Joint Chair (Hon. Gwen Boniface): I would like to take you back to your comments on the comparative of the situation in Ottawa and the situation in Toronto. I think we've heard evidence at this committee that Toronto had the benefit of the Ottawa experience.

Prof. Kent Roach: Well, yes, to a certain extent. We also know, however, that, whether it was through operation Hendon or the ITAC reports, Ottawa knew this was coming.

Therefore, I don't think it's simply "they had the benefit". I think they had the benefit of being criticized for what they did in G20 and actually got their house in order. They had a police service board and a police service that were working together functionally. They had a mayor who bothered to sit on the police service board and wasn't off on his own frolic negotiating with protesters.

I think a lot can be learned from the Toronto experience. I've said critical things about the police—you know that, Senator Boniface—but I also think we need to give credit where credit is due. There are two places where you should look to see what went right: what happened with the actual Parliament grounds not being breached—in light of what happened in 2014—and what was done in Toronto. I think those are significant successes.

Your committee should learn, in a balanced way, both from failures and from what has worked.

The Joint Chair (Hon. Gwen Boniface): I agree with you.

The one piece we also have to keep in mind.... Commissioner Carrique testified that—I may have my numbers slightly wrong—on one day, he had over a hundred incidents going at different points. I think we also, therefore, have to talk about capacity when we think about this, going forward.

Would you agree with me?

Prof. Kent Roach: Absolutely, but we also need to think about the Solicitor General in Ontario taking some sort of responsibility when it comes to those capacity issues.

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

That concludes the second round. We have the ability to do a third round.

A voice: Was Senator [*Inaudible—Editor*]?

The Joint Chair (Mr. Matthew Green): No, it was originally slotted for Senator Carignan. There were two senators in this round.

We are contemplating a full third round of five minutes, and I want to put that to the committee. I understand there are some people who want to split times, so I'm seeking the direction of the committee on proceeding with a five-minute round. Recognizing that Senator Patterson is not here, we will claim some of that time.

I know the guests have been here for quite some time, both in person and online, so I would also like to get direction from the committee on whether or not a five-minute health break might be appropriate. Do you want to continue to work right through?

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): Mr. Chair, personally, I have no objection to the committee continuing its discussions with the witnesses.

However, between 8:00 p.m. and 9:30 p.m., the committee was supposed to deal with upcoming committee business, which means we were supposed to consider motions. So if we agree to hold another round of questions, we are going to have less time to consider motions.

Have I understood correctly? The reason I ask is that the meeting is going to adjourn at 9:30 p.m.

[*English*]

The Joint Chair (Mr. Matthew Green): That is correct—with a bit of discretion on the bookend.

I'm at the direction of committee on what you want to do.

[*Translation*]

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

[*English*]

The Joint Chair (Mr. Matthew Green): We could go for less time, if you want to reclaim some of that. We could do four-minute rounds, perhaps. It is at your discretion.

You want four minutes. This is great, guys. Thank you for your co-operation.

We're going to go with four minutes and we will acknowledge the split times. For the parties that want to do split time, are you requesting a hard stop at two minutes? Do you want me to intervene, or just let you figure it out?

I'll let you figure it out.

Okay, thank you for allowing us to work out that bit of housekeeping.

That being said, we will begin the third round for four minutes with Mr. Motz.

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

Mr. Glen Motz: Thank you. I'll be sharing my time with Mr. Brock.

Dr. West, you stated, "We do not label entire protest movements terrorist because some amongst the protesters are looking for an opportunity to [leverage that protest to potentially] create violence." You also stated, "we have never labelled blockades and other non-violent but illegal means of obstructing critical infrastructure as terrorism...they do not fall within section 2(c) of the CSIS Act, no matter how broadly one interprets it."

Can you elaborate on those statements, please, for the next minute and a half?

● (2005)

Dr. Leah West: Sure. I was referring to the violent protests we've seen in the past, such as those at the G8 and G20, as we heard, and remembering the Summit of the Americas. In those cases, we know there were violent elements of those protest movements seeking to take advantage of the protests to advance their violent agendas, but we did not label or consider those protests "terrorist".

We've also seen a series of blockades, in this country's history, that were non-violent but illegal. We have refrained from calling them "terrorist", because they lacked that serious threat of violence. That's been proper, in my view.

Mr. Glen Motz: How would you classify the "freedom convoy"?

Dr. Leah West: I think it was a constellation of blockades and protests. I think we heard that the serious threats of violence, again, as in the past, came from those who sought to co-opt the movement to advance their own violent agendas. I've seen no evidence to suggest that this was the majority of the protesters or the ultimate aim of the protesters. I don't think that's much different from protests we've seen in the past.

While there may be those amongst them, certainly those in Coutts, who fall under the definition of terrorists and pose that threat, we typically don't label the entire protest movement as terrorist because of the actions of individuals.

Mr. Larry Brock: Thank you.

One of your colleagues from the law school at Queen's University, a professor by the name of Dr. Bruce Pardy, wrote an article today in the Toronto Sun. The heading was, "Invoking the Emergencies Act was clear overreach". He sets out examples as to why he forms that opinion. I don't know if either of you have had a chance to review the article, although that's not really relevant to my question.

This question goes to both professors, but I'll start with you, Professor West. Do you agree with that particular statement? If you don't, explain why.

Dr. Leah West: It's a little too definitive for me. As I said, my opinion is based on my understanding of the law. I stand to be corrected on my understanding of the law, but I haven't seen anything yet that shakes me from that.

If the act was interpreted more broadly, as a hook to use powers that were needed to dispel...the Emergencies Act, knowing that a tenuous legal position was being taken, I think that would be overreach.

Mr. Larry Brock: Thank you.

It's over to you, Dr. Roach.

Prof. Kent Roach: Yes. I tend to agree.

In response also to your colleague's question, I would say that even at Coutts, after those arrests, the blockade self-policed and took itself down. That's something that I think is quite important to bear in mind, because I agree with Professor West that we shouldn't go around branding people and whole groups as terrorists.

The Joint Chair (Mr. Matthew Green): We will now move over to Mr. Virani.

Mr. Virani, the floor is yours for four minutes.

Mr. Arif Virani: Thank you very much.

Professor Roach, with respect to the intelligence components, you've been asked a number of questions about this. I'm going to return to something you wrote about in one of your articles dated February 14 of this past year. It reads as follows:

> Canada has been slow to recognize violent far right extremism despite incidents of far right terrorism including a 2014 shooting rampage in which a man who wanted to overthrow the government killed three RCMP officers; a 2017 killing of five men at a Quebec City mosque by a man motivated by Donald Trump, David Duke, and anti-Muslim sentiment; a 2020 attempt by a military reservist to confront Prime Minister Justice Trudeau, who the reservist feared was imposing a communist dictatorship in Canada; and a 2021 killing of four members of a Muslim family by a man wearing swastika.

How do we get at the source of that kind of bias in terms of our intelligence apparatus, which is not adequately addressing or evaluating the threat posed by far-right extremism? Can we do that through recommendations at this committee? What would you propose that we recommend?

● (2010)

Prof. Kent Roach: I think we need greater ministerial oversight of both CSIS and the RCMP to see whether they are devoting enough resources and have the adequate training to address these. So it would be ministerial oversight, as well as executive oversight review and the National Security and Intelligence Committee of Parliamentarians.

Mr. Arif Virani: In a different article, you started by citing Professor Dworkin, which really made me feel like I was back at the faculty of law. You talked about equality and notions of equality in terms of how it impacts the legitimacy of policing. As someone who lived through parts of the blockade here in Ottawa, I think this is really critical in terms of how people started to treat the police, no longer respecting them in the same way, which I think is problematic from a societal perspective.

You wrote the following:

> Many criticized the police for accepting the "freedom" occupation and blockade for over three weeks, when they take more aggressive stances against Indigenous land blockades and protests by racialized people.... This compounded the equality problem if a lack of adequate intelligence about the danger of far-right violent extremists using the occupation contributed to the policing failure that allowed the Ottawa occupation to last three weeks.
>
> Ignoring equality creates a risk that both the police and the law will be viewed as illegitimate.

I also found interesting what you talked about a bit later in the same passage with regard to the fact that some criticized the police for talking to the protesters. You said that talking isn't necessarily the problem; it's the fact that if there's going to be talking to the protesters, it needs to be done equally, whether the protesters are the Ottawa occupiers or whether the protesters are an indigenous group or a Black Lives Matter group.

Can you unpack that a little bit for us? Going forward, where do you see policing going in terms of correcting this sort of double standard, if I can use that term?

Prof. Kent Roach: Yes. That's something where my views may have changed with some of the evidence that's come forth since February 14, Valentine's Day, when I should have been doing something other than writing a piece.

In any event, I think best practices emerging out of Ipperwash, emerging out of the G20, are that the police should have a plan to talk to the protesters, to provide the protesters with an opportunity to self-police, while recognizing that if they fail to do so and fail to obey the law, then the police have to come in. I think the police also need to maintain their neutrality. I think various police forces that are now pursuing discipline against officers who expressed their political views about the protest.... I think that is part of maintaining their neutrality.

I think that if we had an advanced plan that told everyone that we're going to talk to protesters until *x* point, and if we also had transparent political direction to the police, this would respond to some of these concerns about inequality.

The Joint Chair (Mr. Matthew Green): That does conclude the round, with a little bit of opportunity to conclude the thought.

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

[*Translation*]

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

Ms. West, we know that the Emergency Measures Act is emergency legislation. I have often described it as heavy artillery in the government's legal arsenal because it has existed for three decades and has never been invoked. The ancestor of the Emergency Measures Act is the War Measures Act, which was invoked for the last time in October 1970 in Quebec in the circumstances we are familiar with. It is therefore a law that is not often used and will be invoked only in extreme cases, in exceptional cases.

In the case that concerns us, the situation that took place last February, the events that occurred should not have occurred, in my opinion. We agree that it made no sense to block Wellington Street in Ottawa. The siege had to be lifted, I agree. However, the situation was still localized in Ottawa. There were also localized events at the Ambassador Bridge, in Coutts, and so on. They were really local situations. The Emergency Measures Act was invoked to respond to demonstrations, situations that were entirely manageable in normal times and that occur so rarely in those precise places. In my opinion, it was not justified. I may be mistaken. That is my opinion.

My question is this. In your opinion, when the Emergency Measures Act is invoked in situations that do not justify it, what are the consequences?

We agree that it is extreme. The Emergency Measures Act had not been invoked in 30 years. The last time we saw it was in October 1970 when it was still the War Measures Act. What is the effect of invoking it if it is not justified, as I suggest?

● (2015)

[*English*]

Dr. Leah West: Well, I think if it's determined that the use was not justified, then it's up to this committee to make that clear to Parliament. Parliament has all its remedies available to it. I think, most importantly, it's up to the citizens of Canada to decide whether a government that unjustifiably invokes the Emergencies Act should continue to govern.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): Does that have legal consequences or consequences for political and international balance of things?

Are there consequences other than voters' intention to re-elect or not re-elect the sitting government?

[*English*]

Dr. Leah West: No. Good old democracy is really the cure for that.

[*Translation*]

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

Professor Roach, do you share that opinion?

Do you agree that there are no consequences for invoking the Emergency Measures Act when it was not justified?

[*English*]

Prof. Kent Roach: I agree that it's up to Parliament, but I would add that you are one of at least three accountability mechanisms that are ongoing, including the Rouleau commission and the ongoing challenge in the Federal Court.

One of the things I saw after the G20—where more than 1,000 people were arrested—was that this multiplicity of accountability mechanisms actually seemed to have perversely diluted accountability. Sometimes you can have too much of a good thing. Although I think it's important that we have these multiple accountability mechanisms—and certainly I wouldn't advise to take them all away—I think Canadians are going to have to digest the verdicts from at least three of these accountability bodies, and this joint committee is one of the three.

The Joint Chair (Mr. Matthew Green): That does conclude the round. I'll pass the chair over to Senator Boniface so I can proceed with four minutes.

On the topic of accountability, in an article entitled “The Dilemma of Mild Emergencies that are Accepted as Consistent with Human Rights”, you stated that not having a requirement to examine the actions of the province in which the emergency occurred is “an omission”. Is it your recommendation to this committee that we contemplate providing a mechanism that would force the issue of provincial accountability in review?

Prof. Kent Roach: Yes. I think that as far as you can go is to provide for a formal request to the affected province to appoint a parallel inquiry. Obviously that happened with the mass casualty commission. That has not happened in this case.

The Joint Chair (Mr. Matthew Green): It's certainly an important consideration. I know that obviously section 33 is invoked all the time in terms of provincial sovereignty, but in your remarks, Professor, you mentioned, if I recall, federal pre-emption. Can you expand on that and maybe provide some context to that statement?

Prof. Kent Roach: Yes. On matters of national security, there is a potential for federal pre-emption and also under “Peace, Order and good Government” and the emergency part of our federalism Constitution. Just as the Security Offences Act can make both the RCMP and the Attorney General take the lead, I think that this may be an area where Parliament could legislate a federal pre-emption.

I can't guarantee that provinces would not challenge that as an infringement on their constitutional duty under subsection 92(14) for the administration of criminal justice, but I think that's a possibility.

● (2020)

The Joint Chair (Mr. Matthew Green): In a practical sense, if that happened and was legislated federally and the provinces refused to act or rejected this assertion, then, of course, in this very wild time of Alberta First and Saskatchewan and Manitoba and all the others who want to break away from the country, if we were contemplating that, at least the onus would be on them. Would you agree?

Prof. Kent Roach: Yes, and the Security Offences Act, which involves federal pre-emption, has been around since the CSIS Act and I'm not aware of any challenge to it.

The Joint Chair (Mr. Matthew Green): On the topic of ideologically motivated violent extremists, do you share my alarm that there were reports of high-ranking military, including Joint Task Force 2, members of the Prime Minister's security detail at one point, former and current serving military people in the armed forces, as well as connections with the police? Were you concerned with the assessment that there was an infiltration of that element within the convoy?

Prof. Kent Roach: I was concerned to an extent. I'm more concerned about the weapons and the explosives found at Coutts, but certainly that is part of intelligence looking at the group.

I also worry a little bit, though, that we have the police, who seem to have more freedom to look at open-source material and social media material than CSIS does. To me, that again raises whether the police can actually distinguish or have the necessary intelligence expertise.

The Joint Chair (Mr. Matthew Green): Professor West, on the previous comment, could you reflect on the infiltration of high-ranking armed services and police, people who had insight into logistics and tactical procedures, who, we've heard in testimony, had never been seen before?

Dr. Leah West: As a starting point, I don't think there's anything wrong with retired service members and military members and police officers being part of a protest movement or helping lead that protest movement. The concerning part of it is if those members also have violent extremism goals. That's what concerns me.

The Joint Chair (Mr. Matthew Green): Do you mean like overthrowing the government?

Dr. Leah West: Through violence...yes.

The Joint Chair (Mr. Matthew Green): Thank you. That concludes my round.

I will take the floor back and pass the four minutes on to Senator Boniface.

You have four minutes. The floor is yours.

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

This is for Professor Roach and Dr. West, if you would like to weigh in on this one. I'm trying to come up with a recommendation that deals with, perhaps, mandatory involvement of the provinces or something in a context that says they can't step back and not reply or not attend meetings when people are trying to get a solution together.

Is there any way, within an amendment to the act or if the act is redrafted, as I suspect it should be, that you could make that an obligation?

Prof. Kent Roach: Senator Boniface, I hope that you're going to look at section 20 of the Emergencies Act, because I don't know why that was there originally. It preserves the municipal and provincial silos when it comes to policing. I'm not really sure whether that is necessary. In fact, this emergency may demonstrate some of the flaws of section 20.

Dr. Leah West: I honestly can't think of something other than a legislated requirement for an invitation to the provinces, similar to the inquiry, or a recommendation.

At the same time, I would say that we also need to amend what consultation is from the federal government to the provinces, and make something of required meaningful consultation on that end as well. We shouldn't be looking at one without the other.

● (2025)

The Joint Chair (Hon. Gwen Boniface): I'm looking at it through the lens of the public, who don't always understand the distinct roles. On policing, people thought the RCMP were policing here, when it's municipal.

I'm trying to figure out ways that you could compel people to at least come to the table.

Prof. Kent Roach: I wonder whether this is something the Uniform Law Conference could look at. It sometimes deals with overlapping jurisdiction. It's a thought.

The Joint Chair (Hon. Gwen Boniface): In terms of the governance structure for policing, both in its effectiveness and in its role, when you look at the RCMP and the OPP, which you are familiar with, do you see board-type governance as a better place to assist with this?

Prof. Kent Roach: Yes. It would be board-type, but with adequate staffing.

The Joint Chair (Hon. Gwen Boniface): There would be enough responsibilities that are driven by legislation.

Prof. Kent Roach: Exactly.

The Joint Chair (Mr. Matthew Green): We will now move on to Senator Carignan for four minutes.

[*Translation*]

Hon. Claude Carignan: Thank you.

My question is for Professor West.

In answer to a question, you said there were no consequences for invoking the act other than political consequences. When there are debatable actions that violate section 8 of the Charter, such as unreasonable seizures, and even certain actions provided for in the order, the act does provide for the possibility of compensation. There can also be civil remedies for unreasonable seizures, for example.

[*English*]

Dr. Leah West: Any finding by the commission, this committee or the Federal Court that suggests that it was unreasonable or unjustified to invoke the act would form the foundation for potential charter claims. People could make the claim that their rights were unjustifiably infringed under the charter and seek a remedy—potentially a monetary remedy—from the courts.

[*Translation*]

Hon. Claude Carignan: So there could be civil actions, and we might see another prime minister apologize, as Mr. Trudeau often does. There would be a different one apologizing for invoking the Emergency Measures Act.

[*English*]

Dr. Leah West: I'm sorry. I don't hear your interpretation.

The Joint Chair (Mr. Matthew Green): Okay, we'll stop the time.

Do you want to repeat it?

Hon. Claude Carignan: It's about apologizing.

Dr. Leah West: Was the question about giving apologies? Certainly, that would be one way of trying to repair any harm from an unjustifiable use of the Emergencies Act, but I suspect that findings in court might be more meaningful.

[*Translation*]

Hon. Claude Carignan: I would like to hear your thoughts on professional privilege. I don't know the extent of your knowledge of that subject. Who is the client, in this case?

We have often heard the minister say he could do nothing because of professional privilege.

Who is the client and who can waive professional privilege?

[*English*]

Dr. Leah West: Usually it's the client, so in this case, it would be cabinet or the Prime Minister.

[*Translation*]

Hon. Claude Carignan: So, the Prime Minister or cabinet could waive it. If we summon the Prime Minister to appear here as a witness, we could ask him whether he waives professional privilege, and, if he does, get access to the information.

[*English*]

Dr. Leah West: Yes.

● (2030)

[*Translation*]

Hon. Claude Carignan: Right.

There is also an implicit waiver when information in a legal opinion is disclosed to third parties who are not members of cabinet. We have seen that Mr. Vigneault seemed to have had access to this legal opinion, when he was not a member of cabinet and did not take part in the decision.

Does disclosure to a third party not amount to implicit waiver of professional privilege, as we have seen in a number of judgments, for example?

[*English*]

Dr. Leah West: I would say no. Having been a former Department of Justice lawyer, I would say that my client would be the government. Anyone within the government who needed to make that decision would have access to that opinion.

If it was important for them to have Director Vigneault's opinion, based on that legal opinion, I don't think it would be improper for him to have seen it as a party to the government.

[*Translation*]

Hon. Claude Carignan: So people other than Mr. Vigneault would have to have seen the legal opinion. The disclosure would have to have taken place outside that context in order for it to constitute an implicit waiver of the professional privilege.

[*English*]

Dr. Leah West: I would think that, with regard to anybody within government who is supporting the decision-making within cabinet, it would be justifiable for them to have access to that opinion. It wouldn't be a breach of solicitor-client privilege.

The Joint Chair (Mr. Matthew Green): That concludes the round. Thank you.

We now have, for the last round—and thank you very much to the witnesses who've stayed through this—Senator Harder for four minutes.

Sir, the floor is yours.

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

Again, thank you to the witnesses, particularly for staying later than anticipated.

Professor Roach, I want to go back to the issue that you discussed several times tonight: the fragmentation in the nature of Canada's police system and how that was observed in the course of the events last February. You referenced Toronto a couple of times, and Senator Boniface was trying to get in on that, as well.

I'm not suggesting that Toronto benefited from the knowledge of the Ottawa experience alone, but it was sequential. I take your point about the mayor, the different attitudes of mayors and the local city police forces. Surely there was a difference, also, at the level of the OPP in terms of its integration in the approach that was taken in Toronto versus the reluctance to become involved in Ottawa. Would you agree with that assessment?

Prof. Kent Roach: Is the question that the OPP played a greater role in Toronto than it did in Ottawa, Senator?

Hon. Peter Harder: Yes.

Prof. Kent Roach: I think so, but I'm not confident in making that factual judgment. The OPP, certainly, I know, played a big role in Windsor. I'm actually not sure about whether it played a huge role in the two Toronto weekends. You may be right. I'm—

Hon. Peter Harder: As a resident of Ottawa, I sometimes felt that I had to remind the Province of Ontario that Ottawa was in the province of Ontario. There was a lot of appropriate attention, as there should have been, to the bridges. There was a lot of appropriate attention to the city of Toronto, but there was not that degree of attention, politically, through either the premier or the Solicitor General of Ontario, with respect to what was going on here.

That leads me back to your earlier comments about fragmentation. The fragmentation is not only institutional, with regard to the RCMP mandate; it's also in the rules of the game as they interact with those provinces that have provincial police forces.

Would you agree that there is a need to have written-down memoranda of understanding for how to coordinate in events such as this so that we have some basis of confidence that events like the ones we experienced last winter will be managed more coherently and be less fragmented?

Prof. Kent Roach: Absolutely. We need a framework for public order policing. It's not only here; it's also at the G20 and other situations where we have three levels—sometimes, including indigenous forces, there are four levels—working together. I think we need to work on that and have these protocols.

Ideally, we need to have as much of them in public as possible. There may be some operational details that can't be public, but, yes, we need to plan on how to coordinate our four levels of policing. I would include in that the Parliamentary Protective Service in some cases. Even private security policing is not simply a monolith.

Hon. Peter Harder: Thank you.

I very much agree with that and would reference the inquiry that is taking place in the Senate of Canada with regard to the need to overhaul the RCMP mandate and role. It is an inquiry that I hope can lead to a broader parliamentary conversation around the issues you've just raised.

Thank you.

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

Noting that the time now is 8:34 p.m., I want to thank both witnesses for appearing before us and staying a little bit later for the good and welfare of the committee.

We will now certainly bid our adieu and let you go back to your lives.

I will suspend the meeting for about five minutes for a health break, after which we'll return for our business section of the meeting.

● (2035)

_____(Pause)_____

● (2040)

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

We do have committee business.

With an eager hand up, I recognize Senator Harder.

Sir, the floor is yours.

Hon. Peter Harder: Thank you, Chair.

I'll be brief, but I would like to move the motion standing in my name that has been circulated.

It reads as follows:

> Following the last meeting in December, that:
>
> a. the committee invite no further witnesses;
>
> b. the analysts be instructed to prepare a summary of evidence to be distributed to members no later than February 10th, 2023,
>
> c. Any discussions regarding its report take place in camera, and that;
>
> d. The committee present its final report in the House of Commons and the Senate no later than March 31st, 2023.

Colleagues, this committee will have by then gone over a year. I believe it's important for us to have the framework for our ability to get to a report that can make a meaningful contribution to the consideration of Parliament.

Thank you.

The Joint Chair (Mr. Matthew Green): I'll recognize Mr. Motz.

Mr. Motz, go ahead on the motion.

● (2045)

Mr. Glen Motz: Thank you, Chair.

While there is general agreement with the principle of where Mr. Harder wants to go with this, I would certainly have a proposal for a subamendment if Mr. Harder is amenable to it, after further debate.

Or do you want me to make it now?

The Joint Chair (Mr. Matthew Green): You are the master of your own domain.

Mr. Glen Motz: Mr. Harder, I would propose that we reassess after Rouleau publishes his report and that the motion be amended in paragraph (a) by adding "until the Public Order Emergency Commission's report has been published", and then by deleting paragraphs (c) and (d).

The Joint Chair (Mr. Matthew Green): We've heard the amendment, as proposed by Mr. Motz.

I recognize Senator Boniface on the amendment.

The Joint Chair (Hon. Gwen Boniface): I would just ask that he repeat it.

Mr. Glen Motz: Yes, I will be happy to.

It is that the motion be amended in paragraph (a) by adding, "until the Public Order Emergency Commission's report has been published" at the very end and by deleting paragraphs (c) and (d).

The Joint Chair (Mr. Matthew Green): On the amendment, we have Senator Harder.

Hon. Peter Harder: Thank you very much.

I will be brief.

I would not support the subamendment as described, only in referencing the fact that this committee could make any decision when it reconvenes in the new year. It may or may not be the view of the committee to review this motion. I think it would be very helpful to direct the analysts to begin to prepare the work of putting together the summary of evidence, and to have the expectation among ourselves of tabling a report by March 31, 2023.

The Joint Chair (Mr. Matthew Green): I'd like to put myself on the list for the moment. In doing so, I'll continue by passing the chair over to Senator Boniface.

So that I'm clear, I think what I'm hearing is not a material departure from where you wanted to start. You're suggesting, Senator Harder, that this is by no means officially wrapping it up. It's simply not inviting witnesses and then preparing a report. I want to understand that you also recognize that receiving the published report from the Public Order Emergency Commission will be a part of our overall consideration.

Is that correct?

Hon. Peter Harder: Yes, Chair. That's why I selected the dates that I have. It's on the expectation of when the Rouleau commission would report.

I'm also open to the notion that the committee, as a majority, might wish to hear a witness we haven't thought of. I think it's very important for us to put in play an expectation around which we can govern the work of this committee between now and when we reconvene after the break, and that we have as a deadline—notionally, at this point—March 31, 2023 for our report and act accordingly.

The Joint Chair (Mr. Matthew Green): Okay, so this is simply a ceasing of the work plan as it's contemplated with the long list of witnesses, to turn our minds and our attention to the ultimate reporting phase.

As it relates to the rationale around it being in camera, would you be willing to respond to the rationale around that particular point?

Hon. Peter Harder: Yes, certainly, Chair.

The rationale for in camera is to ensure that as we develop the report, we can have a frank and interior conversation around how we see the report evolving, and try to seek, if we can, a consensus around recommendations in particular. That might not be unanimous. There might be other views that will be incorporated that don't seek unanimous consent of the committee, but I think that work is best done—at least in the experience that I've had—in an in camera fashion.

The Joint Chair (Mr. Matthew Green): I would say, from my experience with our work in the House, that the report stage stuff does typically happen in camera. To confirm, is that also the practice in the Senate?

Hon. Peter Harder: That's correct.

The Joint Chair (Mr. Matthew Green): Okay, I'm satisfied with that.

We do have an amendment on the floor.

I recognize Monsieur Fortin.

● (2050)

[*Translation*]

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

Does Senator Harder agree to splitting his motion and to us voting on paragraphs (a), (b), (c) and (d) separately?

[*English*]

Hon. Peter Harder: I'm in the hands of the chair.

My own view is that it's a whole, but it's up to the committee.

Mr. Arif Virani: Mr. Chair, if I may, I've not seen that done before. I think it's important to vote on it in its entirety, because it reads as a comprehensive whole. Then you'd—

The Joint Chair (Mr. Matthew Green): Just to be clear, Mr. Fortin has not relinquished the floor yet. He put a question.

I just want to make sure, before we jump in on interventions, that you have completed your intervention, Mr. Fortin.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): I asked Senator Harder the question, since it is his motion. Personally, I think they are different subjects.

The motion suggests that the committee invite no further witnesses, and I agree that a date be added. Mr. Motz proposed that it be reassessed after the Rouleau report is submitted, and I agree with that.

Second, the motion then instructs the analysts to prepare a draft report, but that is another subject.

Third, the motion suggests that we must present our report before March 31. The idea of setting ourselves a deadline may be good or bad, but it is definitely a different thing.

I really think these are four different subjects. If I had to vote on the motion now, I would be unhappy about voting against it, because I agree with some of the proposals. If we keep all these items together, we may not be able to agree, when we could certainly agree on at least two or three of them.

[*English*]

The Joint Chair (Mr. Matthew Green): I just want to clarify procedurally that this motion has been tabled. It is in order as it stands. What you're asking him to do, essentially, would be to withdraw the motion and re-put it point by point, and I get a sense that's not the intention. From that perspective, while the intervention is appreciated, it doesn't have a procedural precedent.

Are there any other people who would like to speak to the amendment?

Given that we don't have a speakers list, I would now like to put the question on Mr. Motz's amendment.

Perhaps we could have the clerk read it out before we go to the vote.

The Joint Clerk of the Committee (Ms. Miriam Burke): Mr. Motz moved that Senator Harder's motion be amended in point (a) by adding the words "until the Public Order Emergency Commission's report has been published" and, second, by deleting points (c) and (d).

The Joint Chair (Mr. Matthew Green): You've heard the amendment as put. We will now proceed to the vote.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): I didn't understand very well.

Do you want points (c) and (d) to be deleted?

If I understand correctly, we would be voting on points (a) and (b), and points (c) and (d) would be deleted.

[*English*]

The Joint Chair (Mr. Matthew Green): Is everything good? Okay. We will proceed.

(Amendment negatived: nays 6; yeas 4 [*See Minutes of Proceedings*])

The Joint Chair (Mr. Matthew Green): The amendment is defeated.

We will now go the main motion.

Mr. Brock, go ahead.

● (2055)

Mr. Larry Brock: I have a second amendment to propose.

It's titled, "No witnesses until Justice Rouleau publishes a final report by June 2023".

I move that the motion be amended (a) in paragraph (a) by adding "until the Public Order Emergency Commission's report has been published"; (b) in paragraph (c) by adding "final" before the word "report"; and (c) in paragraph (d) by replacing "March 31" with "June 23".

The Joint Chair (Mr. Matthew Green): I would suggest that your first amendment is redundant. I think that was just defeated. It's a repeat of Mr. Motz's amendment, respectfully. You can't relitigate an amendment that you've just lost.

I don't think that amendment is in order if you're repeating what we just did. If you would like to just add your second two, then I'm willing to entertain that being tabled, but we're not going to repeat amendments.

Mr. Larry Brock: I'll withdraw the reference to (a) in paragraph (a), and seek amendments in (b) to paragraph (c) and (c) to paragraph (d).

The Joint Chair (Mr. Matthew Green): For the purpose of the committee, could you please repeat that so the clerks and everybody can understand it again?

Mr. Larry Brock: It's (b) in paragraph (c) by adding "final" before "report", and (c) in paragraph (d) by replacing "March 31" with "June 23".

The Joint Chair (Mr. Matthew Green): Mr. Brock, would you like to speak to the amendment now? You do have the floor still.

Mr. Larry Brock: My position is as stated.

The Joint Chair (Mr. Matthew Green): With that being said, is there anybody else on the speakers list?

Mr. Motz, you have the floor.

Mr. Glen Motz: I would just like to add that I think we have general agreement around the table that we need to look at getting the report from the Rouleau commission. We need to see how that plays into our report from the analysts. We need to get the analysts working, as Mr. Harder has indicated, on a report for us as a committee. We can then start deliberating and making recommendations.

Given the number of weeks that we sit after the Rouleau commission is to be out, it would be impossible for us in all reasonableness to have a March 31 deadline. Even if we don't call anybody anymore, it would be virtually impossible for us to get through the evidence to be able to look at his report and then turn around and make recommendations based on that by March 31.

Obviously, June 23 is the last day before we rise for summer, I believe. If we're sooner, then we're sooner, but that should be it. We have to be done by then. If we're done sooner, so be it. I think that's reasonable.

It allows us to have a fulsome report. We've heard some great recommendations on everything from policing to the interpretation of the law, etc. I think it would serve us well in what our role is to give us some latitude on time.

The Joint Chair (Mr. Matthew Green): Are there any other comments on the amendment as proposed?

Senator Boniface, you have the floor.

The Joint Chair (Hon. Gwen Boniface): Could I just ask the mover for clarification, if he's willing, on (c) about the final report? What are you distinguishing? I'm trying to understand why that's important.

The Joint Chair (Mr. Matthew Green): While that's being discussed, for the consideration of the committee, I think it's important to note that the original motion proposed, I believe, that we have about six meetings, three hours per meeting.

Mr. Glen Motz: After we go home.... That's the issue. It's due on February 20.

● (2100)

The Joint Chair (Mr. Matthew Green): That's only three weeks to do the report.

Mr. Glen Motz: I think we said two weeks after that.

The Joint Chair (Mr. Matthew Green): Mr. Brock, are you ready?

Mr. Larry Brock: Yes, I'm ready. Thank you, Chair.

To answer Senator Boniface's question, the rationale behind that amendment is contemplating the other motion that has yet to be tabled by my colleague Mr. Motz with respect to the release of the legal opinions. If that motion is passed, it could result in an interim report before the final report.

I don't want to foreclose the possibility that there could be a further report before we issue that final report. That was the rationale.

The Joint Chair (Mr. Matthew Green): I see MP Virani.

I'll then look to put myself on the list and pass the chair to Senator Boniface.

Mr. Arif Virani: With respect to what Mr. Brock just raised, I would say that's a bit speculative in terms of how we should address this motion, based on future motions that may or may not come to pass.

The second piece I would raise is that March 31 is still five weeks after the tabling of the Rouleau commission report in Parliament. There's nothing that requires us to sit only once per week, so if there's a concern about the timing of sittings, that can be addressed through sitting more than once per week. The committee is the master of its own destiny in that regard.

I'd also put out there that we should not conflate the scope of what Justice Rouleau has been asked and what we've been asked. Our own terms of reference and the motion that was passed in the House and in the Senate are technically different entities. That's important to keep in mind, because I think the impression was given that we need to be responding to what may be a 300- or 400-page report by Justice Rouleau.

Thank you.

The Joint Chair (Mr. Matthew Green): Senator Boniface, please take the chair, for my own intervention.

I think I have stated that I have a keen interest and that I am willing to accept whatever findings come from the Rouleau commission, and I hope that we will use that in our contemplation of the report. I recognize the time crunch. I also recognize the remedy that has just been put forward that we could contemplate using constituency weeks or requesting additional time. As it's stated right now, I'm not sure that having three meetings after the final report would be enough. I think we would logistically look to having to spend more time if we wanted that deadline.

Having said that, I also respect the notion that if new information were to come to this committee, we would be able to contemplate that information in an open forum by calling a meeting that includes committee business. That's if we were to contemplate documents that were received or what have you.

To this point, I think we're doing pretty well on this motion, and I'm hoping that we can continue to iron out a pathway forward here. However, as it stands now, I am in support of this, recognizing that there could be a commitment to increase the frequency of our meetings in order to have the report, as well as provide an open forum for which information can be contemplated in public.

I'll acknowledge the fact that any time we're in camera, at the passing of a motion, we can move to go out of camera and into the public domain again. One doesn't preclude the other, at least in my understanding.

As far as interim reports go, I'll say that what I'm not on for are motions that contain a conclusion by any party of this committee that we would then spend hours on in a filibuster, contemplating it in a very public and partisan way. I'm hopeful that any reports that come do so in a way that respects the precedent that is set in our other committees, that we build the report together and that we submit it as a committee.

Those are my comments.

Senator Boniface, I'll take the chair back and I'll recognize Senator Harder.

Hon. Peter Harder: Very briefly, Chair, I share your observations of the intentions behind this. Obviously, as we go forward, we may or may not review that. However, I think it's important for us to be expeditious, recognizing that by the time we report, even with this date, it will have been over a year.

The Joint Chair (Mr. Matthew Green): Mr. Fortin, go ahead.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): I listen to our debates and I understand all the participants' concerns. I don't know whether I should propose it now or later, but could we not instead agree to reject the whole thing?

Between March 31 and June 23, we could meet on May 15 or May 30, for example. We actually considered the possibility earlier of meeting more often, as our colleague Mr. Virani suggests, but we realized that it was not possible, there being no clerks, interpreters and rooms available.

You will recall that at the beginning of the fall, we had asked to meet two days a week. At that time, the answer was that it was not possible and we had to stick to one day a week.

We also cannot imagine that a miracle is going to happen and we will be meeting two or three days a week. We will have to cope with one day a week. However, a deadline of March 31 is definitely a bit short. I think Senator Harder will agree with me that that deadline does not leave us a lot of time for discussion.

Without waiting until June 23, is there a way to agree on May 15 or 30? I do want us to vote, but if we could reach an informal agreement on a date, it might facilitate things.

● (2105)

[*English*]

The Joint Chair (Mr. Matthew Green): I think we've heard that rationale.

We will recognize Ms. Bendayan.

[*Translation*]

Ms. Rachel Bendayan: Yes, I would just like to hear what the clerk has to say, because I don't recall that it was impossible to find other time slots for other meetings. Is it true and definite that we can't find other dates in 2023?

However, I think it is fairly impossible to confirm it today.

The Joint Chair (Mr. Rhéal Fortin): We tried and we were not able to free up our time.

Ms. Rachel Bendayan: It's a new year and...

[*English*]

The Joint Chair (Mr. Matthew Green): I don't want to put the clerk in the position of having to have a crystal ball, but I would say this. I'll take the chair's prerogative to say that if we are in a scenario where we are denied, then I would ask the indulgence of this committee that we revisit an extension on the dates.

I think we're getting to a place where we understand where we need to be with this committee. We're doing really good work. Would that suffice, if we came to a place where...? Actually, the question is, in a parliamentarians' agreement, would it suffice that if we got to a place where that request was denied, at that time you would put that motion to have it extended?

Okay. You don't have to comment. You're not compelled to speak.

Senator Harder, go ahead.

Hon. Peter Harder: Chair, in the spirit in which I intervened earlier, I'd be happy in that circumstance to have a discussion in committee as to whether it would be appropriate—and, if so, for how long—but let's get going on our work.

The Joint Chair (Mr. Matthew Green): I have Mr. Motz.

Mr. Glen Motz: Our committee coordinators have indicated that we do not yet have a calendar for 2023 for committees, and we do not have any indication that there will be more resources available than there are now. We can guess that there might be, but what committees are going to be cancelled? Night sittings might be scheduled as they are.... What impact will that have?

Even if we go to...it doesn't have to be to the end of May, but something reasonable, something in the middle. March 31 is impossible, and maybe the end of June is too far away. Maybe we can meet somewhere in the middle, like May 19 or whatever. We need to be reasonable in the dates we have, because I don't see us getting things done in three meetings. Even if we had an extra meeting a week for three hours, I still don't think that would be enough.

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

Go ahead, Mr. Virani.

Mr. Arif Virani: For everyone's appreciation, I believe that the pressures on scheduling meetings arise during sitting weeks, but they don't arise at all during non-sitting weeks. There are at least three non-sitting weeks. There are two non-sitting weeks in February and at least one in March, so I presume that there would be added flexibility at that point in time for scheduling committee time.

The Joint Chair (Mr. Matthew Green): I will note that we have tried that in the past. Organizing members of Parliament, particularly during constituency weeks, is a difficult task at the best of times.

We do have an amendment. It is being contemplated. We've had lots of different interventions on the amendment. Is it the committee's will that we proceed to a vote on the amendment, or are there other interventions that might provide some amicable middle ground?

Given that we've exhausted the list, we will proceed to the vote.

Can you please read the amendment again?

● (2110)

Mr. Larry Brock: Yes, it's (b) in paragraph (c) by adding “final” before “report”, and (c) in paragraph (d) by replacing “March 31” with “June 23”.

The Joint Chair (Mr. Matthew Green): The question is on the amendment as put.

(Amendment negatived: nays 6; yeas 4 [*See Minutes of Proceedings*])

The Joint Chair (Mr. Matthew Green): We are now on the main motion.

Go ahead, Mr. Motz.

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

If you don't succeed a couple of times, you have to try a third time.

How about this? It's an amendment adding, at the end of paragraph (a), the following: “provided that the joint clerks invite each individual organization listed on the analysts' work plan, dated May 11, 2022, who have not appeared before the committee to submit a brief to the committee for its consideration, with briefs encouraged to be provided to the joint clerks within one month. The joint clerks shall arrange for any briefs provided to be translated, circulated to the committee members and published on the committee's website.”

The Joint Chair (Mr. Matthew Green): You heard the amendment. Do we have any interventions on the amendment?

Ms. Bendayan, the floor is yours.

[*Translation*]

Ms. Rachel Bendayan: Mr. Chair, I was simply going to say that the witnesses we have heard to date have all been examined. We were able to ask them questions.

I believe there are fundamental principles to be observed in a committee's work and treating all witnesses the same way is one of them. I believe it is profoundly unfair to accept written testimony without having the opportunity to ask questions and to see and hear the witnesses. I think that what my colleagues are doing is essentially stretching the study out for another year. Once those documents have been presented and that written testimony has been given, they are surely going to want to see those witnesses so they can question them.

I think they are doing indirectly what can't be done directly by way of the other amendments.

[*English*]

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

Mr. Larry Brock: With all due respect to my Liberal colleague, she presupposes incorrectly. What we are trying to do.... I listened very carefully to Senator Harder's support with respect to his motion, and I heard him very clearly say this does not potentially close the door on hearing from further witnesses. That is an opinion not clearly stated within the motion itself.

I mean no disrespect to Senator Harder, but unless it's actually there and we vote and agree on it, we may not get consensus to call further witnesses. What this does.... I'm quite shocked that my colleague from the Liberal side would take exception to this, because what we're trying to do is expedite the process. We all agreed the list we had on our work plan was quite unmanageable in terms of where we are right now, almost a year into this process.

We're trying to expedite those witnesses who are not that contentious by allowing them to file their reports. We still have further academics on that work plan. Those academics, most surely, would have a prepared statement, or would be in a position to prepare a written statement.

This is all about efficiency. It's not about complicating things. It gives specific impact to Senator Harder's proposal, which we have yet to vote on.

● (2115)

The Joint Chair (Mr. Matthew Green): I will recognize Mr. Virani and then—

Mr. Arif Virani: You can go first, if you want.

The Joint Chair (Mr. Matthew Green): I don't know. I always feel like that's a bit abusive, as a chair, so I'll recognize you and wait.

Mr. Arif Virani: I would just say that, in terms of being efficient, the most efficient thing we probably did was several months ago when we said we would take holus-bolus—I think that's probably the right expression—everything that was before the Rouleau inquiry and incorporate it as evidence in this proceeding. That provides us with a tremendous level of efficiency.

I note that the vast majority, if not every single bit, of that evidence has been tested by cross-examination. As we saw, the Prime Minister was questioned by about nine different counsel when he appeared on that Friday a couple of weeks ago.

The utility of cross-examination, to me, was never more critical than when we had a witness appear here who had to be invited a second time and, thankfully, arrived. This is my personal perspective, but the testimony from the individual from GiveSendGo, in terms of his response to questioning, really demonstrated a lack of credibility in terms of what he was presenting. I think that's informative for all the members of the committee in terms of how we deliberate and what kinds of recommendations we develop.

The utility of cross-examination is actually quite vital. The only thing we're incorporating by reference has already been tested via cross-examination in that other forum before Justice Rouleau, so I think the point is well put by Ms. Bendayan.

The Joint Chair (Mr. Matthew Green): I'll pass the chair over to Senator Boniface.

It's my perspective that there's a higher standard of care that we, as parliamentarians in this committee, have in navigating this review and in contemplating the public consultation process. I'm actually in support of taking this. I take Senator Harder at his word when he says that, if there is a bombshell or if there's a significant departure, that would require us to have greater scrutiny or the demand for a cross-examination on contentious briefings. It needs to be clear. Briefings, procedurally, are put on a footing with testimony as it relates to the analysts' notes.

I will be supporting this motion for those reasons. I take it in good faith that if we had continued down our work plan path, which we had agreed on at one time, we would have invariably seen those witnesses.

I'm going to test the goodwill. Should this motion pass, I would look to the Conservatives to support us on the main—although sometimes I've seen committees where that doesn't happen—in the spirit of trying to move this thing along. For those reasons, I'll be supporting the amendment to have the briefings be contemplated.

I will also go on the record to say that if there are material departures from the committee's consensus around the report, I would also support calling back a witness who has presented a briefing that requires a little bit more cross-examination and scrutiny.

I'll take the chair back and then recognize Senator Boniface.

The Joint Chair (Hon. Gwen Boniface): For the mover of the amendment, I'm wondering whether it is essential to seek it from everybody or whether we could prioritize the witnesses who have not appeared before the commission. Some of the people you would send to have already appeared before the commission, I think. I'm just wondering if you would give.... Perhaps the joint chairs could take a look at that and then sort those lists in a way.

Mr. Glen Motz: I may not have been clear, but—

The Joint Chair (Hon. Gwen Boniface): They can choose not to respond. Perhaps that's the way to leave it. I just think it's confusing for people on the other end who are receiving the information.

Mr. Glen Motz: I'm sorry. I may not have been clear when I read the motion, but this is for witnesses who have not yet appeared, not for those who have.

● (2120)

The Joint Chair (Mr. Matthew Green): No, she's talking about the Rouleau commission.

Mr. Glen Motz: Oh, it's the commission ones.

The Joint Chair (Mr. Matthew Green): Senator Boniface, go ahead.

The Joint Chair (Hon. Gwen Boniface): Within the list—and because I don't have the list in front of me, I don't know—there may be, and I suspect there are, people who have already appeared before the Rouleau commission, in which case we already have their evidence. I just think that if I'm on the receiving end of "we want more information" when I've already testified under oath, it doesn't make sense to me.

Mr. Glen Motz: I would certainly agree to that, absolutely, and I would also suggest that the clerks limit the amount of information we receive. I mean, we don't want 30 pages, but it should be like a five-page brief. If they can't say it to us in five pages, what more can they say? It would be something along those lines: that we trim it down a bit and make it reasonable and manageable.

The Joint Chair (Mr. Matthew Green): Do we have any other interventions on the proposed amendment?

Senator Harder, go ahead.

Hon. Peter Harder: Just to take the suspense out, Mr. Chair, I will, in the spirit of your intervention, vote for the motion, living in the same hope as you do.

The Joint Chair (Mr. Matthew Green): Do we have consensus, or do you want to go to a vote? Do you want it on division or are we going to do the whole thing here?

Ms. Rachel Bendayan: Do any of the colleagues around the table have a sense of how many people we're talking about?

The Joint Chair (Mr. Matthew Green): The remainder of the work plan was circulated earlier. I don't have the number off the top of my head because I don't have the work plan.

Ms. Rachel Bendayan: Mr. Chair, can we suspend for a minute?

The Joint Chair (Mr. Matthew Green): Sure. I think that's reasonable.

We're going to suspend for three minutes.

● (2120)

_____(Pause)_____

● (2120)

● (2125)

The Joint Chair (Mr. Matthew Green): I'm going to call the meeting back to order.

I believe I saw a quick flash of the hand from Mr. Virani.

The floor is yours.

Mr. Arif Virani: We've had some discussions, and the Liberal members of the committee would be minded to support it subject to one condition, which is that the three co-chairs be empowered to vet the list. That's not simply for the purposes of excluding people who have already presented at the Rouleau inquiry, but also for the purpose of ensuring there is some equity among the people who have been invited to provide a written brief among the various invitations that have been issued by various political parties.

The Joint Chair (Mr. Matthew Green): That seems reasonable.

Mr. Arif Virani: The clerk looks a bit puzzled.

What I mean is that we have equity among those witnesses who are being asked by the Conservative Party, the Bloc Québécois, the NDP, the Liberals, and the senators to provide briefs.

The Joint Chair (Mr. Matthew Green): It seems that we have consensus on that.

Can we pass the amendment as referred to the chairs?

Could we read that again?

The Joint Clerk (Ms. Miriam Burke): It is that the motion be amended by adding the following words at the end of paragraph (a): "provided that the joint clerks invite each individual or organization listed on the analysts' work plan, dated May 11, 2022, who has not appeared before the committee or the Public Order Emergency Commission to submit a brief to the committee for its consideration, with briefs encouraged to be provided to the joint clerks within one month, and that the joint clerks arrange for any briefs provided to be translated, circulated to committee members and published on the committee's website, and that briefs be limited to five pages, and that the three co-chairs vet the list to ensure equity among the parties."

Ms. Rachel Bendayan: Mr. Chair, I hate to nitpick, but where it talks about each of the witnesses who did not appear before the committee, I think the word "each" should be removed. Otherwise it would be impossible to have equity among the parties. There's a bit of a contradiction.

The Joint Chair (Mr. Matthew Green): There are no procedural shenanigans here, so that worked out well.

(Amendment agreed to [*See Minutes of Proceedings*])

(Motion as amended agreed to on division)

The Joint Chair (Mr. Matthew Green): Colleagues, we're on to the next motion.

Mr. Motz, the floor is yours.

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

We circulated a motion here a couple of days ago with respect to the documents we've been trying to get at as a committee. This particular motion is very similar to the one we had back in May. It took some of the concerns that were related by some committee members with respect to that and invited the law clerks to be part of it. Again, we have some timelines on it, as you'll see in the motion.

We've heard from a number of witnesses repeatedly, as well as Commissioner Rouleau, as well as the lawyers there, that it's unfortunate that we are somewhat operating in a vacuum without some of these documents. We need to pursue getting those documents to this committee, and then in turn giving those documents to the Public Order Emergency Commission as well.

The Joint Chair (Mr. Matthew Green): Go ahead on the motion, Mr. Harder.

Hon. Peter Harder: Thanks very much, Chair.

I will not support this motion as drafted. I think it is somewhat convoluted in process and enjoins our law clerks to undertake work that is not in their area of specialization.

With respect to the sense that this would provide information to the Rouleau commission that it was unable to secure, I would simply like to put on the record the words of Commissioner Rouleau of November 25, on page 254 of the transcripts, lines 18 to 25, where he says the following:

> Most importantly, I am satisfied that I now have the evidence that I need to make the factual findings and to answer the questions I have been mandated to ask, namely, why did the Federal Government declare the emergency, how did it use its powers, and were those actions appropriate? These are questions that, as I said at the outset, the public wants answered, and I am confident that I am now well-positioned to provide those answers.

I think we should pay attention to Justice Rouleau.

● (2130)

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

Mr. Glen Motz: I think what we heard through the commission, more than Justice Rouleau's final comments.... He had factual findings, and he feels he can make a decision based on what he had, but he's still making it in a vacuum, quite honestly. His own lawyer has indicated the unfortunate reality that the government is withholding this information.

This is about transparency to the public. The public needs to have some sense of what the government relied upon. This committee needs to have some sense of what the government relied upon, as well as the commissioner. This is an attempt by this committee to do what we were asked to do, and that's to look at all the information the government relied upon to invoke the Emergencies Act.

The Joint Chair (Mr. Matthew Green): Mr. Virani, the floor is yours, sir.

Mr. Arif Virani: I have a preliminary question. What I have from Mr. Motz is something that was circulated on November 30. It's a motion of about five pages. Then I have something that was circulated by Mr. Motz on December 6. In some respects there's some overlap, but I'm just a bit concerned: Exactly which motion between those two are we discussing right now?

Mr. Glen Motz: The motion from November 29 is not being pursued. It hasn't been tabled, because we weren't able to on that particular day. The motion of December 6 is the one that stands.

Mr. Arif Virani: Okay. So we're now talking about the motion from December 6.

With respect to the motion from December 6, I'm not actually clear that this committee—or any parliamentary committee, for that matter—has the authority or the ability to direct material to be brought to the attention of either the quasi-judicial inquiry being headed by Justice Rouleau or any inquiry, for that matter. There are two occasions on which this document, as proposed, suggests doing exactly that.

Perhaps the clerk could clarify that issue.

The Joint Chair (Mr. Matthew Green): When you're asking the clerk to clarify, are you asking the clerk to make a legal opinion on your opinion?

Mr. Arif Virani: I'm just wondering if it is within the scope for a parliamentary committee to order something to be brought to the attention of a judicial inquiry that's already concluded its evidence-gathering.

I know what a judge can ask for, but if they're not asking for something, can we forcibly send something to a judicial inquiry? Do you know of any precedent in that regard, Madam Clerk?

The Joint Chair (Mr. Matthew Green): I'm not sure it's a fair question to put to the clerk. We are the masters of our own domain within this committee and have the ability, through voting, to determine what we want to do with information that we receive. It would be up to the quasi-judicial inquiry to accept it or not.

Mr. Arif Virani: Well, I do think it's salient to the analysis, Mr. Chair, in terms of trying to make a determination as to how we'd vote on this matter. It's asking the committee to do potentially something that's beyond our jurisdiction to do.

Point (k) says, “the Joint Clerks be directed to bring this Order to the attention of the Public Order Emergency Commission.” Point (g) says, “documents to be provided to the Public Order Emergency Commission forthwith upon receipt”.

The Joint Chair (Mr. Matthew Green): Okay. I appreciate you sharing your perspective.

Are there any other perspectives on the motion?

Yes, Senator.

The Joint Chair (Hon. Gwen Boniface): Mr. Chair, while I appreciate the thrust of it, I am concerned in terms of the role that we're asking the law clerks to play. I'm not sure that's the role they play. I've been upfront in my concern on this in the previous motion, and for that reason, I wouldn't be able to support it.

Mr. Glen Motz: Perhaps I may comment, Chair.

The Joint Chair (Mr. Matthew Green): I recognize Mr. Motz.

Mr. Glen Motz: Thank you, Chair.

Are you proposing, then, Senator Boniface, that the law clerks be completely removed from this, and that it is asked that those documents come to this committee? Is that what you're asking?

● (2135)

The Joint Chair (Hon. Gwen Boniface): No, I'm just speaking strictly to this. I share the concern that Mr. Virani raised, because I asked the same question around the reference to the Senate in here. I'm wondering whether this is something that.... I guess I'm not proposing anything. I'm just putting my position on the table.

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

Ms. Bendayan, go ahead.

Ms. Rachel Bendayan: I believe this comes from the green book, but I'm double-checking to get a page number. In terms of the discussion, Mr. Chair, that you were having with my colleague, Mr. Virani, it does state specifically that a committee has no power to send documents to a court or other body, only the power to send for documents. I just wanted to provide that information to colleagues.

The Joint Chair (Mr. Matthew Green): Thank you. Do you have a reference page?

Ms. Rachel Bendayan: Yes, I'm looking for the reference.

The Joint Chair (Mr. Matthew Green): I'll take you at your word. I have no reason to believe you are not citing appropriate protocol.

We have a motion that has been duly put. Do we want to call the question?

We'll call the question.

Mr. Glen Motz: Before we get there, Chair, could I ask a question?

The Joint Chair (Mr. Matthew Green): Is it a procedural question?

Mr. Glen Motz: I'm looking for consensus. Is there any consensus that we want these documents? Do we want any documents? If we have to adjust the wording....

An hon. member: The Chair, I believe, has already called the vote.

The Joint Chair (Mr. Matthew Green): I did call the vote, procedurally. There was ample opportunity for intervention. I did call the vote.

We will now proceed with the vote.

(Motion negatived: nays 5; yeas 5 [*See Minutes of Proceedings*])

The Joint Chair (Mr. Matthew Green): Procedurally on a tie, the motion fails.

That concludes the motions that were presented. Unless there is any other business.... I would just note that we have a hard stop at 9:42 p.m.

With that being said, is it the committee's will that the committee be adjourned?

We are adjourned.