

Report of the Public Inquiry into the 2022 Public Order Emergency



Volume 1: Overview

The Honourable Paul S. Rouleau, Commissioner

February 2023



**PUBLIC ORDER
EMERGENCY
COMMISSION**



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**COMMISSION
SUR L'ÉTAT
D'URGENCE**

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Cette publication est également disponible en français :

Rapport de l'Enquête publique sur l'état d'urgence déclaré en 2022.

Volume 1 : Aperçu.

Vol. 1 - CP32-167/1-2022E-PDF

ISBN 978-0-660-46655-2

(Set) CP32-167/2022E-PDF

ISBN 978-0-660-46654-5



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February 2023

To Her Excellency
The Governor General in Council

May it please Your Excellency:

Pursuant to Order in Council P.C. 2022-392, I have inquired into the circumstances that led to the declaration of a Public Order Emergency being issued by the Federal Government and the measures taken by the Governor in Council for dealing with the Public Order Emergency that was in effect from February 14 to 23, 2022, along with other matters set out in the Order in Council.

With this letter, I respectfully submit my report.

Paul S. Rouleau

Commissioner



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Executive Summary

1. Introduction

The federal *Emergencies Act* was enacted in 1988, and for more than thirty years, it had never been used. That record of disuse, in many respects, reflects success. When emergencies arise, as they inevitably do, governments must have the ability to respond promptly and effectively. Fortunately, governments are normally able to deal with emergencies without having to rely on a statute like the *Emergencies Act*, which grants powers that we would not, in ordinary circumstances, think appropriate.

Until February 14, 2022, the *Emergencies Act* had lain dormant. Then, for the first time, the Federal Government proclaimed a Public Order Emergency. This was done in response to a series of protests that occurred throughout the country, which were, in part, a reaction to years of public health measures enacted to address the COVID-19 pandemic. At the centre of these protests was the Freedom Convoy, a loosely organized collection of groups who travelled across the country to Ottawa, entrenching themselves there for three weeks and demanding radical change to government policies.

There is little doubt that the COVID-19 pandemic and the responses of various levels of government played a significant role in how the Freedom Convoy movement emerged. Some Canadians welcomed the public health measures imposed by governments. Others believed that they did not go far enough. Still others believed that government had overstepped its legitimate authority and restricted rights unjustly. It is not surprising that many who fell into the last group engaged in a range of protests against what they viewed as unjust measures. In the case of the Freedom Convoy, rules about

cross-border travel were the immediate cause of protests. Commercial truckers, who throughout the pandemic had performed critical work in difficult circumstances, had been able to pass the Canada – U.S. border with ease compared to other travellers. However, starting in early 2022, both Canadian and American authorities imposed COVID-19 vaccination requirements on truckers crossing the border. For those cross-border truckers who chose not to be vaccinated, these new rules threatened their livelihoods.

Using social media and existing networks of contacts, individuals in the trucking industry and their allies sought to mobilize a series of truck convoys to Ottawa to protest these rules. The results were beyond anything that the organizers could have imagined. Convoys measuring kilometres in length moved toward Ottawa. Thousands of supporters cheered them on by the roadside. Millions of dollars were donated to support their cause. Upon arrival in Ottawa, the convoys paralyzed the downtown core. Roads were filled with trucks, parks became encampments, and sidewalks teemed with protesters. They entrenched themselves, and some of the protesters claimed that they would remain until all COVID-19 mandates were lifted.

Ottawa was not the only site of major protests. In Windsor, Ontario, protesters blockaded the Ambassador Bridge, Canada's busiest commercial link to the United States. In Coutts, Alberta, another border crossing was blockaded until a Royal Canadian Mounted Police (RCMP) raid uncovered a cache of firearms and an alleged conspiracy to murder police. In dozens of other communities across the country, protests large and small took place that were inspired, at least in part, by the Freedom Convoy.

By February 14, there were some signs of improvement, but significant uncertainties remained. Officials within the Federal Government engaged in intense deliberations about what was needed to end the protests, secure the borders, and protect the national interest. Existing legal tools were seen to be inadequate, and provincial and municipal governments were thought to lack the plans or power to end the protests.

Cabinet concluded that there was only one option left: invoking the *Emergencies Act*. Following the invocation of the Act, some protesters left Ottawa by choice. Others remained and were forced out by police. The additional protests that government officials feared would erupt either did not arise or were not as disruptive as the protests in Ottawa. On February 23, a little more than a week after the Public Order Emergency was proclaimed, the Government announced that it was over.

2. The Public Order Emergency Commission

The *Emergencies Act* grants extraordinary powers, but balances this with a range of accountability mechanisms. One of its most significant mechanisms is that, when the Act is used, the Government is required to hold an inquiry at the conclusion of the emergency. Commissions of inquiry are independent bodies appointed by government with a mission to investigate a matter of public importance. They perform two important functions: They make findings of fact, and they make recommendations for the future. When unforeseen, disruptive, or otherwise significant events occur that impact the lives of Canadians, the public has a right to know what happened and why it happened, and to learn lessons from those experiences.

On April 25, 2022, the Governor in Council appointed me to conduct an Inquiry into the 2022 Public Order Emergency. I was given two different mandates to fulfill. The first was found in the *Emergencies Act* itself, which requires the Inquiry to examine “the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency.” This mandate from Parliament is one of public accountability. The public is entitled to know why the Government proclaimed an emergency, and whether the actions that it took were appropriate. My second mandate is contained in the Order in Council appointing me. In addition to examining the circumstances that led to the proclamation of the Public Order Emergency, it directs me to examine the following:

- the evolution, goals, leadership, and organization of the convoy movement and border protests, as well as the participants;
- the impact of domestic and foreign funding, including crowdsourcing platforms;
- the impact, role, and sources of misinformation and disinformation, including the use of social media;
- the economic and other impacts of the blockades; and
- the efforts of police and other responders prior to and after the declaration.

The Commission was asked to examine these issues “to the extent relevant to the circumstances of the declaration and measures taken.” In other words, while these topics are important and worthy of attention, it was the mandate given to me by Parliament that drove the Commission’s work.

Conducting this Inquiry presented a number of challenges. By far, the greatest challenge that I faced was time. The *Emergencies Act* itself sets out the deadline for the Inquiry to file its Report in Parliament. From the day I was appointed Commissioner, I had only 300 days to file this Report. To put that number in context, the Air India Inquiry had a little more four years to complete its work. As a result, this Commission was required to work at an accelerated pace. During our public hearings, over the course of 31 days, I heard from 76 witnesses and received more than 8,900 exhibits into evidence. Immediately afterward, I held an additional week of policy hearings, in which a further 50 experts testified.

I am proud of the hearings that the Commission held. They provided a level of insight and transparency into government decision making that is unusual. The public heard testimony from protesters; police; municipal, provincial, and federal civil servants; and political leaders from a range of governments. Eight Cabinet ministers, including the prime minister, were subjected to hours of examination and cross-examination in open hearings.

Moreover, the Commission gained access to Government records at a level rarely seen in public inquiries. Commission counsel had access to classified information that would normally be unavailable to anyone outside of the Government. Even more significantly, as a result of considerable efforts by the Commission, the Government agreed to waive Cabinet confidence over the various inputs that were before Cabinet when it deliberated on whether to invoke the *Emergencies Act*. In the 371 federal inquiries that have been held since Confederation, this is only the fourth time that such a waiver has been given.

This Report is another way in which the Commission seeks to maintain accountability and confidence in our institutions. In these pages, I have attempted to consolidate the hundreds of hours of testimony and thousands of pages of evidence that I have heard and reviewed into a single account of the events of January and February 2022. I hope that, for all those who want a better understanding of the circumstances that led to the first-ever invocation of the *Emergencies Act*, this Report will meet that need.

3. Emergencies and the law

Before turning to the evidence obtained by the Commission, I believe it is important to address the legal framework that regulates how governments respond to emergencies.

3.1 Jurisdiction over emergencies

Canada is a federation, which means that powers are divided between federal and provincial governments. Most authority to respond to emergencies rests with the provinces. It is the provinces that have jurisdiction over property and civil rights, and, generally, matters of a local nature. By exercising these powers, provinces and municipalities play a primary role in addressing emergencies occurring at the local or regional level. Even in national or international emergencies, provinces can take an active role in responding.

Under the *Constitution Act, 1867*, the Federal Government has a residual power to make laws and exercise temporary powers in relation to national emergencies. When acting under this power, Parliament has temporary, complete jurisdiction to legislate on all matters regarding the national emergency, including those that are normally exclusively under provincial jurisdiction.

Every jurisdiction in Canada has laws that are intended to provide a legal framework for responding to public emergencies. At the federal level, Canada has two main statutes that address emergency management: the *Emergencies Act* and the *Emergency Management Act*. The *Emergency Management Act* sets out federal roles and responsibilities for emergency prevention, preparedness, response, and recovery. The *Emergencies Act*, which is the focus of this Inquiry, regulates how the Federal Government can invoke extraordinary powers to respond to emergencies, as well as how that power is restrained, overseen, and ultimately reviewed.

Each province and territory also has emergency management legislation that governs their responses and specifies the powers and responsibilities of local governments with respect to emergencies. As well, Indigenous governments implement emergency measures by exercising a range of jurisdictions, including treaty rights and delegated powers.

When an event causes severe or widespread disruption, multiple levels of government may declare an emergency and exercise their authority to manage the event simultaneously. This is what happened with the February 14, 2022, Public Order Emergency. In addition to the Federal Government invoking the *Emergencies Act*, the City of Ottawa declared an emergency on February 6, 2022, and the Province of Ontario made a declaration of emergency on February 11, 2022. The City of Windsor declared an emergency on February 14, 2022.

3.2 The *War Measures Act*

Before the *Emergencies Act* existed, the Federal Government responded to certain emergencies by using the *War Measures Act (WMA)*. As its name suggests, the *WMA* was focused on a narrow set of emergencies; namely, war, invasion, insurrection, and apprehended insurrection. When Canada declared war on Germany in 1914, Parliament passed the *WMA* as a tool to allow wartime governments to make new laws without having to obtain the approval of Parliament. Under the *WMA*, when the Governor in Council (i.e., the federal Cabinet) decided that emergency measures were needed, it could proclaim an emergency. When this was done, Cabinet could enact laws without going through the ordinary process in the House of Commons and the Senate. The power given to Cabinet was subject to little or no oversight.

The *WMA* was used during both World Wars, as well as during the October Crisis of 1970. Some measures enacted under the *WMA* included the internment of Canadians of Japanese descent and the warrantless arrest of suspected members of the Front de libération du Québec. Unsurprisingly, these types of measures attracted significant criticism.

3.3 From the *War Measures Act* to the *Emergencies Act*

In 1987, the Federal Government introduced legislation to repeal the *WMA* and to replace it with a new framework for managing national emergencies. When the proposed *Emergencies Act* was introduced to Parliament, the defence minister claimed that its purpose was to prevent abuses of civil liberties. However, the reforms contained in the Act were much broader than this. The *Emergencies Act* was not simply an attempt to build in additional safeguards to prevent repeating earlier abuses that had occurred under the *WMA*. It was an attempt to enact an entirely different framework for the management of national emergencies, one that reflected a range of concerns.

The *Emergencies Act* has four main parts. First, it establishes the types of situations in which the federal Cabinet can declare an emergency. Second, it outlines the process for how proclamations of emergency begin and end. Third, it sets out the types of powers that the federal Cabinet can exercise while an emergency proclamation is in effect. Finally, it establishes a series of oversight and review mechanisms related to Cabinet's use of its emergency powers.

The *Emergencies Act* allows the Federal Government to respond to four distinct types of emergencies: (1) public welfare emergencies, such as natural disasters and pandemics; (2) public order emergencies, which arise out of threats to the security of Canada; (3) international emergencies, such as acts of intimidation or coercion by foreign states; and (4) war emergencies. This Inquiry is concerned with public order emergencies.

Each of these four types of emergencies has a distinct definition, but they all share a common element: the existence of a “national emergency.” A national emergency is an urgent and critical situation of a temporary nature that cannot effectively be dealt with under any other law of Canada and that: (1) seriously endangers the lives, health, or safety of Canadians and exceeds the capacity or authority of a province to deal with it; or (2) seriously threatens the government's ability to preserve Canada's sovereignty, security, and territorial integrity.

For a situation to constitute a public order emergency, it must arise from “threats to the security of Canada” that are “so serious as to be a national emergency.” A threat to the security of Canada, in turn, is defined by the *Canadian Security Intelligence Service Act (CSIS Act)* to mean one of four things: espionage or sabotage against Canada; foreign influenced, clandestine activities; activities involving the threat or use of acts of serious violence for the purpose of achieving a political, religious, or ideological objective; and activities directed at the overthrow of Canada's system of government.

The *Emergencies Act* can be invoked when the Government reasonably believes that the conditions for one of the four types of emergencies have been met. However, because of concerns surrounding federalism, the Federal Government usually needs to consult affected provinces before making such a proclamation. The obligation to consult does not require Cabinet to obtain the agreement of the provinces, except where an emergency exists only within a single province. The *Emergencies Act* does not require consultation with other forms of government, such as Indigenous governments, the territories, or municipalities.

Once an emergency is proclaimed, the federal Cabinet is empowered to make various types of orders and regulations that have the force of law. The powers granted to Cabinet vary with each type of emergency. There are also limits on Cabinet's power to make orders and regulations: They must be consistent with the *Charter of Rights and Freedoms* and the *Canadian Bill of Rights*; they cannot amend the *Emergencies Act* itself; and they cannot provide for the detention, imprisonment, or internment of Canadian citizens or permanent residents based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.

The *Emergencies Act* provides legislative and judicial oversight of the Government. The House of Commons and Senate must each vote to confirm a declaration of an emergency within a fixed time, or else the emergency ends. All emergencies also automatically expire after a fixed amount of time unless they are extended by Cabinet, which requires approval by Parliament as well. Either the House of Commons or the Senate may also vote to terminate a state of emergency at any time.

Parliament also reviews the exercise of emergency powers by Cabinet. The Senate or the House of Commons can consider a motion to revoke or amend an order or regulation made under the Act. If both houses of Parliament agree to such a motion, the order is amended or revoked accordingly. Parliament provides additional scrutiny through a joint House of Commons – Senate committee that reviews Cabinet's performance of its functions under a declaration of emergency.

Both a proclamation of emergency and the exercise of emergency powers under the Act are subject to judicial review on constitutional as well as administrative law grounds. Indeed, when the Federal Government proclaimed the Public Order Emergency of February 2022, numerous applications for judicial review were filed in the Federal Court, challenging the proclamation itself, as well as the measures taken by the Government. Those proceedings remain outstanding as of the time that this Report was drafted.

Finally, as I have already mentioned, once an emergency ends, the Government must cause an inquiry to be held.

4. The right to protest, and its limits

The ability to protest is a cherished right. It empowers individuals to shape the rules by which we choose to govern ourselves, thereby enriching social and political life. Demonstrations sometimes result in public disturbances. Indeed, protests' effectiveness as a form of expression can be because they are confrontational and disruptive. But like all constitutional rights, freedom of expression can be restricted in certain circumstances. This last point often seems to be forgotten in discussions about fundamental freedoms. During the hearings, I heard testimony from several protesters who said that their activities were lawful because they were engaged in protests, and thus were exercising their rights under the *Charter*. This view, while understandable, is inaccurate. The *Charter* provides a robust protection for protest activities. But like all rights in Canada, protest rights are subject to reasonable limits.

4.1 Constitutional protections for the right to protest

The right to protest is protected under the *Charter of Rights and Freedoms* primarily by three provisions: freedom of expression under section 2(b); freedom of peaceful assembly under section 2(c); and freedom of association under section 2(d).

Expression is inherent in the very idea of protest, since protests are, by definition, attempts to express grievance, disagreement, or resistance. The guarantee of freedom of expression in section 2(b) protects a person's right to communicate a message, as long as the method and location of that expression is compatible with the values of truth, democracy, and self-realization. While violence and threats of violence are not protected, freedom of expression is otherwise broad. Expression can take an infinite variety of forms, including the written and spoken word, the arts, and physical gestures. There is protection for expression regardless of the meaning or message sought to be conveyed.

Freedom of peaceful assembly, as the collective performance of individual expressive activity, incorporates and advances many of the same values as freedom of expression. A public assembly or gathering can send a message of protest or dissent, forcing the community to pay attention to grievances and become involved in redressing them. Public gatherings can enable disadvantaged and disempowered communities to forge a collective entity and leverage their voice.

Only “peaceful” assemblies are protected by section 2(c) of the *Charter*. As a matter of definition, “peaceful” might simply mean “without violence,” but it could also entail something closer to “quiet” or “calm.” A violent assembly would clearly not fall within section 2(c). The more difficult question is whether an assembly should lose constitutional protection if it is disruptive or unlawful, but not violent. In my view, it can be reasonable to protect assemblies that produce an element of disruption. Many public protests are disruptive, and that disruption may be central to their efficacy. This is especially true for groups and communities who are otherwise politically marginalized. This is not to say that all non-violent assemblies are constitutionally guaranteed regardless of how disruptive they may be. In some cases, the line between disruption and “non-peaceful” may be blurry. For example, what about assemblies characterized by seriously harmful, yet non-violent conduct? Would such an assembly still be “peaceful”? These are difficult questions to answer in the abstract.

The important point is that an assembly is not excluded from the scope of section 2(c) simply because it is disruptive.

Section 2(d) of the *Charter* guarantees freedom of association. This guarantee is grounded in empowerment for those who join with others to elevate their voice and exercise power. Like freedom of peaceful assembly, freedom of association is a collective right, which protects three categories of activities: (1) the right to join with others and form associations; (2) the right to join with others in the pursuit of other constitutional rights; and (3) the right to join with others to meet on more equal terms the power and strength of other groups or entities. Violent associational activity is not protected by section 2(d).

4.2 Limits of fundamental freedoms

In essence, most forms of protest activity benefit from *Charter* protection. However, all rights protected by the *Charter* are subject to such reasonable limits as can be demonstrably justified in a free and democratic society. In other words, no rights are absolute. In appropriate cases, a government may enact laws or take action that limits a *Charter* right in order to further another important goal. Determining whether any given limit on a *Charter* right constitutes a “reasonable limit” is done by courts under a framework known as the “*Oakes* test.”

The *Oakes* test has four main components. The first step is to determine whether a government’s reason for restricting the right is substantial and pressing enough to justify limiting a fundamental right or freedom. Steps two and three assess the ways a government chooses to advance its purpose: Does the restriction rationally advance the law’s purpose, and if so, does the law restrict the right no more than is necessary to achieve that objective? The final part of the *Oakes* test considers whether the benefit of the restrictive measure is proportionate to its impairment of the freedom.

There are many ways in which governments have sought to restrict the right to protest. Examples include confining protests to designated protest spaces or “free

speech zones,” requiring protest organizers to give notice to the police or obtain their approval, and creating bubble or buffer zones around certain locations such as abortion clinics. Despite the differences in methods, in each of these examples, courts upheld the government actions as a reasonable limit on free expression in particular cases. That does not mean that restrictions like this will always be justified. Context is important when assessing whether limits on any *Charter*-protected right can be demonstrably justified. In different circumstances, the same government conduct could have been found to be an unreasonable — and therefore unconstitutional — limit on free expression. Restrictions on free expression must always be assessed in light of the facts that apply to each individual case.

5. Policing public protests

Occasionally, witnesses at the hearings saw the absence of arrests or coercive police action as an indication that protesters were acting lawfully. This is not necessarily so. Protests are managed through a complex web of written and unwritten laws. When police respond to protests, they have wide discretion in terms of how to use the various powers that are at their disposal. In some cases, protesters work collaboratively with the police to manage parade routes and protest sites. Police may even be involved in planning aspects of public events with protest organizers. Other times, police respond reactively. During protests themselves, police can play a variety of roles, including traffic manager, negotiator, and public relations professional, as well as security guard for protesters, their targets, and members of the public alike. Police may also act to restrict protests, or even shut them down.

Even when police use powers granted to them by the criminal law, they retain wide discretion in how to act. Seriously disruptive protests in Canada seldom end with mass arrests. This is largely because police have significant decision-making authority on whether to use these powers, including whether or not to lay charges when they observe criminal conduct.

Even when arrests or tactical operations are legally justified, police will frequently choose to employ different strategies, including the use of police liaison teams (PLTs) to negotiate with protesters. There are several reasons why police may choose negotiation over enforcement. By engaging with protesters, liaison teams attempt to maintain open lines of communication and develop a relationship of trust. When police understand protesters' goals, they may be able to facilitate a safe and lawful environment where protesters can exercise their freedom of expression and assembly. Through education, police may reduce or eliminate unlawful conduct. In some instances, they may facilitate an end to the protest or reduce the size of its footprint. Police may also choose not to lay charges or arrest protesters because it is unsafe to do so.

The choices police make to manage a protest may differ from those that elected officials would prefer. While governments decide important questions about policing, their control over police is not absolute. If a government has too much control over the police, there is a risk that the law will not be applied impartially. If a government has too little control over the police, there is a risk that the police will become self-governing. As a result, police need to be accountable to democratic institutions, while still making many decisions independent of government. This latitude is often referred to as "operational independence." The contours of operational independence remain a source of debate. At this juncture, I find it sufficient to note that core law enforcement decisions such as whether to investigate, charge, or arrest someone belong to the police.

The discretion that police have in managing public order disturbances trickles down from Senior Command to individual officers. The Commission heard evidence about a range of policing models employed by different police forces. In general, Senior Command provides direction regarding an operation, including about its purpose, limitations, conditions, and expected conclusion. Incident commanders make decisions about how those objectives should be achieved. At the front-line level, each officer also exercises a degree of discretion in performing their duties.

Police are not the only actors with legal powers to prevent, manage, or end public protests. Both provincial and federal governments can call on the military to assist with disturbances that are beyond the police’s capacity to deal with alone. It is important to be very clear that using soldiers for civilian law enforcement is an extreme measure that should never be taken lightly. Soldiers are not generally trained to police; they are trained to kill. The use of such a force to police domestic disturbances would always be a grave matter.

Governments and private individuals may request the assistance of the courts to manage protest activities by seeking injunctions. An injunction is a court order that requires a person or a group to either do, or refrain from doing, things set out in the order. When protesters do not obey the terms of an injunction, police can arrest them for criminal contempt of court.

It is therefore too simplistic to say that protests are managed by police who arrest individuals who break the law. Large-scale public order disturbances, including large protests, are dynamic, complex events, which may be dealt with through a variety of means, by a variety of entities.

6. The origins of the Freedom Convoy movement

Understanding the origins of the Freedom Convoy movement is difficult. On the surface, the causes of the protests were public health measures made in early 2022 that negatively impacted unvaccinated truckers. However, the roots of the protests run much deeper. The protests against public health measures that emerged during the COVID-19 pandemic did not come out in a vacuum. Underlying protesters’ specific concerns about COVID-19 rules were broader grievances about the Federal Government and the state of Canadian society. Understanding the Freedom Convoy phenomenon requires an appreciation for this dynamic.

6.1 The rise of Canadian populism

The 2010s saw the emergence of a new wave of populist sentiment in many parts of the world, including Canada. These sentiments are characterized by the view that political and social elites govern solely for their own self-benefit, at the expense of ordinary citizens. There is no one reason why populist frameworks have become more prevalent in Canada over the last decade. It seems clear that there are at least three broad trends that help to describe the emergence of this sentiment: economic marginalization, social anxiety, and distrust in political institutions.

Economic marginalization has contributed to growing populist sentiment around the world. Many believe that the 2008 economic crisis was the product of a financial system that was rigged in favour of a small economic elite. When that system collapsed under its own weight, political elites bailed out the rich, but left ordinary people to lose their jobs, pensions, and homes. In Canada, events in 2015 added to these economic grievances, particularly in the West. Dropping oil prices presented a stark economic challenge to oil and gas workers at the same time as new environmental policies from the Federal Government, which were viewed as hostile to resource industries, came into effect. Many viewed the Federal Government as actively contributing to Western Canada's economic troubles.

Social anxieties frequently accompany these kinds of economic anxieties. While Canada has grown more globally minded and inclusive over the last decade, polling data shows that a significant segment of the population is skeptical of these trends. A substantial minority of Canadians hold increasingly inflexible views of who is "us" and who is "them," and deepening concerns that "they" represent a challenge to core social values and identity.

The 2010s also saw a dramatic erosion in some people's confidence in public institutions. Perhaps most troubling is the decreasing confidence in electoral politics. Where people question the very legitimacy of the existing political system, there is

real reason to channel their grievances through means outside of traditional electoral politics.

All of these dynamics, which help to define populist tendencies, could be observed during the Freedom Convoy. COVID-19 measures, for example, were seen by some as rules, imposed by a political elite, that inflicted terrible economic harms on working people. The lack of confidence in public institutions, such as public health authorities, led many to question the value of these measures. Political discourse was increasingly hostile. The politicians and public health officials who imposed these rules were not to be merely criticized. For some vocal opponents, they were enemies to be imprisoned or worse.

The emergence of the COVID-19 pandemic did not create these trends, but it did provide a situation where they could manifest more clearly.

6.2 Social media, social movements, and the problems of mis- and disinformation

One thing that became clear from the evidence I heard during the Inquiry was the critical role social media played in shaping the Freedom Convoy. Social media platforms were the tools by which organizers met, coordinated, and connected with participants. But these platforms do not only permit social movements to organize at a previously unachievable rate and scale. Social media also allows hate speech, propaganda, conspiracy theories, and lies to spread farther, faster, and cheaper than ever before. This too was an important dynamic both before and during the Freedom Convoy protests. False beliefs that COVID-19 vaccines manipulate DNA, social media feeds rife with homophobic or racist content, and inaccurate reporting of important events all featured in the evidence before me.

Evidence from many of the convoy organizers and participants demonstrated a range of views that I have no difficulty characterizing as being based on misinformation. Some views were outright conspiratorial. James Bauder, a protest organizer, testified

that mRNA vaccines alter people’s genes and that an international declaration on ethical principles for medical research involving human subjects authorizes the Senate of Canada to override domestic law in certain circumstances. Patrick King, another protest organizer, testified to his apparent belief that the Government of Canada had “implement[ed]” the presence of Chinese soldiers in Canada.

The role that mis- and disinformation played in the protests is complicated. In an expert report prepared for the Commission, Professor Ahmed Al-Rawi conducted an extensive review of social media posts made during the protests. His analysis showed a wide degree of variability in how different social media platforms were used. Facebook and Instagram were largely pro-convoy platforms, while Twitter was home to many opponents of the protests. Misinformation was limited on “mainstream” platforms but was prevalent in alternative platforms like Telegram. There was no single role that social media played in the protests.

Evidence from the Government of Canada indicated that there was no basis to believe that the Freedom Convoy was the product of a foreign disinformation campaign. This is an important fact, but one that risks oversimplifying the role that misinformation played. During the COVID-19 pandemic, foreign state actors had significant success spreading false information about COVID-19, public health measures, and vaccines, done as a means to sow mistrust in democratic governments. As Associate Deputy Minister of Foreign Affairs Cynthia Termorshuizen suggested, “there really wasn’t much of a need for foreign state actors to engage significantly in the convoy information environment because there was already such a high level of disinformation surrounding it.”¹

6.3 Predecessor convoys: 2018 – 2019

Trucker convoy protests were not new to 2022. In the years leading up to the Freedom Convoy, many populist movements used similar tactics, such as “slow rolls” of trucks to disrupt traffic. For example, on December 16, 2018, a convoy of some 600 trucks

¹ Evidence of Cynthia Termorshuizen, Transcript, November 14, 2022, pp. 284 – 287.

drove through Grande Prairie, Alberta to raise awareness for the difficulties truckers in Alberta’s energy industry were facing. On December 19, 2018, the group “Truckers for Pipelines” organized a 22-km-long convoy of trucks to Nisku, Alberta to protest the lack of progress in pipeline development.

In December 2018, a group of individuals in Alberta created a Facebook group called “Yellow Vests Canada” and started planning the “Yellow Vest (Official) Convoy to Ottawa.” They intended to protest, among other things, the Federal Government’s carbon pricing legislation and proposed changes to environmental laws. “Yellow Vests” was a reference to the Yellow Vests protests that had begun in France in November 2018. While the French movement also had its origins in economic grievances, some of its organizers employed anti-immigrant, antisemitic, and Islamophobic rhetoric. Some of the organizers of “Yellow Vest (Official) Convoy to Ottawa” were reportedly concerned about how the French Yellow Vest movement had come to be perceived. A related concern emerged when death threats against the Prime Minister of Canada began to appear on some Yellow Vest Canada websites. The Canadian Yellow Vest organizers eventually rebranded their movement to the “United We Roll” convoy for Canada.

On February 14, 2019, the United We Roll convoy left Red Deer, Alberta. Arriving in Ottawa on February 19, protesters demonstrated at Parliament Hill for two days. Several people who would play prominent roles in the 2022 Ottawa protests were involved in the United We Roll convoy. Tamara Lich, who would go on to play a high-profile role in the events of January and February 2022, was one of the organizers of the Yellow Vest rallies in Medicine Hat, Alberta. Mr. King testified that he was one of two individuals in the pilot truck that led the United We Roll convoy, in which Mr. Bauder also participated.

6.4 Protests in 2020 and 2021: COVID-19 and politics

The United We Roll convoy took place less than a year before the emergence of COVID-19. By the end of March 2020, every province and territory in Canada had declared some form of emergency and imposed a range of public health measures. The timing and details of these measures varied, but a number of commonalities emerged. Examples of these include travel limits, prohibitions on large gatherings, the closure of businesses and schools, and the requirement to wear masks. Some orders imposed significant restrictions on liberty, such as the curfew and stay-at-home orders adopted in Quebec and Ontario, respectively.

Starting in December 2020, Health Canada began to issue regulatory approvals for COVID-19 vaccines. With this came new public health measures that were based on an individual's vaccination status. It became increasingly common for individuals to have to prove that they were vaccinated in order to travel, engage in recreation, and even work.

The public's response to public health measures were varied. Many thought that governments were taking inadequate action to protect the people of Canada. Many others believed that governments had gone too far and were restricting liberties without justification. I do not intend to wade into the debates about the appropriateness of various governments' approaches to the pandemic. However, I do wish to make three observations. First, whatever their merit, these public health measures imposed genuine hardship on Canadians. Second, some of the rules implemented by governments caused understandable confusion and even anger among the public. This is not to say that the rules themselves represented bad policy, only that some measure of negative public reaction was understandable. Third, at a time when the pandemic forced many people to live their lives online, it is not surprising that social media was actively used as a means for individuals to express their displeasure with government actions.

Protests against COVID-19 public health measures began almost immediately after measures were imposed. Throughout the summer of 2020, protests grew in size, number, and level of coordination. The targets of protests were, at times, concerning. Most protests focused on traditional targets such as legislatures, government offices, and public spaces. As the pandemic went on, however, protesters began targeting less traditional locations such as hospitals, vaccination clinics, and schools.

A federal election was called on August 15, 2021. As with most elections, there were protests associated with campaign events. However, many of the protests were framed as being in opposition to COVID-19 vaccine mandates. Like many of the public health protests that took place prior to the election, those that characterized the 2021 election were unusually aggressive and troubling in their tone.

On August 27, 2021, campaign events in Mississauga, Nobleton, and Bolton, Ontario had been planned for Prime Minister Justin Trudeau. In Nobleton, approximately 200 anti-vaccine protesters gathered outside the venue, holding flags and banners, using bullhorns, and pushing and yelling. They circled the prime minister's bus upon its arrival and then moved toward the windows of the venue and yelled through the glass. The prime minister's campaign cancelled the event in Bolton because of security concerns regarding approximately 400 anti-vaccine protesters who had gathered outside the event venue.

On August 29, protesters at a campaign event in Cambridge, Ontario attempted to drown out the Prime Minister's speech by heckling him loudly. Some held signs with the words "no microchip," referring to the conspiracy theory that COVID-19 vaccines were injecting tracking devices into people. On September 6, 2021, a protester reportedly threw gravel at Prime Minister Trudeau during a campaign stop in London, Ontario. The RCMP reported a "marked escalation" in aggressive protester conduct and indicated that some individuals were advocating for violence.

Looking back at 2021, one can see a range of factors that contributed to the protests that took place. Individuals protested for a variety of reasons, ranging from the genuine fatigue and hardship caused by almost two years of COVID-19 measures to polarized and hostile partisan views. At the fringes were more radical actors, including both ethno-nationalist extremists and conspiracy groups. Most protests were peaceful, but social media amplified calls for violence. The growing number of people and locations that were being targeted by protests represented a troubling escalation.

6.5 James Bauder and Operation Bearhug

I have already noted that the 2022 Freedom Convoy was foreshadowed by the 2019 United We Roll convoy to Ottawa. In 2021, a second foreshadowing event took place: Operation Bearhug.

Just as United We Roll found its inspiration in the French Yellow Vest movement, Operation Bearhug was also inspired by events abroad. On August 30, 2021, truck drivers in Australia began blockading parts of the Gold Coast Highway as a protest in response to mandatory vaccine requirements and lockdowns. On the same day, Mr. Bauder — a Canadian who, as I noted earlier in this chapter, participated in United We Roll and would go on to help organize the Freedom Convoy — made a post on his Facebook page, referencing the Australian protests and calling out to all truckers in Canada to participate in a “CANADA UNITY Convoy” from Calgary, Alberta to Ottawa, subsequently dubbed “Operation Bearhug.”

On September 16, 2021, Mr. Bauder posted a message on the Facebook page for a group called Canada Unity. He advised that the Canada Unity Convoy would “not leav[e] Ottawa until the LAW is upheld by our elected Canadian government.” On September 28, he posted a copy of a “Memorandum of Understanding” (MOU) drafted by Canada Unity.² The parties to the MOU were the “People of Canada,” the Senate of Canada, and the Governor General. The MOU required the Senate and Governor

² Memorandum of Understanding, COM00000866.

General to instruct all levels of government to reinstate all employees dismissed due to vaccine mandates, issue a “cease-and-desist order” abolishing all vaccine passport rules, and create a “Citizens of Canada Committee.” In exchange, Canada Unity would “immediately stop Operation Bear Hug.”

By December 6, 2021, the Canada Unity Convoy had arrived in Ottawa. According to the Ottawa Police Service (OPS), 10 – 15 vehicles participated. Mr. Bauder claimed that the convoy grew to 500 vehicles. Protesters demonstrated in Ottawa until December 10. After these events, Mr. Bauder went on Facebook to say that the protest would have been more successful with a bigger crowd and suggested that there could be a “BearHug 2.0”.

6.6 Border measures and truckers

From early in the pandemic until August 2021, there was a general prohibition preventing foreign nationals from entering Canada from the United States for purposes such as tourism. For those who were allowed to enter, most needed to show proof of a negative COVID-19 test or to quarantine. Cross-border truckers, however, were exempted from pre-arrival testing and quarantine. In August and September 2021, Canada’s rules were loosened to permit foreign nationals to enter Canada for discretionary purposes, provided that they were fully vaccinated.

For commercial truck drivers, this change did not have any immediate impact. They continued to be permitted to enter Canada without having to be vaccinated. This began to change in October when first the United States, and then Canada announced new rules that would require truckers to be fully vaccinated to cross the border. Unvaccinated Canadian truckers could still enter, but would now have to quarantine. These changes were the spark that ignited the Freedom Convoy movement.



7. Organizing the Freedom Convoy to Ottawa

The evidence that I heard about the initial days of the Freedom Convoy painted a picture of a group of early leaders that were united in their intent to protest public health measures and, more broadly, the Government's actions in restricting freedom. They were, however, somewhat fractured over their expectations for the movement.

Chris Barber is a commercial truck driver based out of Swift Current, Saskatchewan, with a considerable social media following. He is a self-described "internet troll" and an "online troublemaker." During the pandemic, Mr. Barber became increasingly frustrated with provincial and federal public health rules.

Brigitte Belton is an independent trucker based in Southwestern Ontario. Ms. Belton testified that she faced a range of difficulties during the COVID-19 pandemic. These culminated in a negative interaction with a Canada Border Services Agency (CBSA) officer on November 16, 2021, while crossing the Ambassador Bridge in Windsor, where she was asked to pull over into the CBSA compound because she did not have a mask on. After her interaction with the CBSA, Ms. Belton posted a video on TikTok to share her experience, which garnered significant attention. Ms. Belton's frustration with public health restrictions reached a boiling point when the Federal Government introduced the vaccine mandate for cross-border truckers.

Patrick King lives in Red Deer, Alberta, and has held various positions in the oil and gas industry. He too was active on social media. Between his various online platforms, Mr. King estimates that he had about 500,000 followers. It became apparent during his testimony that Mr. King has made numerous statements on social media that could reasonably be viewed as racist and violent. During the COVID-19 pandemic, Mr. King had been outspoken about public health restrictions.

James Bauder is a commercial truck driver living in Calgary, Alberta. Like Mr. King, he has a background in the oil and gas industry. Public health measures have had a direct impact on Mr. Bauder's employment. He testified that he quit his job because

he could not access clients' facilities without proof of vaccination. He testified that all COVID-19 public health measures are unlawful, that mRNA COVID-19 vaccines are a form of gene-altering therapy, and that God told him to organize the convoy.

Tamara Lich lives in Medicine Hat, Alberta, and has worked primarily in oil and gas logistics and administration. She has held leadership positions as a board member of Wexit Alberta and Wexit Canada — political parties intended to promote Western Canadian interests or to seek independence. Ms. Lich testified that she and most of her colleagues were laid off in early January 2022, when their workplace closed amid the COVID-19 Omicron variant and an economic downturn. Her parents owned a pilot truck business that was impacted by the cross-border vaccine mandate.

Collaboration between the organizers appears to have begun in early January 2022, when Ms. Belton contacted Mr. Barber using TikTok. The pair had no prior relationship. In their discussions, they initially envisioned a slow roll campaign and made a flyer calling for slow rolls that would begin on January 23 and continue until public health restrictions were lifted. Within days, Ms. Belton learned of Mr. Bauder, who was also in the process of planning a protest convoy to Ottawa. Mr. Bauder, in turn, introduced Ms. Belton to Mr. King.

On January 13, 2022, Mr. King hosted a Facebook Live event. Mr. Barber, Ms. Belton, and Mr. Bauder were present online, along with approximately 3,000 other supporters. During the event, the group began discussing a convoy to Ottawa. That day, Ms. Lich reached out to Mr. Barber and offered to help by drawing on her background in logistics and administration. The following day, Ms. Lich created a Facebook page and a GoFundMe campaign for the Freedom Convoy and started raising funds.

On January 22, two contingents of Freedom Convoy participants departed for Ottawa from Prince Rupert and Vancouver, British Columbia, respectively. Additional contingents of the Freedom Convoy would depart from Nova Scotia and Southwestern

Ontario on January 27. Participants maintained contact with one another through radios, apps, and social media.

The Freedom Convoy was born of a collective effort by individuals who were dissatisfied with what they perceived as government overreach, particularly regarding responses to the COVID-19 pandemic. While public health measures had impacted each of them differently, their common frustration brought the organizers together and attracted supporters. However, while united in their overall motivation, their perspectives differed at times on what exactly the convoy should accomplish, and what tactics it should employ. Some organizers had ambitious visions of what success would mean, while others had more modest hopes. Mr. Barber testified that he simply wanted his voice heard. Mr. Bauder, on the other hand, publicized Canada Unity's MOU, which appeared to have more radical ambitions.

Given the differences in the organizers' goals, it is not surprising that the way they envisioned reaching those goals varied as well. For instance, the organizers do not appear to have agreed on the duration of their stay in Ottawa. Ms. Belton testified that she expected to stay one or two days. Mr. King, on the other hand, had stated during the January 13 Facebook Live event that protesters would not leave until their demands were addressed or the Government was "fired."

Organizers also did not speak with one voice, though they were sufficiently aligned so as not to denounce each other. There were occasions where some organizers were willing to overlook aspects of the others that they found problematic because they believed that co-operation would more effectively further their own goals. For example, Ms. Lich and Mr. Barber became concerned with Mr. King's involvement in the Freedom Convoy because of previous controversial statements that Mr. King had made that seemed to condone the use of violence against politicians. While I heard evidence that Ms. Lich confronted Mr. King about this prior to the arrival of the convoy in Ottawa, Mr. King continued with the group and participated in the protests.

Mr. Barber and Ms. Lich were not prepared to disavow Mr. King outright because of his large social media following and the support that he brought with him.

The organizers appear to have been more united in their intention that the protest be peaceful, or at least that it not become physically violent. Maintaining a peaceful protest was important to many of the organizers, who believed that violence or threats of violence would discredit the movement and drain it of popular support.

The five organizers I have mentioned in the preceding paragraphs were not the only ones who played key roles in the protests. They were not even the only ones who organized convoys to Ottawa. I heard evidence of a broad array of groups, organizations, and movements who participated in the Ottawa protests in some way. For example, I heard evidence from Steeve Charland, a writer, speaker, and blogger from Grenville-sur-la-Rouge, Quebec, who was an organizer of a largely independent contingent of protesters from Quebec. He is a former board member of La Meute, an advocacy group that is often associated with the far right, and is now involved with the group Les Farfadaas. Mr. Charland described Les Farfadaas as a protest movement that fights for justice and takes care of those whom society has forgotten.

Mr. Charland testified that, when he first heard about the Freedom Convoy, he had little interest in the cross-border vaccine mandate. Instead, when describing his motivation for joining the protest, Mr. Charland pointed to government overreach in the form of curfews and restrictions on hosting guests at home, among other initiatives. The curfew measure was unique to Quebec. The Federal Government had no role in its implementation.

The importance of noting Mr. Charland is to emphasize that the Freedom Convoy was never a monolithic movement. From its very beginnings, it was a collection of different groups and people, many of whom had their own unique concerns and goals.

8. The City of Ottawa

Parliament Hill is in the downtown core of the City of Ottawa, on the banks of the Ottawa River. Immediately south of Parliament Hill is Wellington Street, which is home to several important institutions including the Office of the Prime Minister and Privy Council building. Two blocks east of Parliament Hill is the intersection of Rideau Street and Sussex Drive. The Rideau Centre, Ottawa's largest shopping mall, is located there. Between Wellington Street and the Rideau – Sussex intersection is Elgin Street, which runs north – south. On the east side of Elgin Street, about four blocks south of Wellington Street, is Confederation Park.

As the national capital, Ottawa is a particularly complicated city from a legal and jurisdictional perspective. Multiple levels of government operate side by side within a relatively small, dense urban space, and multiple law enforcement agencies have jurisdiction and policing responsibilities. The OPS is the police of jurisdiction in the city of Ottawa. As such, it is responsible for providing policing services throughout Ottawa, including on Wellington Street, on Parliament Hill, and within the Parliamentary Precinct.

The OPS is an independent law enforcement agency that has a relationship with both the City of Ottawa and the Ottawa Police Services Board (OPSB). Under Ontario's *Police Services Act (PSA)*, municipalities have the duty to provide adequate and effective police services. Where a municipality establishes its own police force, the *PSA* requires the creation of a municipal police services board, which is independent from the municipality, though it shares some members. The Chair of the OPSB, up to February 16, 2022, was City Councillor Diane Deans.

Various other agencies also provide policing and security in Ottawa. The Ontario Provincial Police (OPP) is responsible for policing provincial highways that run through the city. The RCMP is responsible for protecting senior federal government officials and diplomats, investigating national security-related offences, and conducting

traffic enforcement on parkways owned by the National Capital Commission (NCC). The Parliamentary Protective Service (PPS) is responsible for physical security on Parliament Hill and in the Parliamentary Precinct. NCC conservation officers conduct parking and property offence enforcement on NCC properties. In the Quebec portion of the National Capital Region, the Service de police de la Ville de Gatineau (SPVG) provides policing in Gatineau, and the Sûreté du Québec (SQ) is responsible for highway patrol and assisting the SPVG.

9. Early intelligence and police preparation for the arrival of the convoy

As the Freedom Convoy approached Ottawa, few within the OPS expected that demonstrators would remain for a protracted period. However, there was information available to the OPS that, properly assessed, would have told a different story. Much of the disarray in Ottawa was a result of the OPS's incorrect belief regarding how long the protests would last. To appreciate why the OPS had it wrong, it is first necessary to understand the structure of the OPS, and how it went about assessing intelligence prior to the arrival of the convoy.

9.1 The structure of the OPS and roles of key OPS players

The OPS is overseen by a chief of police, who is supported by two deputy chiefs and a chief administrative officer. Together, they constitute the command team. The following table summarizes the roles of key OPS members as of January 2022, before the protesters' arrival in Ottawa:

Deputy Chief Steve Bell	<ul style="list-style-type: none">• oversaw the Intelligence, Information, and Investigations Command• was appointed as Interim Chief of Police upon Chief Sloly's resignation on February 15, 2022
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<p>Acting Deputy Chief Patricia Ferguson</p>	<ul style="list-style-type: none"> • oversaw the Community Policing Command • had executive oversight for planning and operations during the Freedom Convoy
<p>Inspector Russell Lucas</p>	<ul style="list-style-type: none"> • oversaw the Operations Support Branch (including the Special Events Unit) and served as Incident Commander during the Freedom Convoy
<p>Superintendent Mark Patterson</p>	<ul style="list-style-type: none"> • oversaw the Intelligence Directorate whose responsibilities included gathering intelligence on protests
<p>Chief Peter Sloly</p>	<ul style="list-style-type: none"> • was Chief of the OPS from October 28, 2019 to February 15, 2022

At the time of the protests, most senior officers within or overseeing the Intelligence Directorate were new to their roles.

In responding to major incidents like the Ottawa protests, the OPS uses the Incident Command System (ICS). It comprises three levels of command: strategic, operational, and tactical. Those levels are responsible for establishing an objective, determining how to achieve the objective, and carrying out the tasks to accomplish the objective, respectively. Strategic command for OPS planning and operations in response to the Freedom Convoy was assigned to Acting Deputy Chief Patricia Ferguson. The OPS used two levels of operational commanders: an event commander and an incident commander. The respective role of each was not clearly documented. The tactical level involved units that focused on implementing the operational command's plan. This included the Public Order Unit (POU), the Police Liaison Team (PLT) and the Traffic Unit.

9.2 Pre-arrival intelligence and planning

The OPS had access to multiple sources of intelligence before the Freedom Convoy arrived in Ottawa. Taken together, this body of intelligence showed that there was a strong possibility that the Ottawa protests would extend past the first weekend, contrary to what the OPS command believed.

Project Hendon is a joint intelligence project led by the OPP's Provincial Operations Intelligence Bureau. It collects information, produces intelligence, and disseminates intelligence regarding protest events that could present a public safety impact. Multiple agencies from across Canada, including the OPS and the RCMP, received Project Hendon reports regularly.

Project Hendon first reported on the Freedom Convoy on January 13, 2022. As early as the next Hendon report, on January 20, 2022, there was mention that the Freedom Convoy might attempt to disrupt the workings of government and that some participants intended to stay in Ottawa until their demands were met. From their earliest coverage of the Freedom Convoy in January, Hendon reports indicated that protesters lacked an exit strategy after arriving in Ottawa, that hundreds of vehicles from numerous convoys were participating, and that individuals with fringe ideologies were joining the movement.

In addition to the Hendon reports, the OPS had access to other sources of information. PPS assessments articulated the Freedom Convoy's intent to stay, its unprecedented support, its ability to cause disruption, and the potential for it to overwhelm the OPS. A member of the OPP PLT told OPS Acting Deputy Chief Ferguson that she believed that a core group of protesters would remain in Ottawa until all mandates were lifted. The Ottawa Gatineau Hotel Association informed the OPS that it had received an email on January 25 indicating that Freedom Convoy participants were planning to book hotels for 30 – 90 days, although on January 29, hotels advised the OPS

that groups had only booked stays for Friday and Saturday, and were leaving on the Sunday.

The OPS Intelligence Directorate played a lead role in assessing the information that the OPS was receiving throughout January. Sergeant Chris Kiez was in charge of preparing an overall intelligence assessment for the OPS, and he completed the initial version of this on January 25, 2022. The assessment stressed that this event would be of an unprecedented scale, with “numbers of people beyond the norm,” and added that the convoy would “be able to stop and effectively shut down movement if they desire.” Other risks posed by the Freedom Convoy were not prominently featured.

OPS Inspector Russell Lucas began to act as incident commander on January 21. He initially discounted the intelligence that the Freedom Convoy would remain in and disrupt downtown Ottawa until its demands were met because it did not align with his experience of anti-vaccine protests by local truckers in 2020 and 2021. Those protesters had also said that they would stay in downtown Ottawa until their demands were met, but they left within a day. Consequently, Inspector Lucas focused the OPS’s planning and preparation on traffic management, which he identified as the principal risk posed by the convoy.

Under the traffic plan, the OPS would first fill up Wellington Street with protester vehicles on a “first-come basis,” and would then stack trucks on other streets in the downtown core. Vehicles that could not fit downtown would be directed to the Sir John A. Macdonald Parkway, the Sir George-Étienne Cartier Parkway, and a parking lot located at 300 Coventry Road.

Inspector Lucas received this traffic plan on January 26. By this time, he had developed heightened concerns about the Freedom Convoy because of additional intelligence he had received. He perceived three principal risks: anti-government elements joining the Freedom Convoy; the expressed intention of some participants to remain in Ottawa beyond the weekend; and the growing public support for the

Freedom Convoy. Inspector Lucas anticipated that the OPS could be overwhelmed by the sheer number of participants.

While Inspector Lucas took steps such as obtaining additional POU's from the OPP and neighbouring municipal forces, and putting both OPS and OPP PLTs into action, the OPS's operational plan still did not contain contingency plans to address a prolonged protest. During an OPS Intelligence Directorate meeting on January 27, Inspector Lucas stated that he was praying for "really cold weather" so that few participants would remain. Without contingency plans, the operational plan counted on the best and did not plan for the worst.

9.3 Oversight by the strategic command

As the convoy approached Ottawa, no member of the OPS executive had access to a complete or accurate intelligence picture. While Chief Sloly began receiving intelligence on January 13, Deputy Chief Bell and Acting Deputy Chief Ferguson only began to receive intelligence briefings or updates around January 20.

The OPS lacked a system to ensure that intelligence reports were disseminated to the entire executive and so, for example, Hendon reports did not begin reaching the OPS's deputy chiefs until January 27, one day before the convoy arrived. Similarly, Chief Sloly and Acting Deputy Chief Ferguson apparently did not have regular access to the OPS Intelligence Directorate's daily briefings. Prior to January 27, there was also no system of dedicated executive-level meetings to discuss intelligence, which allowed this uneven dissemination to continue right up to the arrival of the convoy.

These shortcomings made it challenging for the executive to provide strategic oversight of the operational plan. Acting Deputy Chief Ferguson neither identified nor raised concerns about a disconnect between intelligence and the operational plan to Chief Sloly, perhaps because she was privy to less intelligence than Deputy Chief Bell. While Chief Sloly did identify concerns about the potential for protesters to remain in Ottawa after the weekend, he ultimately agreed with the operational plan. I note that

Chief Sloly was playing a higher-level strategic oversight role and that he relied on his subordinates to ensure that the plan reflected the intelligence.

9.4 Preparation by OPS partners

The OPS was not the only police service that was preparing for the arrival of the Freedom Convoy. On January 24, the OPP appointed Superintendent Craig Abrams as strategic commander in charge of policing the Freedom Convoy for Ontario's East Region. The OPP also deployed a critical incident commander to the National Capital Region Command Centre (NCRCC) to assist with coordinating the deployment of police resources with the OPS and other police partners. I discuss the NCRCC in more detail in the next section.

Similarly, the SQ and the SPVG prepared to manage Freedom Convoy vehicles travelling from Quebec to Ontario. The SQ, aware of the convoy from Project Hendon and its own intelligence services, developed traffic management plans for the convoys heading from various places in Quebec to Ottawa.

On January 27, a meeting took place under the auspices of INTERSECT, a police-led, information-sharing program in the National Capital Region (NCR). It was apparent to OPP Superintendent Abrams and RCMP Deputy Commissioner Michael Duheme, who both attended the call, that the OPS was planning for a weekend event at most. The two did not question this plan. Indeed, some in the OPP appear to have shared the OPS's confidence in the plan and the assumptions on which it was based.

10. Ottawa's preparation for the arrival of the convoy

10.1 Preparation by the City

The City of Ottawa's response to the protests was led by Department of Emergency and Protective Services General Manager Kim Ayotte. Mr. Ayotte reported to City

Manager Steve Kanellakos, who was the highest ranking unelected official in Ottawa. Mr. Kanellakos, in turn, reported to Ottawa Mayor Jim Watson and City Council.

When preparing for the Freedom Convoy protests, the City of Ottawa relied primarily on information provided by law enforcement agencies, which indicated that the protest would last the weekend and, while potentially disruptive, would be peaceful. However, some information the City received raised the possibility of a longer and more serious protest.

On January 26, OPS Chief Sloly briefed Mayor Watson, Mr. Kanellakos, and Mr. Ayotte on what to expect in the coming days. Mayor Watson recalled that it was unclear during that briefing how many vehicles were coming to Ottawa, what plan the protesters had, and how long they intended to stay. During this meeting, Mr. Ayotte advised the OPS that Ottawa By-law and Regulatory Services (BLRS) would not be enforcing or ticketing protesters in any situations that were dangerous. The OPS agreed with this approach.

It is unclear to what extent the City questioned or challenged the OPS's operational plan. Mr. Ayotte's evidence is that the City raised concerns about letting trucks into the downtown core but that they received "hard pushback" from the OPS. Conversely, Mr. Kanellakos told the Commission that, while the City was not consulted on the plan, he considered it a reasonable approach. The City deferred to the OPS plan and did not use its authority under municipal by-laws to close roads to prevent the entry of vehicles into the downtown core.

January 28 was the first day that convoy participants began to arrive in Ottawa. The NCRCC, a police-led and emergency operations centre with representatives from the RCMP, the OPP, the OPS, the PPS, and the City, was activated. The OPS assumed the role of incident command for the protests. Other than maintaining situational awareness, the City itself took few steps to prepare for the demonstrations. Most of

the preparation was done by the police, with City actions being more supportive or peripheral.

10.2 Information provided to the Ottawa Police Services Board

In the lead-up to the arrival of the Freedom Convoy, the OPSB was also being briefed by the OPS. The information it received with respect to the anticipated size and character of the protests was mixed. While the OPSB received some information that suggested a large, longer-term protest, the main thrust of the information was that the protests would be manageable and would only last for the weekend.

Chair Deans called a special public meeting of the OPSB on January 26. This was the first and only meeting it held prior to the arrival of the convoy. During the meeting, Chief Sloly briefed the Board. Chair Deans understood from that briefing that the OPS had no reason to believe that the protest was going to become a prolonged occupation. The OPS expected that the demonstration would last the weekend, with a small group of protesters possibly remaining into the beginning of the next week. However, Acting Deputy Chief Ferguson also advised that information obtained through contact with protest organizers indicated that it would be a fluid event that could go on for an extended period. The OPSB seemingly failed to raise this potential discrepancy at the meeting, despite its obvious importance.

The OPSB did not receive detailed information on the OPS's operational plan. Chair Deans believed a plan was in place, but felt that Chief Sloly did not want to share details at that time. The Board did not push for those details, and endorsed the general approach of facilitating the right to protest while protecting against loss of life and serious injury.



11. The Ottawa protests

11.1 Arrival and the first weekend: January 28 – 30, 2022

The police and municipal officials were not the only groups preparing for the arrival of the Freedom Convoy. Convoy supporters in Ottawa were also preparing a welcome. One such effort was the Adopt-A-Trucker campaign, organized by Chris Garrah. In addition to raising funds, which I discuss in later in Section 16.1, Adopt-A-Trucker matched truckers with Ottawa residents willing to provide food, showers, laundry, and accommodations.

Initially, Mr. Garrah was also involved with security and liaising with police, but passed those roles on to Daniel Bulford, a former RCMP member. On January 27, Mr. Bulford contacted the OPS, identified himself as the main point of contact regarding volunteer security for the protesters, and invited them to raise any concerns with him. The OPS provided Mr. Bulford with maps identifying where trucks could park in the downtown core, which Mr. Bulford forwarded to convoy organizers.

The arrival of the Freedom Convoy protesters in Ottawa could fairly be described as chaotic. The organizers' plan was for the smaller convoys to converge on January 28 in the town of Arnprior, Ontario, and then travel to Ottawa as a united convoy the following day. However, some vehicles arrived in Ottawa on January 28. Initially, the OPS was able to facilitate the orderly arrival of protesters, directing vehicles to Wellington Street. Protesters were co-operative and followed police directions. By the afternoon of January 28, approximately 150 trucks had reached downtown, and an additional 50 trucks were parked at the Coventry Road site.

The sheer number of vehicles that began to arrive caused serious challenges. By the evening of January 28, Wellington Street was stacked with vehicles and the OPS was aware that the situation would soon become even more difficult. More than 3,000 additional vehicles were expected to arrive by the afternoon of Saturday, January 29.

During the night of January 28 – 29 there were warning signs that some protesters were willing to engage in disruptive behaviour. Protesters on Wellington Street warned the OPS that “all Hell’s going to break loose” and that tractors would break through roadblocks. Protesters on Queen Street reacted with hostility to police who tried to move them. There were reports of by-law violations and aggressive conduct by protesters. Small factions of protesters appeared determined to disrupt traffic flow.

Notwithstanding the large numbers of vehicles and protesters predicted to arrive, OPS Chief Sloly was briefed at 10 a.m. on January 29 that the plan to manage traffic was still working and that convoy participants were honouring agreements with the PLT concerning where to park.

Within a few hours of this call, however, the OPS became overwhelmed. By noon, OPS security officers, traffic officers, and the PLT had become exhausted trying to manage the protests, and in order to conceal staffing shortages, the OPS began to deploy Public Order Units (POUs) to conduct foot patrols. By mid-afternoon, the entry points to downtown Ottawa were blocked and impassible.

The influx of Freedom Convoy vehicles and the disruptive behaviour by some protesters threw the OPS operational command at the NCRCC into a state of dysfunction. OPS Inspector Lucas described the atmosphere there as chaotic and explained that he and his team had neither the capacity to process the incoming information nor the resources to respond to the needs it was facing. Some dayshift officers were on duty for more than 15 hours, and some officers were not getting relieved by replacement shifts.

The OPS’s traffic plan collapsed, and the OPS began to lose the ability to manage downtown core streets. The OPS was unable to prevent the entry of heavy equipment into downtown Ottawa, including a boom truck — a heavy truck with a flatbed back used to lift and deliver construction equipment — that made its way onto Wellington

Street and hoisted a Canadian flag outside the top window of the Office of the Prime Minister.

The OPS also largely lost the capacity to conduct enforcement. When confronted with illegal activities by protesters, the OPS was unable to issue tickets, lay charges, or make arrests. This lack of enforcement contributed to a general sense of lawlessness.

While most protesters were not violent, they were disruptive. There were reported incidents at the National War Memorial, the Tomb of the Unknown Soldier, and the Terry Fox statue that many residents found upsetting. The Ottawa Paramedic Service reported treating 17 patients associated with the demonstration. The Shepherds of Good Hope, a shelter for individuals experiencing homelessness, reported that staff had been harassed for meals by protesters and that a service user and a security guard had been assaulted. Large crowds of unmasked protesters at the Rideau Centre forced the mall to close.

Even as the situation escalated, the OPS did not appear to recognize that they were facing a long-term disruption to the city. The OPS executive still expected that most protesters would soon leave. This led the OPS to miss out on early offers of support, such as when it turned down an offer of 18 front-line OPP constables because the OPS executive believed they were not necessary.

On January 30, Freedom Convoy organizers held a press conference during which they addressed the events of the first weekend. Ms. Lich and Mr. Barber participated, along with Benjamin Dichter, a trucker and podcast producer that Ms. Lich asked to assist with media relations. During the press conference, Mr. Dichter said, referring to the chaos caused by the trucks in the downtown core, “That’s what we want. We want a logistics nightmare for the government because they solve all of our problems, right? Well, they can solve this problem for us.”³ He further commented that the truckers had the intent and financial ability to stay for the long term.

³ Transcript of January 30, 2022 Press Conference, COM00000895, pp. 3 and 4.

The press conference also addressed reports of misconduct by protesters. Mr. Barber and Ms. Lich denied that anyone associated with their group was involved in defacing monuments or urinating on war memorials. Mr. Dichter dismissed reports of protesters flying Nazi and Confederate flags as “hoax hate” and emphasized the diversity among protesters and organizers.

Over the course of the weekend, the core group of protesters began to establish encampments in downtown Ottawa. Around the same time, the OPS learned that other protesters were re-booking hotels for the following weekend. These two developments forecast the pattern over the next two weeks: a core group of protesters remaining in downtown Ottawa, with thousands of additional supporters joining them on the weekends.

The OPS only identified the need to develop a plan for a longer protest after it realized, on the evening of January 30, that protesters were staying. In his testimony before the Commission, OPS Chief Sloly stated that, on January 29, he expected five to ten percent of protesters and vehicles to stay behind. It does not appear that he or his deputies considered that if ten percent of the 4,000 – 5,000 vehicles the OPS expected stayed, it would mean that up to 500 vehicles would remain in Ottawa clogging the downtown core. By January 30 or 31, Chief Sloly believed that what had begun as a demonstration had become an occupation.

11.2 The experience of Ottawa residents

Before continuing with a detailed description of the events that took place in Ottawa, it is important to describe the overall impact of the protests on the city and its residents.

The honking that had characterized the Freedom Convoy’s drive across Canada continued upon its arrival in downtown Ottawa. Throughout the first week of the protests, the honking was almost constant, continuing throughout the day and, at times, into the night. Most of the downtown protest sites had average daytime noise levels of 90 – 110 decibels in the first week. Ottawa resident Zexi Li, who eventually

obtained an injunction to stop the honking, testified that she measured noise levels inside her tenth-floor condo unit as high as 85 – 90 decibels. The negative impact of the honking was obvious. Some protesters seemed to enjoy the harm that the noise was causing. In one video, Mr. King laughed when referring to residents' inability to sleep.

Many of the trucks in the downtown core were left idling. This caused an abundance of diesel fumes to permeate the air, not only on the streets, but also in people's homes.

City services, particularly those in the downtown area, were seriously disrupted. This included access to City Hall, local libraries, COVID-19 vaccination clinics, snow removal operations, community and social services, and public transit. Traffic disruption impacted residents' lives in many ways. The Children's Hospital of Eastern Ontario reported that its cancer patients had difficulty accessing treatment.

I heard witnesses describe a general state of lawlessness in the downtown area. There was a breakdown of order and social norms, as well as activities that put public health and safety at risk. Open fires were used by protesters to stay warm, despite the nearby storage of diesel, propane, and fireworks.

Ottawa's 911 services were overwhelmed. In addition to a higher than usual number of legitimate calls, there were also many false 911 calls that seemed intended to disrupt the system.

I heard credible reports of residents feeling threatened and being harassed by protesters. On February 3, an individual was criminally charged for uttering threats against Ottawa Mayor Jim Watson. The same individual was alleged to have made a death threat against OPS Chief Sloy. Ottawa Department of Emergency and Protective Services General Manager Kim Ayotte and his family, OPSB Chair Deans and her staff, and City councillors Catherine McKenney and Mathieu Fleury also received threats. In addition, private residents were subjected to harassment,

particularly those who wore masks in public. In some instances, protesters attempted to remove residents' masks, resulting in physical altercations.

I also heard evidence of homophobic and transphobic slurs being directed at residents, and of racialized residents feeling targeted. Some individuals who lived in the area were too afraid to leave their homes. Vulnerable residents were particularly affected. These fears were compounded by the seeming inability of the police to protect the public and preserve law and order. Residents saw symbols of hate in their community, including swastikas and Confederate flags. Also present was the flag of Diagonon, a group created by online personality Jeremy Mackenzie, who was in Ottawa with other Diagonon members during the first weekend of the protests. Law enforcement and intelligence agencies view Diagonon as a militia-like extremist organization, a characterization that Mr. Mackenzie disputes.

Downtown businesses were also affected, with many closing in response to the protests. By some estimates, lost business revenue and lost wages totalled between CAD\$150 million and CAD\$210 million.

11.3 The protesters after the first week

Throughout the first week, around 500 vehicles remained in the downtown core. Convoy participants who stayed in Ottawa were organized around a system of “block captains” who held daily meetings with protesters camped out in the areas to which they were assigned.

While many of the protesters slept in their vehicles, others stayed in hotel rooms that had been provided by financial supporters of the protests. One donor reportedly spent \$100,000 on hotel rooms for protesters. Hotels were also used as command centres, with different aspects of the protests coordinated out of different hotels. Mr. Dichter stayed at the Sheraton, where he focused on public and media messaging. Mr. Garrah, Mr. Bulford, and the Adopt-A-Trucker team established their

headquarters at the Swiss Hotel, focusing on distributing food, maintaining portable toilets, shovelling snow from sidewalks, collecting waste, and working with police.

Another command centre took shape at the ARC Hotel. Ms. Lich and Mr. Barber took up residence there, as did Mr. Bauder and his Canada Unity group. Also located in the ARC were the leaders of the anti-mandate group Taking Back Our Freedoms (TBOF).

Early in the first week, Ms. Lich concluded that she needed legal advice regarding the GoFundMe fundraiser that she had started. She was put in touch with the Justice Centre for Constitutional Freedoms (JCCF) who, in turn, asked Edmonton-based lawyer Keith Wilson, KC to represent some of the convoy organizers. Mr. Wilson agreed to lead a team of lawyers, including Eva Chipiuk. On February 2, Mr. Wilson flew to Ottawa with several individuals, including Chad Eros, an accountant who agreed to assist Ms. Lich in dealing with the GoFundMe campaign.

Ms. Lich was exhausted as she fielded requests for access to donated funds from individual protesters and organizations like TBOF. She was concerned that TBOF was attempting to take over the movement.

When they first met, Ms. Lich felt that Mr. Wilson was genuine and was there to help. She immediately liked and trusted him. Others did not. Mr. Dichter felt that Mr. Wilson's messaging was too negative. Mr. Eros came to believe that Mr. Wilson, Ms. Lich, and others with roots in the Alberta sovereigntist movement had taken over the narrative of the Freedom Convoy, which threatened to delegitimize the protest.

11.4 Policing the first week of the protest

Although the OPS realized that the protests had become a more serious policing problem than it had expected, it did not develop an overall operational plan to resolve the protests. Instead, it focused on developing a public order sub-plan that was disconnected from a broader resolution strategy. This resulted in a perception

that Chief Sloly — who focused on the development of this sub-plan — prioritized enforcement over other strategies to resolve the protests.

The OPS's planning challenges were compounded by a general breakdown of command and control. The breakdown began on February 1, when the OPS shifted primary operational decision-making authority from the OPS Incident Commander, Inspector Lucas to the OPS Event Commander, Superintendent Christopher Rheaume. On February 4, OPS Acting Deputy Chief Ferguson replaced Superintendent Rheaume with Superintendent Jamie Dunlop. Chief Sloly testified that neither of these changes were communicated to him until February 5 and that his deputies' failure to promptly inform him of these significant changes eroded his trust in his executive team. Chief Sloly also lacked confidence in Superintendent Dunlop, which led the OPS to replace him with a third event commander, OPS Superintendent Mark Patterson, on February 6. The constant changing of event commanders during the protests was highly disruptive.

Another problem that emerged during the first week of the protests was the failure to properly employ Police Liaison Teams (PLTs) to manage the protests. PLT engagement was sometimes misunderstood by OPS leadership as an avenue to make later enforcement appear more legitimate, or as another means to gather intelligence, rather than as a tool to build long-term relationships, to identify win-win solutions to problems, and to shrink the footprint of the protests. Perhaps as a result of these misunderstandings, the PLT was denied the autonomy it needs to work effectively. In practice, PLT activities were micro-managed by OPS leadership.

It is hard to understand exactly why these problems existed since the PLT had already proven its usefulness during the first week of the protests. For example, PLT officers were instrumental in convincing protesters to peacefully vacate Confederation Park by February 6. Notwithstanding this early success, the PLTs were underutilized until mid-February. OPP witnesses testified that there were moments when PLT officers were sitting idle.

Public confidence in the police also began to erode during the first week of the protests. During a briefing for members of Ottawa City Council and OPSB members on February 2, OPS Chief Sloly stated that “there may not be a policing solution” to the Freedom Convoy. Chief Sloly testified that he made this statement because no single police of jurisdiction could handle the size and scale of the events. However, as Chief Sloly recognized, his statement was widely misunderstood and misinterpreted. Many members of the public found the statement alarming, and it left them wondering how the situation could be resolved without police intervention.

OPS members started reaching out to external agencies for help on January 31. The OPP responded to the request, but the RCMP declined to provide some of the personnel requested by the OPS. RCMP Commissioner Brenda Lucki was concerned that the OPS lacked a plan to use RCMP POU's and did not want to commit to providing those officers until there was greater certainty in how they would be used. She did not explain to Chief Sloly that this was one of the reasons why she was declining his request. Requests for policing resources were also made at the political level including calls between Ottawa Mayor Watson and Prime Minister Trudeau, as well as provincial Cabinet Minister Lisa MacLeod, and between Chief Sloly and Ontario Solicitor General Sylvia Jones.

On February 2, the OPP identified that the OPS's lack of internal command, control, and communication was frustrating the OPP's attempts at providing assistance. OPP Superintendent Abrams testified that the OPS's response to the Freedom Convoy remained dysfunctional and dangerous. He pointed to the failure to use PLTs and confusion within the OPS over who had the authority to direct operational planning as reasons why he was reluctant to provide additional OPP resources to the OPS.

OPS Chief Sloly attempted to respond to the OPS's confused command and control structure by becoming more engaged in decision making and planning. Multiple witnesses testified that this was counterproductive because it eroded the authority of the event commander and created more confusion about who was in charge.

On the morning of February 4, Chief Sloly publicly announced a new “surge, enforce, and contain” strategy that involved the deployment of an additional 150 officers to conduct enforcement and contain the protests within the downtown core. Many OPS officers who were responsible for implementing this plan only learned of it when it was publicly announced, and partner agencies had not been consulted beforehand. The OPS also lacked the officers to staff the plan, even though Chief Sloly was told before the announcement that the OPS did have sufficient personnel.

On February 5, Chief Sloly articulated a number of general priorities for the OPS, which he believed were already embedded in the OPS’s plan. However, OPS Acting Deputy Chief Ferguson understood these to be new priorities that would form the basis for a new plan. Multiple witnesses perceived that Chief Sloly’s interventions contributed to the breakdown of the incident command structure that Chief Sloly was attempting to remedy.

The end of the first full week of the protests on Sunday, February 6 became a low point for police – protester relations and internal police morale. This was best characterized by a series of events involving the Coventry Road site which, by February 6, had evolved into a logistics hub for the Freedom Convoy. To support the trucks in the downtown core, protesters were storing thousands of litres of fuel at this site, and this represented a major safety risk.

The PLT began to negotiate with protest leaders at Coventry Road to get the fuel stockpile removed. The negotiations went well, and a protest leader agreed to do what he could to move the fuel off-site. Approximately two hours into these negotiations, however, the PLT learned that the OPS would be conducting a public order operation at Coventry Road later that day. Upon hearing this news, the PLT attempted to have the POU action stopped, but event commander Superintendent Patterson and Deputy Chief Bell decided to proceed. The result was that the POU moved into the area and arrested protesters as they were removing fuel, pursuant to their agreement with the PLT. Protesters understandably viewed this as a betrayal by the OPS. Both OPS and

OPP PLT members were demoralized and felt that there was no use in trying any longer since the trust they had cultivated with protesters had been lost.

11.5 City residents begin to fight back

Frustrated by what they perceived to be the lack of a meaningful response by the OPS, residents of Ottawa began to take their own action against protesters during the first week. On February 4, Ottawa City Councillor McKenney organized a “safety walk” with residents in order to “take back the streets.” They organized a second walk a few days later, but it was called off because of heightened risks of confrontation with protesters.

Following the first weekend, Ottawa resident Zexi Li became the lead plaintiff in a proposed class action lawsuit against the protesters. As part of that action, Ms. Li obtained an injunction on February 7, prohibiting protesters from using air or train horns within the city. Initially, the injunction was successful, but eventually the honking resumed.

11.6 The municipality's response

Ottawa's primary response during the first week was its decision, on Sunday, February 6, to declare an emergency. City Manager Kanellakos testified that the decision was made at that time because it had become evident that the protesters were staying, and police were reporting that they did not have enough resources. According to Mr. Kanellakos, the City felt that the declaration would notify the community that the situation was serious and would signal to the Province of Ontario that it should step in.

On February 7, Ottawa City Council held its first meeting since the start of the protests. Council passed several motions including the following:

- asking that the mayor call on the provincial and federal governments to provide the necessary financial and logistical supports needed to peacefully end the protests;
- directing staff to apply for an increase to the set fine applicable to several by-law violations;
- condemning the racism, antisemitism, and discrimination experienced by the Black, Jewish, Muslim, racialized, and 2SLGBTQI+ communities; and
- petitioning the federal government to assume responsibility for public safety and security within the Parliamentary Precinct.

On the following day, OPS Chief Sloy wrote to Mayor Watson and OPSB Chair Deans stating that the OPS was the sole police of jurisdiction and that this last motion lacked authority.

Council also debated a motion for the City to enter into discussions with the federal minister of Public Safety to determine whether the *Emergencies Act* could be invoked at that time. The motion failed on a 12 to 12 vote.

During the first week, City legal staff worked on the possibility of obtaining some type of injunction against the protesters. On February 2 and 4, the City's legal department asked for information from the OPS about the type of injunction that it would need to assist in responding to the protests, but found it difficult to get a clear answer. Ottawa City Solicitor David White concluded that the OPS had lost interest in an injunction. It seems that the City took the position that it would only seek an injunction if the OPS said it needed one.

As the protests continued, members of City Council began to push for more action, and on February 9, they passed a motion asking Mr. White to review the possibility of pursuing an injunction. During its February 11 meeting, the OPSB also discussed why an injunction had not yet been sought by the City. That very day, at the direction of City Manager Kanellakos, the City of Ottawa filed an application for an injunction in the Ontario Superior Court of Justice. The application was for an order prohibiting

protesters from violating the City’s by-laws. Associate Chief Justice Faye McWatt granted the injunction the next day, describing the City’s evidence as overwhelming.

In the end, the City’s injunction was never used by police. Mr. Kanellakos testified that, in hindsight, it probably would have helped to seek the injunction sooner.

11.7 Ontario’s absence

One theme that emerged during the Inquiry was the view that the Government of Ontario was not fully engaged in responding to the protests. Many witnesses saw the Province as trying to avoid responsibility for responding to a crisis within its borders.

These complaints were difficult to assess because Ontario did not fully participate in the Inquiry. While the Province produced about 1,000 documents and provided the testimony of a deputy minister and an assistant deputy minister, it did not seek standing as a party. Moreover, both Premier Doug Ford and Solicitor General Sylvia Jones refused to be interviewed by Commission counsel. When I issued summonses to compel their testimony, they invoked Parliamentary privilege and refused to comply. As a result, the Commission is at a regrettable disadvantage in its understanding of Ontario’s perspective.

Ontario Deputy Solicitor General Mario Di Tommaso testified that the Province was “very engaged in providing support to the City of Ottawa through a variety of means” but also testified that “when the concern was such that the protest was spreading to other parts of the province ... that’s when the Premier decided to act.”⁴ I take these comments as recognition that the Province was not as engaged when protests in Ontario were limited to Ottawa.

The absence of provincial engagement at the political level is well illustrated by a series of “tripartite meetings” that took place between February 3 and 10. These were

⁴ Evidence of Deputy Solicitor General Mario Di Tommaso, Transcript, November 10, 2022, pp. 160 – 162.

attempts to bring together officials at the federal, provincial, and municipal levels to coordinate an integrated response to the protests. They took place at two levels: staff and ministerial. While Ontario sent representatives to the staff table, it was absent at the political table. Premier Ford told Mayor Watson that he did not believe these meetings would be productive. Solicitor General Jones was of the view that responding to the protests was a law enforcement issue to be dealt with between OPS Chief Sloly and OPP Commissioner Thomas Carrique, not political officials.

11.8 The Ottawa Police Service requests 1,800 officers

On February 5, the OPSB asked Chief Sloly how many officers the OPS required to end the protests. Chief Sloly took this to be a formal direction under the *Police Services Act* and on February 6, reported that 1,800 additional officers were needed. OPSB Chair Deans asked the mayor's office to apply political pressure in acquiring these resources. The mayor's office was hesitant to get involved, but after further discussions, the mayor agreed.

On February 7, Chair Deans, Mayor Watson, and Chief Sloly made the request for 1,800 officers public. Chief Sloly publicized the request in a City Council meeting, and Mayor Watson and Chair Deans sent co-signed letters to Prime Minister Trudeau, Federal Public Safety Minister Marco Mendicino, Ontario Premier Ford, and Solicitor General Jones.

While making the request public likely generated political pressure, it also risked revealing the OPS's strategic and operational thinking. The request signalled that the OPS was preparing for a mass mobilization of resources to attempt to remove protesters. That created the possibility that protesters could plan a strategic response.

In fairness, the February 7 request was not the only time when political actors disclosed staffing information, arguably for political purposes. In one media release, Ontario Solicitor General Jones stated that more than 1,500 OPP officers had been on the ground in Ottawa from the beginning of the protest. In reality, the OPP had

contributed a cumulative 1,500 OPP officer shifts. OPP Commissioner Carrique and Ontario Deputy Solicitor General Di Tommaso characterized the disclosure of these figures as unhelpful and unwise. When pushed on whether the solicitor general was politicizing the issue of police resources through this statement, Commissioner Carrique indicated that the Commission would need to ask the solicitor general herself; however, as discussed previously, Solicitor General Jones refused to testify before the Commission.

On the same day that the request for 1,800 officers became public, OPP Commissioner Carrique, Ontario Deputy Solicitor General Di Tommaso, and RCMP Deputy Commissioner Duheme heard reports that OPS Chief Sloly had told his team to ask for twice as many resources as they needed. Chief Sloly acknowledged that he may have made a remark of this nature during an OPS meeting. While Chief Sloly's intent was to encourage the command team to consider how many resources they needed in the long term, when OPP Superintendent Abrams learned of the request for 1,800 officers the following day, he was understandably suspicious.

11.9 Rideau and Sussex

Tom Marazzo served as an officer in the Canadian Armed Forces for 25 years. He came to Ottawa during the first weekend of protests, after James Bauder asked him to assist with logistics. By the evening of February 7, Mr. Marazzo became concerned about mounting public pressure on the OPS to take action against protesters. Mr. Marazzo felt that the protest organizers needed to help to relieve the tension.

On the morning of February 8, OPS Deputy Chief Bell told City Manager Kanellakos that the PLT wanted to meet with him to discuss a potential meeting with some of the protesters. Mr. Kanellakos told PLT officers that he would meet with the protesters but that he needed something in exchange. An officer suggested that the trucks could be moved out of the residential neighbourhoods.

At around noon on February 8, the PLT escorted Mr. Marazzo and convoy lawyers Mr. Wilson and Ms. Chipiuk to Ottawa City Hall to meet with Mr. Kanellakos. Mr. Marazzo told Mr. Kanellakos that the protesters wanted a meeting with the mayor. Mr. Kanellakos said that there would be conditions on a meeting; namely, that trucks move out of the residential areas. Everyone agreed that this would be a positive step.

After the meeting, Mr. Marazzo, Mr. Wilson, Ms. Chipiuk, and the PLT went to the intersection of Rideau Street and Sussex Drive to try to convince the protesters there to relocate onto Wellington Street. This intersection was an area of particular concern for the police due to the highly aggressive attitude of the protesters who were situated there. Ms. Chipiuk and Mr. Marazzo led the effort to convince the protesters to move. Eventually, they agreed to do so. Moving the trucks required the assistance of the OPS, which had previously installed jersey barriers that blocked traffic on Rideau Street from moving onto Wellington Street. In the early evening, Ms. Chipiuk and Mr. Marazzo located an OPS PLT member and informed him that the truckers were ready to move. After a phone call, however, the PLT officer informed the protest organizers that the OPS would not remove the jersey barriers.

This decision by the OPS appears to be the result of an internal miscommunication. OPS Acting Superintendent Robert Drummond understood that the plan was to have the group at Rideau and Sussex leave Ottawa, not relocate to Wellington Street. Once it became clear that the protesters simply wanted to relocate, the OPS refused to co-operate. The identity of the individual who did not approve the move is unclear.

In parallel with the negotiations between the City and the protest organizers, the OPS was planning a public order operation to clear the Rideau – Sussex intersection. An operation had initially been planned for February 7, the day before Mr. Kanellakos met with the protesters, but had been postponed for lack of resources. On February 9, OPS Superintendent Patterson presented another plan for this operation. The OPP and the RCMP did not support the operation as presented, and an OPS commander

cancelled it because OPS public order experts felt that the plan was poorly planned and unsafe.

Unaware of the POU operation that was still under consideration, Mr. Marazzo, Mr. Wilson, and Ms. Chipiuk met with the PLT on February 9 to see if it might still be possible to move the trucks out of the Rideau – Sussex intersection. They told the PLT that, if the police could guarantee the removal of jersey barriers, they could work with the truckers that were located at the intersection and convince them to move. Having been forced to abandon its public order operation, the OPS command eventually approved the plan to move trucks onto Wellington Street.

On February 10, convoy organizer Tamara Lich requested that key organizers and volunteers meet at Rideau and Sussex at 10 a.m. to try to get the truckers to clear the intersection. Together with the PLT, they persuaded several truckers to move onto Wellington Street. At around 4 p.m., the OPS indicated that it would remove the barriers. Just before sunset, police and City workers arrived at the intersection with a forklift and tow truck. The police presence in the area was increased to help manage the move. However, some of the protesters believed that the police were there to remove the truckers by force and reacted accordingly. Despite Mr. Wilson's and Ms. Lich's efforts to calm the growing crowd, it became impossible to carry out the operation.

11.10 The Integrated Planning Cell

The February 7 request for 1,800 officers was referred to the OPP and the RCMP for assessment. The RCMP wanted this request to be supported by a plan before they committed resources, but the OPS still lacked an overall operational plan to end the protests. To address this problem, OPP Commissioner Carrique decided, with RCMP Commissioner Lucki's support, to establish an Integrated Planning Cell (the Cell) to assess the OPS's needs and to support its planning efforts. The Cell was a team of subject matter experts led by OPP Chief Superintendent Carson Pardy. During the

first meeting with the Cell on February 8, the OPS agreed to provide the Cell with its plan and to consider a proposal from Chief Superintendent Pardy to establish a unified command with the OPP and the RCMP.

OPS Chief Sloly's attitude toward the Cell was mixed. He saw benefits from the Cell's expertise, but also felt that it was assessing whether the OPS was "worthy" of additional resources. Chief Sloly was also concerned that the Cell would be used to undermine him and the OPS. On February 9, he commented that integration with the Cell was, in effect, a zero-sum game: either the OPS would embed the Cell into the OPS's plan, or the Cell would embed the OPS into the Cell's plan. Chief Sloly insisted that the OPS remain in control.

Chief Sloly proceeded to oversee the development of an operational plan that reflected his focus on public order operations. This February 9 plan contained a terse, one-sentence mission statement that emphasized ending unlawfulness and restoring safe and open neighbourhoods and businesses. The plan called for negotiation but included little detail on the role of the PLT. Its focus was a series of public order operations to reduce the protest footprint by clearing protesters out of Ottawa, one area at a time. The command and control dysfunction and the lack of trust between Chief Sloly and his deputies that had plagued the OPS during the first week persisted in the development of this plan.

The OPS's second meeting with the Cell on February 9 was, at times, contentious. Chief Sloly insisted that the Cell guarantee specific numbers of officers and suggested that attempting to plan without those resource commitments would be a waste of time. The Cell did not view the OPS's plan as safe. The Cell stated that it wanted to help the OPS to develop an appropriate plan and was prepared to commit to providing the resources required to implement it. While Chief Sloly understood the Cell's perspective that the OPS's plan was too aggressive, he did not agree to pause it.

From the Cell's perspective, this meeting did not generate the agreement on planning or integration that the Cell was seeking. Instead of a joint plan, there were now two plans: the OPS's February 9 plan, and a plan that the Cell was developing to systematically clear the downtown core.

By February 10, OPP Commissioner Carrique had prioritized the deployment of OPP resources to Windsor to address protests that were taking place there, which I discuss in Section 12, later in this chapter. He based this decision not only on Windsor's economic importance, but also on the fact that the OPS lacked an appropriate plan to use OPP officers. The RCMP redeployed officers from Ottawa to Windsor for similar reasons. Neither the RCMP nor the OPP appears to have communicated this decision to Chief Sloly, which may have contributed to his low expectations of the Cell.

The OPS's integration, planning, and command and control challenges reached their breaking point on February 10. The Cell struggled to obtain information on OPS resources and plans because OPS officers felt unable to provide it without Chief Sloly's approval. While the Cell was developing its own plan, the OPS had not endorsed it.

Making matters worse, the relationship broke down between OPS strategic commander Acting Deputy Chief Ferguson and OPS operational commander Superintendent Patterson. As I discussed earlier, the February 9 public order action against the Rideau – Sussex protesters was cancelled. Chief Sloly and Superintendent Patterson wanted to proceed, but Acting Deputy Chief Ferguson stated that she disagreed with their approach. In response, Superintendent Patterson accused her of undermining his authority and colluding with her spouse, who led the OPS PLT. She denied this allegation. Chief Sloly removed Superintendent Patterson as event commander due to his comments regarding Acting Deputy Chief Ferguson.

11.11 The OPS's attempt to "reset"

Superintendent Patterson's removal paved the way for a significant reset. Chief Sloly consulted with his deputies on a replacement, and on February 10, they selected

Acting Superintendent Robert Bernier, one of the OPS's best-trained commanders. Acting Superintendent Bernier immediately identified a series of priorities that he believed would help the OPS to "reset" its response to the protests.

Acting Superintendent Bernier began by developing a new mission statement for the OPS's plan that emphasized negotiation, de-escalation, respect for the right to protest, public safety, and integration of the POU and the PLT into decision making. He formed an integrated command table to make all operational decisions, which had seats for POU, PLT, and OPP officers.

The appointment of Acting Superintendent Bernier did not solve all of the OPS's challenges. At times, Chief Sloly continued to be engaged in operations. Acting Superintendent Bernier was not always provided with timely information. Nevertheless, the course correction that began on February 11 was significant, and marked a genuine turning point.

By February 11, the Cell had developed a draft plan. It outlined a four-phase approach to stabilize the situation, dismantle the entire protest zone, maintain the cleared zone, and then demobilize. RCMP Commissioner Lucki and OPP Commissioner Carrique both expressed confidence in the draft plan when they were briefed on it on February 11. OPS Acting Deputy Chief Ferguson also supported it.

However, the Cell and the OPS were still working in silos, and Acting Superintendent Bernier did not even know that the Cell was developing its own plan. On February 12, OPS Deputy Chief Bell recognized that there was a need to marry the Cell's plan with Acting Superintendent Bernier's plan. The Cell's RCMP representative contacted Acting Superintendent Bernier later that day, and the work of integrating the plans began.

While Acting Superintendent Bernier advised the Cell that he had spoken with Chief Sloly and that the Cell should proceed with the plan, Chief Sloly subsequently told the Cell that he needed to be briefed on it himself. When OPP Chief Superintendent Pardy

told Chief Sloly that the Cell wanted greater integration, Chief Sloly responded that he wanted to be briefed on that, too. On the afternoon of February 12, the Cell briefed Chief Sloly on its draft plan, but Chief Sloly did not provide his approval. According to OPP Chief Superintendent Parfy, this occurred because of a statement made by an RCMP expert during the meeting that unintentionally suggested that Chief Sloly's actions could cause the police response to the Ottawa protests to fail. Chief Sloly requested further documentation and stated that he would not support the Cell's approach if he was not confident in what the OPS and the Cell could accomplish.

On the evening of February 12, the Cell finalized and approved its draft plan. On February 13, the Cell sought and obtained Acting Superintendent Bernier's approval, and Acting Deputy Chief Ferguson informed the Cell that OPS Chief Sloly's approval was not required. Chief Sloly told RCMP Commissioner Lucki and OPP Commissioner Carrique later that evening that the OPS had fully approved the plan.

The February 13 plan was a significant improvement over the February 9 plan. It detailed how the police would end the protests by first using the PLT to shrink the footprint of the protests and then launching POU actions to remove any remaining protesters. It created an integrated OPS – OPP – RCMP strategic command that would resolve any disagreements between the forces' operational commanders and provide a buffer between the operational commanders and the political sphere.

While the February 13 plan did not yet include sub-plans to clear protesters from downtown Ottawa and tow vehicles, they were under development. Commissioners Lucki and Carrique expressed confidence in the plan and appeared to be prepared to commit significant resources to it.

11.12 Continued resistance from residents

By the third weekend of protests, residents' frustrations were reaching a boiling point. This frustration culminated on February 13 in "The Battle of Billings Bridge," a counter protest that was organized to prevent another convoy from joining the demonstrations

in the downtown core. Hundreds of residents filled the street, blocking the convoy from passing. Eventually, protesters agreed to remove the flags supporting the convoy from their vehicles and were allowed to leave, one at a time.

According to Ottawa City councillors McKenney and Fleury, this was a watershed moment. The community felt empowered and wanted to take more action. Others viewed this event quite differently. Prime Minister Trudeau testified that the Government was concerned that counter protests such as this would become more frequent and would increase the possibility of violence.

11.13 The “breakthrough” with the protesters

At the same time that the OPS was engaged in its course correction, protesters and City officials were engaged in renewed talks.

Dean French is the former chief of staff to Ontario Premier Doug Ford. On February 6, he was put in touch with convoy lawyer Mr. Wilson. Mr. French offered to act as an intermediary between the protesters and the City of Ottawa to see if the two sides could find common ground on a way forward. On February 10, Mr. French called Mayor Watson, whom he knew from his time in politics. Mr. French indicated that he was willing to facilitate discussions with the protesters. The mayor asked his Chief of Staff, Serge Arpin, to call Mr. French back. During his first call with Mr. French, Mr. Arpin suggested that if Mr. French could persuade the convoy organizers to remove trucks from residential areas, a meeting between the protesters and Mayor Watson might be possible. Mr. French conveyed this message to Mr. Wilson and the protesters.

Mr. French continued to have productive one-on-one discussions with Mr. Arpin and Mr. Wilson, and on February 11, went to Ottawa to iron out a deal. He met with Mr. Arpin to finalize the details of an agreement, which included a commitment to move at least 75% of the trucks in residential areas out within 24 – 72 hours.

Later that day, Mr. French met with protester representatives Mr. Wilson, Ms. Chipiuk, Ms. Lich, Mr. Marazzo, and several others and finalized the terms of a deal. Some trucks would be moved onto Wellington Street, while others would depart to the nearby town of Arnprior. In exchange, the mayor of Ottawa would meet with Ms. Lich and other protesters. Ms. Lich and Mr. Wilson viewed the deal as a possible exit strategy for protesters. Several convoy organizers met that evening and decided to accept the deal.

Letters setting out the terms of the agreement were drafted to be signed by Mayor Watson and Ms. Lich. On February 12, the two exchanged these letters.⁵ On February 13, copies of the letters were distributed to Chief Sloy, OPS legal counsel, City councillors, and the chief of staff to Minister Mendicino. Both letters were made public later that day.

The OPS only became aware of these negotiations on February 12. At noon on February 13, just prior to the letters being made public, there was a call between City Manager Kanellakos and OPS Chief Sloy. They agreed that OPS Acting Superintendent Drummond would be assigned to assist with the logistics of implementing the deal, and that OPS, City, and protester representatives would meet that evening to sort out the move. At this meeting, Acting Superintendent Drummond negotiated some of the details of the move with the protesters. It was understood that the trucks that could not fit onto Wellington Street would leave the city. Acting Superintendent Drummond told the protesters that even if they moved to Wellington Street, they could not stay there forever.

The protester group went out to speak to the truckers on the ground to get agreement on the deal. Although there was some pushback, the protester representatives felt that they were getting significant buy-in from the truckers. However, not all the organizers were supportive of these plans, and a number of them worked to undermine them.

⁵ Letter from Jim Watson, February 12, 2022, HRF00001264; Letter from Tamara Lich, February 12, 2022, HRF00001275.

Benjamin Dichter used his Twitter account to deny that a deal existed, even though he had been briefed on it. He caused even more confusion by tweeting a denial from Tamara Lich's Twitter account, to which he had access. Patrick King and Brigitte Belton also denied the existence of a deal, calling it "a false flag" and "fake news."

Attempts to move trucks began at around 1 p.m. on February 14. At 4:30 p.m., the Parliamentary Protective Service (PPS) contacted OPS Chief Sloly, expressing concern at not having been informed of the deal to move trucks. By 5 p.m. it was dark, and the movement of trucks had stopped for the day. At that time, 102 vehicles had been moved, including 42 heavy trucks, 23 of which had moved onto Wellington Street. According to Mr. Wilson, other vehicles may have gone to locations outside of the city or returned home.

One significant consequence of the February 14 invocation of the *Emergencies Act* was the OPS decision, made during a February 15 noon meeting with the Integrated Command Table, to no longer facilitate the movement of trucks. Other reasons for this decision, aside from the invocation of the Act, appear to be the PPS's security concerns, the limited additional space on Wellington Street, and the fact that not all protester groups were prepared to leave.

11.14 Challenges in implementing the OPS's February 13 plan

By February 14, the OPS's February 13 plan had been approved, but the command, control, and integration challenges persisted.

Chief Sloly requested that OPS general counsel review the February 13 plan. While the general counsel advised that she would review but not approve the plan, the Cell was concerned because it understood that the plan could not be actioned until the review occurred. In addition, Acting Superintendent Bernier continued to believe that Chief Sloly wanted to review and approve the plan before it was actioned. RCMP Commissioner Lucki asked Chief Sloly, on February 14, why he had not signed off on

the plan. Chief Sloly said that he was shocked by the question and told her that his approval was not required.

The Cell also believed that the OPS was reviving its area-by-area approach from the February 9 plan because Acting Superintendent Bernier, without the involvement of the Cell, decided to launch a public order operation to remove protesters who remained on the residential streets on February 14. This unilateral initiative caused the Cell to question the OPS's commitment to integration and the February 13 plan.

11.15 Police governance during the protests

OPSB Chair Deans had regular one-on-one discussions with Chief Sloly. However, at the board level, communication was less frequent. During the first week, Chair Deans was advised by OPS communications personnel that she needed to reduce the number of OPSB meetings because of finite police resources. When Chair Deans pursued a meeting on Saturday, February 5, Chief Sloly discouraged her, saying that he wanted it delayed until Monday because he was fully focused on managing the protests over the weekend. However, Chair Deans proceeded to hold the meeting and Chief Sloly attended, as directed.

The minutes of the February 5 meeting show that the OPSB was requesting more information and putting more pressure on Chief Sloly for particulars around the OPS's plan. The minutes of the meeting indicate that Chief Sloly reassured the Board that a comprehensive plan existed, but that he could not provide them with operational details. In reality, no comprehensive plan existed at that time.

Prior to the next meeting on February 11, Chief Sloly told Chair Deans that he would not provide the OPSB with operational information, suggesting that it would have been unlawful for him to do so. When testifying, however, he agreed that the OPSB was entitled to any information relevant to its oversight function and there were no legal impediments to providing this type of information.

Around this time, Chair Deans began to doubt whether the OPS actually had a plan to end the protests. She made a further request for information. In response, Chief Sloy arranged for the OPP to attend on February 15 and brief the Board. This briefing did not occur because of his resignation, which I discuss in Section 19.1.

Ontario's Ministry of the Solicitor General is responsible for monitoring, consulting with, and advising police services boards. Kenneth Weatherill, Inspector General of Policing in Ontario's Ministry of the Solicitor General, found it concerning that Chief Sloy did not share an operational plan with the OPSB when they asked for it. Mr. Weatherill also observed that the OPSB was not receiving answers to questions it asked of OPS leadership.

Throughout the relevant period, the OPSB turned to the Ministry of the Solicitor General to get a more complete understanding of its role. The Board requested training on its responsibilities and sought guidance on developing relevant policies. The Ministry declined to provide the requested training in the middle of the protests. Instead, the Ministry offered to answer any specific questions that the Board had. On February 9, the OPSB provided a list of seven questions, and the Ministry provided a detailed response, emphasizing the Board's right to request information from the OPS.

12. The Windsor and Ambassador Bridge protests

The Ambassador Bridge in Windsor, Ontario serves as a Canadian port of entry (POE) from Detroit, Michigan. Originally targeted for a slow roll protest, the Ambassador Bridge was blocked by protesters starting on February 7. While this was not the first blockade of a Canadian POE that was inspired by the protests in Ottawa, it was perhaps the most significant due to the critical role the bridge plays in Canada's economy. The blockade would become a major preoccupation of the Federal Government in the days leading up to the invocation of the *Emergencies Act*, as well as the catalyst for

greater involvement by the Province of Ontario in responding to the Freedom Convoy movement.

12.1 The City of Windsor

The City of Windsor is in Southwestern Ontario, on the southern bank of the Detroit River. It is both a vital trade link with the United States and home to hundreds of thousands of residents. Windsor and Detroit are connected by a series of international crossings, the largest of which is the Ambassador Bridge. In 2021, the Ambassador Bridge was associated with almost 24% of Canada's trade activity by road.

On the Canadian side of the border, there are two entrances to the bridge: the primary entrance from Huron Church Road and a secondary entrance from Wyandotte Street West. Huron Church Road is a major artery in the city, and connects to Highway 401, a little more than three kilometres from the Ambassador Bridge.

The Windsor Police Service (WPS) is the police of jurisdiction in the City of Windsor. While the Ambassador Bridge itself falls within federal jurisdiction, the WPS responds to emergencies on the bridge. In January and February 2022, Pamela Mizuno was the chief of the WPS. Superintendent (Investigation Services) Jason Crowley and Inspector Karel DeGraaf acted as the WPS Critical Incident Commanders (CIC) during the protests. In their capacity as CICs, they were in charge of making operational decisions for the WPS. Subsequently, the OPP would appoint Superintendent Dana Earley as its CIC in Windsor.

The WPS has limited experience with large-scale public order events. It does not have a Public Order Unit (POU) or a Police Liaison Team (PLT); however, it uses officers trained in crisis negotiations in a similar capacity to how other forces use PLTs.

The mayor of Windsor is Drew Dilkens. He is also the chair of the Windsor Police Services Board (WPSB). Stephen Laforet is Fire Chief and Community Emergency Management Coordinator for the City. He has primary responsibility for coordinating

the development and implementation of Windsor's emergency management program. As in Ottawa, police led the response to the protests, with City officials acting in a support capacity.

12.2 Pre-arrival intelligence and preparation

Windsor had already been the site of several slow roll protests in December 2021 and January 2022, including two along Huron Church Road on January 23 and 29, both of which caused disruptions to the Ambassador Bridge. The WPS knew the organizers of these protests and were in communication with them in December and January. The WPS also monitored the social media accounts of known protesters. On February 3, the WPS learned on social media that protesters were planning a new slow roll protest in Windsor and confirmed this directly with protest organizers. Superintendent Crowley requested that his team prepare an operational plan to deal with the expected slow roll.

The WPS also had access to several sources of information and intelligence, including the Hendon reports. The first identification of an Ambassador Bridge blockade was in the January 31 Hendon Report; however, no particular date for such a protest was listed. The first time a specific date was mentioned was in the February 4 Hendon Report. It noted that commercial truck drivers would conduct slow roll protests in the coming days and might attempt to block the Ambassador Bridge on February 7. That same day, the WPS began to seek out POU resources from other jurisdictions in Ontario, and WPS Chief Mizuno reached out to OPP Commissioner Carrique directly to request assistance. Chief Mizuno briefed Mayor Dilkens on the anticipated slow roll and the threat of a blockade.

The February 6 Hendon Report reiterated the possibility that the slow roll protest planned for that day could turn into a blockade. The WPS began formally liaising with the OPP, the RCMP, the CBSA, and others to obtain further assistance. However, because resources were needed in Ottawa, only limited assistance was available.

12.3 The start of the Windsor protests

On February 6, more than 100 vehicles gathered at Mic Mac Park in Windsor. The protesters were generally co-operative with the WPS, although some responded aggressively to the presence of three WPS officers.

At 10:05 a.m. on February 7, a relative of a convoy participant called the WPS to say that the protesters were planning on shutting down the border. That morning, Chief Mizuno advised City officials that protesters were meeting in the nearby town of Comber, Ontario, and that a convoy would be driving into Windsor that morning with the purpose of blocking the Ambassador Bridge. Early that morning, Chief Mizuno and WPS Deputy Chief Jason Bellaire exchanged emails regarding the possibility of stopping the convoy before it reached the bridge. However, the WPS could not implement this because the number of personal vehicles in the convoy made it difficult to determine who was a protester and who was simply a motorist. Similarly, attempts by WPS officers to convince protesters at Mic Mac Park not to engage in a blockade failed due to the lack of any clear protest leader to negotiate with.

The WPS identified strategic intersections leading to the Ambassador Bridge and attempted to control movement through them. This worked at first, but protesters responded by improvising alternative blockade locations. By mid-afternoon, southbound traffic on Huron Church Road was stopped just south of College Avenue. By the early evening, traffic into the United States was also blocked.

On the evening of February 7, WPS officers engaged with protesters who had parked their vehicles at Assumption High School. The WPS had two tow trucks ready to assist in removing the vehicles when the protesters became confrontational. Protesters threatened violence with tire irons, jammed the towing company's phone lines, and threatened to attend the tow yard.

Over the next few days, the Ambassador Bridge was sometimes only partially blocked, and other times fully blockaded. However, throughout this period, commercial traffic was at a standstill.

At 6:30 a.m. on February 8, 2022, Superintendent Crowley sought further assistance from the OPP. Later that day, the OPP PLT arrived in Windsor. The OPP PLT convinced protesters to open a limited number of lanes and keep an emergency lane open. However, sometime on February 8, protesters blocked Huron Church Road and Tecumseh Road West, which further strained police resources. The WPS had to begin deploying non-uniformed personnel to help manage the protest.

City officials were also working to obtain additional resources at the political level. Windsor Mayor Dilkens asked Chief Mizuno what additional resources the WPS required and was told that they needed 100 additional officers. On February 7 or 8, Mayor Dilkens had separate calls with Ontario Solicitor General Jones and Federal Public Safety Minister Mendicino. In parallel with these discussions, the WPS and the OPP were also communicating about the request for 100 officers. OPP Superintendent Mike McDonnell advised WPS Superintendent Crowley that the OPP needed a plan for how the WPS intended to use 100 front-line OPP officers.

On February 9, Chief Mizuno sent formal requests for policing resources to both the Province of Ontario and the Federal Government, while Superintendent Crowley circulated a document outlining how the WPS intended to use the resources it was requesting. POUs from both the OPP and the Waterloo Regional Police Service began to arrive in Windsor that day. The arrival of these units was a welcome relief for the WPS as the protests continued and, in some respects, grew in seriousness. As of 7:30 p.m. on Wednesday, February 9, there were approximately 125 vehicles and 300 people in the vicinity of the Ambassador Bridge. The City received a report from one of its contracted parking enforcement supervisors of increasing aggression from protesters.

On the morning of Thursday, February 10, an OPP command team headed by Superintendent Earley arrived in Windsor. The WPS and the OPP established a unified command, which jointly controlled operations. Under the shared command, planning and command responsibility for any given operation was assigned to the CIC whose police force was leading the operation. In practice, this meant that the OPP was responsible for the public order response.

Upon her arrival in Windsor, Superintendent Earley set about developing a public order plan that would permit police to clear the blockade as soon as possible. By the end of the day on February 10, Superintendent Earley made the decision to launch the public order enforcement action on the morning of February 12. She picked this date and time because it was likely that fewer protesters and no children would be present.

12.4 The provincial declaration of emergency, the injunction, and the enforcement plan

The City first began considering the possibility of seeking an injunction on the afternoon of February 9. The next day, City Council voted in favour of doing so. The City ultimately decided that instead of bringing the injunction itself, it would support one brought by the Automotive Parts Manufacturers' Association. The hearing for this injunction took place on February 11. Chief Justice Geoffrey Morawetz of the Ontario Superior Court of Justice granted the motion and imposed a temporary 10-day injunction prohibiting protesters from blocking access to the Ambassador Bridge.

The Province of Ontario also took action on February 11. In addition to supporting the injunction application, it declared that an emergency existed under the *Emergency Management and Civil Protection Act (EMCPA)*. It used its powers under that law to make the *Critical Infrastructure and Highways Order*, which prohibited impeding access to certain types of infrastructure, such as the Ambassador Bridge, and gave police additional authorities to remove blockades.

Both the City and the WPS began to use signs, social media, and flyers to notify protesters that it was unlawful for them to blockade the Bridge. At 7:24 p.m., Superintendent Earley signed off on the operational plan to remove the blockade. The OPP and other participating public order units were positioned and ready to begin enforcement action. However, by then night had fallen and as news of the injunction spread, protesters were becoming more confrontational, so Superintendent Earley prepared to begin the operation the next morning.

Superintendent Earley briefly considered delaying enforcement even longer, after a discussion with OPP command about the possibility of a negotiated resolution to the protests. This option only emerged on the afternoon of February 11, when one of the protest leaders, Jake Neufeld, told an OPP PLT member that the protesters would leave if they received a letter from the Provincial Government inviting them to a meeting. The decision was made to distribute such a letter to the protesters.

Superintendent Earley learned that a similar letter would be distributed to protesters in Ottawa on the afternoon of February 13. She decided to pause the planned action in Windsor because she feared that it could negatively impact negotiations in Ottawa. Within half an hour of making this decision, OPP Deputy Commissioner Chris Harkins told her that she should not be concerned about potential impacts on the Ottawa negotiations. Superintendent Earley advised her command table that they would proceed with the planned enforcement action the next morning if the Windsor letter was not successful.

At 8:24 p.m., Superintendent Earley received a signed copy of the letter from the Province offering the possibility of a meeting in exchange for ending the blockade. PLT members distributed the letter to protesters, along with a flyer about the effect of the provincial declaration of emergency. Some protesters left in response to the letter, but many did not. There was too little time between the distribution of this letter and the planned public order enforcement action for the letter to have any meaningful effect.



12.5 Clearing the protests at the Ambassador Bridge

On the morning of February 12, there were approximately 500 protesters and 100 vehicles participating in the blockade of the Ambassador Bridge. Starting at 8:20 a.m., police began to clear the blockade. By 10 a.m., they had cleared the first of three main protest areas, and by 11:12 a.m., the second area was cleared.

By the afternoon of February 12, however, the number of protesters had increased enough to outnumber police, and police observed mounting aggression. Superintendent Earley decided to pause the enforcement action partway through clearing the third area and reinforce it for the night. That evening, protesters made attempts to breach the POU line, and police had to bring in additional officers.

The POU resumed their enforcement action at 7:54 a.m. on February 13, when there were fewer protesters present. By 8:46 a.m., they had cleared the third area. By the end of the enforcement action, 47 individuals had been criminally charged, although the charges against four of the protesters were subsequently withdrawn. A total of 37 vehicles were towed.

When the blockade was cleared, Mayor Dilkens notified Minister Mendicino, Premier Ford, and the solicitor general. Premier Ford expressed some relief, as Mayor Dilkens understood that major companies in Windsor, including the automotive and agricultural industry, were putting pressure on the premier to resolve the situation.

Significant traffic controls and police presence remained along Huron Church Road. Police closed all side street access by installing wall-to-wall jersey barriers so that the road could only be used to access the Ambassador Bridge. Emergency vehicles and those with a legitimate need to cross were permitted to do so at designated access points. This corridor, which effectively bifurcated the city, was in place for several weeks and then scaled back incrementally with the support of a significant continued police presence. A secure perimeter was kept in place until March 28, 2022.

On February 14, Mayor Dilkens learned, through media reports, of rumours that the *Emergencies Act* might be invoked. Shortly after 9 a.m., he asked Minister Mendicino if the Federal Government would be taking this step but did not receive a direct response. However, at around noon, Minister Mendicino texted Mayor Dilkens suggesting that it would be helpful if the mayor could be “supportive” of any “additional authorities” that could assist in keeping the Ambassador Bridge open.

Intelligence collected by police following the clearing of the blockade reflected that there were continued threats to the bridge and other locations in Windsor. In some cases, these threats materialized. For example, on February 15, police learned of a convoy from Ottawa headed toward Windsor. Police successfully intercepted the convoy. Peaceful protests continued in Windsor, albeit with smaller numbers of individuals.

13. The Coutts protests

The Coutts Port of Entry (POE) is located near the village of Coutts, Alberta, and is approximately 20 km south of the town of Milk River along Highway 4. The Coutts POE is the busiest land border crossing in Alberta. Jim Willett is the mayor of Coutts, and the RCMP is the police of jurisdiction. The blockade at the Coutts POE was notable for its duration, complexity, and volatility, as well as the dramatic way in which it was resolved: an RCMP action that uncovered a cache of weapons and allegations of a conspiracy to murder police officers.

13.1 The lead-up to the protest and the establishment of the blockade

On January 19, 2022, the RCMP first became aware of the possibility of protests at the Coutts POE through open-source intelligence. On January 24, an organizer of a planned protest called the Coutts Village Office to let them know there would be a slow roll convoy in the area. The organizer emphasized that the protest would not

result in a road blockage. Social media posts advertised a protest set to take place on January 29. The tone of the posts varied. Some emphasized a family-friendly event, while others referred to blocking traffic and staying until all COVID-19 mandates and restrictions were lifted.

The RCMP also spoke with protest organizers, who said that they did not intend to stage a blockade. Their plan was to conduct three slow rolls between Coutts and Milk River, ensuring that at least one lane of traffic remained unobstructed while they protested.

On January 29, a convoy of approximately 1,000 vehicles gathered in Lethbridge, Alberta, and proceeded toward Coutts on Highway 4. As the convoy neared Coutts, a lengthy backlog formed along the highway. Eventually, a truck jackknifed across the highway, blocking traffic. According to the RCMP, a splinter group of protesters wished to take a more aggressive stance than the organizers, and the organizers did not have sufficient control of the convoy to stop them.

Only some of the protesters present in Coutts on the weekend of January 29 – 30 intended to participate in a long-term protest. By January 31, most vehicles had departed, and only about 175 vehicles remained. However, several drivers positioned their trucks to fully block Highway 4.

The RCMP deployed a Consultative Conflict Management Group (CCMG), their version of a PLT, to negotiate with remaining protesters to clear the highway. The immediate difficulty that they faced was an inability to identify a clear leader to negotiate with. While protesters had begun to use Smuggler's Saloon, a bar in Coutts, as a forum to discuss their collective strategy, at that time there was little to no organization or leadership for the protests.

On January 31, additional protesters began to arrive on the highway north of the Coutts POE. In order to prevent more vehicles from joining the blockade, the RCMP created a checkpoint south of Milk River known as Checkpoint 10. Over the course of

January 31, the number of protesters at Checkpoint 10 swelled to between 500 and 700, effectively forming a second blockade along the highway.

The RCMP began to take actions to clear out the Coutts blockade on February 1. This initially involved RCMP officers approaching vehicles at the back of the convoy and asking the drivers to leave the area. This was met with success, and some vehicles departed. Through social media, protesters at the Milk River blockade became aware of what was taking place and began to drive off-road to bypass Checkpoint 10 and make their way toward Coutts. As these protesters arrived, their vehicles added to the blockade, significantly expanding it.

RCMP CCMG members went to Smuggler's Saloon to attempt to negotiate a resolution. Late on February 1 or in the early morning of February 2, they reached an agreement with protesters to open one lane of traffic in each direction. Marco Van Huigenbos, a local town councillor and unofficial spokesperson for the protesters, testified that the protesters agreed to do this to reduce the risk of further enforcement action, and to emphasize the fact that they were engaged in peaceful protest.

13.2 The evolving character of the protests

Between February 3 and 7, traffic along the highway was slow, and there were many sporadic disruptions. On February 3, a full blockade was re-established. Soon after, Grant Hunter, an Alberta Member of the Legislative Assembly (MLA) who had already been speaking with the protesters, tried to convince them to reopen one lane of traffic. It seems that they were about to agree when Artur Pawlowski, a well-known Calgary pastor, delivered a sermon at Smuggler's Saloon that incited the crowd and made them take a more entrenched attitude.

During this time, the size and makeup of the protesters fluctuated. Large numbers were present on weekends, with significantly fewer attending on weekdays. Mayor Willett also commented that, over time, the character of the protests changed. Fewer children and families were present, and the tone became more confrontational.

On February 8, after days of constant changes in the state of the protest, a full blockade was re-established. This was in reaction to a speech made by Alberta Premier Jason Kenney about easing public health restrictions. Protesters viewed the Premier as being too slow to act and believed that there was too much uncertainty about when restrictions would be eased.

13.3 Political engagement with protesters

Throughout the protests at Coutts, a range of politicians engaged with protesters in order to hear their concerns and attempt to resolve the blockade. Mr. Hunter appears to have been the first elected official to travel to the protests, arriving there on January 30. At other times, Alberta MLAs Drew Barnes and Shane Getson were also present. On February 5, local Member of Parliament Glen Motz arrived with Mayor Lorne Buis of the Village of Foremost to speak with protesters. None of these individuals represented the Government of Canada or the Government of Alberta.

Alberta Minister of Transportation Rajan Sawhney spoke on the phone with Mr. Van Huigenbos, though she was not speaking on behalf of the Provincial Government, either. Mayor Willett also tried to have Minister Sawhney come to Coutts in person, but this never happened.

Direct political engagement did not resolve the situation. In part, this may have been because none of the politicians were there in official government roles. Another explanation was that for many protesters, dialogue was not enough. They were not looking to be heard; they were looking for their demands to be met.

13.4 Efforts to procure tow trucks

The RCMP recognized that it would need tow trucks and other heavy equipment to clear the blockade if protesters refused to depart voluntarily. While a number of tow truck operators were hired to provide services, these plans began to fall apart as

early as February 1, when supporters of the blockade encouraged boycotts of anyone assisting the RCMP.

On February 4, RCMP Deputy Commissioner Curtis Zablocki, commanding officer of K Division (Alberta), signed a request for assistance (RFA) to the Canadian Armed Forces for access to heavy towing capacity. The RCMP was later told that the military did not have the equipment that would be suitable for use at Coutts.

The Government of Alberta was also seeking to obtain equipment with heavy towing capabilities. On February 2, Premier Kenney and Minister Mendicino discussed the request for military equipment, and on February 5, a formal RFA was sent by the Province in a letter from Minister of Municipal Affairs Ric McIver to Minister Mendicino and Minister of Emergency Preparedness Bill Blair. On February 7, having not yet received a response from the Federal Government, the Province of Alberta began to procure its own heavy towing equipment. By February 12, it had started to receive some of the equipment it expected to need but had difficulty locating operators who were trained to use the vehicles. In total, the Province purchased 12 vehicles at a cost of more than \$800,000.

Alberta never received a formal response to its RFA due to human error. A letter turning down the RFA was drafted and approved by Minister Blair but was never sent.

13.5 Security concerns, renewed enforcement, and the end of the blockades

As early as January 31, the RCMP was concerned about the possible presence of firearms within the protester group at Coutts. They had received reports of a protester with a gun, which they investigated without success. None of the protesters they spoke with were willing or able to identify who among them may have had the weapon.

Concern about firearms resurfaced on February 9, when the CCMG officers obtained new information about a possible cache of weapons. On February 11, the RCMP

obtained a wiretap authorization, and on February 13, based on the results of that order, they obtained a search warrant. The warrant authorized searches of Smuggler’s Saloon as well as a motorhome and two trailers.

The RCMP executed the warrant in the early morning hours of February 14. The RCMP seized 13 long guns, two handguns, two sets of body armour, a machete, a large quantity of ammunition, and high-capacity magazines. One of the pieces of body armour had patches that depicted the symbol of Diagonol, the alleged extremist organization that I discuss in Section 11.2 of this chapter. The police arrested 12 individuals during the execution of the warrants. Later that day, they arrested a thirteenth person who had been travelling from Calgary to Coutts while allegedly in possession of two additional firearms.

The arrests by the RCMP on February 14, 2022 played a significant role in ending the blockades. Mr. Van Huigenbos testified that the message of the protesters “had been lost” as soon as the news of the seizure began to circulate. By 7 p.m. on February 14, the protesters agreed with the RCMP to dismantle the blockade and disperse the next day. Many protesters returned to their homes. Others — mostly from the Milk River camp — moved to a nearby location that was offered by the Provincial Government as an alternative protest site, with some staying there for weeks.

14. Protests at other ports of entry

14.1 Southern Ontario

Southern Ontario represents a vital trade corridor with the United States. Canada’s four busiest commercial land border crossings — the Ambassador Bridge in Windsor, the Blue Water Bridge in Sarnia, the Peace Bridge in Fort Erie, and the Queenston Lewiston Bridge in Queenston — are all located in this region. When the Ambassador Bridge was blocked, much of the commercial traffic was re-routed to the three other

crossings. In addition to dealing with increased traffic, the Blue Water Bridge and Peace Bridge POEs were subjected to disruptive protests.

On February 5, 2022, the CBSA received information that a convoy of protesters was headed to the Blue Water Bridge and intended to block it. A convoy of approximately 400 vehicles arrived on February 6 and blocked all U.S.-bound traffic. After about three-and-a-half hours, protesters began to disperse, and by February 7, the CBSA reported no impact to its operations. On February 9, protesters re-established a blockade nearby, but traffic was diverted and could continue to access the bridge. This blockade continued until February 14.

On February 12, approximately 120 vehicles set up a blockade near the Peace Bridge POE. Protests continued on February 13, and that afternoon, police directed the Peace Bridge Authority to close the bridge to U.S.-bound commercial traffic. That evening, law enforcement cleared protester vehicles off nearby roads, and only 15 – 20 pedestrian protesters remained. By 9 a.m. on February 14, the Peace Bridge was reopened to U.S.-bound traffic.

14.2 Emerson, Manitoba

The Emerson POE, located in Emerson, Manitoba, is the busiest land border POE in Manitoba. Slow roll protests took place at the Emerson POE on January 17 and 18, 2022. On January 29, a convoy of vehicles began to circle about five kilometres north of the POE, causing traffic congestion. The next day, vehicles blocked the southbound lanes headed to the United States, but they departed that evening.

On February 2, a 14-vehicle convoy appeared at the Emerson POE and conducted a slow roll protest. The leader of this convoy was the same individual who appeared to be leading the late-January protests. The RCMP was in communication with him, and the protesters departed later that day.

On February 9, the same protest leader contacted the RCMP and advised that a group of Freedom Convoy supporters might attempt to block the POE. The next day, approximately 50 vehicles started a blockade about one-and-a-half kilometres north of the Emerson POE.

The RCMP assembled a Divisional Liaison Team (DLT) — an equivalent to a PLT — to negotiate with protest leaders. From February 10 to 14, the DLT continued to discuss a resolution to the blockade with the protesters. During these discussions, the RCMP observed a gradual reduction in the number of vehicles occupying the area. On February 13, the RCMP informed a lawyer who was advising protesters that enforcement actions might occur soon and that charges could be laid. The next day, the RCMP completed a plan to initiate an operation to clear the blockade if it did not resolve by February 15. This plan was never put into operation because on February 15 the protesters informed the RCMP that they had agreed to depart midday the next day, which is what occurred.

14.3 Pacific Highway, British Columbia

The Pacific Highway POE is in Surrey, British Columbia. It is the fifth busiest commercial land border crossing in Canada. On February 7, 2022, small groups of protesters began to assemble at the POE. On February 9, there were 20 – 30 protesters in the area, but by the early evening of February 12, there were approximately 800. Aggressive conduct by the protesters led to a service disruption at the POE and caused local RCMP to call in reinforcements from nearby detachments.

On February 13, the RCMP made a small number of arrests and moved other protesters. By the next day, 25 – 50 vehicles and their operators remained on the road and refused to leave. An additional 12 arrests were made on February 14, and multiple vehicles were removed from the area. On February 15, the POE became operational again.

On February 19, the RCMP had information regarding a convoy of approximately 400 big rigs and passenger vehicles approaching the area. Shortly after noon, as a preventive measure and to help ensure safety, the RCMP blocked vehicle and pedestrian access to the POE. Surrey RCMP became aware of several incidents involving a group of aggressive protesters who surrounded members of the media. Police intervention was required to ensure that the journalists could safely get to their vehicles. Protesters were cleared over the ensuing hours, and the POE resumed normal operations late that night.

14.4 Other ports of entry

Many other POEs were targeted by protesters. Some resulted in partial disruptions, such as a protest at the Woodstock, New Brunswick POE on January 29. Others raised complex problems for Canadian authorities, such as a February 13 protest at the Ontario-based Cornwall POE that risked cutting off the Akwesasne Mohawk community that lives on Cornwall Island from the rest of Canada.

Throughout this period, the CBSA, law enforcement, and government officials were confronted with a constantly changing environment and shifting intelligence. Officials made significant efforts to respond to threats to POEs, although in most cases, disruptions did not occur. The CBSA, for example, reported disruptions at 19 POEs in January and February 2022, though they received information about many more possible blockades. There were also concerns about blockades of a rail crossing and disruptions at the Port of Halifax, neither of which occurred.

15. Protests in other locations

Protests also occurred in cities and smaller communities around the country. Nearly all required significant resources and efforts from government and law enforcement at the provincial and local levels.

15.1 British Columbia

From February 5 to 6, 2022, protesters supporting the convoy to Ottawa gathered at the Legislative Assembly of British Columbia in Victoria. That weekend, there were also protests in Kelowna, Salmon Arm, Osoyoos, Powell River, the Fraser Valley, Campbell River, Fort Nelson, Fort St. John, 100 Mile House, Nelson, and Vancouver.

On February 12, protests also occurred across the province, including another protest targeting the Legislature in Victoria, but the Victoria Police Department reported no major issues. Demonstrations at the Legislature in Victoria persisted until February 20, and protesters said they would remain until COVID-19 mandates ended. By February 17, only about 30 people were left, but on Saturday, February 19, a convoy of 400 vehicles drove from Campbell River to the Legislature. There was also a counter protest that day.

Also on February 19, a convoy of 400 vehicles participated in a rally in Chilliwack and at the Osoyoos border crossing. On February 20, small protests occurred in Penticton and at the Paterson border crossing.

15.2 Alberta

Several convoys, rallies, and protests occurred throughout Alberta between January 29 and February 22, 2022. The Government of Alberta reported that these events were generally peaceful, non-violent, and did not result in multi-day occupations of cities or other locations.

Approximately 9,000 people and 200 vehicles converged on Edmonton on January 29. These initial protests were followed up by calls on social media using keywords like “Bear Hug” and suggesting blockades and highway slowdowns.

On February 5, the Edmonton Police Service reported a growing but peaceful crowd of approximately 1,000 people at the Alberta Legislature Building in Edmonton. Some

counter protesters threw eggs at protesters from downtown condo balconies. It was reported that protest events were dispersed by the end of the day.

February 5 saw significant protests in the City of Calgary. Media reported that thousands of people marched through downtown Calgary. A Freedom Rally took place in Central Memorial Park involving an estimated 3,000 – 4,000 protesters and approximately 20 vehicles, including a dump truck that continuously blew its horn.

Protest activity resumed on the weekend of February 11 – 13, and the City of Edmonton obtained an interim injunction prohibiting the frequent or sustained sounding of horns. Edmonton’s downtown core experienced traffic congestion that weekend caused by 700 – 800 vehicles. Edmonton police kept protesters and counter protesters apart to avoid confrontations.

Approximately 5,000 people, accompanied by a convoy of about 50 vehicles, attended a rally against public health measures in Calgary from February 11 to 13. On the afternoon of February 22, about 225 vehicles and 1,500 pedestrians demonstrated in front of the Legislature in Edmonton.

15.3 Saskatchewan

The Government of Saskatchewan became aware that a “Freedom Convoy” protest was planned for Saturday, February 5, at the Saskatchewan Legislative Building in Regina. Convoy protesters and their vehicles blocked the right driving lane of a loop of streets around Wascana Centre, while leaving the left driving lane open for emergency vehicles. Some protesters were upset and verbally abusive when ticketed for violating by-laws. Most protesters left by midnight on February 6, and the following morning police initiated an enforcement plan to disperse remaining protesters.

Starting on February 7, the RCMP received intelligence of planned protest activity at the Regway border crossing for February 12, and at the North Portal border crossing for February 18. Protesters in vehicles set up camps on private property near the

border crossings, at the invitation of the owner. Delays were initially expected at the border crossings, but it appears that blockades never materialized.

15.4 Winnipeg

Protest activity in Manitoba centred around the Manitoba Legislative Building in Winnipeg. On February 1, the Winnipeg Police Service became aware of planned protests that were modelled on what was occurring in Ottawa. A group of people and vehicles gathered at the Legislature in Winnipeg on Friday, February 4, and remained there until February 23. Approximately 100 – 300 protesters initially attended. On weekends, attendance could reach around 1,000. Traffic disruptions were minimal, but the protests generated considerable noise in one of Winnipeg's most densely populated areas.

On February 23, police delivered a letter to protest organizers, warning that anyone who remained after 5 p.m. risked being arrested, and their vehicles could be subject to forfeiture. The protesters departed later that day.

15.5 Toronto

The Toronto Police Service (TPS) learned in early February 2022 that convoys from multiple locations were planning to converge in Toronto, Ontario on February 5 to replicate events in Ottawa. On February 3, the TPS began developing a plan to protect critical public services.

As expected, the convoys arrived in Toronto on February 5. Planned traffic management measures prevented convoy vehicles from reaching their destinations in front of and around Queen's Park, which is the location of the Provincial Legislature. As a result, there were no major disruptions of critical public services. Several vehicles blocked the intersection of Avenue Road and Bloor Street West, but this area is some distance from critical public service locations, which minimized the demonstration's impact.

When the TPS learned that a convoy intended to target Toronto's downtown core on February 12, police developed another response plan. As with the convoy events of February 5, the protests on February 12 resulted in limited disruption to municipal and critical services, while permitting protests to take place.

15.6 Quebec

Protests in support of the Freedom Convoy occurred in Québec City from February 3 to 6, 2022. About 10,000 protesters converged at the National Assembly, peaking on Saturday, February 5. The Sûreté du Québec (SQ) reported that the atmosphere was festive. Most demonstrators left the city by the evening of February 6.

On February 16, the SQ reported about 20 convoys in the province, but none were obstructing critical infrastructure. Also on February 16, RCMP and open-source information suggested that protesters would attempt to block the St-Bernard-de-Lacolle border crossing. The SQ prepared a risk assessment and an operational plan in response to this threat. This operation was widely publicized and ultimately no blockade materialized.

On February 19, there was a major demonstration at the National Assembly. Using lessons learned from the previous protests, police negotiated an agreement with protesters to allow those with trucks, tractors, and tractor trailers parked in front of the National Assembly to blow their horns for two blocks of time on February 19. The protest dispersed on the afternoon of February 20.

15.7 New Brunswick

New Brunswick had multiple anti-mandate protests starting in mid-January 2022. Some of these events resulted in significant traffic disruptions, notably near Fredericton City Hall on January 22, and in downtown Moncton and at the New Brunswick – Nova Scotia border on January 23. In late January, protests occurred at the New Brunswick – Nova Scotia border and the New Brunswick – Maine border crossing, but these

blockades did not last longer than an hour-and-a-half because of severe weather conditions. There were also small convoys and protests in Fredericton, Moncton, Saint John, Bathurst, Quispamsis (at the Premier’s residence), and Grand Falls during the week of February 4 – 10, with no reported threats to public or police safety.

A planned four-day demonstration at the Legislative Assembly of New Brunswick in Fredericton began on February 11. Police set up four blockades near the Legislature and 15 checkpoints at entrances to the city where heavy trucks were stopped, their manifests checked, and those without business in Fredericton were turned away. On February 12, there were about 700 people protesting in downtown Fredericton. By Sunday, February 13, only about 50 people and fewer than 10 vehicles were left. A small group continued demonstrating at the Legislature in Fredericton until February 15, 2022.

15.8 Nova Scotia

On or about January 15, 2022, Nova Scotia Department of Justice officials began to receive information through social media that a blockade of Highway 104 at, or near, the border with New Brunswick was planned for January 29. Nova Scotia had previously experienced a blockade of Highway 104 in June 2021 by people protesting public health measures. The RCMP H Division (Nova Scotia) and J Division (New Brunswick) shared operational information regarding the interprovincial border.

On January 28, the minister of Municipal Affairs and Housing issued a direction pursuant the *Emergency Management Act* that prohibited vehicles from stopping, parking, or operating in a manner that caused a partial or complete blockade of a road. The direction also prohibited financing, organizing, aiding, encouraging, or supporting the interruption of the normal flow of traffic.

On the day when the blockade was scheduled to go ahead, a snowstorm occurred resulting in sections of Highway 104 being closed. Most vehicles were unable to get to the location of the planned protest, and it never took place.



16. Financial support for the Ottawa protests

Moving hundreds of people across the country and establishing them in Ottawa for weeks required everything from fuel, food, and lodgings, to laundry, portable toilets, and cooking equipment. In this section, I set out what the Commission learned about how the Ottawa protests were sustained.

16.1 Early fundraisers

To raise money to support the Freedom Convoy, Tamara Lich created a GoFundMe crowdfunding campaign on January 14, 2022. She began accepting email money transfer donations on January 18. Both the GoFundMe and email money transfer campaigns were set up to receive donations into an existing savings account that Ms. Lich had with the Toronto-Dominion Bank (TD).

Within a few hours of its creation, the campaign came to the attention of GoFundMe executives because of how quickly it was receiving donations. GoFundMe became concerned about Ms. Lich's ability to distribute the funds in accordance with the campaign's description, which indicated that the money would go to reimbursing truckers for fuel costs. When a committee of volunteers who were helping Ms. Lich manage the fundraiser contacted GoFundMe to ask them to release some of the donations to Ms. Lich, the company asked for more information about how the money would be used before doing so. After the committee provided the information and reiterated their request for funds, GoFundMe asked Ms. Lich to sign a "Letter of Attestation" confirming that she would only use the funds as outlined in the campaign.

Ms. Lich signed the letter on January 27. After receiving the letter, GoFundMe directed its payment processor, Stripe, to initiate a CAD\$1 million payment to Ms. Lich's TD account. The money was deposited into her account on February 2, though for reasons I explain later, it was not accessible to her.

While Ms. Lich was raising funds on GoFundMe, Chris Garrah was establishing a second major fundraiser. In January 2022, Mr. Garrah participated in a video call with several of the early organizers of the Freedom Convoy. During the call, he agreed to help organize Ottawa-area protest supporters to prepare for the arrival of the convoy.

Mr. Garrah's work took two forms: organizing local volunteers to provide things like food, showers, and laundry services; and raising money to help pay for this local support. Mr. Garrah termed this the "Adopt-A-Trucker" campaign and started fundraising on a crowdfunding platform called GiveSendGo on January 18. The campaign was connected to an account he had set up at the Royal Bank of Canada (RBC). Adopt-A-Trucker would eventually develop its own website with the assistance of a man identified only as "Serge" (no last name), whom Mr. Garrah had met while in Ottawa. This website also solicited donations of cryptocurrencies, which Serge controlled.

16.2 The creation of the Freedom Corporation and the suspension of the GoFundMe fundraiser

In between GoFundMe's decision to release CAD\$1 million to Ms. Lich and the money arriving on February 2, GoFundMe continued to communicate with Ms. Lich's volunteer committee. Members of the committee felt that they were having difficulty dealing with GoFundMe and wanted assistance. Mr. Garrah learned of these difficulties and introduced the committee to his friend Chad Eros, a chartered professional accountant. Mr. Eros agreed to assist.

Mr. Eros believed that the fundraiser should not have been set up to connect to Ms. Lich's personal bank account. On January 30, Mr. Eros incorporated the Freedom 2022 Human Rights and Freedoms Non-Profit Corporation (Freedom Corporation) and offered it to be used to receive donations. The convoy organizers agreed, and several of them were added as directors.

By the end of January, GoFundMe became concerned that the fundraiser might be violating its terms of service, which prohibit the explicit or implicit purpose of promoting

hate, violence, discrimination, or the violation of any law. This led GoFundMe to seek new assurances from the organizers that donations would not be given to anyone who had engaged in unlawful acts. It did not receive an immediate response.

On February 2, GoFundMe suspended the fundraiser pending a further investigation. On the same day, it had a call with OPS Deputy Chief Steve Bell. Deputy Chief Bell told GoFundMe that the Ottawa protests involved residents being harassed, and that there were concerns for safety and livability for the people of Ottawa. The next day, GoFundMe spoke with Ottawa Mayor Jim Watson, who expressed concern about the possibility of GoFundMe releasing additional funds.

On February 3, lawyer Keith Wilson, who was acting as legal counsel for the Freedom Corporation, wrote a letter to GoFundMe answering the questions that had been asked before the fundraiser was suspended. Later that day, representatives of GoFundMe spoke with Ms. Lich, Mr. Wilson, Mr. Eros, and other organizers to discuss the fundraiser. GoFundMe was not satisfied by the information it received. On February 4, in a second phone call, OPS Deputy Chief Bell told GoFundMe that the situation was escalating and that acts of violence were taking place. Later that day, GoFundMe decided to remove the fundraiser from its platform and refund all donations.

16.3 The Freedom Convoy campaign moves to GiveSendGo

Meanwhile, a different group of people were attempting to move the Freedom Convoy fundraiser from GoFundMe to GiveSendGo. This process was initiated by two men associated with an American social media platform called CloutHub: founder Jeff Brain and investor John Ballard. On January 26, Mr. Ballard contacted Jacob Wells, the co-founder of GiveSendGo, to discuss working together to have the Freedom Convoy use their respective services.

On January 31, Mr. Brain, Mr. Ballard, Mr. Wells, Mr. Eros, and James Peloso, a man associated with the group Taking Back Our Freedoms (TBOF), had a call to discuss the Freedom Convoy using GiveSendGo and CloutHub. While the Freedom Convoy

never followed up with CloutHub, Mr. Eros did begin working with Mr. Wells to start a fundraising campaign on GiveSendGo.

Creating a GiveSendGo campaign was complicated by the fact that the Freedom Corporation did not have a bank account set up yet. Without a bank account, it could not create an account with GiveSendGo's payment processor, Stripe. Mr. Wells proposed a temporary solution: While the Freedom Corporation worked to establish a bank account, Mr. Wells would connect the Freedom Convoy 2022 campaign to his own Stripe account. Mr. Eros agreed to this plan, and on January 31, the GiveSendGo Freedom Convoy 2022 campaign went live.

Mr. Eros eventually created a Stripe account for the Freedom Convoy by linking it to Keith Wilson's trust account. On or about February 7, Mr. Wells switched the GiveSendGo fundraiser over from his Stripe account to the one created by Mr. Eros. On February 8, Stripe notified Mr. Eros that they had put a pause on his account. Mr. Eros reached out to Mr. Wells, and Mr. Wells switched the fundraiser back to his own Stripe account on either February 10 or 11.

16.4 Cryptocurrencies

In addition to more traditional forms of fundraising, people also donated cryptocurrencies to support the protests. Earlier in this chapter, I mention that Adopt-A-Trucker solicited such donations on its website. Patrick King was associated with a short-lived project called Freedom Convoy Token. However, the most successful campaign was a Bitcoin fundraiser started on January 27 by Ottawa resident Nicholas St. Louis called "Honk Honk Hodl." It raised nearly 21 Bitcoin, which was at the time worth more than CAD\$1 million.

16.5 Ongoing barriers to accessing money

Earlier in this section, I explain that GoFundMe released CAD\$1 million to Tamara Lich before suspending her fundraiser. Ms. Lich also accumulated more than

CAD\$400,000 in email money transfers. However, she was never able to use much of this money. The day after GoFundMe deposited donated funds into her TD account, TD emailed Ms. Lich to say it had placed a temporary hold on the funds because it appeared that the money was being held in trust for beneficiaries other than her. Following unsatisfactory discussions between Ms. Lich and TD on February 6 and 10, the bank implemented a freeze on her accounts.

On February 10, the attorney general of Ontario applied to the Ontario Superior Court of Justice for a “restraint order” under section 490.8 of the *Criminal Code* regarding the money raised on GiveSendGo. The premise of the application was that the money being raised by both the Freedom Convoy 2022 campaign and the Adopt-A-Trucker campaign met the legal definition of “offence-related property.” The Court granted the application, prohibiting anyone from disposing of the Freedom Convoy 2022 or Adopt-A-Trucker money.

On February 14, TD applied to the Ontario Superior Court of Justice for an “interpleader,” which is an order to pay funds into the court. TD’s position was that the money in Ms. Lich’s account belonged to “the truckers,” but it had no way of identifying who “the truckers” were. TD wanted the Court to hold the money until its proper ownership could be determined.

On February 17, Ottawa resident Zexi Li obtained what is known as a *Mareva* injunction. This is a court order that is brought as part of a civil lawsuit and designed to preserve a defendant’s assets pending the outcome of the case. Ms. Li had previously commenced a class action on behalf of downtown Ottawa residents against various Freedom Convoy organizers. In granting a *Mareva* injunction, the court prohibited the defendants from dealing in any way with all funds held in the bank accounts that Chris Garrah and Tamara Lich used to collect donations, as well as a range of cryptocurrency donations.

On February 28, 2022, the terms of the *Mareva* injunction were varied to appoint an escrow agent. The funds targeted by the *Mareva* injunction, as well as the money TD had sought to pay into court, were transferred to the escrow agent, who was mandated to hold them pending the outcome of Ms. Li's class action.

16.6 Sources and destination of donations

According to information provided by GoFundMe, the Freedom Convoy 2022 campaign hosted on that platform had 133,836 donors. Approximately 107,000 donations originated in Canada (86%), 14,000 in the United States (11%), and 4,000 originated from 80 other countries (3%). According to GoFundMe, the campaign raised approximately CAD\$10,060,000 before it was shut down. CAD\$9 million originated from Canada (89%), CAD\$870,000 originated from the United States (9%), and CAD\$190,000 originated from 80 other countries (2%).

Email money transfer donations totalling CAD\$419,416.63 were made to the Freedom Convoy campaign. There were approximately 3,000 transfers, all of which originated from Canadian domiciled financial institutions.

The money raised by Ms. Lich through the original Freedom Convoy 2022 fundraisers ended up in three places. The bulk was refunded to donors by GoFundMe. Ms. Lich was able to access CAD\$26,000, which she spent on fuel payments to bulk fuel providers and other items. The remaining funds were handed over to the escrow agent.

According to information provided by GiveSendGo, the Adopt-A-Trucker campaign had 8,380 donors. Canada was the country of origin for 3,640 donations (43%), while 4,293 came from the United States (51%), and 447 from other countries (5%). A total of USD\$591,789.18 was donated to the Adopt-A-Trucker campaign. Of this, USD\$327,843.13 originated in Canada (55%), USD\$244,526.10 from the United States (41%), and USD\$19,419.95 from other countries (3%).

Documents from RBC showed that, between February 7 and 11, Mr. Garrah received 170 email money transfers worth CAD\$31,067.

According to Stripe, it processed CAD\$793,584.74 in donations to the Adopt-A-Trucker campaign. It paid out CAD\$330,470.92 to Mr. Garrah's RBC account. Stripe turned over CAD\$375,999.68 to the escrow agent. The remaining funds were accounted for by credit card chargeback and other account actions.

Approximately CAD\$220,000 was withdrawn from Mr. Garrah's RBC account between January 31 and February 11, when it was restrained. This includes approximately CAD\$150,000 in cash withdrawals, bank drafts, and other transfers and CAD\$10,553.44 in payments to the Swiss Hotel.

According to information provided by GiveSendGo, the Freedom Convoy 2022 campaign hosted on that platform had 113,152 donors. Canada was the country of origin for 39,498 donations (35%), while 67,264 came from the United States (59%), and 6,390 from other countries (6%). A total of USD\$9,776,559.50 was donated to this campaign. Of this, USD\$4,627,660.00 originated in Canada (47%), USD\$4,593,686.50 originated in the United States (47%), and USD\$555,213.00 originated in other countries (6%).

While the fundraiser was connected to the Stripe account in the name of Chad Eros, it received CAD\$3,763,180.40 in donations. These funds were never paid out, and CAD\$3,401,844.30 was handed over to the escrow agent. For money donated while the GiveSendGo Freedom Convoy 2022 campaign was connected to Jacob Wells' Stripe account, it appears that the donations were refunded to donors.

According to RCMP documents, the Adopt-A-Trucker cryptocurrency campaign raised approximately USD\$6,040 (CAD\$7,685.90) as of February 15, 2022. Of this, CAD\$3,847.13 was paid to the escrow agent, while CAD\$3,838.77 was unaccounted for.

The Honk Honk Hodl fundraiser raised approximately 21 Bitcoin. On February 16, 14.4048 Bitcoin was distributed into 100 wallets, each containing the equivalent of CAD\$8,019.43 at the time. Mr. St. Louis and an unknown individual distributed 100 physical envelopes, each containing unique instructions on how to access one wallet, to truckers in Ottawa. Of the 100 wallets that were distributed, 40 remained untouched as of early November 2022.

On February 28, police executed a search warrant on the home of Mr. St. Louis and seized four Bitcoin wallets. I note that, as far as the Commission is aware, Mr. St. Louis has not been charged with any criminal offence. Eventually, approximately 7.57 Bitcoin derived from the Honk Honk Hodl fundraiser was transferred to the escrow agent.

16.7 Physical currency

During the Ottawa protests, there were many locations where individuals could drop off cash donations. One such location was the main stage on Wellington Street, where a water jug was placed to collect donations to Adopt-A-Trucker. The donations that were dropped off there made their way to the Swiss Hotel. Mr. Eros estimated that these donations sometimes reached up to CAD\$20,000 per day. Brigitte Belton testified that a similar, unrelated cash distribution system operated out of the ARC Hotel. Unsure what to do with the money, Mr. Eros created a system to distribute envelopes containing CAD\$500 to truckers.

16.8 Funding protests outside of Ottawa

The Commission did not receive any information suggesting that funds raised by the Ottawa protest organizers were sent to any border protests.



17. Invoking the *Emergencies Act*

The decision to invoke the *Emergencies Act* was the culmination of multiple streams of information working their way through the complex machinery of the government. A wide range of federal actors were obtaining, assessing, and passing on information, along with their own views and opinions, during a period characterized by imperfect information, uncertainty, high stakes, and an evolving situation on the ground.

17.1 Context and concurrent events

The events of the Freedom Convoy did not occur in a vacuum. Several of the witnesses from the Federal Government testified that the Government's response could only be understood in the context of other significant events that were occurring in January and February 2022.

At the start of 2022, federal officials viewed the Canadian economy as fragile. It was only starting to emerge from the impact of COVID-19 health measures. The pandemic had placed a significant strain on supply chains. Inflation was rising. The chronic issue of business investment in Canada was particularly acute, a problem that was compounded by increasing American protectionism, exemplified through its “Build Back Better” legislation. As originally drafted, this legislation contained significant incentives for car companies to build electric cars exclusively in the United States. Given that electric vehicles are the future of the automotive industry, the Federal Government felt that this would have been devastating for the Canadian automotive sector. Canadian officials were fighting for changes that would permit continued manufacturing in Canada. A key argument was that the United States needed Canada as much as Canada needed the United States, and that Canada was a reliable trading partner.

Several witnesses also noted that, at the same time as the Freedom Convoy protests were taking place, Russia was preparing to invade Ukraine. While Russia's illegal

invasion did not commence until February 24, 2022, the federal government received intelligence as early as December 2021, warning of an invasion.

17.2 Federal monitoring and coordination

In the weeks leading up to the invocation of the *Emergencies Act*, federal officials received information, intelligence, and assessments from various departments and agencies. Several RCMP units were involved in the collection and assessment of information during the convoy. The CBSA had various intelligence teams undertake assessments that focused on threats at or near POEs. The Canadian Security Intelligence Service (CSIS) focused on investigating its existing subjects, but also monitored the protests to determine whether other individuals were mobilizing toward serious violence. The Privy Council Office (PCO) and National Security and Intelligence Advisor (NSIA) Jody Thomas played key roles in coordinating this work.

Notwithstanding all of the federal entities gathering intelligence, there was a sense that gaps remained. NSIA Thomas identified a gap related to the collection of open-source information from social media. While police collected this information for law enforcement purposes, CSIS was more limited in what it could investigate. The federal government does not have a clear legislative framework, appropriate policies, or the necessary technological tools to collect this information while respecting privacy rights.

NSIA Thomas further stated that it was sometimes difficult to know how to interact with law enforcement agencies due to concerns about their operational independence. Apprehension about federal officials not crossing the line meant that, in her view, there was useful information that could have been provided to decision makers but was not.

The first recorded formal meeting of public servants in which the convoy was discussed was the January 25 meeting of the Assistant Deputy Ministers' National Security Operations Committee (ADM NS Ops), a body that coordinates actions among

national security agencies and ensures situational awareness across the federal government. Daily meetings of that committee were convened from January 26 until February 12. The Deputy Ministers' Committee on Operational Coordination (DMOC), a deputy minister-level national security body, began to hold *ad hoc* meetings on January 31, first to maintain situational awareness, and later to discuss what tools the Federal Government did or did not have to respond to the protests.

On January 26, RCMP Commissioner Lucki briefed Public Safety Minister Mendicino and Minister of Intergovernmental Affairs Dominic LeBlanc about the convoy. Ministerial briefings continued at least once every day. The attendees at these meetings varied, but generally included Minister Blair, Minister LeBlanc, and Minister Mendicino, as well as representatives from the PCO, the Prime Minister's Office, the RCMP, CSIS, Transport Canada, the CBSA, and the Department of Justice.

On Sunday, January 30, 2022, officials within the PCO watched a press conference held by convoy organizers, which led them to realize that the protesters were not leaving Ottawa. That same day, the Clerk of the Privy Council gave the Prime Minister his first formal briefing on the convoy. Ministers became further engaged through the Cabinet Committee on Safety, Security, and Emergencies (SSE), which met on February 3, 6, and 8 to discuss the convoy. After the SSE's February 8 meeting, the Prime Minister transferred the management of the file to the Incident Response Group (IRG). The IRG is a special emergency committee, chaired by the prime minister, that is convened in response to national crises. Its task is to develop and coordinate a prompt federal response. Unlike other Cabinet committees or the full Cabinet, IRG meetings involve direct participation by senior members of the public service, as well as ministers. The first IRG meeting related to the Freedom Convoy was on February 10, 2022.

17.3 Interactions with external stakeholders

Throughout the convoy, interactions between the federal, provincial, territorial, and municipal governments varied in terms of their purposes and formality.

Transport Canada played a major role in the federal response to the protests by developing a document called the Strategic Enforcement Strategy. It had two parts: communication and enforcement. The communication component was a response to the fact that many protesters did not believe that they were doing anything illegal. It called for consistent communication to protesters about the illegal nature of their conduct. The enforcement component involved identifying the spectrum of enforcement authorities available to police, provincial transportation authorities, and others that could be used where commercial trucks or other vehicles were involved in unlawful protests or demonstrations. The strategy required the co-operation of provinces, territories, and municipalities to succeed.

On February 7, senior Transport Canada officials participated in the meeting of the Federal, Provincial, and Territorial Crime Prevention and Policing Committee. At the meeting, Deputy Minister of Transport Michael Keenan presented an early version of the Strategic Enforcement Strategy. Alberta and Ontario provided mixed feedback. Deputy Minister Keenan felt that Ontario's response was "slightly cooler" than the other provinces. On February 8, Deputy Minister Keenan received a letter from Ontario Deputy Minister of Transportation Laurie LeBlanc, which Deputy Minister Keenan described as collaborative and collegial in tone, but negative and disappointing in substance. He interpreted the letter as a polite but firm "no" to Transport Canada's strategy.

Global Affairs Canada (GAC) is responsible for ensuring security for diplomatic missions in Ottawa. As protest activity intensified, GAC began to receive formal and informal complaints from foreign missions and governments.

On February 7, the protests in Ottawa entered their second full week, and protesters in Windsor began their blockade of the Ambassador Bridge. The next day, protesters re-established a full blockade in Coutts, Alberta. With these developments came increasing pressure on the Federal Government from both domestic and foreign sources to intervene and end the protests.

Internally, the voices of many domestic industries began to call for federal intervention. The Retail Council of Canada advised that there was not enough inventory available to avoid material and product shortages if the blockades persisted. The Automotive Parts Manufacturing Association (APMA) communicated that plants might shut down if the blockades reached a critical point. The CEOs of Canada's big banks reported receiving negative messages from international investors.

Canada was also receiving negative messages directly from foreign actors, including both industry and politicians. Some U.S. officials emphasized that the Ambassador Bridge had to reopen quickly. Others began to use the blockade to argue for shifting manufacturing out of Canada entirely. Canada received concerned messages from United States Homeland Security Advisor to the President Elizabeth Sherwood-Randall, United States Secretary of Transportation Pete Buttigieg, and United States Secretary of Homeland Security Alejandro Mayorkas. On February 10, Deputy Prime Minister Chrystia Freeland spoke with Director of the National Economic Council of the United States Brian Deese, United States President Joe Biden's most important economic advisor. After her call, Minister Freeland wrote to her staff that:

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

He said that he supposed this proved the point we had made previously to them about how closely integrated our economies are. (He did not seem to see this as a positive.)⁶

These engagements culminated in a call between Prime Minister Trudeau and President Biden on February 11. Such calls usually take weeks or months to organize. The fact that a call between the Prime Minister and the President occurred a day after Minister Freeland's call with Mr. Deese was seen as significant and a clear sign of the degree of the United States' concern.

17.4 Financial analysis of border blockades

Within days of the Ambassador Bridge blockade, Canadian officials began to assess its economic impacts. Transport Canada was the first to produce an assessment.⁷ It considered three scenarios for how the blockades would impact Canada's gross domestic product (GDP). In what Transport Canada considered to be the most likely scenario, the auto sector would be shut down due to supply chain disruptions, but other sectors would continue to operate by re-routing traffic through alternative POEs. In this scenario, Transport Canada estimated the loss to the economy to be CAD\$45 million per day.

The Department of Finance's Economic Policy Branch, led by Assistant Deputy Minister Rhys Mendes, produced two economic analyses during the convoy events: an initial analysis on February 10 and an updated version on February 22.⁸ The Department of Finance's February 10 analysis relied on Transport Canada's most likely scenario, and agreed that it set a reasonable upper limit to the impact of the Ambassador Bridge blockade. The Department of Finance also modelled the Coutts

⁶ Email from Deputy Prime Minister Chrystia Freeland to Leslie Church, February 10, 2022, SSM.CAN.00001255.

⁷ Backgrounder on the Impact of a Road Blockade at the Ambassador Bridge, PB.CAN.00000840.

⁸ Blockades – Recent Developments and Summary of Economic Disruptions, SSM. CAN.00000177 and SSM.CAN.00007571, respectively.

and Emerson blockades and the Economic Policy Branch assessed that the longer the disruptions continued, the greater the economic impacts could be.

17.5 The Government of Ontario increases its engagement

The Ambassador Bridge situation was also causing concern to the Government of Ontario. On February 9, Prime Minister Trudeau spoke with Ontario Premier Ford, who expressed frustration with how Ottawa officials were managing the protests. Premier Ford indicated, however, that the bigger issue was the Ambassador Bridge.

As I discuss in Section 12.4 in this chapter, on February 11, Ontario declared a province-wide emergency, and the Ontario Superior Court of Justice granted an injunction prohibiting persons from impeding access to the Ambassador Bridge. On February 12, the OPP and the WPS began clearing the blockade with the assistance of other law enforcement agencies.

17.6 The work of the Incident Response Group

During the first meeting of the IRG on February 10, two “tracks” of work were identified for senior officials. Under Track 1, deputies were to examine all options under existing authorities available to their departments and agencies that could be used to respond to the protests. Under Track 2, deputies and ministers were to consider whether new legal authorities were needed and, if so, whether they should be secured through the adoption of new legislation or through the invocation of the *Emergencies Act*. Deputies and assistant deputy ministers completed this work on February 11, and on February 12, the IRG considered options under Track 1.

The first was Transport Canada’s Strategic Enforcement Strategy, which I discuss in Section 17.3. The strategy called upon provinces to use emergency measures as part of their enforcement efforts. Ontario’s declaration of an emergency on February 11 was consistent with this aspect of the strategy, and Transport Canada believed that it had a significant positive effect on the Ambassador Bridge blockade. Nonetheless,

Transport Canada was concerned that the strategy could not provide a complete solution to the continuing protests and that it would take time to implement.

The Department of Finance considered measures that could be put in place to dissuade people from being involved in the protests and that would persuade people to leave. It considered options under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)* and the *Bank Act*. In a memo on these options the Department of Finance noted that the *PCMLTFA* did not apply to crowdfunding platforms and payment service providers.⁹ Bringing these platforms under the *PCMLTFA* would, according to the memo, “help mitigate risks that these platforms receive illicit funds, increase the quality / quantity of intelligence received by [FINTRAC], and make more information available to support investigations by law enforcement.”

The Department of Finance concluded that there were no useful tools under the *Bank Act* as it stood. This led them to consider legislative amendments that could be introduced. Its view was that there were significant limitations to this approach, as *Bank Act* measures could only apply to federally regulated financial institutions and, in any event, would take time to enact through legislation.

Public Safety developed a proposal for direct engagement between protesters in Ottawa and the Federal Government. A face-to-face meeting between protest leaders and federal officials had the potential to give the protesters a “win” and allow them to leave feeling that they had accomplished something. The OPS had identified six individuals with whom they believed they could engage. RCMP Commissioner Lucki raised concerns about the proposal. In particular, she suggested that it might interfere with police operational independence and that it was premature. The IRG ultimately chose not to pursue this option. Minister Mendicino explained that this was because there were unanswered questions about which protesters were in charge and whether they had the ability to get other protesters to leave.

⁹ Memorandum to the deputy prime minister and minister of finance, SSM.CAN.00003764.

Federal departments and agencies also identified “gaps” in existing authorities and other obstacles that stood in the way of an effective federal response. This included the fact that RCMP officers could not enforce municipal or provincial laws in Ontario without being sworn in as special constables, the difficulty in procuring heavy tow trucks, and the inability of the CBSA to prevent foreign nationals from entering Canada on the grounds that they intended to participate in the Freedom Convoy protests.

During the February 12 IRG meeting, participants also had detailed discussions on the state of protest activity across the country. NSIA Thomas noted that law enforcement had begun to take action in Windsor, but that the situation remained fluid. RCMP Commissioner Lucki reported that the OPP had delivered a letter signed by the Ontario Government proposing to meet with the protesters if they agreed to end their demonstrations, but that the letter had little impact.

Both the NSIA and the RCMP reported a worsening of protest activity in Ottawa. Commissioner Lucki added that the mood on the ground had become more hostile toward police and that additional convoys were reportedly travelling to Ottawa.

The reports on the state of police planning in Ottawa were inconsistent. Minister Mendicino indicated that a plan seemed to be lacking in Ottawa. The minutes of the meeting indicate, however, that the RCMP received confirmation that OPS Chief Sloly had accepted the Integrated Planning Cell’s plan, and Commissioner Lucki said she would be able to provide additional details on the plan on the next call.

Turning to the state of protests across the country, NSIA Thomas reported that slow roll protests had proven to be an effective tactic and that multiple POEs were experiencing blockages. Commissioner Lucki described the situation as “evolving hour by hour.”

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

17.7 Meetings and deliberations on Sunday, February 13, 2022

Minister Freeland spent the early part of Sunday afternoon on a call with the CEOs of Canada’s largest banks. The CEOs were alarmed about the ramifications of the protests, the impact on the Canadian economy, and the possible loss of future foreign investment.

The DMOC met at around noon. Commissioner Lucki provided another detailed situational update on the state of protest activity across the country. With respect to the Ambassador Bridge, she noted that progress had been made over the last 24 hours, but that the situation was dynamic. Commissioner Lucki also provided an update on the state of police planning in Ottawa. She indicated that there was a new plan involving the RCMP, the OPP, and the OPS, and that it had been approved, but not signed off yet by the OPS.

After this meeting, Commissioner Lucki called Minister Mendicino to update him on the situation in Coutts. She told him that Coutts involved a hardened cell of individuals, armed with firearms, who were willing to “go down” for their cause. Minister Mendicino testified that this was the most serious and urgent moment in the blockade so far. After the call, he reached out to Chief of Staff to the Prime Minister Katie Telford and told her what he had learned.

When the IRG met at 4 p.m., Minister Mendicino announced that great progress had been made in clearing and securing the Ambassador Bridge, but that there was no definitive timeline for reopening. He noted that enforcement actions were occurring at other ports of entry, and that an Integrated Central Command had been established in Ottawa to coordinate the RCMP, the OPP, and the OPS.

In his testimony before the Commission, Prime Minister Trudeau expressed the view that the police plan for Ottawa was not fully developed by February 13 and that he did not have confidence that the police had the situation under control. He had not seen the February 13 plan himself, but formed his view based on briefings he had received.

When asked at the hearing whether she ought to have provided an update on the Ottawa plan at the February 13 IRG meeting, RCMP Commissioner Lucki did not agree that this was significant, pointing out that she had reported on the plan at the previous day's meeting.

Minister Freeland provided an update on the economic impacts of border blockades. She cited “ongoing economic losses of 0.1 – 0.2% of gross domestic product for every week the blockades continue.” Minister Freeland acknowledged having obtained this figure from a Bloomberg economic analysis, and not her departmental officials. Minister Freeland conveyed to her Cabinet colleagues that the main concern was not the daily trade impact, but the fundamental and long-term harm that would occur if the blockades continued.

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

CSIS provided a written threat assessment at the February 13 IRG meeting on the risks associated with invoking the *Emergencies Act*.¹⁰ CSIS assessed that invoking the *Emergencies Act* would likely disperse the Freedom Convoy in Ottawa and elsewhere but would also likely increase the number of Canadians holding extreme anti-government views and might radicalize some of them toward violence.

¹⁰ Possible Implications of *Emergencies Act* (formerly *War Measures Act*) Across the IMVE Space, TS.NSC.CAN.001.00000172_REL.

The IRG concluded that the information available to it disclosed real threats of serious violence not only in existing protest sites like Ottawa, but also at a range of other locations where new protests might erupt. By the end of the February 13 IRG meeting, there was consensus around the table that the *Emergencies Act* was necessary and that the Prime Minister should call a meeting of the full Cabinet. The meeting was scheduled for 8:30 p.m. that evening.

The Prime Minister provided opening remarks at the meeting of Cabinet. NSIA Thomas then provided Cabinet with an integrated briefing on the situation across Canada. She reported that multiple POEs continued to experience blockages. She noted that the threat picture with respect to ideologically motivated violent extremism (IMVE) remained stable and unchanged, and that CSIS continued to watch persons of interest. She reported that there had been recent and important gains in Windsor, that there was potential for a breakthrough in Ottawa, and that the RCMP was taking enforcement action in Coutts.

RCMP Commissioner Lucki did not speak at the Cabinet meeting, and so did not provide Cabinet with an update on the police plan for Ottawa. Clerk of the Privy Council Janice Charette testified that Cabinet was generally aware that the RCMP, the OPP, and the OPS were working together to develop an operational plan. Cabinet was not provided with any detailed information about the contents of that plan, or how and when it would be approved and implemented.

A question that arose during the Commission's hearings was whether Cabinet was advised of Commissioner Lucki's view that not all existing tools had yet been exhausted in Ottawa. She had expressed this view to Minister Mendicino's chief of staff less than an hour before the Cabinet meeting began, but this was not passed on to Cabinet. NSIA Thomas noted that Commissioner Lucki had not voiced this view at either the DMOC meeting or the IRG meeting held earlier in the day, something she would have been expected to do had there been anything she considered useful or critical.

Cabinet was provided with a verbal briefing by the attorney general on the threshold for declaring a Public Order Emergency and the definition of threats to the security of Canada. When asked whether Cabinet was aware that CSIS had assessed that there was no threat to the security of Canada under the *CSIS Act*, Clerk Charette and Deputy Clerk of the Privy Council Nathalie Drouin confirmed that Cabinet had been advised of this. However, when asked again on cross-examination, neither the Clerk nor the Deputy Clerk could clarify whether this had been said to the full Cabinet or to the IRG.

The Cabinet meeting ended with a consensus that the Prime Minister should convene a meeting with the First Ministers (the premiers of the provinces and territories in Canada) to consider invoking the *Emergencies Act*. The actual decision on invocation was left *ad referendum* to the Prime Minister following his consultations, meaning he was left with the final decision on whether to invoke the Act.

17.8 The First Ministers' Meeting

The Cabinet meeting concluded at roughly 10 p.m., and invitations for a First Ministers' Meeting (FMM) were sent shortly after. This was unusually short notice. No agenda or briefing material was provided in advance, and the premiers were not advised of the subject of the call. Prime Minister Trudeau testified that none of the premiers seemed surprised about the topic or seemed ill-prepared to discuss it.

The First Ministers' Meeting was attended by Prime Minister Trudeau and the premiers of all provinces and territories; Public Safety Minister Mendicino, Minister of Justice David Lametti, and Minister of Intergovernmental Affairs LeBlanc; and several senior federal, provincial, and territorial officials. The Prime Minister began by discussing the situation in Ottawa and elsewhere and informed them that the purpose of the meeting was to consult with them on whether the Federal Government should declare a public order emergency. He told them that no decision had yet been made. Minister Lametti

explained the threshold for declaring a public order emergency and then outlined the measures that the Government was contemplating.

The premiers of British Columbia, Yukon, the Northwest Territories, Ontario, and Newfoundland and Labrador all supported the invocation of the Act. The premier of Nunavut was more neutral. The premiers of Quebec, New Brunswick, and Nova Scotia all emphasized that the situation was under control in their provinces and that the Act should not apply there. Both Nova Scotia and Prince Edward Island premiers voiced their concern that tensions could be inflamed by Federal Government action. The premiers of Alberta, Saskatchewan, and Manitoba voiced the strongest reservations, including that the situation was under control in their provinces, that using the Act could inflame tensions, and that governments had other means to respond, such as by lifting public health measures.

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

17.9 The decision to invoke the *Emergencies Act*

The responsibility of providing advice to the Prime Minister on the invocation of the Act fell to the Clerk of the Privy Council. The PCO had begun preparing a Decision Note from the Clerk to the Prime Minister after the Cabinet meeting on February 13. The Decision Note was sent to the Prime Minister at 3:41 p.m. on February 14.¹¹ It provided a summary of the information and assessments that the Government had received to date and stated that the legal thresholds for invoking the *Emergencies Act* had been met. Ultimately, Clerk Charette recommended that the Governor in Council declare the existence of a Public Order Emergency.

¹¹ Memorandum for the Prime Minister, Invoking the *Emergencies Act* to End Nation-Wide Protests and Blockades, SSM.NSC.CAN.00003224.

The Decision Note summarized the threats posed by the protests as follows:

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

The Decision Note indicated that a more detailed threat assessment was being provided to the Prime Minister under separate cover. However, that was never prepared.

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

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

Specifically, PCO is of the view that while municipal and provincial authorities have taken decisive action in key affected areas, such as law enforcement activity at the Ambassador Bridge in Windsor, considerable effort was necessary to restore access to the site and will be required to maintain access. The situation across the country remains concerning, volatile and unpredictable. While there is no current evidence of significant implications by extremist groups or international sponsors,

PCO notes that the disturbance and public unrest is being felt across the country and beyond Canadian borders, which may provide further momentum to the movement and lead to irremediable harms – including to social cohesion, national unity, and Canada’s international reputation. In PCO’s view, this fits with the statutory parameters defining threats to the security of Canada, though this conclusion may be vulnerable to challenge.

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

Prime Minister Trudeau testified that he was not surprised by the content of the Note. Upon receiving and reviewing the Decision Note, he made the decision to invoke the Act.

18. Measures taken under the *Emergencies Act*

The Government enacted two measures under the *Emergencies Act*: the *Emergency Measures Regulations (EMR)* and the *Emergency Economic Measures Order (EEMO)*. In this section, I describe the provisions that they contained.

18.1 Prohibitions regarding protests

The central provision of the *EMR* banned participation in three specified kinds of public assemblies that could reasonably be expected to lead to a “breach of the peace.” The first were assemblies that interfered with the functioning of “critical infrastructure,” including airports, railway stations, and ports of entry. The second were assemblies that caused serious disruption to the movement of persons or goods or seriously interfered with trade. The third were assemblies that supported the threat or use of acts of serious violence against persons or property.

The *EMR* also banned foreign nationals from entering Canada to participate in any public assembly that was prohibited by the *EMR*, or to facilitate such an assembly. The *EMR* also prohibited travelling “to or within an area” where a banned public assembly was taking place, unless a person was “moving through that area for reasons other than to participate in or facilitate the assembly.”

The final set of prohibitions under the *EMR* targeted individuals who, while not engaged in prohibited assemblies themselves, supported those who were. The *EMR* banned anyone from providing any form of material support to either help or reward persons who were involved in prohibited assemblies. This had the effect of banning donations of money, food, fuel, or other goods to protesters.

18.2 Exclusion zones

The second type of power created by the *EMR* allowed public officials to secure what were called designated “protected places.” This power effectively allowed for the creation of exclusion zones by the police. There were five types of protected places: critical infrastructure; Parliament Hill and the Parliamentary Precinct; official residences; government and defence buildings; and war memorials. In addition, the minister of Public Safety was authorized to designate any other location as a protected place.

18.3 Rendering essential services

The *EMR* contained a power for the government to require a person to render “essential goods and services” to the government for the removal, towing, and storage of any vehicle, equipment, structure, or object that was part of a blockade. The government was required to provide reasonable compensation to those who provided such services.

18.4 Enforcement and offences

Peace officers were empowered to “take the necessary measures to ensure compliance” with the *EMR*, as well as any provincial or municipal laws. This rule allowed the RCMP to enforce all applicable laws without first having to be sworn in as special constables in Ontario.

Any contravention of a rule in the *EMR*, such as by participating in a prohibited assembly, constituted an offence. Those found guilty could, in the most serious cases, face five years of imprisonment.

18.5 Asset freezing

The *EEMO* imposed duties on financial institutions that controlled the property of “designated persons,” i.e., anyone who, directly or indirectly, was involved in an activity that was prohibited by the *EMR*. In addition to banks and credit unions, the *EEMO* applied to specialized businesses such as insurance companies, securities dealers, cryptocurrency exchanges, and payment processors.

Covered financial institutions had two key duties under the *EEMO*: the duty to determine and the duty to cease dealings. The duty to determine required institutions to determine whether they were in possession or control of any property that belonged to or was controlled, directly or indirectly, by a designated person.

The duty to cease dealings required financial institutions to stop any activity with the property of a designated person, effectively freezing designated persons' bank accounts, RRSPs, mortgages, trading accounts, lines of credit, and credit cards.

Because of the broad definition of “designated person,” the duty to cease dealings did not only apply to people participating in protests. Individuals who donated money to a fundraiser after the *EEMO* came into effect were also designated persons, and all financial institutions would be under a duty to cease dealings with them. Officials within the Department of Finance stated, however, that the Government’s intention was that financial institutions would only freeze the assets of protester leadership or major supporters.

The disconnect between the legal and desired scope of the *EEMO* reflected the *EEMO*’s dual purpose. On the one hand, the duty to cease dealings was intended to cut off major financial support flowing to protesters. On the other hand, the Federal Government wanted to use the threat of asset freezing to convince rank and file protesters to leave. It appears that the Government drafted the *EEMO* in this broad way to cause maximum concern to protesters that their assets could be frozen, even though it only actually wanted to target protester leadership.

One of the more controversial aspects of the *EEMO* from the perspective of financial institutions was that it placed the duty on them, and not the Federal Government, to determine who was a designated person. To aid in this area, the *EEMO* authorized government institutions to disclose information to financial institutions that would help them to apply the *EEMO*. Pursuant to this authority, the RCMP disclosed lists of persons that it identified as being involved in activities that violated the *EMR*.

18.6 Transaction reporting to Financial Transactions and Reports Analysis Centre of Canada

Under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)*, various individuals and entities, known as “reporting entities,” are required

to make reports to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). One type of report is a suspicious transaction report, which is submitted when a reporting entity has reasonable grounds to suspect that a transaction is related to a money laundering or terrorist financing offence.

In February 2022, crowdfunding platforms, like GoFundMe, and payment processors, like Stripe, were not reporting entities under the *PCMLTFA*. The *EEMO* required these entities to register with FINTRAC if they were in possession or control of property belonging to a designated person. Once registered, these entities were required to file reports with FINTRAC when there were reasonable grounds to suspect a transaction was related to a money laundering or terrorist financing offence by a designated person.

19. The end of the Public Order Emergency

Mid-February was a critical time during the Freedom Convoy protests. Freedom Convoy organizers and the City of Ottawa reached an agreement to move trucks out of residential neighbourhoods, only to see it fall apart; the OPS and the Cell developed an integrated operational plan; the OPP cleared the blockade of the Ambassador Bridge; an RCMP operation resulted in multiple arrests in Coutts; and Cabinet decided to invoke the *Emergencies Act*. These events culminated in a large-scale police operation that finally cleared the protesters in Ottawa.

19.1 Changes in the Ottawa Police Service and Ottawa Police Services Board leadership

On February 14, OPSB Chair Diane Deans learned that a national media outlet, *CBC / Radio-Canada*, would soon be releasing a critical piece about OPS Chief Sloly. She called Chief Sloly that evening to discuss the piece and asked whether he had a serious interest in resigning. Chief Sloly interpreted this as the OPSB chair pressuring him to resign. While initially indicating his desire to remain in his position,

the next morning Chief Sloly advised Chair Deans that he had decided to resign, effective at the end of the day. He explained that his primary reason for resigning was his concern that decreasing public confidence in him and the OPS was endangering public safety. He also believed that the OPSB, and Chair Deans specifically, had lost confidence in him.

The OPSB held an *in-camera* meeting shortly after Chief Sloly announced his resignation. Chair Deans recommended hiring Matthew Torigian, an external candidate, as interim chief effective February 24. However, the OPSB had a legal obligation to have an interim chief in place by the time Chief Sloly's resignation came into effect at the end of the day. OPSB Police Services Advisor Graham Wight raised this issue with the Board, after which it agreed to ask Deputy Chief Bell to act as an immediate and temporary interim chief while the Board completed the hiring process for an external interim chief.

Mr. Wight reported to his superiors at the Ministry of the Solicitor General that Chair Deans had been provided with authority to hire an external interim chief. While the OPSB *in-camera* meeting was still ongoing, the deputy solicitor general of Ontario advised OPP Commissioner Carrique that Chief Sloly had resigned and that an external interim chief would be hired. It appears that OPP Commissioner Carrique communicated this information to RCMP Commissioner Lucki. The two were concerned about the possibility of continued changes in the OPS's senior ranks, and believed it was critical for Deputy Chief Bell to remain interim chief while the protests were ongoing. Commissioner Lucki asked federal Deputy Minister of Public Safety Rob Stewart to speak to Ottawa City Manager Kanellakos about this issue. He did so, which put pressure on the mayor's office to intervene.

Ottawa Mayor Watson, his Chief of Staff Serge Arpin, and OPSB Chair Deans spoke by phone on the morning of February 16. Chair Deans said that the OPSB had chosen Mr. Torigian to be interim chief and would be signing a contract with him that afternoon. Mayor Watson expressed his strong disagreement with that decision. The two sides

had different understandings of how the discussion ended: Mayor Watson and Mr. Arpin understood that Chair Deans had agreed not to sign Mr. Torigian's contract without the mayor's consent. Chair Deans believed that she had said that she would not sign the contract if the mayor directed her not to, but that no such direction had been given.

Mayor Watson clearly implied during the call that his continued confidence in Chair Deans depended on the OPSB changing course regarding the hiring of the interim chief. Despite the implied consequences, Chair Deans signed a contract with Mr. Torigian later that day. Mayor Watson, believing this to be contrary to what Chair Deans had committed to during their phone call, concluded that he had lost confidence in her.

City Council was scheduled to meet on February 16. Before the meeting, Mr. Arpin informed Chair Deans that a motion would be brought to remove her as chair of the OPSB and offered her an opportunity to step down. She declined. During the meeting that followed, Council removed Chair Deans. City Councillor Carol Anne Meehan, along with the two other City appointees who were members of the OPSB, resigned in protest. Ultimately, Mr. Torigian rescinded his acceptance of the role of interim chief. Deputy Chief Bell continued on as interim chief through the remainder of the protest.

Interim Chief Bell promptly supported integration between the OPS, the OPP, and the RCMP, and agreed to a unified command. He also confirmed that the February 13 plan was fully approved and told the OPS event commander, Acting Superintendent Bernier, to make operational decisions without seeking his approval. From February 15 onward, the implementation of the February 13 plan proceeded smoothly.

19.2 The implementation of federal emergency measures

As I describe in Sections 18.1 and 18.2 of this chapter, the *Emergency Measures Regulations (EMR)* had two provisions that could be used to exclude people from protest sites: the prohibition against travelling to or within an area where an unlawful assembly was taking place (section 4 of the *EMR*) and the power to secure designated protected places (section 6). The OPS consulted Public Safety Minister Mendicino's

office about designating a secure zone in Ottawa. Ultimately, officials agreed that it would be better for police to rely on the more flexible powers under section 4 of the *EMR* to control access to the downtown core.

The *EMR*'s prohibition on foreign nationals entering Canada to participate in prohibited assemblies was only used once while the *Emergencies Act* was in effect.

As I discuss in Section 18.3 of this chapter, the *EMR* required persons to make available goods and services for the removal and storage of any object that was part of a blockade. Prior to the declaration of emergency, the Integrated Planning Cell had tasked the OPP with sourcing heavy tow trucks to help clear Ottawa's streets. By February 13, the OPP had identified seven tow truck companies willing to provide a total of 34 tow trucks. However, no agreements were concluded with these companies, and operators were reluctant to assist the police without indemnification and confidentiality agreements.

The OPP had contingency plans in place in the event that towing companies did not render services, and Commissioner Carrique was told by his team that they could "get the job done" with or without the assistance of towing companies. Still, with the authorities granted by the *EMR*, Commissioner Carrique sent a letter to towing companies in the Ottawa area expressly invoking the *EMR*.

With respect to the provisions of the *EMR* that removed the need to swear in RCMP officers before they could enforce provincial and municipal laws in Ontario, there was differing evidence before me on whether this power was used. While RCMP Deputy Commissioner Michael Duheme suggested that RCMP officers continued to be sworn in even after the *EMR* came into effect, other police witnesses testified that they benefited from not having to swear in officers. Although this contradiction was never put directly to him, Deputy Commissioner Duheme recognized that he did not have direct knowledge of how the swearing-in process was working on the ground.

As I discuss in Section 18.5 in this chapter, the RCMP facilitated the asset freezing required under the *EEMO* by distributing lists of individuals and entities believed to be “designated persons” to financial institutions. The RCMP began disclosing these on February 15. A question raised at the hearing was whether financial institutions had any discretion in how they applied the lists. Department of Finance officials and the RCMP indicated that financial institutions would have to “vet” the lists against other information in their possession, before freezing an account. In her interview with Commission counsel, General Counsel of the Canadian Bankers Association Angelina Mason said that the banks’ duty to determine consisted mainly of matching listed entities against their own client lists to ensure that they were the same person. At the hearing, Department of Finance officials accepted that financial institutions relied heavily on these lists.

In total, approximately 280 accounts worth around CAD\$8 million were frozen. It is important to note that fewer individuals or entities were affected, because in some cases, multiple frozen accounts belonged to the same person.

The *EEMO* did not set out a process for unfreezing accounts, and officials had discussions about how this should be done while the *EEMO* was in effect. The main options were for protesters to go in person to either their bank branches or to local police detachments outside of Ottawa to show that they were no longer participating in protests. Ultimately, no individualized process was developed because, on February 21, the RCMP advised financial institutions that it no longer believed that any of the previously disclosed entities met the criteria of a designated person.

With respect to the FINTRAC reporting measures I discuss in Section 18.6, these rules had almost no effect. FINTRAC Deputy Director of Intelligence Barry MacKillop stated that from FINTRAC’s perspective, there was no noticeable difference in the numbers of suspicious transaction reports received between January 26 and February 23, relative to other periods. Mr. MacKillop stated that, from an intelligence perspective, the *EEMO* had no impact on FINTRAC’s ability to fulfill its mandate.

19.3 Police messaging to protesters

On February 15, police started advising protesters to either leave or face possible arrest. On February 16, the OPS posted a “Notice to Demonstrators” on its website and on social media informing them that they were required to leave and would risk being arrested and charged under the *Criminal Code* if they did not. The next day, it posted a further notice to its website and social media stating that a secured zone had been established under the *Emergencies Act*. On February 16 and 17, PLT members handed out flyers and advised protesters to leave.

On February 16, Freedom Convoy organizer Chris Barber and convoy lawyer Keith Wilson published a video on Mr. Barber’s TikTok account responding to these notices. Mr. Wilson said that the notices described the emergency orders inaccurately and that the orders still permitted peaceful assemblies. He ended the video by calling on concerned citizens to come to Ottawa.

On the same day, convoy organizers Daniel Bulford, Tamara Lich, and Mr. Barber met with OPS PLT officers, who delivered a message advising that the protesters should leave Ottawa.

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

19.4 Police enforcement action

On February 17, OPS Acting Superintendent Bernier, the RCMP, and the OPP operational commanders approved an updated operational plan. The February 17 plan built on the February 13 plan in two significant ways: 1) it outlined objectives to accomplish for each of the four phases referenced in the February 13 plan; namely, stabilization, actions on, maintenance, and demobilization; and 2) it included sub-plans for traffic, towing, investigations, arrests, tactical action, and public order.

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

The first phase of enforcement began at 7:41 a.m. Large numbers refused to leave and were more aggressive than expected. Some grabbed for police firearms, struck at officers, and used flagpoles or hockey sticks as weapons. The first enforcement phase took nearly four hours. After clearing the first area, police began to clear the intersection of Rideau Street and Sussex Drive. At 8 p.m. on February 18, police decided to hold the line they had established in front of the Fairmont Château Laurier hotel, which police considered safer than continuing operations through the night.

At 9 a.m. on February 19, police resumed their operation, moving west toward Wellington Street. By the end of that day, police had cleared the downtown core of protesters and trucks. On February 20, police cleared the Coventry Road staging area.

Chris Barber and Tamara Lich were arrested separately on February 17. Daniel Bulford and Patrick King were arrested on February 18, though Mr. Bulford was later released without charge. James Bauder was arrested on February 21. By February 19, with several key convoy leaders in custody, and in the face of the public order policing action, Mr. Marazzo began to encourage protesters to leave Ottawa.

The protesters in Ottawa were not offered an alternative site to exercise their right to protest, although some moved to the Canadian War Museum, a few blocks west of the Parliamentary Precinct, and they were permitted to lawfully protest there.

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

According to OPS Acting Superintendent Bernier, there were no significant injuries sustained by protesters or bystanders during the enforcement operation. Ontario's Special Investigations Unit reviewed two incidents but did not lay any charges against police. Some of the protester witnesses suggested that the police acted with undue violence. In response to this evidence, Acting Superintendent Bernier swore an affidavit setting out, in some detail, how the POU plan was put into effect. The affidavit contains general information and does not address individual protesters.¹²

Neither a detailed review of the public order operation nor specific findings regarding the arrests of particular individuals is within my mandate.

19.5 Federal Government activities during the emergency

Following the invocation of the *Emergencies Act*, the Incident Response Group (IRG) met daily from February 16 to 23. At the IRG meetings, NSIA Thomas provided daily operational and threat updates, and RCMP Commissioner Lucki provided daily law enforcement updates.

As I note in Section 17.4, the Department of Finance did not attempt to quantify the economic impact of the blockades until February 22. When its analysis was done, it

¹² Affidavit of Robert Bernier, November 20, 2022, AFF.00000020.

arrived at a result similar to that which Deputy Prime Minister Freeland stated during the February 13 IRG meeting. The Department of Finance's best estimate was that the blockades would reduce the growth of Canada's GDP by 0.1 – 0.2% and the level of GDP in the first quarter of 2022 by 0.03 – 0.05%. Much of the impact on the level of GDP was likely be recouped in the second quarter of 2022. Assistant Deputy Minister for Economic Policy Mendes explained that they were able to come to this conclusion on February 22 because by that time, they knew that the disruptions had ended, and their impact had therefore been limited. The February 22 analysis cautioned that the economic impacts could quickly escalate if blockades re-emerged, and noted the risk posed by producers choosing to reduce trade with Canada as a result of these events.

As the law enforcement operation in downtown Ottawa progressed, federal officials began to consider what the threshold for revocation of the emergency should be. This is a matter that the *Emergencies Act* does not specify. At NSIA Thomas's request, the PCO proposed eight draft criteria, which were circulated on February 21 to senior officials, and were subsequently revised based on their feedback. Several senior officials emphasized that the primary consideration ought to be whether the emergency tools were still necessary to respond to threats of serious violence.

Email exchanges dated February 20 indicate that the Deputy Clerk asked PCO officials and deputy ministers to prepare a possible rationale for the maintenance of the *Emergencies Act*, and she received a long list of justifications. Nevertheless, by February 23, the IRG had received information that the situation had stabilized and was satisfied that the *Emergencies Act* authorities were no longer necessary.

On February 23, the Clerk sent the Prime Minister a Decision Note advising that the Public Order Emergency no longer existed and recommending the revocation of the special measures. The Prime Minister agreed with the Clerk's recommendation, and the Public Order Emergency was revoked that day.

20. Findings and Conclusions – Introduction

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

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

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

In the previous sections of this summary, I set out an extensive narrative of the events of January and February 2022. Much of this narrative focused on an unprecedented set of protests in Ottawa, and an equally unprecedented response from numerous governments. Having reviewed that evidence carefully, it is apparent that there were signals missed, opportunities lost, and delays created that resulted in a situation in the nation's capital that was far more serious and complex than it might have otherwise been.

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

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

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

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

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

21. The Freedom Convoy

21.1 The evolution and origins of the convoy

As I describe in Sections 6 and 7, the origins of the protests in January and February 2022 can be traced to populist movements that pre-date the COVID-19 pandemic and revealed a growing distrust in government by certain segments of the population. Government responses to COVID-19 exacerbated this pre-existing dynamic.

The public health measures imposed, and the protests they generated, provided opportunities for those with broader grievances about economic status, government policy, social change, and western alienation to air these concerns.

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

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

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

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

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

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

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

21.2 Organization and leadership of the convoy

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

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

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

21.3 The goals and makeup of the protesters

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

This was true from the time of the protests’ inception. The initial convoy organizers had different views about what they hoped to achieve. On one hand, Mr. Barber testified that all he wanted was a conversation with the prime minister or the Federal Government about ending COVID-19 mandates. On the other hand, James Bauder and his group, Canada Unity, sought support for a memorandum of understanding (MOU) that, on its face, called for the Governor General to change Canada’s system of government if all COVID-19 restrictions were not repealed.

As the protests grew, so did the diversity of views and goals of the people who participated in them. For example, some members of the Quebec group, Les Farfadaas,

joined the protests in Ottawa and settled at the Rideau – Sussex intersection. The group had not coordinated with the Freedom Convoy and brought their own purpose and history to the protests.

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

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

I do not accept Mr. Mackenzie’s evidence in that regard. I am satisfied that law enforcement’s concern about Diagonon is genuine and well founded. The fact that a ballistic vest that was seized by the RCMP during the protests in Coutts — along with numerous guns — bore a Diagonon patch suggests as much.

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

21.4 The nature of the protests

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

These efforts, however, were not successful.

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

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

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

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

At the same time, I do not accept the evidence espoused by the organizers that they were never aware of harassment, intimidation, or other non-peaceful conduct by protesters. Their knowledge of actual and potential violence or harassment can be inferred from their own evidence. As a starting point, Mr. Barber testified that if you put 200 truck drivers in a room, “somebody’s going to get a black eye and a broken nose.” Mr. Barber himself almost got into a physical altercation “at least twice” with a driver who “was ignorant about moving [trucks] when I asked him to.”¹³

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

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

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

I am satisfied that the organizers understood that the protests presented serious challenges to Ottawa residents, the police, and municipal politicians, and that they had caused a severe disruption of life in Ottawa. The Freedom Corporation’s

¹³ Evidence of Chris Barber, Transcript, November 1, 2022, pp. 56 and 109.

organizers entered into negotiations with the Ottawa mayor precisely to reduce this disruption and the pressure it placed on the city. In this regard, I put little weight on the organizers' evidence that they never received any direct reports or complaints about harassment and intimidation, as those suffering violence at the hands of protesters would be unlikely to complain to protesters. The organizers needed no such reports to be aware of the effects of the protesters' behaviour.

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

This was, to some extent, the result of the size of the protests. Convoy organizers did not anticipate the level of participation that ultimately occurred. The Freedom Convoy was successful, in part, because it permitted and encouraged participation from groups and individuals who held a variety of perspectives and were frustrated about a range of issues. Broad participation, however, made it difficult for the organizers to control the message of the protest and the conduct of those involved.

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

Similarly, while some organizers like Ms. Lich and Mr. Barber sought to distance themselves from controversial figures such as Mr. Bauder and Mr. King — and at one point, even convinced Mr. Bauder to retract his MOU — they remained reluctant to sever all ties. I am satisfied that this is, in part, because they understood that the protest movement included Mr. King and Mr. Bauder’s supporters, and those who shared their views. Despite all of the problems Mr. King and Mr. Bauder presented, neither Ms. Lich nor Mr. Barber disavowed them. With respect to Mr. Bauder, Mr. Barber said that, while he did not support an undemocratic change in Government, he still believed that Mr. Bauder shared the same goals and that the MOU was simply “improperly written.” Similarly, with respect to Mr. King, Mr. Barber said he “had all the right reasons and a good heart.”¹⁴ From Ms. Lich’s view, despite Mr. King having deliberately sought to undermine her deal with the mayor of Ottawa, she believed that “at his core,” Mr. King “was here to — just like the rest of us were, to exercise his democratic rights to a peaceful assembly.”¹⁵ Tom Marazzo, another organizer, testified that he had been in contact with Mr. Mackenzie during the protests in Ottawa and spoke about him in glowing terms. These statements show that many organizers, instead of cutting ties with protesters that attracted criticism and controversy, viewed figures like Mr. Bauder, Mr. King, and Mr. Mackenzie, and their supporters, as part of their movement.

21.5 Misinformation and disinformation

As I describe in Sections 6 and 7, social media played a critical role in the protests. Some of the organizers initially contacted each other on social media platforms. Facebook, Twitter, and numerous other social networks were the tools by which organizers met, coordinated, and connected with other participants. Many of the organizers already had, or quickly developed, large social media followings. Early planning meetings were livestreamed on Facebook. More than CAD\$10 million in the

¹⁴ Evidence of C. Barber, Transcript, November 1, 2022, pp. 23 and 45.

¹⁵ Evidence of T. Lich, Transcript, November 3, 2022, pp. 344 and 345.

GoFundMe campaign was raised with the assistance of an accompanying Facebook page. The role of social media is difficult to overstate.

Social media also served as an accelerant for misinformation and disinformation, which I find, for reasons I discuss in Section 6.2, clearly played a role in the protests. I have no doubt that misinformation about COVID-19 influenced the views of some protesters and how they assessed the quality of government health measures. Some protesters also spread misinformation and disinformation about the protests themselves. One notable example is the denials by some prominent organizers about Ms. Lich's deal with the mayor.

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

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

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

Privy Council for Canada” — misinformation and disinformation have been a constant presence throughout these proceedings.

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

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

21.6 Connections between protest locations

I am satisfied that there was no meaningful coordination between the protests in Ottawa and other locations in Canada. The convoy organizers who testified denied any connections to other protests. The evidence before me of communication between protest locations was minimal and did not reveal a collaborative effort. A February 10, 2022 Special Threat Advisory Report from the RCMP stated that the protests outside Ottawa “appeared to be inspired by the Ottawa convoy” but that these “solidarity actions appear to be decentralized, in some cases organized impromptu, and not directly linked to organizers in the Ottawa convoy.”¹⁶ I accept this as an accurate description.

¹⁶ RCMP Ideologically Motivated Criminal Intelligence Team, *Special Threat Advisory – Update 6*, February 10, 2022, PB.NSC.CAN.00000526, p. 4.

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

Given law enforcement's characterizations of Dialogon, these connections are troubling, but there is little evidence of significant or widespread coordination between Dialogon supporters in Coutts and Ottawa. To the contrary, in a report on the arrests in Coutts, the RCMP noted that "there has been no information uncovered to suggest that there is an organized effort between the individuals charged in Alberta and individuals involved in the Ottawa protest."¹⁷

I do not doubt that the protests in Windsor, Coutts, and other locations drew energy and inspiration from the convoy protests in Ottawa. I do not find, however, that any of the Ottawa organizers played a significant role in the organization of the other protests.

22. The policing response in Ottawa

There were several deficiencies in how the police responded to the events in Ottawa. Before identifying these deficiencies, I make three observations. First, the events in Ottawa were unprecedented in size and complexity. They would have presented significant challenges regardless of the adequacy of the police response. Second,

¹⁷ RCMP "K" Division Criminal Analysis Section, *Coutts Intel Brief*, PB.NSC.CAN.00008508, p. 1.

before the protests began, the Ottawa Police Service (OPS) was dealing with severe staffing challenges and the loss of experienced officers at the Senior Command level. These staffing issues continued throughout the protests. Third, as already indicated, for many Ottawa residents and businesses, these events were traumatic and extraordinarily difficult to endure. However, without minimizing that impact, I agree with those who point out that no one was seriously injured, and that buildings, highways, and monuments were not destroyed. Our Parliamentary institutions continued to function. I now turn to the deficiencies that I wish to highlight.

22.1 Intelligence failures

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

Before the convoy’s arrival, OPS Chief Peter Sloly recognized the importance of the OPS conducting an ongoing intelligence assessment and instructed his subordinates accordingly. I also acknowledge that the Hendon reports, while generally lauded as containing high-quality analysis, left room for varying interpretations as to what was likely to follow. Having said that, in my view, the Hendon reports, other intelligence received from partner agencies, and the content of the OPS’s own intelligence assessment, viewed cumulatively, should have raised greater concerns that the events in Ottawa would be unprecedented in size, intensity, and duration, and should have prompted the OPS to plan accordingly.

The OPS’s own intelligence officers identified some, but not all, of the important red flags that countered the view that they were only facing a weekend disruption. The Parliamentary Protective Service (PPS) provided information and assessments that articulated the Freedom Convoy’s intent to stay, its unprecedented support, its ability to cause disruption, and the potential for it to overwhelm the OPS. The OPS’s

Provincial Liaison Team (PLT) informed the OPS of the number of vehicles in the convoys headed to Ottawa and the protesters' intent to stay.

In testimony, OPS Acting Superintendent Robert Bernier felt that there was a “bizarre disconnect” between the Hendon reports and the OPS’s planning.¹⁸ I prefer to say that there was a significant disconnect between the information available to the OPS and the early planning for the event. This disconnect arose, in part, because the OPS Intelligence Directorate did not share the Hendon reports with the operational command. However, the operational command still received sufficient intelligence to understand the risks that Ottawa was facing and did not plan for these risks. The operational command initially discounted this intelligence because it was inconsistent with the OPS’s experience with previous weekend protests. While the OPS’s reliance on its past experience was understandable, it should have given more weight to the intelligence that contradicted this experience and developed contingency plans.

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

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

These issues were not limited to the Hendon reports. The OPS also lacked a system to ensure proper dissemination of its own intelligence products, resulting in uneven distribution. This, coupled with the lack of dedicated meetings to discuss intelligence,

¹⁸ Evidence of R. Bernier, Transcript, October 25, 2022, p. 242.

made it more challenging to provide oversight and ensure that the operational plan was intelligence led.

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

Several parties at the Commission relied heavily on the testimony of OPP Superintendent Morris, whose unit was responsible for the Hendon reports. He described the absence of credible threats that protesters intended to engage in violence or other unlawful activity, and, in fact, commented on there being no instances of serious violence despite the size and length of the protests. I disagree with his assessment and accept the evidence from several witnesses that there was violence. Further, the conduct of some protesters was intimidating and highly disruptive. Some disagreement may come down to different witnesses using the word "violence" to mean different things. In any event, the more important point here is that planning for a weekend event, even when there is no indication of violence, is a very different exercise from planning for something that could potentially become a prolonged, large-scale protest.

I also wish to highlight a fundamental flaw in how intelligence was collected in relation to the Freedom Convoy. The Freedom Convoy was a nation-wide event. However, the intelligence gathering was led by the OPP, a provincial police service. I question,

as did several of the witnesses, whether it is appropriate for the intelligence gathering for such an event to be coordinated at a provincial level instead of at a national level.

22.2 Lack of continuity of command

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

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

Poor communication respecting transfer of authority, and confusion about who was in charge, compounded these challenges. In Section 11.4, I discuss how this confusion arose, starting with the shift of operational decision-making authority from the OPS incident commander to the event commander without notifying Chief Sloly, and how these events led Chief Sloly to lose trust in subordinates. These events reflect serious dysfunction within the OPS's leadership, and also the absence of a coherent approach to the selection of operational commanders. The switches in event commanders also adversely impacted the OPS's operations and the development of plans and resource requests.

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

22.3 Failures in communication with incident command

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

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

negotiations with protest organizers until February 13, even though Chief Sloly had been notified days earlier. All of these communication failures were avoidable and undermined the OPS's response to the protests.

22.4 Lack of integration of the PLT into decision making

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

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

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

Other OPS commanders also had an inadequate understanding of the PLT's role. This is undoubtedly due, at least in part, to the OPS having neither trained senior officers on the National Framework for Police Preparedness for Demonstrations and Assemblies nor adopted a specific PLT strategy at the time of the protests. I agree with

the testimony from OPS Acting Deputy Chief Ferguson and OPS Inspector Russell Lucas that the OPS sometimes prioritized a quick win through enforcement, without an overall plan that truly integrated the role of the PLT.

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

22.5 The Chief’s involvement in operational decisions

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

In testimony, Chief Sloy attributed his involvement in operational decisions to his diminished trust in his subordinates, his desire to ensure that the plans were effective, and his deep concern over the readiness of his team for the second weekend of protests. By way of example, Chief Sloy intervened in an attempt to support the development of a public order sub-plan, but this and other interventions fostered further confusion about who was in charge. An unhealthy dynamic between Chief Sloy and his team furthered the problem of his involvement in operational matters. His

unfortunate comment that he would “crush” those who did not support his February 9 plan is just one example of this unhelpful dynamic.

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

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

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

Chief Sloly’s distrust of the OPP and the RCMP may well have been linked to public comments and private statements by federal and provincial politicians that blamed the OPS for failing to manage the Freedom Convoy, as well as communication failures between police forces. That said, I find that the OPP and the RCMP leadership wanted the OPS to remain the police of jurisdiction and to succeed.

Communication between Chief Sloly and the Integrated Planning Cell was also dysfunctional, which likely reflected Chief Sloly’s distrust of the Cell’s motives and his concern that the OPS remain the police of jurisdiction. As I discuss in Sections 11.10 and 11.14, there was miscommunication about the appropriate level of integration between the OPS and the Cell as well as miscommunication about whether Chief Sloly expressed support for the Cell’s work and plan. At times, Chief Sloly appeared hostile

and dismissive toward the Cell and its concerns, and the OPS's conduct caused the Cell to question the OPS's commitment to integrated command.

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

22.7 Uncertainty over the existence or adequacy of the plan

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

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

- a. reports that OPS Chief Sloly had instructed his officers to calculate the number of officers needed and then double it;
- b. reports that OPS command and control was dysfunctional and resistant to an integrated command;
- c. reports that the OPS did not have a plan or that its plan was inadequate, overly aggressive or risky;

- d. reports that OPP officers already sent to Ottawa had not been deployed or supported appropriately;
- e. the possibility that the OPP would be asked to provide substantial resources elsewhere in Ontario; and
- f. the sheer size of the ultimate requests for resources.

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

It was reasonable that the OPP and the RCMP wanted to know that an adequate plan existed and how and when its resources would be utilized. Some parties at the hearing pointed out that additional resources were provided by the RCMP and the OPP to the Windsor Police Service (WPS) before the operational plan for Windsor was finalized. In my view, there were many differences between the two events that explain why the OPP and the RCMP needed more information before releasing officers to Ottawa. For example, Windsor was a smaller, simpler situation, and a unified command was already in place. In addition, the requests for resources came through the OPP's commander in charge.

A great deal of testimony focused on what plans existed at what points in time. OPS Chief Sloly testified that there was only one plan: it was in place by January 28 and

was appropriately updated as more work was done and as circumstances changed. Other witnesses gave evidence that different plans were developed at different stages. In particular, there was conflicting evidence about whether the February 13 plan that the Integrated Planning Cell and Acting Superintendent Bernier developed was or was not an evolution of Chief Sloly's February 9 plan.

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

I accept that it is no easy feat to pivot to a plan to dismantle a protest the size of the one in Ottawa. Members of the public and politicians held unrealistic expectations of how quickly such plans could be developed and operationalized, and they failed to appreciate the importance of a measured response, which would necessarily take more time to execute. However, as I discuss in Section 11.11, the OPS did not develop an overall operational plan until February 13. The various plans that existed prior to that date never represented an appropriate overall plan to comprehensively end the protests.

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

22.8 Communication failures

In addition to poor communication between the police and government that I identify earlier in this summary, there were also serious problems in how the police and others communicated with the public. Effective communication with the public might well have mitigated unrealistic expectations around the police response. Effective

communication involves accurate, timely, and consistent messaging. That did not take place in Ottawa.

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

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

As I discuss later in this summary, the response to the Windsor protests required a highly coordinated messaging plan that involved both police and government. This was missing in Ottawa. The Province of Ontario's refusal to participate in the tripartite meetings, which were intended to have participation from municipal, provincial, and federal government representatives, contributed to these messaging failures.

22.9 The plan's adequacy

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

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

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

22.10 Legal uncertainty

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

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

22.11 Decision making and communication unduly influenced by extraneous considerations

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

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

22.12 Chief Sloly

Much of the focus of the evidence was on Chief Sloly. It is all too easy to attribute all of the deficiencies in the police response solely to him. This would be unfortunate and indeed, inconsistent with the evidence. Errors in leadership must be seen in the context of a truly unprecedented event in size, duration, and complexity. Chief Sloly served the public with distinction as a police leader for 30 years. He came to Ottawa as an agent of change to address racism, misogyny, and a lack of community trust in

the OPS, and he faced substantial resistance in doing so. He was heading the OPS at a time when the senior ranks had been depleted and expertise had been lost. Chief Sloly's resignation, rooted in an acknowledgement that he had lost the confidence of others, did remove one obstacle to a successful resolution by creating an opportunity to restore that confidence.

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

23. The policing response in Windsor

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

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

Actual planning and preparation, prior to February 7, were limited for a couple of reasons. First, jurisdictional issues hampered the police response. The WPS is responsible for policing the City of Windsor and responds to incidents that occur on

the Ambassador Bridge. The Canada Border Service Agency's (CBSA) jurisdiction extends only to the physical port of entry, and given its limited jurisdiction, the CBSA advised the WPS that it did not have a plan to deal with the blockade. The federal government had authority over the bridge itself, but not the municipal roads feeding into it.

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

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

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

Much as in Ottawa, the protesters in Windsor represented a cross-section of Canadians who were present for a variety of reasons. Situational reports document the presence

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

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

Police planning and resource deployment also proceeded smoothly, with a full operational plan and all necessary subplans developed by the evening of February 11, only 48 hours after the planning process had begun. Planning proceeded quickly in part because the OPP command had assured OPP Superintendent Dana Earley that Windsor was a priority and that she would have whatever resources were necessary. The RCMP supported this approach because it had confidence in the OPP’s control over the situation.

I find that both the OPP and the WPS command respected the autonomy of their respective commanders on the ground in Windsor. Though the OPP command made it clear to Superintendent Earley that Windsor was a priority and that clearing the blockade was urgent, there was no evidence of any interference in her decision making. As I explain in Section 12.4, the OPP command’s message to Superintendent

Earley that clearing the Ambassador Bridge was her priority was an appropriate strategic-level communication.

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

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

Finally, I find that the Ambassador Bridge blockade was cleared as of shortly after midnight on February 14, before the Federal Government invoked the *Emergencies Act*. While the blockade never again took hold, there were continued threats of further disruptions to the bridge and other critical infrastructure in and around Windsor. These threats contributed to the need for a lengthy demobilization period and continued police presence and checkpoints along Huron Church Road, which was not fully reopened to the public until March 28. Police established these checkpoints without relying on the *Emergency Measures Regulations* and continued to use them following the revocation of the Public Order Emergency.

24. Civilian oversight and governance of the police

24.1 The oversight role of police services boards

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

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

24.2 Resistance to board meetings

As I discuss in Section 11.15, OPS Chief Sloly was resistant to meeting with the OPSB during the protest, viewing the meetings as a demand on his time that could otherwise be spent responding to the protests themselves. Ultimately, the OPSB had

to force the issue by directing a Special Meeting of the Board, which the chief was legally obligated to attend.

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

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

As I discuss in Section 10.2, on January 26, the OPSB asked about the OPS's operational plan and was provided with a high-level explanation. The OPSB did not request further details prior to the convoy's arrival. OPS Chief Sloly did, however, assure the OPSB that a plan was in place.

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

It was within the OPSB's authority to request the details of the operational plan. It was also open to the Board to set priorities for the OPS, such as ensuring continued

effective policing in the areas of the city not affected by the protests. I wholly endorse the guidance in this regard as set out in the Morden and Epstein reports.

In light of the conflicting information received by the OPSB ahead of the convoy's arrival, which I discuss in Section 10.2, the Board should have ensured that the OPS had contingency plans in place in case the protest turned into a more protracted demonstration. The OPSB did not do this.

As I discuss in Section 11.15, OPS Chief Sloly maintained a high degree of resistance in sharing the OPS's operational plan with the OPSB throughout February. When asked if he would have provided the Board with a copy of the OPS's plan if the Board had specifically directed him to do so, Chief Sloly said that he would have consulted with legal counsel and, if there was no prohibition, he "would have provided what we could, and that would largely be a heavily redacted document."¹⁹ But there is no constraint on providing this type of information to a board and there are mechanisms in place to ensure the confidential exchange of information. It would be inappropriate — and against the guidance set out in the Morden Report — to provide the OPSB with a "heavily redacted document" of the kind described by the chief.

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

¹⁹ Evidence of Peter Sloly, Transcript, October 28, 2022, p. 256.

24.4 Confidentiality

One reason that OPS Chief Sloly gave for not providing the OPSB with a detailed operational plan was his pre-existing concern around the Board's ability to maintain confidentiality. He testified about *in-camera* discussions that had been leaked by OPSB members to the public prior to the convoy's arrival. This was corroborated by Graham Wight, an OPSB police services advisor, who stated that the OPSB's executive director had described it as a "leaky organization" and recalled that Chair Deans had also expressed concerns about confidentiality.²⁰ Chair Deans seemed to acknowledge these concerns in her testimony.²¹

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

While I accept that the OPSB's ability to maintain confidentiality was of concern to the OPS, this is not an acceptable reason for failing to provide the Board with all of the information necessary to exercise its oversight function. OPS Chief Sloly acknowledged in his testimony that internal issues at the Board regarding confidentiality did not relieve him of his obligation to provide this information, though it might impact the level of caution with which he would brief.

The provincial Code of Conduct for Police Service Board Members requires them to keep confidential information disclosed to them during *in-camera* meetings. If a member breaches this obligation, there is a range of possible consequences, from additional training to removal. The *Police Services Act* also requires the provincial

²⁰ Interview Summary: Graham Wight, WTS.00000081, p. 4.

²¹ Evidence of Diane Deans, Transcript, October 19, 2022, p. 72.

solicitor general to monitor boards to ensure that they comply with prescribed standards.

The OPSB had primary responsibility for taking action to rectify these issues. Because they were aware of these concerns, Ontario's Ministry of the Solicitor General and OPS Chief Sloly should also have raised concerns about confidentiality with the Board. While it appears that Chief Sloly did raise these concerns with OPSB Chair Deans, he did not know whether there had been any action in response. The Ministry of the Solicitor General did nothing about this issue, and it appears that the police services advisor never reported these concerns to Ontario's inspector general of policing. It is obvious to me that this unresolved issue undermined the relationship of trust between the OPSB and the OPS, compromising their ability to collaborate.

24.5 Oversight by the Ontario Ministry of the Solicitor General

In Section 11.15, I describe the mandate of the Ontario Ministry of the Solicitor General in relation to police services boards and its interactions with the OPSB during the protests. I note that Kenneth Weatherill, Ontario's Inspector General of Policing, was concerned that Chief Sloly did not share an operational plan with the OPSB, and that the Board was not holding Chief Sloly accountable to the extent that it was entitled. However, Mr. Weatherill did not believe that it was the Ministry's role to weigh in on these matters.

I do not agree. The Ministry has a statutory duty to monitor board performance and ensure adequate and effective policing in the municipality. Insofar as the Ministry had concerns that the Board was not exercising its oversight function, it fell to the Ministry to provide guidance to the Board. This could have empowered the Board to direct the chief to provide operational information, particularly given that the Board was hearing from Chief Sloly that it was "unlawful" for him to do so. I find that, based on what the Ministry knew at the time, it would have been preferable if it had acted.

The Ministry's decision not to provide the OPSB with the training that it requested during the protests — directing them instead to send the questions they had about their role in writing to the Ministry — demonstrated another shortcoming in its response. While I commend the Ministry on its helpful answers to the questions sent by the OPSB, I cannot agree with Mr. Weatherill's decision to deny the Board's request for training. He identified two reasons for this decision. First, the OPSB could consult other resources. This response is unsatisfactory as the Ministry is the only body with a statutory duty to monitor police boards and ensure adequate and effective policing in municipalities. Second, he took the position that it would have been irresponsible to pull the Board away from its governance responsibilities to provide this training. I disagree. The OPSB was seeking to better understand its role. Any training the Ministry could have provided on governance during a major event, even informally, would have served to enhance the Board's ability to govern effectively.

24.6 Outside influences on the Ottawa Police Services Board

I describe in Section 19.1 how the OPSB decided to hire an external candidate to act as interim chief after Chief Sloly resigned from the OPS. This information was initially communicated to Ontario Deputy Solicitor General Di Tommaso by Mr. Weatherill. Deputy Solicitor General Di Tommaso, in turn, informed OPP Commissioner Carrique. In doing so, Deputy Solicitor General Di Tommaso indicated that the information came from an ongoing *in-camera* meeting of the OPSB.

While the role of the police services advisor includes reporting information on police services boards to the inspector general of policing and the deputy solicitor general, confidential information communicated *in camera* should not be circulated outside of this reporting structure without the Board's knowledge. The relationship between police services boards, police services leadership, and the provincial government requires that confidential information be treated as such. The OPSB should have been aware that the Ministry would be communicating this confidential information to OPP Commissioner Carrique.

The facts of this case raise the question of to what extent it is appropriate for confidential board information to be shared more widely, as was done when OPP Commissioner Carrique communicated the information to RCMP Commissioner Brenda Lucki. While the RCMP is a federal entity, at the time, it was part of the command structure that was in place in Ottawa. It is therefore possible that Commissioner Lucki had relevant information for the OPSB to consider in making its decision regarding the next Ottawa chief of police. In my view, this question cannot be conclusively answered on the evidence before me, but I raise it for others' consideration.

If Commissioners Lucki and Carrique had concerns about the impact of a change in OPS leadership on operational plans, these concerns should have been raised with the OPSB, either directly or through the relevant deputy minister. The Board would have benefited from this additional perspective in making this important decision.

Ottawa Mayor Jim Watson had his own concerns with the hiring of an external candidate. He raised these directly with OPSB Chair Deans. In Section 19.1, I describe how he may have implied that her continued leadership of the OPSB was contingent on having the Board reverse its course on this decision. This again undermined the Board's ability to exercise its governance and oversight functions and to act decisively. It was open to him to communicate his concerns to Chair Deans, but he should have been careful to not insinuate that failure to comply would have consequences for her continued leadership.

25. Pre-invocation activities by the Federal Government

25.1 The Federal Government's situational awareness

In the lead-up to the arrival of the Freedom Convoy, the message conveyed to the RCMP by the OPS was that they had the protest situation well in hand. The RCMP accepted that message at that time. The RCMP was not the police of jurisdiction in

Ottawa, and so I accept that it was reasonable for it to accept the OPS's reassurances in this regard.

However, there were troubling signals about both the character and possible duration of the protests that were immediately apparent to the Federal Government. The RCMP described the Freedom Convoy as a nation-wide protest with the goal of disrupting traffic flow and the general business of government in the hope that this would cause the Federal Government to lift all COVID-19-related public health measures. Most indications were that the protests would be peaceful; however, the Freedom Convoy was also attracting attention and support from ideologically motivated networks. Open-source monitoring had identified posts associated with the Freedom Convoy that were advocating violence. A number of threats were being made against elected and other public officials, with Prime Minister Justin Trudeau and Minister of Transport Omar Alghabra being particular targets of strong resentment. Minister Alghabra was advised to stay at home and participate in meetings from there. Several other ministers had already been placed under increased protection in mid-January due to an escalation in online threats, including references to assassination, from individuals and groups opposed to public health measures.

The Prime Minister and his staff had recently observed and experienced an unprecedented level of violent rhetoric and threats to their safety during the 2021 federal election campaign. On the heels of this experience, they were somewhat skeptical of the OPS's assurances that the protest would follow the usual pattern of a demonstration.

CSIS advised that it was investigating ideologically motivated violent extremism (IMVE) activities, and that there had been online commentary calling for violence and the storming of Parliament Hill buildings. CSIS reported that it was unaware, at that time, of any tangible plots of serious violence.

RCMP Commissioner Lucki advised that it was unknown how long the convoy protesters planned to stay in Ottawa, but that social media posts indicated that some participants might stay until January 31, 2022, in order to the disrupt the House of Commons when it returned.

As I discuss in Section 17.2, NSIA Jody Thomas raised concerns in these proceedings about gaps in the federal government’s ability to collect information needed in order to properly monitor and collect open-source information from social media. They identified the absence of a legislative framework and the lack of necessary tools to engage in this type of collection as particular concerns.

I accept that there is a gap in the federal government’s authority and ability to monitor the digital information environment, and that this gap hampered its ability to anticipate the convoy and understand and gauge the situation as events unfolded.

I also agree with the observation of the McDonald Commission, which was established to investigate the activities of the RCMP Security Service in the aftermath of the October Crisis, that accurate intelligence is needed not only to enable the government and police forces to take effective action, but also to avoid over-reacting to threats. Sound intelligence enables the government to cope with a crisis using methods appropriate to the real, rather than the imagined, dimensions of the threat. As Commissioner McDonald cautioned,

[a] small group of terrorists could realize a very great victory for their undemocratic cause by frightening a government into adopting measures which encroach on the civil liberties of citizens to a degree far in excess of what may be necessary to deal with the actual threat.²²

²² Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police, *Second Report: Freedom and Security Under the Law*, Vol. 1 (1981), p. 436.

I also note that a number of Federal Government witnesses expressed concerns about the flow of information between law enforcement and government, in part due to concerns surrounding operational independence. I have already discussed this problem in my findings on the policing response, and simply note that the problem applies with equal force at the federal level.

A related concern is the seemingly limited amount of “raw” information that is passed up through the chain of command, as opposed to delivered in synthesized reports. I was surprised to hear, for instance, that the National Security and Intelligence Advisor (NSIA) does not receive reports provided to the RCMP by other intelligence agencies. I appreciate that high-ranking officials and Cabinet ministers generally have neither the time nor the inclination to pore through extensive materials, but particularly in an emergent situation, there is value in providing more information, and filtering it less.

25.2 Government messaging

On January 27, ahead of the Freedom Convoy’s arrival, the Prime Minister gave a televised address in which he said the following:

[t]he small fringe minority of people who are on their way to Ottawa, or who are holding unacceptable views that they’re expressing, do not represent the views of Canadians who have been there for each other who know that following the science and stepping up to protect each other is the best way to continue to ensure our freedoms, our rights, our values as a country.²³

These comments, as well as remarks the Prime Minister made at a press conference on January 31, were interpreted by many as referring to all Freedom Convoy

²³ Overview Report: Timeline of Key Events, COM.OR.00000004, p. 5; *Canadian Frontline Nurses and Kristen Nagel v. Attorney General of Canada*, Notice of Application, February 18, 2022, para 26, COM00000397, p. 73.

participants. This served to energize the protesters, hardening their resolve and further embittering them toward government authorities.

I expect that the Prime Minister was intending to refer to the small number of people who were expressing racist, extremist, or otherwise reprehensible views, rather than to all Freedom Convoy participants. It may well be that his comments were taken out of context, including by some media. However, in my view more of an effort should have been made by government leaders at all levels during the protests to acknowledge that the majority of protesters were exercising their fundamental democratic rights. The Freedom Convoy garnered support from many frustrated Canadians who simply wished to protest what they perceived as government overreach. Messaging by politicians, public officials and, to some extent, the media should have been more balanced, and drawn a clearer distinction between those who were protesting peacefully and those who were not.

25.3 Early federal responses to the arrival of the Freedom Convoy

By Monday January 31, it became clear that, contrary to expectations, the Freedom Convoy was not leaving, and the OPS was overwhelmed. The federal government started to become more involved at all levels: political, public service, and law enforcement. Internally, the government activated both existing committee structures and *ad hoc* working groups, to track what was happening and assist in developing strategies. Externally, ministers and senior public servants began reaching out to municipal and provincial counterparts, as well as the OPS and the OPP, in an effort to coordinate and help resolve the situation.

By the end of the first week of the protests, there was a sense within the Federal Government that the OPS had lost control of the situation in Ottawa. On February 3, the Cabinet Committee on Safety, Security, and Emergencies (SSE) met to discuss whether there was anything the federal government could do to assist in resolving the situation. At that meeting, Deputy Minister of Public Safety Rob Stewart reported that

the OPS had expressed the view that they would not be able to bring the protests to a conclusion without the assistance of the federal government. At this meeting, CSIS advised that, at this point, there was no indication that violent extremism was planned, but that they were watching persons of interest.

As I discuss in Section 11.8, there was early confusion and disagreement about the number of policing resources being provided to the OPS. Beyond the question of numbers of officers that had already been deployed to Ottawa, there was also confusion around the proper process for requesting assistance from the RCMP. Both the OPP and the RCMP were understandably hesitant to commit the considerable resources requested by the OPS without knowing that an adequate plan existed for how they would be utilized. An added complication for the RCMP was that providing a large number of officers to the OPS meant drawing on the resources of RCMP divisions across the country. This became increasingly problematic as protest activities around the country increased in frequency and seriousness. It was unfortunate that these types of process questions may have hindered prompt aid. It would have been preferable if these issues could have been discussed and addressed in a multilateral forum such as the tripartite table that the Federal Government attempted to establish to address the situation in Ottawa.

I find the Province of Ontario's reluctance to become fully engaged in such efforts directed at resolving the situation in Ottawa troubling. As I discuss in Section 11.7, it appears that Ontario's refusal to participate in the political tripartite table with Ottawa and the Federal Government was based on two beliefs. First, as Ontario Deputy Solicitor General Di Tommaso expressed it, Ontario's view was that responsibility for resolving the situation in Ottawa fell largely to the Federal Government because the Freedom Convoy was "protesting a federal vaccine mandate on Parliament's doorstep."²⁴ Second, it was Ontario's position that the situation in Ottawa was a policing matter best left to the OPP.

²⁴ Interview Summary: M. Di Tommaso, WTS.00000041, p. 3.; Evidence of M. Di Tommaso, Transcript, November 10, 2022, p. 170.

The Prime Minister's view was somewhat different. He concluded that the Ontario Government was content to sit back and let the Federal Government “wear” the problem. Ottawa Mayor Watson expressed a similar sentiment.

In Canada's constitutional order, municipalities fall within provincial jurisdiction. I recognize that Ottawa is a uniquely complex city from a jurisdictional perspective, given the multiple levels of government that operate there, among other reasons. In fact, many of the key federal institutions affected by the protest, including the Prime Minister's Office and Privy Council Office, the Supreme Court of Canada, and Parliament, are located there. But this does not change the fact that Ottawa is a municipality created by the Province of Ontario and subject to its jurisdiction. The Province is ultimately responsible for effective policing in Ottawa. Given that the City and its police service were clearly overwhelmed, it was incumbent on the Province to become visibly, publicly, and wholeheartedly engaged from the outset.

In one of the Commission's policy roundtables, Professor Leah West of Carleton University described the events leading to the invocation of the *Emergencies Act* as a failure in federalism. Unfortunately, I find that this description is apt. I recognize that Ontario was eventually spurred to action by the Ambassador Bridge blockade. It was not until Prime Minister Trudeau spoke to Premier Doug Ford on February 9, after the Ambassador Bridge blockade, that collaboration became the name of the game. It is unfortunate that such collaboration did not take place days earlier.

Had there been greater collaboration at the political level from the start, it could well have assisted in ironing out the communication, jurisdictional, and resourcing issues that plagued the early response to the protests. It could also have assisted in identifying authorities available to each level of government that might have been used to respond to the protests and coordinate direct engagement with protesters. It could also have provided the people of Ottawa with a clear message that they had not been abandoned by their provincial government during a time of crisis.

Unfortunately, Ontario's premier and solicitor general exercised Parliamentary privilege to resist the summonses that I issued to them. The Commission would have greatly benefited from the perspective that their testimony could have provided.

By February 5, the protest activity in Coutts had become sufficiently problematic that the government of Alberta requested the federal government's assistance in the form of heavy equipment and personnel. By this time, the Alberta division of the RCMP had also requested that additional RCMP officers be sent to Alberta to assist, on the basis that the acting minister of Justice and Solicitor General was of the opinion that an emergency existed in the province. While the RCMP was able to provide Alberta with the requested policing resources by drawing on officers from its British Columbia division, the federal government did not provide the requested towing equipment. The only heavy towing equipment to which the federal government had access were Canadian Armed Forces heavy-duty wreckers that were neither readily available nor suitable for the intended use.

Meanwhile, protests had also spread to Toronto, Ontario and Québec City, Quebec. On February 7, the Ambassador Bridge blockade began, instantly wreaking havoc at the single most important commercial land crossing in Canada. On February 8, the situation in Coutts had deteriorated to the point that protesters had re-established a full blockade of the highway, effectively shutting down Alberta's largest port of entry.

The Federal Government perceived that the situation was worsening nation-wide. The minutes of the February 6 and February 8 meetings of the SSE reflect the Federal Government's concerns: The CBSA reported that there had been at least a dozen situations involving Canada's borders in the past 10 days; CSIS reported an increase in online activity focused on anti-enforcement rhetoric and invitations to participate in blockades at border crossings, though no actual violence had been identified to date; Public Safety Canada reported that the OPS staff were tired and needed reinforcements, and that the protest appeared organized, including that the blockade at the Ambassador Bridge was designed to divide the OPP's attention; and the RCMP

reported that the OPP was in the process of developing an integrated plan to manage the Ottawa demonstration, but that demonstrations persisted in Windsor, Coutts, and Winnipeg, Manitoba.

There was public perception and expectation that, since the protests were triggered by a federal vaccine mandate and were taking place “at Parliament’s doorstep” in Ottawa as well as along the Canada – U.S. border, the Federal Government should own the situation and solve the problem. Jurisdictionally, however, there were severe limits on what it could do. As noted, attempts by the Federal Government to coordinate a response with the provinces had, to that point, failed to bear fruit. On February 9, the Clerk of the Privy Council instructed the federal deputy ministers to create a comprehensive list and preliminary assessment of all available federal powers, authorities, and resources that might be available to assist in resolving the protest situation across the country. It was at this time that use of the *Emergencies Act* began to be seriously considered.

26. The path to invoking the *Emergencies Act*

As I discuss in Section 17.6, on February 10, the Prime Minister convened an Incident Response Group (IRG) meeting to discuss potential Federal intervention. The IRG is a purpose-built special committee of Cabinet, chaired by the Prime Minister and convened to respond to crisis situations. It is less formal and more flexible than other Cabinet committees and involves a far greater degree of direct input from senior public servants.

By this point, the Federal Government was already familiar with the *Emergencies Act*. In March 2020, in response to the COVID-19 pandemic, the Federal Government considered using the Act as part of the federal response. Government officials studied the parameters of the statute (in what the Prime Minister described as “a crash course

in the *Emergencies Act*²⁵) and engaged in extensive consultations with the provinces. In the end, the Prime Minister concluded that it was not appropriate to invoke the Act in response to the pandemic. But this process meant that, by February 2022, key decision makers already had at least some familiarity with this statute.

The February 10 IRG meeting was preceded by a ministerial briefing. RCMP Commissioner Lucki gave an operational update, at which she expressed concerns about the OPS's ability to resolve the situation in Ottawa. When the Cell arrived in Ottawa to review the Ottawa police plan, they discovered that there was no plan to review. There was reason to hope that progress would be made, because as of that morning the appropriate people from the OPS were engaged with the Integrated Planning Cell. But it was unlikely that there would be any significant actions taken for a few days. As for the national situation, open-source reporting suggested that there was a plan to block a Canadian National Railway (CN Rail) route. There were at least 24 planned demonstrations in British Columbia for the coming weekend, with others planned for later in February and the beginning of March. There were another five planned in Nova Scotia, and five in Manitoba. She noted that these were just the ones they knew about; she expected there would be more. She further noted that managing these protests was a huge draw on RCMP resources nation-wide. Further deployment would have a significant impact on operations, including on a number of national security investigations. CSIS Director Vigneault advised that as the occupation continued and frustrations and tensions increased, so did the risk that an individual or small group would mobilize to violence.

At the February 10 IRG meeting, NSIA Thomas and RCMP Commissioner Lucki provided a situational update. The report on Ottawa was that the situation remained largely unchanged. The Integrated Planning Cell was developing a plan of action. There were challenges throughout the country. The size of the Coutts protest was smaller than in previous days, but those who remained were entrenched. The protesters at

²⁵ Evidence of Prime Minister Justin Trudeau, Transcript, November 25, 2022, pp. 42 and 43.

the Ambassador Bridge were becoming more aggressive, and enforcement action was set to begin the next day. New Brunswick and Nova Scotia were already using their emergency statutes to address protests, and Ontario was expected to follow suit the following day. There were also rumours of blockades at the Alberta – Northwest Territories border. Minister Blair noted that in areas like Coutts and Windsor, police capacity was exceeded almost immediately after the protests began.

On the basis of the information available at that time, I find that there was cause for serious concern that protests associated with the Freedom Convoy were spreading and would continue to do so, and that law enforcement, while responding to these challenges for the moment, were stretched to the limit.

The IRG soon began the “two track” consideration that I describe in Section 17.6, examining existing federal authorities under Track 1, and considering what additional authorities might be needed, either through new legislation or the use of the *Emergencies Act* under Track 2. The results of this process were presented to the IRG on February 12.

The use of the Canadian Armed Forces, while technically an available option, was never seriously considered by the IRG, nor should it have been. Soldiers are trained for combat, not for crowd control. Even the appearance of military involvement risked exacerbating the protests rather than resolving them.

The IRG also considered an Engagement Proposal, prepared by Deputy Minister Stewart and OPP Inspector Marcel Beaudin, for a representative of the Federal Government to meet with protest leaders if they agreed to leave the protest and publicly denounce unlawful activity. The IRG ultimately decided not to pursue this approach.

I am not troubled by the Government’s decision not to pursue this approach. The Ottawa protest had been going on for more than two weeks and was fueling a growing national movement. The Government understandably wanted it to end quickly. I

accept that meeting with an undefined group of organizers with no clear leadership, when in any event there was little likelihood of predicting, let alone controlling, the protesters' actions, was unlikely to resolve matters. Comparable attempts to negotiate in Windsor had been unsuccessful for similar reasons. I find that the Engagement Proposal was a good faith effort by public officials to try to solve the problem, but that it was reasonable in the circumstances for the Federal Government not to pursue it.

There was one criticism of this Engagement Proposal, however, that I do not accept. As it was being prepared, RCMP Commissioner Lucki raised the concern that it might cross the line into interference with police operational independence. I do not view this as a concern here. The proposal did not purport to direct police in respect of operational matters, but rather contemplated a non-policing solution developed with input and guidance from police. There was nothing to suggest that the Engagement Proposal was an attempt to direct law enforcement in any way.

The IRG met at 4 p.m. on Sunday February 13 to discuss whether the time had come to invoke the *Emergencies Act*. By the end of that meeting, there was consensus around the table that invoking the *Emergencies Act* was necessary. The prevailing view was that the protest in Ottawa had become an entrenched illegal occupation, and that the situation across the country was dangerous, complex, and volatile. The IRG concluded that a meeting of the full Cabinet should be held to discuss the invocation of the *Emergencies Act*.

Cabinet met at 8:30 p.m. that evening. After receiving a situational update and a briefing on the *Emergencies Act*, Cabinet proceeded to deliberate on whether the thresholds had been met and the Act should be invoked. The consensus was that it should be and that a First Ministers' Meeting should be called to consult with the provinces. The final decision on invoking the Act was left *ad referendum* to the Prime Minister, following the First Ministers' Meeting, meaning that no further Cabinet meeting would be necessary.

Two issues arose at the hearing about information provided to the IRG and Cabinet that require additional comment.

First, the Prime Minister expressed the view that there was no police plan in place for clearing the Ottawa protest by February 13, and that he was not confident they had the situation under control. At the February 12 IRG meeting, Commissioner Lucki indicated that she would provide additional details of the police plan at the next meeting, however she did not speak at the February 13 IRG meeting, and therefore did not provide an update on the plan. I heard the suggestion that, had Commissioner Lucki told the IRG about the plan, a different decision might have been made.

I accept that it would have been preferable for Commissioner Lucki to provide a further update on February 13, but I am not prepared to find that it would have made a difference. First, while the evidence was somewhat contradictory as to what Commissioner Lucki understood regarding the approval of the plan on February 13, regardless of the status of the plan, she had significant doubts about police leadership in Ottawa and what that meant for timing and implementation of the plan. Second, a further update on the plan from Commissioner Lucki was unlikely to have inspired confidence around the IRG table. Federal officials had repeatedly been told a plan was in place without any apparent results. Several ministers and officials also had concerns about police leadership in Ottawa, many of which I have found to be valid. The February 13 plan was a significant development, but its successful execution depended on integration and co-operation between law enforcement actors, issues that had not been fully resolved by the time of the IRG meeting. However, even more significant was the fact that, by this point, the IRG's concerns were national in scope. The fact that a plan existed for Ottawa, though relevant, was unlikely to have changed the course of the IRG's deliberations. As Clerk Charette testified, "there was no single plan at any single site that would have necessarily changed my advice to

the Prime Minister about the totality of the circumstances that led to the invocation of the *Emergenc[ies] Act*.²⁶

The second issue relates to Commissioner Lucki's view that not all of the tools available through existing legislation had been exhausted in responding to the protests.

As I discuss in Section 17.7, Commissioner Lucki made this comment to Public Safety Minister Marco Mendicino's chief of staff in replying to an email request to provide the RCMP's "wish list" of powers that could be granted if the *Emergencies Act* was invoked. This view was not included in speaking notes that Commissioner Lucki sent NSIA Thomas, who spoke on her behalf during the Cabinet meeting, and, therefore, this view was not conveyed to Cabinet.

I do not view this as particularly significant. The Clerk confirmed that in the conversation around the invocation of the *Emergencies Act*, Cabinet was briefed that there were tools and authorities in many organizations that had not been fully deployed, including in the RCMP. It is clear that legal tools and authorities existed; the problem was that these powers, such as the power to arrest, were not being used because doing so was not thought to be an effective way to bring the unlawful protests to a safe and timely end.

Following the February 13 Cabinet meeting, the Privy Council Office was tasked with convening a First Ministers' Meeting for the next morning. No agenda or briefing material was provided in advance. Out of concern that knowledge of the purpose of the meeting would trigger a reaction from protesters if it became known, the premiers were not advised of the topic of the call, though it appears that none of the premiers were surprised about it or seemed ill-prepared to discuss the possible invocation of the Act.

²⁶ Evidence of Janice Charette, Transcript, November 18, 2022, p 270.

The result of the meeting was that the Prime Minister did not believe that the premiers had a solution to the crisis that did not require the invocation of the *Emergencies Act*. After receiving a memorandum from the Clerk of the Privy Council recommending invocation of the Act, he decided to do so.

The Clerk’s memorandum referred to a threat assessment that was to be provided to the Prime Minister under separate cover. That assessment would have been a collation of the inputs and assessments that had been delivered up to that point. It was never prepared. In my view, this integrated assessment document should have been provided. A threat assessment is a critical component of a decision-making process. It would have constituted an important part of the record and, although I accept that it would likely not have contained any significant information that had not been communicated earlier, there is benefit in presenting information in consolidated form. I do not, however, find that its absence in any way affected the validity of the decision.

27. How to assess the invocation of the *Emergencies Act*

27.1 The role of the Commission in reviewing the decision to invoke the *Emergencies Act*

One of the most difficult questions that I have faced, and one for which there is no precedent, is what role the Commission should assume in assessing Cabinet’s decision to declare a public order emergency. Some parties have argued that I should not opine on the appropriateness or legality of the decision, as that is the role of the Federal Court in a judicial review proceeding. Others have argued that pronouncing on the decision is the *raison d’être* of the Inquiry.

I consider this question in light of the terms of my mandate. Section 63 of the Act and my Order in Council both direct me to enquire “into the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency.”

There is no clear direction to decide whether the decision to declare an emergency was justified in law. Arguably, this is implied by this language, but the emphasis is on an enquiry into the circumstances leading to the decision, rather than the decision itself.

That being said, I must also consider my mandate in light of the Act's emphasis on public accountability. The various oversight mechanisms contained in the *Emergencies Act* speak to a legislative intention to subject the declaration of an emergency to careful scrutiny both during and after the life of an emergency.

The role and focus of a commission established under section 63 will, to some extent, depend on the context. In some instances, it may be beyond doubt that the conditions for invoking the *Emergencies Act* were met, but there may be other questions regarding the circumstances that led to the declaration and the measures taken under it that require careful review. In the present situation, however, I am faced with a statute that has never been used or judicially interpreted, and questions have been raised by the parties as to whether its conditions have been satisfied. My assessment of the circumstances must therefore inevitably involve a consideration of the Act's requirements.

I acknowledge that the Commission's role is distinct from that of a court. The Commission does not have the legal authority to adjudicate the "lawfulness" of the declaration as such. I do not intend or consider my findings on this topic to be in any sense binding on the courts. The effect or significance of the Commission's findings and conclusions in the judicial review proceedings will be a matter for the Federal Court to determine.

Thus, I interpret the Act and the Terms of Reference of my mandate as directing that I should enquire into the circumstances that led to the declaration being issued, examine and assess the basis for the invocation of the Act, and make findings and draw conclusions about the appropriateness of the declaration and the exercise of

powers granted under it, including whether the Act's requirements were met. The ultimate legality of the decision remains within the purview of the courts.

27.2 Norms, values, and interpretive principles

Before considering the relevant legislative provisions, I will outline the norms, values, and principles that, in my view, underlie emergency legislation and ought to be considered when interpreting the legislation and considering whether its requirements have been met. In doing so, I draw on the work of Professor Nomi Claire Lazar, University of Ottawa, on the theory and ethics of emergency powers in liberal democracies.²⁷

The difficulty of addressing emergencies can be understood as a challenge in reconciling the tension between the conflicting values that come to the forefront in an emergency situation. Three pairs of values in particular must be balanced in considering whether invocation of emergency legislation is justified: order and freedom, speed and deliberation, and rules and exceptions.

Tensions between order and freedom sit at the heart of our system of governance. Freedom cannot exist without order, because the machinery of order — such as procedures, laws, police, and courts — create the conditions for the protection of freedom, the enjoyment of freedom, and the mediation of conflicting freedoms. While order constrains freedom — laws, for example, limit the range of permissible actions — without order's constraints, freedom cannot exist.

The ever-present tension between order and freedom generally goes unnoticed in our society because we are accustomed to the many day-to-day limits on our rights in the service of order. Traffic rules, driver's licences, building codes, municipal by-laws, and

²⁷ Nomi Claire Lazar, *States of Emergency in Liberal Democracies* (Cambridge University Press, 2013), c. 4 – 6.

of course the criminal law are all examples of constraints on our freedoms, but they are habitual, accepted, and therefore inconspicuous.

It is commonly assumed or asserted that tensions and trade-offs between order and freedom are a distinctive problem of emergencies and emergency powers. In fact, they are not. The fundamental and inevitable tension between order and freedom is a constant; it is simply more visible, and more stark in a time of emergency. In times of emergency, however, freedoms that are usually unconstrained may suddenly be curtailed. This puts a spotlight on the clash of values.

The tension between order and freedom is reflected in the thresholds for invoking the *Emergencies Act*. When the use of emergency powers becomes necessary, this is generally because the order necessary to freedom is under a special threat. The threshold for invocation is the point at which order breaks down and freedom cannot be secured or is seriously threatened.

The tension between speed and deliberation is one that is inherent in our system of government but becomes acute in a situation of emergency. In normal times, we expect government action to be timely and effective, but also cautious, deliberative, and well thought out. Acting in haste is generally considered the greater risk; thus, the legislative process is designed to slow down government action to ensure that it is properly and thoroughly deliberated. The urgent character of emergencies, however, demands quick decisions, which cannot be achieved through the normal legislative process. Emergencies by their very nature often require rapid if not instant response, as hasty action may be necessary to protect life and limb. As I explain earlier in this section, the *Emergencies Act* accommodates this to a degree by reversing the sequence of decision and deliberation. While deliberation normally precedes decision, under the *Emergencies Act*, the decision is made by Cabinet where deliberations are usually much less extensive than in the legislative process. In this sense the decision comes first, and the deliberation follows. This deliberation may lead the Legislature

to reverse the executive’s decision; thus, despite the need for speed, the check on executive power is ultimately preserved.

Finally, the tension between rules and exceptions is also reflected in the Act. The definitional thresholds under the *Emergencies Act* attempt to delineate the conditions under which exceptions to the normal course of law are justifiable. But the law can only go so far in anticipating what may occur. The determination that those thresholds have been met and that the Act must be invoked is not a cut-and-dried activity; it inevitably requires the exercise of judgment, often in the heat of a crisis. The accountability mechanisms inherent in the Act ensure that the decision makers operate in full knowledge that their decision will not escape scrutiny and judgment. That scrutiny must be careful, and that judgment must be exercised in a manner that is firm, but fair.

27.3 Interpreting the *Emergencies Act*

The *Emergencies Act* is, without doubt, extraordinary legislation. It temporarily allows the executive to legislate without going through the usual Parliamentary process. It contemplates the taking of measures that may not be appropriate in normal times. It allows for the temporary suspension of the division of powers under the Constitution.

The *Emergencies Act* is also necessary. It is a fundamental responsibility of government to ensure the safety and security of people and property in emergency situations. Most, if not all, modern democratic governments have enacted emergency power legislation in order to ensure that this responsibility can be fulfilled.

I discuss Canada’s history of emergency measures legislation in Section 3.2. By the time the *Emergencies Act* was enacted, the *War Measures Act* was considered, to use the words of then Minister of National Defence Perrin Beatty, “an archaic and dangerous piece of legislation completely out of tune with democratic Canadian life.”²⁸

²⁸ *House of Commons Debates (Hansard)*, 33rd Parl., 2nd Sess., Vol. 9 (November 16, 1987), p. 10808 (The Hon. Perrin Beatty).

In part because of the *War Measures Act*'s troubled legacy, the Government that brought in the *Emergencies Act* was acutely aware of the need to craft a statute that ensured respect for civil liberties and the rule of law, while at the same time being powerful and flexible enough to deal with urgent, unanticipated circumstances.

The *Emergencies Act*, while in some respects imperfect or outdated, is a statute firmly anchored in the principles of the rule of law, constitutionalism, and public accountability. It is predicated on a complex matrix of conditions, requirements, checks, balances, and accountability mechanisms designed to prevent its abuse. The combination of limits and safeguards in the *Emergencies Act* distinguishes it from emergency statutes at the provincial and territorial level in Canada, which generally have lower thresholds for declaring an emergency and fewer, if any, mechanisms for accountability.²⁹ It also distinguishes the *Emergencies Act* from emergency statutes in comparable countries around the world, which generally lack this robust, multi-layered approach to constraints and oversight.³⁰

The Act does not envision unrestricted legislation by decree. Rather, it reverses the normal order of decision and deliberation, so that rather than having legislative action follow deliberation by Parliament, action comes first, and Parliamentary deliberation follows shortly thereafter. As Professor Lazar has written, the *Emergencies Act*

does not eliminate deliberation, debate, and oversight [...]. The *Emergencies Act* functionally shifts these processes of deliberation forward in time. While deliberation over the public good and what laws, policies and actions might best serve it takes place *in advance* in normal times, the Act allows that sometimes decisions [...] must be made *now*,

²⁹ Jocelyn Stacey, *Governing Emergencies in an Interjurisdictional Context*. This paper is reproduced in Vol. 5 of this Report.

³⁰ See, for example, Kim Lane Scheppele, "North American emergencies: The use of emergency powers in Canada and the United States" (2006) 4:2 *International Journal of Constitutional Law* 213.

while remaining subject to deliberation and judgment along the way and after the fact.³¹

Put simply, the operational principle underlying the *Emergencies Act* is a recognition that in a situation of emergency, it may be necessary for the executive to “act now and ask later.” Invocation of the *Emergencies Act* is a drastic move, but it is not a dictatorial one.

When the Act was introduced, the government of the day tabled a white paper that reviewed the policy, constitutional, and legal basis for the legislation, and was intended to aid in the discussion of the complex and fundamental issues associated with the formulation of emergencies legislation.³² According to the white paper, the category of public order emergency was designed to deal with “situations resulting from lawlessness, terrorism or insurrection,”³³ also described as “several varied kinds of contingencies, ranging from civil unrest to apprehended insurrection.”³⁴ The common thread tying these circumstances together is that they

arise from the deliberate actions of individuals or groups that place in jeopardy the life, liberty, safety, security, or property of the citizen, the rule of law, or constitutional government. And when such disturbances are so serious in nature or so widespread in scope as to threaten the security of Canada as a nation, the federal government has a constitutional as well as a social responsibility to intervene to restore conditions of safety and security.³⁵

³¹ Nomi Claire Lazar, *On Necessity under the Emergencies Act*, p. 9-6. This paper is reproduced in Vol. 5 of this Report.

³² Canada, Emergency Preparedness Canada, *Bill C-77: An Act to Provide for Safety and Security in Emergencies — Working Paper*.

³³ Canada, Emergency Preparedness Canada, *Bill C-77: An Act to Provide for Safety and Security in Emergencies — Working Paper*, p. 56.

³⁴ Canada, Emergency Preparedness Canada, *Bill C-77: An Act to Provide for Safety and Security in Emergencies — Working Paper*, p. 22.

³⁵ Canada, Emergency Preparedness Canada, *Bill C-77: An Act to Provide for Safety and Security in Emergencies — Working Paper*, p. 22.



I return here to the tension between rules and exceptions as this manifests itself in the *Emergencies Act*. The white paper asserts that the *Emergencies Act* is intended to provide the government with “an appropriately safeguarded statute to deal with a full range of possible emergencies.”³⁶ Parliament may only go so far in anticipating what may occur. The determination of whether it necessary and appropriate to invoke the Act will ultimately and always require the exercise of judgment. What Canadians can and should expect is that this judgment be exercised in good faith, in the best interests of the country, in compliance with each of the prerequisites required by the legislation, and in keeping with the rule of law.

27.4 The statutory thresholds for declaring a public order emergency

In interpreting the Act, I face a similar challenge to that faced by Cabinet: interpreting a complex, multi-layered legislative scheme enacted more than 35 years ago in a very different social and political context, and for which there is no precedent. Ascertaining what constitutes a public order emergency is a complex exercise, requiring one to weave together several multi-part definitions across two statutes. I begin with the definition of a “national emergency,” which is a threshold that must be met before any of the types of emergency under the Act may be declared:

<p>3 For the purposes of this Act, a national emergency is an urgent and critical situation of a temporary nature that</p> <p>(a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as</p>	<p>3 Pour l’application de la présente loi, une situation de crise nationale résulte d’un concours de circonstances critiques à caractère d’urgence et de nature temporaire, auquel il n’est pas possible de faire face adéquatement sous le régime des lois du Canada et qui, selon le cas :</p>
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³⁶ Canada, Emergency Preparedness Canada, *Bill C-77: An Act to Provide for Safety and Security in Emergencies — Working Paper*, p. 50.



<p>to exceed the capacity or authority of a province to deal with it, or</p> <p>(b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada</p> <p>and that cannot be effectively dealt with under any other law of Canada.</p>	<p>a) met gravement en danger la vie, la santé ou la sécurité des Canadiens et échappe à la capacité ou aux pouvoirs d'intervention des provinces;</p> <p>b) menace gravement la capacité du gouvernement du Canada de garantir la souveraineté, la sécurité et l'intégrité territoriale du pays.</p>
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The Government of Canada has confirmed that, in invoking the *Emergencies Act*, the Governor in Council relied on paragraph (a) of this definition.

The definition of a public order emergency builds upon the notion of a national emergency, and ties it to the concept of “threat to the security of Canada”:

<p>16 In this Part,</p> <p>...</p> <p>public order emergency means an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency;</p> <p>threats to the security of Canada has the meaning assigned by section 2 of the <i>Canadian Security Intelligence Service Act</i>.</p>	<p>16 Les définitions qui suivent s'appliquent à la présente partie.</p> <p>...</p> <p>état d'urgence Situation de crise causée par des menaces envers la sécurité du Canada d'une gravité telle qu'elle constitue une situation de crise nationale.</p> <p>menaces envers la sécurité du Canada S'entend au sens de l'article 2 de la <i>Loi sur le service canadien du renseignement de sécurité</i>.</p>
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The definition of “threat to the security of Canada,” in turn, is found in the *Canadian Security Intelligence Service Act*:

<p>2 In this Act,</p> <p>...</p> <p>threats to the security of Canada means</p> <p>(a) espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage,</p> <p>(b) foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,</p> <p>(c) activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state, and</p>	<p>2 Les définitions qui suivent s’appliquent à la présente loi.</p> <p>...</p> <p>menaces envers la sécurité du Canada Constituent des menaces envers la sécurité du Canada les activités suivantes :</p> <p>a) l’espionnage ou le sabotage visant le Canada ou préjudiciables à ses intérêts, ainsi que les activités tendant à favoriser ce genre d’espionnage ou de sabotage;</p> <p>b) les activités influencées par l’étranger qui touchent le Canada ou s’y déroulent et sont préjudiciables à ses intérêts, et qui sont d’une nature clandestine ou trompeuse ou comportent des menaces envers quiconque;</p> <p>c) les activités qui touchent le Canada ou s’y déroulent et visent à favoriser l’usage de la violence grave ou de menaces de violence contre des personnes ou des biens dans le but d’atteindre un objectif politique, religieux ou idéologique au Canada ou dans un État étranger;</p>
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<p>(d) activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada,</p> <p>but does not include lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in paragraphs (a) to (d).</p>	<p>d) les activités qui, par des actions cachées et illicites, visent à saper le régime de gouvernement constitutionnellement établi au Canada ou dont le but immédiat ou ultime est sa destruction ou son renversement, par la violence.</p> <p>La présente définition ne vise toutefois pas les activités licites de défense d'une cause, de protestation ou de manifestation d'un désaccord qui n'ont aucun lien avec les activités mentionnées aux alinéas a) à d).</p>
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The Government of Canada has confirmed that, in invoking the *Emergencies Act*, the Governor in Council relied on paragraph (c) of this definition.

The previously mentioned provisions, taken together, comprise the definition of a public order emergency. The legal authority to declare a public order emergency is found in section 17 of the *Emergencies Act*:

<p>17 (1) When the Governor in Council believes, on reasonable grounds, that a public order emergency exists and necessitates the taking of special temporary measures for dealing with the emergency, the Governor in Council, after such consultation as is required by section 25, may, by proclamation, so declare.</p>	<p>17 (1) Le gouverneur en conseil peut par proclamation, s'il croit, pour des motifs raisonnables, qu'il se produit un état d'urgence justifiant en l'occurrence des mesures extraordinaires à titre temporaire et après avoir procédé aux consultations prévues par l'article 25, faire une déclaration à cet effet.</p>
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Section 25 refers to the obligation of the Federal Government to consult with the provinces prior to a declaration of a public order emergency:

<p>25 (1) Subject to subsections (2) and (3), before the Governor in Council issues, continues or amends a declaration of a public order emergency, the lieutenant governor in council of each province in which the effects of the emergency occur shall be consulted with respect to the proposed action.</p>	<p>25 (1) Sous réserve des paragraphes (2) et (3), le gouverneur en conseil, avant de faire, de proroger ou de modifier une déclaration d'état d'urgence, consulte le lieutenant-gouverneur en conseil de chaque province touchée par l'état d'urgence.</p>
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Section 19 sets out the powers available in the event of a public order emergency, which I discuss in the next section.

In summary, to declare a public order emergency, Cabinet had to believe, on reasonable grounds, that:

- a. there was an urgent and critical situation of a temporary nature that seriously endangered the lives, health, or safety of Canadians;
- b. the emergency arose from activities directed toward the threat or use of serious violence against persons or property for the purpose of achieving a political, religious, or ideological objective;
- c. the emergency was of such proportions or nature that it exceeded the capacity or authority of a province to deal with;
- d. the emergency could not be effectively dealt with by any other federal law; and
- e. the emergency required the taking of special temporary measures.

The Government also had to establish that the requirement of provincial consultation mandated by section 25 had been met.

27.5 The “reasonable grounds to believe” standard

The “reasonable grounds to believe” standard is a familiar one in law. It

requires something more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities. In essence, reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information.³⁷

The “reasonable grounds to believe” standard is sometimes expressed as “reasonable and probable grounds to believe.” As the Supreme Court of Canada has explained, these terms are synonymous: “[r]easonableness’ comprehends a requirement of probability.”³⁸ This means that a person who exercises a power based on reasonable grounds to believe must believe in the probability that certain facts or a certain situation exists. However, the existence of the facts or situation need not ultimately be proven on a balance of probabilities.

The “reasonable grounds to believe” standard has both a subjective and an objective component. The decision maker must subjectively (i.e., personally) believe that the conditions are met, and that belief must be justifiable from an objective point of view. The objective element means that a reasonable person “standing in the shoes” of the decision maker must be able to come to the same conclusion that the decision maker did. It is possible for the decision maker to be reasonably mistaken about the existence of a fact or situation, but still meet the standard. An error is reasonable if

³⁷ *Mugesera v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 100, para 114 [internal references omitted]; see also *R v. Beaver*, 2022 SCC 54, paras 71 and 72.

³⁸ *Baron v. Canada*, [1993] 1 S.C.R. 416, p. 447.

a reasonable person placed in the same situation, observing the same facts, would have committed the same error.³⁹

Importantly, the objective component must be based on an assessment of the totality of the circumstances known to the decision maker at the time of the decision, not what may become known after. This cuts both ways. On the one hand, it means that the decision maker may not rely on information obtained after the fact to bolster the reasonableness of the decision. On the other hand, it means that information unknown to the decision maker at the time cannot be used to undermine the reasonableness of the decision unless it was unreasonable for the decision maker not to have secured such information before acting.

The context in which the *Emergencies Act* operates is important. Cabinet will invariably be acting on incomplete information and in circumstances of urgency. These practical realities must be considered when assessing whether Cabinet had reasonable grounds to believe a public order emergency existed.

A similar recognition exists in the criminal law, where police officers are required to exercise certain powers on a “reasonable grounds to believe” standard in dynamic and volatile circumstances. In *R. v. Beaver*, the Supreme Court discussed this dynamic in the context of the police power to make an arrest:

In evaluating the objective grounds to arrest, courts must recognize that, “[o]ften, the officer’s decision to arrest must be made quickly in volatile and rapidly changing situations. Judicial reflection is not a luxury the officer can afford. The officer must make his or her decision based on available information which is often less than exact or complete”. Courts must also remember that “[d]etermining whether sufficient grounds exist to justify an exercise of police powers is not a ‘scientific or metaphysical

³⁹ See Anne-Marie Boisvert, *The Reasonable Grounds to Believe Standard in Canadian Criminal Law*. This paper is reproduced in Vol. 5 of this Report.

exercise’, but one that calls for the application of ‘[c]ommon sense, flexibility, and practical everyday experience’⁴⁰.

Provided that the necessary factual basis exists, the “reasonable grounds to believe” standard builds in the concept of a margin of appreciation. Reasonable minds may differ on the same question, and a decision is not wrong or unreasonable because an outcome thought likely to happen does not materialize. The margin of appreciation inherent in the standard is important, particularly when the decision is one made by the highest levels of the executive, in a situation of urgency, and requires the application of judgment.

I emphasize, however, that the decision must nevertheless be carefully scrutinized. The “reasonable grounds to believe” standard was inserted specifically to ensure that decisions made under the Act would be reviewable.⁴¹ While the standard may be a flexible one, the margin of appreciation it affords Cabinet is not limitless. Moreover, given the impact that the use of the *Emergencies Act* can have on both *Charter* rights and the constitutional division of powers with the provinces, the review of the decisions made by Cabinet must be meaningful. All of the prerequisites to the declaration must be in place. The Act is not a tool of convenience; it is one of last resort.

27.6 Economic considerations

One interpretive question that arose during the Inquiry was whether economic concerns could be relevant to the existence of a national emergency under the *Emergencies Act*. The *Emergencies Act* does not, and was not intended to, capture purely economic crises.⁴²

⁴⁰ *R. v. Beaver*, 2022 SCC 54, para 72(5) [internal citations omitted].

⁴¹ *House of Commons Debates*, 33rd Parl., 2nd Sess., Vol. 12 (April 25, 1988), pp. 14765 and 14766 (Bud Bradley).

⁴² Canada, Emergency Preparedness Canada, *Bill C-77: An Act to Provide for Safety and Security in Emergencies — Working Paper*, p. 26.

This does not mean that when a public order disturbance causes economic disruption to such a degree that it seriously endangers the lives, health, and safety of Canadians, those effects are irrelevant or that Cabinet is required to disregard them. To the extent that a public order event causes an economic disruption that is significant enough to put the life, health, and safety of Canadians in danger, Cabinet can take those consequences into account when considering whether the situation constitutes a national emergency.

28. Assessing the decision to invoke the *Emergencies Act*

As the IRG and Cabinet deliberated over whether to invoke the *Emergencies Act*, they were required to weigh a significant amount of information, much of which I have set out in this Report. I discuss next what I believe to have been the most salient information regarding each of the statutory conditions. In doing so, I consider only the information known to Cabinet and the Prime Minister at the time the decision was made. I note that this discussion is not comprehensive, in that it does not reflect all the information before Cabinet, and that the information listed under one requirement may in some cases also have bearing on another.

28.1 Subjective grounds

There was little suggestion by the parties that the subjective requirement had not been met, (i.e., that Cabinet did not genuinely believe that the statutory requirements for a declaration of a public order emergency had been satisfied). This conforms with my assessment of the evidence I heard from the various officials and ministers who were instrumental in the decision to invoke the Act. The Federal Government undertook a thorough and structured analysis and, applying the law as it understood it to be, Cabinet and the Prime Minister believed that the threshold for declaring a public order emergency had been met.

Some suggestion was made that in the absence of disclosure of the legal advice that Cabinet received, which is protected by solicitor – client privilege, it cannot be known whether its decision conformed to that opinion. I do not accept this argument. Numerous witnesses, including, but not limited to the Prime Minister, the Clerk of the Privy Council, and the minister of Justice (who was responsible for providing the legal advice to Cabinet), testified that they believed the legal thresholds for invoking the *Emergencies Act* were met. Each of them explained what they believed those thresholds to be. I do not need to see the legal advice itself in order to accept the evidence that they believed their conclusion to be justified in law.

I note, however, that it would have been preferable if the legal basis for Cabinet’s decision had been articulated at an earlier stage of the Commission’s work, an issue to which I return in my Recommendations.

I have no hesitation in accepting that Cabinet had a subjective belief that it was facing a public order emergency. The more substantial issue that I must assess is the objective question: whether Cabinet’s belief in the existence of a public order emergency was objectively reasonable. I turn now to that question and will assess it with respect to each of the statutory thresholds contained in the Act.

28.2 An urgent and critical situation of a temporary nature that seriously endangered the lives, health, or safety of Canadians

From my assessment of the situation as understood by Cabinet, I am satisfied that a compelling and credible factual basis existed that objectively supported a reasonable belief that the lives, health, and safety of Canadians were seriously endangered.

Cabinet had four main bases upon which to conclude that this criterion was satisfied: dangers to the life, health, and safety of residents and other innocent bystanders in Ottawa, as well as other areas affected by the protests; risk of serious injury and

violence within the protests themselves; the short- and long-term impacts of border blockades; and the risk of conflict arising from counter protests.

The impact of the occupation on the residents of Ottawa was striking. Many experienced negative effects on their physical and psychological health and were legitimately concerned for their personal safety. Street obstructions impeded access to critical public and emergency services. There were multiple reports of harassment, intimidation, and assaultive behaviour, to which law enforcement was often unable to respond. The very fact that law enforcement was overwhelmed and unable to enforce basic laws created a safety risk. The fire hazards caused by open fires, wood piles, propane tanks, and jerry cans of fuel were constant. Residents endured prolonged exposure to diesel fumes and excessive noise from air and train horns. Many of these effects had a particularly strong impact on vulnerable individuals, especially those who rely on homecare or the delivery of goods and services.

There were also dangers to bystanders who found themselves in the midst of other protests across the country. Residents of Coutts, for example, appear to have been unable to travel to Milk River to access essentials such as medical services and grocery stores. Others suffered negative impacts to their psychological health.

There were also reasonable concerns regarding serious injury and violence arising from the protests themselves. On several occasions, police attempting to enforce the law were swarmed. Tow truck drivers who tried to assist were physically threatened. Police reported that the tone of the protests was becoming increasingly hostile, as were some protesters. The entrenched nature of the protests made it more likely that some form of police enforcement action would be necessary, and if such action occurred, the large numbers of protesters involved increased the potential for violent confrontation. Children were present at many protest sites, placing them at risk, and there were suggestions that they were being used as human shields to prevent police enforcement. The possibility of injury was particularly high following the discovery of a large cache of weapons in Coutts. The recent known presence of weapons at the

site of a protest, together with the inflammatory provocation expressed by protest supporters, increased concerns that bad actors such as had been discovered at Coutts might be present within, or might join, other protests.

There was also a risk of violence arising from counter protests. Frustration was growing on the part of individuals and communities impacted by the ongoing protests. There were numerous reports of confrontations between protesters and others, and suggestions by some, such as union leadership in Windsor regarding the blockade, that they would take matters into their own hands.

The border blockades had both immediate and potentially long-term impacts on the lives, health, and safety of Canadians. They instantly disrupted the lives and livelihoods of thousands of Canadians. They interfered with critical supply chains and risked causing shortages of essential medical supplies and food. There was concern that they would expand to other critical infrastructure such as railways and ports, the consequences of which would be profound. Coming at a time when the economy was already particularly vulnerable, they risked jeopardizing Canada's trade relationships, and significantly imperilled the economic livelihood of Canadians, with unknowable consequences.

As explained earlier in this section, I recognize that the *Emergencies Act* was not intended to apply to “economic emergencies.” Financial costs and trade impacts are not sufficient in themselves, and I have not considered them to be so. What is relevant, however, is the human health and public safety consequences that may flow from a serious, sudden, prolonged, and deliberate disruption to economic security and the ability to earn a living. The human impact of this cannot be ignored in considering whether there was “an urgent and critical situation that seriously affected the lives, health, and safety of Canadians.”

I also acknowledge that there were facts that suggested that the situation might be less concerning. Certain sites and situations, such as Coutts and the Ambassador

Bridge, were in the process of being brought under control. There remained, however, considerable uncertainty as to whether that control could be maintained. As RCMP Commissioner Lucki reported to the Deputy Ministers' Committee on Operational Coordination (DMOC) regarding the Ambassador Bridge blockade, it “would only take a few vehicles to shut it down again.”⁴³

In addition, the protests were an ongoing, rolling, and mobile movement. As one protest ended, another would soon appear. I note that Cabinet was receiving reports of potential blockades of rail crossings and ports. While these situations did not materialize, the Government's concern about them was reasonable.

I accept that there had not been reports of serious, widespread violence manifesting at protest sites, and that Police Liaison Teams (PLTs) had, on certain occasions, been able to negotiate with protesters to mitigate harms, such as by opening traffic lanes for essential services and, in some cases, cross-border traffic. These were important factors to take into consideration, but they did not render Cabinet's conclusion that the safety of Canadians was endangered unreasonable. Objectively speaking, there were substantial grounds for this concern.

28.3 Activities directed toward the threat or use of serious violence against persons or property for the purpose of achieving a political, religious, or ideological objective

The invocation of the *Emergencies Act* requires that there be a threat to the security of Canada, that is to say, a real risk of serious violence against persons or property, and that the violence be directed to achieving a political, religious, or ideological objective. Lawful advocacy, protest, and dissent are excluded from the definition, unless carried out in conjunction with threat activity.

⁴³ DMOC Read out, February 13, 2022, SSM.CAN.00000096, p. 1.

This proved to be the most controversial of the statutory requirements in this instance and was the focus of much attention during the Inquiry.

Canadian criminal law helps to illuminate the meaning of “serious violence” against persons. The term “serious violent offence” has been held, albeit in a different statutory context, to mean an offence in which someone causes or attempts to cause “serious bodily harm.” “Serious bodily harm,” in turn, means “any hurt or injury, whether physical or psychological, that interferes in a substantial way with the physical or psychological integrity, health or well-being of the complainant.”⁴⁴

In my view it is reasonable to interpret “serious violence” to persons in the context of the *Emergencies Act* as violence causing, or intended to cause, substantial interference with someone’s physical or psychological integrity, health, or well-being.

Threats or use of serious violence against property may also be threats to the security of Canada.

In assessing the threat requirement, it is important not to lose sight of the “purpose” element. Only those threats of serious violence that can reasonably be viewed as being for the purpose of achieving a political, religious, or ideological objective are relevant.

There was information before Cabinet indicating a threat of serious violence for a political or ideological purpose. Ideologically motivated extremists, several of whom CSIS had identified as subjects of investigation, were present at and encouraging the protests. There were numerous threats made against public officials by individuals opposed to public health measures. Targets included the prime minister and several Cabinet ministers, the premier of Ontario, the mayors of Ottawa, Windsor, and Coutts, multiple Ottawa City councillors, and the chief of the Ottawa Police Service. Certain

⁴⁴ *R. v. C.D.*; *R. v. C.D.K.*, [2005] 3 S.C.R. 668, para 20; *R. v. McCraw*, [1991] 3 S.C.R. 72, p. 81.

federal elected officials and staff had been advised to stay away from downtown Ottawa for their own safety. CSIS and the Integrated Terrorism Assessment Centre (ITAC) had repeatedly advised that, although no tangible plot had been identified, the protests presented an opportunity for IMVE supporters to engage in threat activities. CSIS and ITAC had also advised of the risk that a lone wolf actor, inspired by the IMVE elements at the protests, might conduct an attack against soft targets such as opposition groups or members of the public, and that lone wolf actors are very difficult to detect and predict.

The rhetoric of the protests also increasingly began to contemplate violence as part of a desire to achieve policy change over public health measures. Online messaging from protesters in Ottawa, Coutts, and elsewhere suggested that protesters intended to succeed in their cause or die trying. Messaging also indicated that any action by police or Government would be interpreted as a “call to arms.” NSIA Thomas and the RCMP reported that the protesters in Ottawa were becoming more hostile and aggressive, suggesting that violence might erupt out of frustration with the Government’s refusal to accede to their demands. According to the following, from OPS Deputy Chief Steve Bell, after weeks of occupying the streets of downtown Ottawa, the mood of participants was already volatile and becoming more so:

The 11th, 12th, and 13th are the weekend. I remember that weekend having extreme concerns for the safety of our members, for the safety of our community based on the volatility and escalation in violence in direct confrontational interactions with our members as it relates to them trying to manage the area or conduct any enforcement in it. It was concerning. The situation at this point was becoming exceptionally more volatile and you could see it escalate almost on an hour-by-hour basis.⁴⁵

⁴⁵ Evidence of Steve Bell, Transcript, October 24, 2022, p. 128.

I recall that the white paper specifically indicated that the concept of a public order emergency was intended to cover situations of “civil unrest” and “lawlessness,” when connected to threats of politically motivated serious violence.

Throughout the protests, there were also various threats made against the Canadian system of government itself. Perhaps the most notorious was the “Memorandum of Understanding” prepared by Canada Unity, which proposed to have the Governor General and the Senate force the resignation of Canada’s democratically elected Government. There were others, including Patrick King’s messages on social media that included statements such as “WE WILL BE THE NEW GOVERNMENT. We will just take the power and share it together.”⁴⁶ Concerns such as these took on an additional gravity with the discovery in Coutts of a large cache of weapons and ammunition amassed by protesters with allegedly extremist anti-government views.

These threats must be understood in the broader context of the online rhetoric that had become increasingly violent over the course of the pandemic. This included references to assassination, holding “Nuremberg Trials 2.0,” and conducting civilian arrests of those perceived to be involved with public health rules. These concerns must also be assessed within the context of law enforcement’s acknowledgement that its ability to identify potential perpetrators was limited and that a significant portion of ideologically motivated violent rhetoric occurring online likely remained undetected and unreported.

In my view, there was credible and compelling information supporting a reasonable belief that the definition of threat to the security of Canada was met.

I recognize, of course, that CSIS had not assessed the protests as constituting a threat to the security of Canada pursuant to their mandate under the *CSIS Act*. Some parties suggested that, because of this, Cabinet’s conclusion that there was such a threat was unreasonable. I do not accept this argument.

⁴⁶ OPS Daily Intelligence Advisory Convoy 2022, OPS00010125, p. 1.

To be clear, I agree that since the definition of “threats to the security of Canada” in the *Emergencies Act* is incorporated by reference from the *CSIS Act*, the definition is the same in both statutes. The effect of incorporation by reference is that the incorporated material is considered to be part of the text of the legislation.⁴⁷

This said, the *CSIS Act* and the *Emergencies Act* are different regimes that operate independently from each other. They serve different purposes, involve different actors, and implicate different considerations. While CSIS’s input was, of course, an important consideration for Cabinet, it was not, and should not have been, determinative.

In other words, it is not the definition itself that is different, but rather that two different decision makers, each interpreting the same words in the context of different statutes, can reasonably come to different conclusions as to whether the threshold is met.

I recognize that CSIS Director Vigneault, in explaining why he advised the Prime Minister that declaring a public order emergency was necessary even though CSIS had not identified a threat to the security of Canada, erroneously referred to the definition of “threat to the security of Canada” as being “broader” under the *Emergencies Act* than under the *CSIS Act*. Similar comments were made by Minister Blair and NSIA Thomas. I note that these witnesses are not lawyers, and I consider their evidence on this with that in mind.

Minister of Justice and Attorney General of Canada David Lametti explained the point more clearly:

So there is a definition that is incorporated by reference. It’s moved into the *Emergencies Act* and the decision-making power remains with Cabinet.

⁴⁷ *B.C.G.E.U. v. British Columbia (Minister of Health Services)*, 2007 BCCA 379, paras 34 and 35.

So there's also a purpose change. What CSIS is doing is determining whether a threshold is met for the purposes of further investigations, generally clandestine, according to CSIS protocols, with warrants, et cetera, they're all -- you've heard testimony already from the CSIS Director, as well as Madam Tessier, about the rules of thumb that CSIS uses for proceeding in their analysis under section 2.

That isn't incorporated in here because the decision maker is different. And the inputs can be much wider - have to [be] much wider when you're a member of Cabinet, when you're making a decision Governor-in-Council. There are other inputs that can go into the meeting of that definitional standard that CSIS wouldn't normally use. And so that's very, very important to underline, that it is -- while it is the same standard of the same magnitude, the interpretation of that standard is being done according to a wider set of criteria by a very different set of people with a different goal in mind, and that goal is given by the *Emergencies Act* and not the *CSIS Act*.⁴⁸

The Prime Minister confirmed that this was his understanding as well.

There's been a bit of back and forth at this Commission on whether these words are different or can be read differently, or broader when they're used in a public order emergency than they're used for the *CSIS*. It's not the words that are different. The words are exactly the same in both cases. The question is, who is doing the interpretation, what inputs come in, and what is the purpose of it?⁴⁹

I also accept that the definition in section 2(c) of the *CSIS Act* includes broad, open-ended concepts such as "threat" and "serious," that leave scope for reasonable

⁴⁸ Evidence of David Lametti, Transcript, November 23, 2022, p. 81.

⁴⁹ Evidence of Prime Minister Trudeau, Transcript, November 25, 2022, p. 50.

people to disagree. As University of Ottawa Faculty of Law Professor Craig Forcese has written regarding the four categories of threat outlined in section 2 of the *CSIS Act*, “each of these categories of national security threat is broad and vague, and thus capable of expansive definition.”⁵⁰ While I do not suggest that expansive definition is appropriate, I agree that the definitions are broad and open-ended.

I note as well that both Director Vigneault and CSIS Deputy Director of Operations Michelle Tessier candidly acknowledged that determining whether a threat to the security of Canada exists is “not an exact science.” Director Vigneault further noted that “in this event and other events of the sort that we’ve seen in the US, [...] in other democracies is that there could be a very quick turn of events.”⁵¹ My impression, upon hearing the CSIS witnesses and reviewing the documents, is that CSIS was, with good reason, extremely hesitant to invoke its investigative mandate with respect to the Freedom Convoy protests, beyond the existing subjects of investigation. Under the current structure of the *Emergencies Act*, this can lead to precisely the situation that seems to have occurred here: a public order disturbance arising from a threat to the security of Canada that has not been identified as such by CSIS.

I highlight here the situation in Coutts, Alberta, which was a concrete manifestation of the very risk that had been identified to Cabinet: a highly disruptive, but mainly peaceful protest that included a smaller group of actors who allegedly intended to effect serious violence for a political purpose. The fact that this situation was discovered and disrupted is a credit to law enforcement. It was, nevertheless, clearly a situation that could reasonably be viewed as meeting the definition under section 2(c) of the *CSIS Act*, but that CSIS had not identified as such. In the same way, Cabinet could reasonably consider that the risk of similar groups of politically or ideologically motivated violent actors being present at other protests met the definition in section 2(c) although CSIS had not identified them.

⁵⁰ Craig Forcese, “Through a Looking Glass Darkly: The Role and Review of ‘National Security’ Concepts in Canadian Law” (2006) 43:4 *Alberta Law Review* 963, p. 969.

⁵¹ Evidence of David Vigneault, Transcript, November 21, 2022, p. 42.

Though no definitive links had been found, there was legitimate concern that similar individuals or groups intent on violence might be present in Ottawa or at other protests. Law enforcement and intelligence agencies view the group Diagon as a militia-like extremist organization. The discovery of the Diagon insignia among the material seized at Coutts, coupled with the presence of Diagon leader Jeremy Mackenzie in Ottawa, heightened this concern.

I recognize that some of the information before Cabinet at the time, such as the suggestion that a firearms theft in Peterborough, Ontario, might be connected to the protests, was later found to be unsubstantiated. The record before me shows, however, that most of the information that Cabinet was acting upon was borne out.

It is also important to acknowledge that not all the threats of serious violence I have enumerated can be linked to both specific political or ideological objectives and to identified protesters. However, in some instances the link between serious violence and political or ideological objectives is clear, such as the threats to assassinate public officials because of the government's public health policies. In still other cases, for example the alleged conspiracy uncovered at Coutts, not only is this connection between serious violence and politically or ideologically motivated violence made, but it can also be attached to a specific protester. When the record is viewed as a whole, the inference connecting the protests to threats of serious violence and the achievement of political or ideological objectives is readily and reasonably available.

I emphasize here that this should in no way be taken to mean that peaceful, lawful protest that seeks to achieve a change in government policy is in any way a threat to the security of Canada. To the contrary, it is a fundamental and cherished part of a healthy democracy. Indeed, the right to protest helps ensure the security of Canada. But the situation that Canada experienced in February 2022 was not peaceful, lawful protest. Many of the protesters may have intended it to be, but the situation

escaped their control. As NSIA Thomas put it, at some point peaceful, lawful protest “metastasized into something else.”⁵²

To return once again to the theoretical principles underlying emergency powers, the threshold for invocation is the point at which order breaks down and freedom cannot be secured or is seriously threatened. In my view, that threshold was reached here.

I do not come to this conclusion easily, as I do not consider the factual basis for it to be overwhelming and I acknowledge that there is significant strength to the arguments against reaching it. It may well be that serious violence might have been avoided, even without the declaration of emergency. That it might have been avoided does not, however, make the decision wrong. There was an objective basis for Cabinet’s belief, based on compelling and credible information. That was what was required. The standard of reasonable grounds to believe does not require certainty.

28.4 An emergency of such proportions or nature that it exceeded the capacity or authority of a province to deal with it

In order to constitute a national emergency under section 3(a), the situation must be such that a province lacks the capacity (i.e., the ability in practice), or the authority, (i.e., the power), to deal with the emergency. An emergency could be beyond the capacity or authority of a province to deal with if:

- a. the emergency is such that no single province would be capable of resolving the entire situation, because the emergency extends beyond provincial boundaries; or

⁵² Evidence of Jody Thomas, Transcript, November 17, 2022, pp. 224 and 225.

- b. the emergency is beyond the capacity or authority of at least one province, such that the provinces, collectively, would be unable to resolve the situation.

I find that this requirement is met. This was a nation-wide, mobile, and constantly evolving series of events. Many provinces were affected, and the protest groups were numerous and geographically disparate. The protest in Ottawa drew protesters and convoys from across the country. The convoys were, by definition, mobile.

It is true that the protests were first and foremost policing matters, and in that sense fell within provincial jurisdiction. Although certain provinces expressed the view that they could manage the situation in their own province, this was uncertain, and evidently not the case nation-wide. I note also that certain affected provinces had indicated their incapacity to resolve the situation. The protests in Ontario required drawing on RCMP resources from all over the country. Alberta had requested federal assistance with law enforcement, which the RCMP had been able to provide by drawing on resources from British Columbia. On February 11, the premier of Manitoba requested “immediate and effective federal action regarding the blockade activity unfolding at the Canada-US border crossing at Emerson, part of a series of damaging protest activities now occurring at international border crossings across the country.”⁵³ In addition, it was reasonably foreseeable that if the protests continued to spread as anticipated, absent federal action, provincial resources would be insufficient, as they had proved to be in Ontario and Alberta.

Between their inception and the date that the emergency was declared, the protests had grown into a movement that could not be resolved in a localized, piecemeal fashion. It was a national situation, requiring national measures such as cutting off funding to the protests, which no province had the authority to do.

⁵³ Letter from Premier Heather Stefanson to Prime Minister Trudeau, February 11, 2022, SSM.NSC.CAN.00001176.

28.5 Could the emergency be effectively dealt with by any other law of Canada, and did it require the taking of special temporary measures?

For a situation to constitute a national emergency, it must be one that cannot be dealt with under any other law of Canada. This raises the question: what is meant by “any other law of Canada”? The Supreme Court has held that the phrase “law of Canada” in section 101 of the *Constitution Act, 1867*, means federal statute, regulation, and common law.⁵⁴ In other words, it excludes provincial law. Both federal and provincial legislation differentiates between the language “law of Canada” with “law of Canada or a province.”⁵⁵

Section 3 of the *Emergencies Act* confirms this interpretation. Section 3(a) requires that a national emergency must “exceed the capacity or authority of a province to deal with it.” It would be redundant for section 3 to also require that the situation be one that “cannot be effectively dealt with” by provincial law. Rather, once Cabinet has established that a situation exceeds provincial authority, it must then consider whether that situation can be effectively addressed under any other federal statute or common law before concluding that a “national emergency” exists under the *Emergencies Act*.

The modifier “effectively” is important. There may be situations where other federal laws could technically apply to a situation, but still fall short. Practical considerations must be taken into account, such as whether the resources exist to enforce existing authorities, whether they would be effective in resolving the situation in a timely way, and whether they would address the situation safely.

⁵⁴ *Roberts v. Canada*, [1989] 1 S.C.R. 322.

⁵⁵ See for example, *Privacy Act*, R.S.C. 1985, c P-21, s. 8(2)(e); *Softwood Lumber Products Export Charge Act, 2006*, SC 2006, c. 13, s. 88. See also examples in provincial statute, *Business Corporations Act*, SNWT (Nu) 1996, c. 19, s. 264; *Income Tax Act*, R.S.B.C. 1996, c. 215, s. 68.1.

Here, the evidence shows that the federal government found itself seriously impacted by the protests in the operation of its ports of entry and with respect to critical buildings in Ottawa, as well as in areas of responsibility such as the economy and trade. Jurisdictionally, however, it was unable to resolve the protests or meaningfully contribute to the efforts of police to do so, beyond providing the assistance of the already-stretched RCMP. As I discuss earlier in this section and in Section 17.6, the Federal Government had done considerable work to identify solutions that could be drawn from existing authorities, but ultimately concluded that none, taken separately or together, were a viable solution to the situation.

Although there continued to be laws such as the *Criminal Code* that, if effectively used, could bring the protests under control, it was apparent that law enforcement had serious concerns about using those powers, including whether engaging in enforcement action would give rise to unacceptable safety risks for police, protesters, and bystanders. This is as an example of a law being legally available, but ineffective due to the practical realities of the situation.

Finally, although the option of deploying the Canadian Armed Forces continued to exist, I agree with the Federal Government's view that it was not an appropriate solution in these circumstances. In saying this, I recognize that when the *Emergencies Act* was adopted, use of the military against civilians to quell protests was considered not only a viable option, but preferable to using emergency powers. The white paper proposes that “[l]ess serious emergencies arising from the breakdown of public order would continue to be dealt with under the *Criminal Code* or Part XI of the *National Defence Act* (which covers aid to the Civil Power [...]).”⁵⁶ Much has changed since then.

The question of whether the emergency necessitated special temporary measures is effectively a consequence of the previous point. The work done to identify solutions within existing legislation identified the gaps in authority that would require the taking

⁵⁶ Canada, Emergency Preparedness Canada, *Bill C-77: An Act to Provide for Safety and Security in Emergencies – Working Paper*, p. 58.

of special temporary measures. As I explain later in this summary, only measures that are necessary to address the Public Order Emergency could be taken.

28.6 Provincial consultation

The Federal Government submits that the First Ministers' Meeting on February 14, 2022, complied with its obligation to consult with the provinces before declaring a public order emergency. The Federal Government was correct to recognize that this was the only "consultation" that took place, and that the previous "engagements" that I review in Section 17.3 would not, on their own, satisfy this requirement. The First Ministers' Meeting was the only time the premiers were asked for their views on the invocation of the *Emergencies Act*.

The Federal Government has only carried out this sort of consultation once before. That was in 2020, when it considered declaring an emergency in response to the COVID-19 pandemic. The provinces point to those consultations as an example of a proper process. Compared to that process, a number of provinces have suggested that the First Ministers' Meeting was a perfunctory exercise that did not comply with the statutory consultation requirement.

The 2020 example notwithstanding, there is effectively no "playbook" to instruct federal officials in how to carry out an effective and meaningful consultation under section 25.

The Government, when introducing the *Emergencies Act*, recognized that measures taken pursuant to a declaration of emergency might intrude upon areas of provincial jurisdiction.⁵⁷ The obligation of the Federal Government to engage in consultations was a response to this exceptional aspect of the Act.

⁵⁷ *House of Commons Debates*, 33rd Parl., 2nd Sess., Vol. 9 (November 16, 1987), pp. 10807 and 10809 (The Hon. P. Beatty). See also Canada, Emergency Preparedness Canada, *Bill C-77: An Act to Provide for Safety and Security in Emergencies – Working Paper*, pp. 50 – 53.

The white paper explains how the Government anticipated that the term “consultation” should be understood in the context of the *Emergencies Act*:

“Consultation” in this context is to be interpreted in its fullest dictionary sense of not only exchanging information but also seeking the advice and taking into consideration the interests and views of the provincial government which may be affected. Furthermore, to ensure clarity and accountability, the onus of consultation will vary depending upon the circumstances of the emergency and operational requirements. The limitation of “reasonableness,” where it is applied, is designed to permit the commencing and conducting of necessary operations and controls in a timely fashion.⁵⁸

Thus, the intention was to create a requirement that would maximize the principles of federalism but remain flexible enough that the consultation requirement would vary in keeping with the practical realities and exigencies of any given emergency situation.

The white paper noted that as a legal matter, it is “clear that Parliament, and Parliament alone, has authority to determine when such a national emergency exists,” but that consultation is desirable not only to “respect principles of federalism,” but also because “the effective deployment of the country’s resources during a national crisis requires the coordination of efforts by all levels of government, and thus demands consultation.”⁵⁹

I certainly agree that the premiers had little time to prepare and that the notice they received was not explicit regarding the topic to be discussed at the First Ministers’ Meeting. That said, in the context of the events, the topic of discussion probably did not come as a surprise to many of the participants.

⁵⁸ Canada, Emergency Preparedness Canada, *Bill C-77: An Act to Provide for Safety and Security in Emergencies – Working Paper*, pp. 55 and 56.

⁵⁹ Canada, Emergency Preparedness Canada, *Bill C-77: An Act to Provide for Safety and Security in Emergencies – Working Paper*, p. 32.

The Federal Government indicated to the Commission that one of the reasons it did not inform the provinces of the purpose of the meeting was the concern that news could leak, and the potential for the declaration of an emergency could anger protesters and increase the risk of violence. I accept this point as valid, though I would characterize it as one taken out of an abundance of caution. I hope and expect that if the provincial governments were advised of the concerns that CSIS had expressed regarding the potential for escalation and violence should the proposed use of the *Emergencies Act* become public, they would have respected the confidentiality of the information.

Taken in isolation, it is arguable that the First Ministers' Meeting was not an appropriate consultation. In my view, however, this conclusion would be a mistake. The First Ministers' Meeting must be considered in the context of the substantial intergovernmental engagement work that came before, both at the political and the officials' level, the aim of which was to make sure that existing legal tools were being used and resourced — a key aspect of and reason for consultation under the *Emergencies Act*.

Considering the totality of the circumstances, my view is that the manner in which the Federal Government conducted the consultation was adequate and satisfied the minimum requirements of section 25, but could, and likely should, have been better. It would have been preferable, for instance, if the provinces had been provided a brief period to provide feedback on the proposed measures. This might have assisted Cabinet in delineating the scope and application of the measures taken under the Act.

There was no formal consultation with Indigenous communities regarding use of the *Emergencies Act*, although I heard evidence that the minister of Crown and Indigenous Relations reached out to the heads of the three national Indigenous organizations. The Act as currently drafted does not require consultation with Indigenous Peoples. This is an issue to which I return in my Recommendations.

28.7 Conclusion on the invocation of the *Emergencies Act*

I end with a quote from Perrin Beatty, the minister who introduced the *Emergencies Act*:

When the country is threatened by serious and dangerous situations, the decision whether to invoke emergency powers is necessarily a judgment call, or more accurately a series of judgment calls. It depends not only on an assessment of the current facts of the situation, but even more on judgments about the direction events are in danger of moving and about how quickly the situation could deteriorate. Judgments have to be made, not just about what has happened or is happening, but also about what might happen. In addition, to decide about invoking exceptional measures, judgments have to be made about what the government is capable of doing without exceptional powers, and on whether these capabilities are likely to be effective and sufficient.⁶⁰

For these reasons, I have concluded that Cabinet was reasonably concerned that the situation it was facing was worsening and at risk of becoming dangerous and unmanageable. There was credible and compelling evidence supporting both a subjective and objective reasonable belief in the existence of a public order emergency. The decision to invoke the Act was appropriate.

29. Were the measures appropriate and effective?

I am required by section (a)(iii) of the Order in Council to set out findings and lessons learned on the appropriateness and effectiveness of the measures taken under the *Emergency Measures Regulations (EMR)* and the *Emergency Economic Measures Order (EEMO)*.

⁶⁰ House of Commons, Legislative Committee on Bill C-77, *Evidence*, 33rd Parl., 2nd Sess., Vol. 1, No. 1 (December 15, 1987), pp. 13 and 14 (The Hon. P. Beatty).

29.1 The Commission's mandate

In assessing how I should examine the measures contained in the *EMR* and the *EEMO*, I am guided by both the purpose of the Inquiry mandated by section 63(1) of the *Emergencies Act* and the terms of the Order in Council establishing the Commission.

As I have already stated, this Commission is intended to be a tool of public accountability. As such, it must be able to fully examine not only the circumstances that led to the invocation of the Act, but also the measures taken under it. It is possible for a government to be entirely justified in invoking the Act, but still use the Act in an unjustifiable manner. A commission under section 63(1) must have a robust role in examining measures adopted under the Act in order to fulfill its role as a check against government overreach.

The language in the Order in Council appointing me is consistent with this approach. The language of “appropriateness and effectiveness” is broad and places few restrictions on how I may go about my consideration of the measures.

Although the role of the Commission is not to conduct a judicial review, and the Commission does not have the legal authority to render a formal judgment on the “lawfulness” of the measures, I cannot avoid considering the legality of the measures in assessing whether they were appropriate. Again, I do not intend or consider my findings on this topic to be in any sense binding on the courts. The effect or significance of my findings and conclusions in any judicial review proceedings will be a matter for the Federal Court to determine.

In my view, however, assessing the appropriateness of measures goes beyond a consideration of whether statutory or constitutional thresholds for the measures have been satisfied. “Appropriateness” is a more open-textured standard that permits me to assess the measures holistically. Parts of a measure may be appropriate while other parts may not be. However, any measure that does not meet the statutory preconditions will by definition be inappropriate.

I therefore interpret my mandate to give me the freedom to comment about any aspect of the appropriateness of the measures as broadly defined, in light of the information received during the course of the Inquiry.

Effectiveness relates more directly to whether the measures fulfilled the purpose of responding to the particular emergency in question. The concept is closely related to appropriateness. The fact that a measure was wholly ineffective in addressing an emergency may be a strong signal that it was also inappropriate. However, this is not always the case. Even a well-designed, lawful, and rights-respecting measure might still fail to successfully contribute to the resolution of an emergency. No measure can be perfect, particularly when created in situations of urgency. In such circumstances, a measure might well be appropriate, even if not ultimately effective in the particular case.

Moreover, like appropriateness, effectiveness is not an all-or-nothing concept. A measure may have been effective but could have been more effective if drafted or implemented differently. My mandate is broad enough to allow me to make this type of comment where applicable.

29.2 The legislative framework

Section 19(1) of the *Emergencies Act* sets out the powers that are available in a public order emergency:

<p>19 (1) While a declaration of a public order emergency is in effect, the Governor in Council may make such orders or regulations with respect to the following matters as the Governor in Council believes, on reasonable grounds, are necessary for dealing with the emergency:</p>	<p>19 (1) Pendant la durée de validité de la déclaration d'état d'urgence, le gouverneur en conseil peut, par décret ou règlement, prendre dans les domaines suivants toute mesure qu'il croit, pour des motifs raisonnables, fondée en l'occurrence :</p>
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<p>(a) the regulation or prohibition of</p> <p>(i) any public assembly that may reasonably be expected to lead to a breach of the peace,</p> <p>(ii) travel to, from or within any specified area, or</p> <p>(iii) the use of specified property;</p> <p>(b) the designation and securing of protected places;</p> <p>(c) the assumption of the control, and the restoration and maintenance, of public utilities and services;</p> <p>(d) the authorization of or direction to any person, or any person of a class of persons, to render essential services of a type that that person, or a person of that class, is competent to provide and the provision of reasonable compensation in respect of services so rendered; and</p> <p>(e) the imposition</p>	<p>a) la réglementation ou l'interdiction :</p> <p>(i) des assemblées publiques dont il est raisonnable de penser qu'elles auraient pour effet de troubler la paix,</p> <p>(ii) des déplacements à destination, en provenance ou à l'intérieur d'une zone désignée,</p> <p>(iii) de l'utilisation de biens désignés;</p> <p>b) la désignation et l'aménagement de lieux protégés;</p> <p>c) la prise de contrôle ainsi que la restauration et l'entretien de services publics;</p> <p>d) l'habilitation ou l'ordre donnés à une personne ou à une personne d'une catégorie de personnes compétentes en l'espèce de fournir des services essentiels, ainsi que le versement d'une indemnité raisonnable pour ces services;</p> <p>e) en cas de contravention aux décrets ou règlements d'application du présent article, l'imposition, sur déclaration de culpabilité :</p>
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<p>(i) on summary conviction, of a fine not exceeding five hundred dollars or imprisonment not exceeding six months or both that fine and imprisonment, or</p> <p>(ii) on indictment, of a fine not exceeding five thousand dollars or imprisonment not exceeding five years or both that fine and imprisonment, for contravention of any order or regulation made under this section.</p>	<p>(i) par procédure sommaire, d'une amende maximale de cinq cents dollars et d'un emprisonnement maximal de six mois ou de l'une de ces peines,</p> <p>(ii) par mise en accusation, d'une amende maximale de cinq mille dollars et d'un emprisonnement maximal de cinq ans ou de l'une de ces peines.</p>
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These provisions must be read together with section 17(2), which sets out certain things that must be contained in a declaration of a public order emergency:

<p>17 (2) A declaration of a public order emergency shall specify</p> <p>(a) concisely the state of affairs constituting the emergency;</p> <p>(b) the special temporary measures that the Governor in Council anticipates may be necessary for dealing with the emergency; and</p> <p>(c) if the effects of the emergency do not extend to the whole of Canada, the area of Canada to which the effects of the emergency extend.</p>	<p>17 (2) La déclaration d'état d'urgence comporte :</p> <p>a) une description sommaire de l'état d'urgence;</p> <p>b) l'indication des mesures d'intervention que le gouverneur en conseil juge nécessaires pour faire face à l'état d'urgence;</p> <p>c) si l'état d'urgence ne touche pas tout le Canada, la désignation de la zone touchée.</p>
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Section 19(2) provides that if a declaration of emergency is limited to a specific area of Canada, the powers in section 19(1) can only be exercised or performed with respect to that area. Section 19(3) provides that the powers in s. 19(1) shall be exercised in a manner that does not unduly impair the provinces' ability to deal with the emergency, and with a view to achieving concerted action with them.

As I have noted earlier, the preamble to the Act confirms that measures must comply with the *Charter* and the *Canadian Bill of Rights*. Of course, this would be true even in the absence of the Act's preamble.

Taken together, these provisions indicate the following requirements for measures taken under the Act:

- a. The measures must fall within one of the types of measures authorized in section 19(1) of the *Emergencies Act*;
- b. The governor in council must have reasonable grounds to believe that the measures are necessary for dealing with the emergency;
- c. The measures may only relate to the parts of Canada to which the declaration of emergency applies;
- d. The measures must not unduly impair the provinces' ability to deal with the emergency; and
- e. The measures must comply with the *Charter of Rights and Freedoms* and the *Canadian Bill of Rights*.

In the case of the *EMR* and *EEMO*, some of these criteria are non-controversial. There was no suggestion that the measures in question fell outside of the scope of the kinds of measures authorized by section 19(1). Similarly, I did not hear a suggestion that the measures themselves unduly impaired the ability of provinces to respond to the

events of January and February 2022. As such, I need not comment further on these matters.

The requirement for the governor in council to have reasonable grounds to believe the measures are necessary is a threshold that requires more extensive discussion. I have already discussed the standard of “reasonable grounds to believe” in my analysis on the invocation of the Act. In section 19 of the Act, the belief on reasonable grounds is tied to the necessity of the measures. The English text of section 19(1) refers to order and regulations “necessary for dealing with the emergency,” while the French text refers to “toute mesure ... fondée en l’occurrence.” This difference in terminology can be resolved by an interpretation of the term “necessary” that is informed by the notion of “justification.”

A necessary measure is one that is required, needed, or essential in order to deal with a declared public order emergency. A government confronting an emergency situation will seek not only to resolve the situation but to do so in a particular way.⁶¹ Here, the Federal Government witnesses emphasized the importance of resolving the protest situation quickly and safely. In other words, Cabinet determined that it was necessary to resolve the emergency as soon as possible, and with a minimum amount of physical force, in order to ensure the safety and security of Canadians and restore their faith in the ability of their institutions to respond to a crisis. In my view, this was an appropriate outcome to strive for in addressing the emergency. A necessary measure will be one that Cabinet reasonably believes is needed to bring about that outcome.

In assessing what is necessary for dealing with an emergency, Cabinet will properly take into account a wide range of circumstances, including the urgency of the situation, the nature and scope of the emergency, and an assessment of how existing authorities have been used.

⁶¹ Nomi Claire Lazar, *On Necessity in the Emergencies Act*, p. 9-11. This report is reproduced in Vol. 5 of this Report.

Necessity also requires tailoring. Cabinet, when it designs measures to adopt, must tailor these so as not to impose unnecessary restrictions or requirements on persons, property, or areas, or confer unnecessary powers on law enforcement or other officials. There may be more than one measure that could achieve the outcome of resolving the emergency quickly and safely. To show that a measure is necessary, Cabinet must consider alternatives, and be able to justify why the measure they chose, from among the possible measures likely to bring about the outcome, was deemed necessary in the circumstances.

With respect to the requirement that measures comply with the *Charter*, I only wish to note that this question encompasses an assessment of whether a *Charter* right has been limited by the measures, as well as if such a limit can be justified under section 1 of the *Charter* pursuant to the *Oakes* test, which I describe in Section 4.2.

29.3 Approach to my assessment

In assessing the appropriateness and effectiveness of the measures, I am mindful of the tension between speed and deliberation that is inherent in the exercise of emergency powers.

The urgent character of emergencies will generally demand quick decisions. Inaction or delay may lead to an emergency becoming significantly worse. The *Emergencies Act* is designed to permit swift action, and it is unlikely that measures adopted under the law will be models of perfection. In assessing measures, I cannot ignore the reality of the situation in which they were made.

At the same time, emergency measures are powerful tools. It is essential that reasonable efforts be made to ensure that they are as focused and controlled as possible, while still being effective in achieving their aim. Circumstances of urgency will nearly always be present when the *Emergencies Act* is used. This cannot serve as an excuse to accept what are otherwise inappropriate measures.

The present case presents an unusual situation due to the short duration of the emergency. As I have explained, the *Emergencies Act* reverses the normal order of deliberation and decision, allowing quick decisions to be made in urgent circumstances, with more considered deliberation to follow. Had the Public Order Emergency continued for a longer period, I expect that this process of deliberation and refinement would have taken place, whether through the Parliamentary review process, or by Cabinet itself. As it stands, the Parliamentary Review Committee was not even established until after the emergency was over, and there was likely insufficient time during the emergency for any meaningful refinement of the measures after they were enacted.

Assessing effectiveness presents additional challenges. The *EMR* and *EEMO* did not exist in a vacuum. At the same time those provisions were in effect there were many other ongoing activities directed toward responding to the protests. Separating the impact of the measures from other activities of government, law enforcement, and private actors is, in many cases, impossible. Assessing the effectiveness of measures may involve drawing reasonable inferences.

It is also important for me to assess the measures both individually and as a whole. The measures were intended to work with each other, and with existing powers and authorities. Their effectiveness and their appropriateness should be assessed within the full context in which they operated.

A final word on this part of my mandate: During this Inquiry, attention was focused primarily on the question of whether it was appropriate for the Federal Government to invoke the *Emergencies Act*. Less attention was paid to the question of the appropriateness or effectiveness of some of the measures. This is largely a function of the short time during which the declaration of emergency and measures were in place, and the short time frame in which the Commission operated. Readers of this Report should be aware that, as I conduct my assessment of the measures, I do so without the benefit of the same thoroughness of submissions with respect to some of the measures as that which I received on the question of invoking the Act.

29.4 The deterrent effect of the measures

Before turning to an examination of the individual measures, I wish to begin by discussing the topic of deterrence. Throughout the hearings various witnesses referred to the deterrent effect of the declaration of the emergency itself as well as the measures adopted under it. This objective was particularly true of the emergency economic measures.

As a general matter, I agree that deterrence was an appropriate objective. The use of force to resolve the unlawful protests in Ottawa and elsewhere in Canada necessarily entailed a risk of physical harm to protesters, police, and bystanders alike. The larger the protests, the greater the risk. In Section 5, I discuss the role that Police Liaison Teams (PLTs) play in reducing the footprint of protests in order to make public order operations safer. The use of emergency measures to deter participation in the unlawful protests was consistent with this approach. It was preferable, as a general matter, to dissuade protesters from participating than to remove them by force.

This is not to say that all deterrence measures were necessarily appropriate. Particular means of deterring participation might be grossly inappropriate. My point is that the strategy of deterrence was an appropriate one to pursue through the use of emergency measures.

Evaluating the effectiveness of the measures on deterring participation is difficult. It is generally impossible to know how many protesters left before enforcement and what motivated any given protester to leave. It is similarly impossible to know for a fact whether any person chose not to join the protests as a result of the measures. I did, however, hear considerable agreement among witnesses that the invocation of the *Emergencies Act* discouraged some individuals from remaining at existing unlawful protests or starting new ones.

A number of federal officials testified that they believed the measures had a significant deterrent effect. Although some of these witnesses rightly acknowledged that evidence

of this was speculative or anecdotal, their belief appears to have been informed, at least in part, by the assessment of law enforcement personnel, who were in a position to observe these effects “on the ground.” Moreover, the deterrent effect reported by law enforcement was not only in Ontario; it extended from one side of the country to the other. For example, on February 21, RCMP Commissioner Lucki reported to the IRG that law enforcement in British Columbia, Nova Scotia, and Manitoba had each reported that the *Emergencies Act* had served as an effective communication tool and deterrent in their jurisdictions.

In Ottawa, law enforcement issued notices to protesters highlighting some of the measures that could be taken against them pursuant to the *EEMO* and the Ontario emergency regulations. I heard from law enforcement that this messaging incentivised some individuals to leave voluntarily, and deterred others from joining the unlawful protests. I heard of similar messaging with respect to the *Emergencies Act* being used in Winnipeg and Windsor. Some witnesses felt that the *Emergencies Act* helped reduce the risk of a second blockade in Windsor and mitigated the threat of new unlawful protests in other provinces.

Although I note that the protest organizers who testified before this Commission do not appear to have been personally deterred by the invocation of the *Emergencies Act*, I am satisfied, based on the preceding paragraphs, that it did have some deterrent effect. While it is not possible for me to measure that effect with any precision, I find that messaging regarding the *Emergencies Act* likely incentivised some protesters to return home voluntarily or helped convince some individuals to stay home altogether.

I note that when the declaration of emergency was first proclaimed, unlawful protest activity nationwide was volatile and barely controlled. Within nine days, it was brought under control, and the declaration was revoked. In my view, it is fair to say that the declaration of an emergency and the measures taken pursuant to that declaration had a deterrent effect across the country, and this was an appropriate objective.

29.5 The prohibition on public assemblies

The prohibition on participation in certain types of public assemblies that were likely to lead to breaches of the peace was the cornerstone of the entire measures package. More than any other measure, the prohibition on participation directly targeted the most immediate manifestation of the emergency; namely, the protests themselves.

This measure was also the one that most directly impacted the constitutional rights of protesters. Most of the participants in the protest were engaged in the exercise of the core right protected by freedom of expression: political expression. While some protesters may have crossed the line into violence, and at times and in places, the assembly may not have been “peaceful,” the fact remains that many protesters were engaged in conduct that is afforded significant protection under the *Charter*. For this measure to have been appropriate, it needed to be carefully tailored.

In my view, Cabinet went to significant lengths to tailor the prohibition. It did not prohibit all anti-government protests, but only those that were likely to result in a breach of the peace as well as the serious disruption of the movement of persons, goods or trade, interference with critical infrastructure, or the support or threat or use of acts of serious violence (which is not constitutionally protected). This tailoring made a difference. Protests lawfully continued in various locations, including just outside of the town of Milk River, Alberta, and at the Canadian War Museum in Ottawa, Ontario.

One aspect of the measure does raise legitimate concerns: its geographical scope. It may be argued that the prohibition should have applied only in Ontario. By the time the *EMR* was made, the situation in Coutts had effectively been resolved, and the protest at the Pacific Highway border crossing in British Columbia was in the process of being cleared. Protesters in Emerson, Manitoba, had already been told that the RCMP would shortly be conducting an enforcement action, which resulted in them voluntarily leaving within days. Representatives of several provinces, both in the First Ministers’ Meeting and during the Inquiry, stressed that they were able to

manage local protests without the *Emergencies Act*. While Ottawa was by no means the Federal Government's only concern, it was the primary site of protest activity.

Federal Government witnesses stressed the importance of a Canada-wide prohibition because unlawful protests were still taking place outside of Ottawa, and there was a very real risk that new ones would erupt elsewhere. There is force to this submission. It would not be difficult, for instance, to imagine protesters in Ottawa simply moving to Gatineau, Quebec, and encamping outside of the federal institutions located there.

On the other hand, the Federal Government had the option to enact this provision of the *EMR* as only applicable within Ontario, but to clearly announce to protesters that it was prepared to quickly amend the *EMR* to expand it to any other province should circumstances so require.

While it is important for Cabinet to carefully consider limiting the geographical scope of measures such as this, I am satisfied that they did, and that there was an objective basis for Cabinet to believe that it was necessary that this measure apply nationally. Although I view it as a close call, I accept that Cabinet was reasonably concerned about continued proliferation of unlawful protests and over-stretched law enforcement resources nation-wide. This was a dynamic and fluid situation. As Minister of Intergovernmental Affairs Dominic LeBlanc explained, the national application of the measure was intended to be both dissuasive and preventive; dissuasive, by making it clear that a protest deemed unlawful in one jurisdiction could not simply show up in another; preventive, by giving the provinces the tools they would need to deal with situations that might suddenly arise in their jurisdiction, without further intervention by the Federal Government. The measure sent a clear signal that conduct like that which was occurring in Ottawa would not be tolerated anywhere in Canada. Finally, Cabinet was concerned about coordination between the protests. While I have found that there was no such coordination, that concern was nonetheless reasonable at the time, and would have contributed to a reasonable belief that it was necessary for this measure to apply nation-wide.

I have little difficulty concluding that this measure was effective. The provision clearly indicated to protesters that their conduct was unlawful and provided a firm foundation for police action to remove protesters who did not leave on their own.

The strongest argument against the effectiveness of this measure is that police did not lay any charges under the *EMR*. The suggestion is that the existence of the *EMR* did not really play a role in ending the protests since it was not used. I do not find this argument compelling for at least two reasons.

First, as I discuss in Section 5, the policing of public protests cannot be reduced to a singular model of police laying charges against protesters. The management of public order events is more complex. The fact that police have exercised their discretion in a particular way — including to not lay certain types of charges — does not tell the full story of the role the law played in managing the situation. In the case of the prohibition on participation, the Commission heard evidence that it was used by police in public messaging prior to enforcement to convince protesters to leave, not only in Ottawa, but in other provinces as well. As I indicate earlier in this summary, I am satisfied that this measure did play a role in dissuading participation in the unlawful protests. The fact that they did so without actually needing to lay charges should arguably count in favour of its effectiveness, not against it.

Second, this argument looks at the prohibition on participation in isolation, rather than in the context of the measures as a whole. The effectiveness of the prohibition on participation cannot be assessed without considering the other measures that rested on it, such as the power to create exclusion zones, the prohibition against providing material support, or the *EEMO* asset freezing regime. As I discuss in more detail later this summary, these measures were also effective in responding to the emergency. Since they all relied on the central prohibition on participation, I have no difficulty in accepting that the measure was itself effective.

29.6 Prohibition on travelling to or within a prohibited public assembly

The appropriateness of the ban on travelling to or within a prohibited public assembly is closely tied to the appropriateness of the prohibition against participation. Indeed, I see very little conceptually that divides the two. The prohibition against travel was subject to a number of exceptions, the most significant of which is that it did not apply to a person who resides in, works in, or is moving through that area for reasons other than to participate in or facilitate the assembly. In light of my conclusion on the appropriateness of the prohibition on participation, I do not see why I would arrive at a different conclusion on this aspect of the *EMR*.

My conclusion might have been different had there been evidence that the measure was intended or used to limit access to the protest area by representatives of the media. In that case, the measure would be limiting access to the protest by persons who were not engaged in any unlawful activities, but who were still exercising a key constitutional right — freedom of the press. In such circumstances, other considerations, such as the operational requirements of the police, would have to be strong enough to render the measure appropriate. However, since I did not hear evidence or receive submissions on this point, I merely identify this as a potential weakness of how the measure was drafted that should be considered in the future.

With respect to the effectiveness of this provision, I have no difficulty concluding that it was effective. It was this provision that the OPS relied upon to create an exclusion zone around the downtown core, which was a critical component of their operational plan. Indeed, this speaks to the necessity of the measure as well.

I acknowledge that OPS Acting Superintendent Bernier believed that the police had common law power to create exclusion zones and that this power was sufficient to allow for the implementation of the plan to end the Ottawa protest. I agree that there is a common law power to create exclusion zones in some circumstances. This

power, however, is not clearly defined. In my view, it is doubtful that the common law would have allowed for the creation of an exclusion zone on the scale of the one that was created pursuant to the *EMR*. At an absolute minimum, reliance on the common law would have led to disputes over the legality of such an exclusion zone. I note that although Ontario's *Emergency Management and Civil Protection Act* would have permitted the Government of Ontario to make a prohibition order akin to this measure, this was not included among the measures that Ontario adopted pursuant to its declaration of emergency.

The fact that many protesters did not respect the measure and that other protesters attempted to join the demonstrations, does not change my conclusion. As I have already said, I find that, taken as a whole, the measures provided clarity and had a deterrent effect. The fact that many protesters did not comply with this rule may mean that it was not fully effective in ending the protests on its own, but that is not a reasonable standard against which to measure the *EMR*'s effectiveness. What must be assessed is whether it was effective in the sense that it made a meaningful contribution to bringing the emergency to an end. I conclude that it did.

29.7 Prohibition on bringing minors to a prohibited public assembly

In light of my conclusions on the appropriateness of the prohibition on participation and travel, it follows that the ban on causing minors to travel to or participate in prohibited assemblies was also appropriate. I heard evidence of protesters bringing young children to protests in Ottawa, Windsor, and Coutts. I suspect that many of the parents who did so believed that they were taking their families to lawful protests. In certain places and at certain times, they were likely correct. However, there was also a suggestion that, in some cases, children may have been used to prevent police enforcement. As events unfolded, the reality was that children were present in locations that were already unsafe, and becoming even less so by the day. By the time the *Emergencies Act* was invoked, these protests were no place for children.

In terms of the effectiveness of the measure, I am satisfied that at least some parents decided to either remove their children from the protest locations or not bring their children to the protests in the first place. I heard evidence that on several occasions, the police decided not to proceed with enforcement because of the presence of children at the protests; when the police did move to enforce in Ottawa, this no longer appeared to be an impediment. In light of this, and of the overall evidence of deterrence presented to me, it seems a matter of common sense that this measure had an impact.

29.8 Designation of protected places

I arrive at a somewhat different conclusion with respect to the list of designated protected places under section 6 of the *EMR*. Although I find that the objective of the measure was appropriate, its design was not.

It was appropriate to create a measure aimed at protecting designated places in light of the very real threat that new protests might emerge and interfere with critical infrastructure or other important property.

That said, the drafting of this provision strikes me as problematic in two respects. First, it simply provided that designated places could be “secured,” without elaboration as to what this meant. This is too vague to properly restrict the exercise of enforcement powers, and arguably too vague to be useful. As I discuss in Section 19.2, the Federal Government and the OPS ultimately decided that this provision should not be used in Ottawa. Second, it may also be problematic that the provision identifies a lengthy list of places that may be designated as protected, but also gives the minister of Public Safety and Preparedness the authority to designate, without restriction, any other places.

I recognize that I did not hear argument on this point and that there may be evidence and argument to support the measure, but based on the information before me, I conclude that it was not appropriate as drafted. I believe that this measure could have

been appropriate, had it been properly designed. A more carefully crafted measure would have specified, for example, what types of conduct were prohibited, for instance damaging, destroying, or obstructing the use or operation of a designated place. This would have given direction to both the police and the public on how the provision would be implemented.

As for effectiveness, while I have found that the *EMR* as a whole deterred protesters, there is little to suggest that the power to secure designated places specifically contributed to this, and the power went unused because Cabinet's reasonable fears of further illegal protests interfering with designated places did not materialize. I therefore conclude that it was not an effective measure.

29.9 Rendering essential services

The measures that empowered the RCMP or its designate to require towing companies to assist the police was appropriate in light of the circumstances. Perhaps the defining feature of the demonstrations in January and February 2022 was the extensive use of trucks and heavy equipment as protest tools. They were the key components of slow rolls, blockades, and the long-term occupation of the streets of Ottawa, as well as locations such as Coutts. Honking their horns was one of the most obvious forms of the protesters' expression, as well as the cause of harm to local residents. Given the size of the vehicles and equipment involved, the police required towing capacity to help resolve at least some of the protests that took place.

I also heard evidence of the difficulty authorities had in procuring towing capacity. Towing companies near Ottawa, Windsor, and Coutts refused to assist police due to pressure from protesters and their supporters. I acknowledge that the Ontario Provincial Police (OPP) expressed confidence that it would have been able to deal with the protests even if the towing companies it had secured ultimately decided not to co-operate. However, having considered all the evidence, I am satisfied that tow trucks were important for a safe enforcement operation. It was likely that most, and

potentially all available towing companies would have refused to assist police without the *EMR*. Although I have no basis to question the OPP's belief that the Ottawa protest could have been ended without access to heavy tow trucks, it is nonetheless certain that the operation was made considerably easier and likely safer because of the availability of tow trucks. The tow trucks also allowed the reopening of the streets once they were cleared of protesters. The authority to compel, if necessary, avoided the problem of retribution from protesters and their supporters, and offered companies the broad indemnification they felt they needed in order to participate. Indeed, it turned out to be the carrot of indemnification, and not the stick of sanction for refusing to co-operate, that ultimately proved more important in procuring towing capacity.

I find that the measure was effective. While there was some debate about this, I am satisfied that the measure was used in Ottawa. This is clear from the OPP bill provided to the federal government for more than half a million dollars. The federal government was only required to pay to the extent that the *EMR* was invoked to require towing services. As I have already said, I am satisfied that such co-operation was not forthcoming absent the indemnification and compulsion measures under the *EMR*.

29.10 Enforcement authority for extra-provincial police

The *EMR* removed the need for the swearing in of out-of-jurisdiction police officers in order to enforce provincial laws and municipal by-laws. This allowed for rapid deployment of RCMP and officers from other provinces to assist the OPS and the OPP. By simplifying and accelerating this process, the measures assisted in bringing the situation to a rapid end.

I am satisfied that it was advantageous to remove this swearing-in requirement for RCMP officers to effectively assist with police operations in the protests. While the RCMP would have been able to enforce the prohibitions in the *EMR* itself without

being sworn in, police operations also included enforcing provincial laws, including the provincial emergency measures.

The difficulties encountered when the RCMP came to assist in Windsor would have been avoided if the *EMR* measures had been in place. OPP Superintendent Earley, who led the operation in Windsor, found the swearing-in process so cumbersome that she circumvented it by pairing every RCMP officer with a partner from the OPP or the WPS so that the full range of authorities under provincial and municipal legislation could be used. This was a pragmatic solution, but an unfortunate waste of police resources at a time when they were badly needed and clearly stretched.

I recognize that the OPS had already taken steps to simplify and speed up the swearing-in process in Ottawa, but in a situation where time was of the essence, removing this unnecessary administrative burden was appropriate, especially given that several hundred RCMP officers were about to arrive in Ottawa, and the Government wanted the State of Emergency to be in place for as short a time as possible. As OPS Interim Chief Steve Bell noted, removing the swearing-in requirement allowed the OPS to “streamline and effectively create operational bodies.”⁶²

29.11 Border measures

The provision of the *EMR* that allowed the Canada Border Services Agency (CBSA) to exclude foreign nationals from entering Canada to participate in an unlawful assembly was ultimately of little, if any, assistance in resolving the emergency. The CBSA already had exclusion powers which it had successfully used to exclude many individuals who were entering Canada for the purpose of joining the protests, most notably, the requirement for individuals to show proof of COVID-19 vaccination. There was only one case in which foreign nationals were turned away at the border on the authority of the *EMR* provision. I have no difficulty concluding that their exclusion had no bearing on the resolution to the Public Order Emergency.

⁶² Evidence of S. Bell, Transcript, October 24, 2022, p. 130.

Given the lack of evidence of an influx of foreign nationals who could not be turned away using existing vaccination requirements, I conclude that this measure was not effective.

In the circumstances however, I am not prepared to say that it was not justified as part of the measures considered necessary at the time. The concern about American involvement and potential participation in the protests was reasonable. Many of the border blockades involved protests taking place on both sides of the port of entry. Calls originating from the United States had flooded emergency 911 call centres in Ottawa. More than CAD\$6 million in funding for the Freedom Convoy had been sent from the United States. The links between the United States and what was happening in Canada were significant enough that Prime Minister Justin Trudeau raised this in his call with U.S. President Joe Biden, who acknowledged that the situation was a shared problem. In this light, it was reasonable to consider that individuals would come to Canada to physically join the protests, and it was appropriate to take measures to prevent this.

29.12 Prohibition on providing material support

The prohibition on providing material support to individuals involved in illegal protests was appropriate. The Ottawa protests were only able to become as entrenched as they did through extensive contributions of support from others. Cash donations allowed for the purchase of hotel rooms and fuel. Sophisticated operations like Adopt-A-Trucker provided food, showers, and shelter. All of these contributed to sustaining the protests. It was appropriate for the Government to attempt to cut off this support to encourage protesters to depart before the police resorted to the use of force.

In reaching this conclusion, I am mindful that providing material support to protesters could be viewed as a constitutionally protected expressive act. However, given the pressing need to bring the protests to an end, and the important role that cutting off

donations played in achieving that goal, I find that it was a reasonable limit to prohibit such donations.

I also have no difficulty in concluding that this measure was effective. Although I have found that few of the online donations ever reached the protesters, there were many other ways that third parties provided material support that sustained the protests. When this provision was taken together with other measures, such as the asset freezing regime under the *EEMO*, I conclude that it played a role in reducing the level of support received by the protesters, which in turn reduced their capacity to continue with the protests. This likely had at least some impact on the footprint of the protests prior to police enforcement action.

29.13 Asset freezing

The asset-freezing regime had two main purposes: first, discouraging people from remaining at the site of unlawful protests; and second, preventing further financial support from reaching convoy participants.

The level of financial support provided to the Ottawa protest from people across Canada and around the world was significant. Protest organizers were clear that they were stunned by how successful they were in generating funds. While their intended use was not always well-defined, it was obvious that the donated funds could enhance the ability of protesters to remain in Ottawa for an extended time, whether by purchasing food, fuel, hotel rooms, or entertainment.

However, as I have found, relatively little of this donated money ever reached the protesters. Most funds were blocked through steps taken by private entities and through court orders. This raises an interesting question of whether the provisions of the *EEMO* directed at freezing assets were necessary to respond to the unlawful protests.

I have concluded that they were, at least when viewed through the prism of the “reasonable grounds to believe” standard under the *Emergencies Act*. Given the pace at which donations were accruing, it was reasonable for Cabinet to be concerned that donations were continuing to make their way to protesters. The ability of Tamara Lich’s Freedom Convoy fundraiser to move to GiveSendGo so quickly following GoFundMe’s decision to shut it down demonstrated that both protesters and donors could rapidly change their fundraising tools. The use of cryptocurrencies as a fundraising tool complicated matters even more. It was entirely reasonable for Cabinet to be concerned that there would be further attempts to evade the effects of the Attorney General’s Restraint Order, or the *Mareva* injunction obtained by downtown Ottawa resident Zexi Li. There was evidence that court orders, while useful tools, could be slow to obtain and might not be effective in intercepting donations before they could be moved. In light of the evidence, I conclude that Cabinet had reasonable grounds to believe that an extraordinary measure such as the *EEMO*’s asset freezing provision was necessary to prevent the protests from being financially sustained over the long term.

In addition, as I will explain later, the asset freezing regime had a significant impact in encouraging protesters to leave unlawful protests.

That conclusion, on its own, does not answer the question of whether the measures were appropriate. In particular, there are six features of the scheme that call for additional scrutiny: 1) the impact of asset freezing on *Charter* rights; 2) the geographical scope of the measure; 3) the application of the measure to provincially regulated financial institutions; 4) the scope of who the measures applied to; 5) the absence of discretion or exceptions in the scheme; and 6) the absence of adequate procedural protections.

Fundraising itself attracts constitutional protection under section 2 of the *Charter*, both for donors and for the recipients of the funds. For donors, the act of donation can itself be an expressive act. Given the political character of the protests, I have no difficulty in finding that many donors to the Freedom Convoy did so at least in part to express

solidarity with protesters and to add their voices to a political protest. It also impacted protesters themselves by removing a key resource that permitted them to continue to engage in political expression.

However, for reasons I explain earlier in this summary, by the time the *Emergencies Act* was invoked, ending the unlawful protests was itself a reasonable limit on freedom of expression. The asset freezing regime, while highly impactful on protesters, did not involve physical force or violence. By encouraging protesters to leave without having to resort to force, the *EEMO* sought to achieve an end to the unlawful protests that did not place the physical well-being of protesters or others at risk. It was a proportionate response to the situation as it existed as of February 14, 2022.

It was not an infringement of section 8 of the *Charter* for the *EEMO* to require listed entities to freeze property owned, held, or controlled by persons engaging in prohibited activities. While the *Charter* protects individuals against “unreasonable search and seizure,” the freezing of assets under the *EEMO* is neither unreasonable nor a “seizure” for the purposes of section 8. The Supreme Court has explained that s. 8 is meant to promote an individual’s privacy interests. It does not protect against restrictions on the enjoyment of property. Accordingly, even the taking of property by government action would not, in itself, constitute a “seizure” for the purpose of s. 8 unless it were done in the context of an administrative or criminal investigation.⁶³ The *EEMO* did not constitute a taking of the assets in question; it only required designated institutions to freeze them. This was not meant to assist an administrative or criminal investigation, but to deter people from continuing to participate in illegal protests.

The second feature of the *EEMO* that requires consideration is that it applied throughout Canada. It might be argued that it should have been limited to Ontario, given its obvious focus on those who were involved in or supported the protests in Ottawa. The simple response is that the measures had to be national in scope in order to be effective. Between online banking and smartphone apps, moving money

⁶³ *Québec (Attorney General) v. Laroche*, [2002] 3 S.C.R. 708, paras 52 and 53.

between financial institutions takes only minutes to accomplish. Had the *EEMO* applied only to institutions in Ontario, there would have been little to stop protesters raising or moving money using out-of-province entities.

The third feature of the *EEMO* was the fact that it covered provincially regulated financial institutions, such as credit unions. This was a real concern. One of the most significant aspects of the emergency branch of the “Peace, Order, and good Government” (POGG) power, which I discuss in Section 3.1, is that it permits the Federal Government to deal with matters that are ordinarily in the exclusive jurisdiction of the provinces. Such disruption of the ordinary rules of federalism should not be done lightly, nor accepted as appropriate without serious justification.

However, I find that the *EEMO*’s regulation of provincial institutions was appropriate for two reasons. The first is that, just as protesters could easily move their money from province to province, so too could they move their money from banks to credit unions or other provincial institutions with relative ease. Second, the *EEMO* did not seriously interfere with provincial jurisdiction. The sole impact of the measure was to require asset freezing. Provinces remained free to regulate their institutions in any other way they saw fit.

The fourth feature of the *EEMO* is that it applied to more people than it should have. As I discuss in Section 18.5, there was a tension between what the *EEMO* did, and what the Federal Government was seeking to achieve. The *EEMO* required the freezing of assets for all “designated persons,” which would include not just protesters, but also small-dollar donors to the Freedom Convoy. On the other hand, the Federal Government stated, both in February 2022 and to the Commission, that it only wanted financial institutions to freeze the assets of protest leadership and major supporters. The message conveyed by the Government was that contributions to illegal protests were prohibited and exposed the donors to having their accounts frozen but that, at least at the outset, only significant donors would be targeted.

Ultimately, I do not find that the scope of the *EEMO* was inappropriate. Seeking to prevent any funds from supporting the illegal protests was, in my view, a reasonable measure in the circumstances. Further, the measure was not retrospective, meaning that those who had donated to the Freedom Convoy before the *Emergencies Act* was invoked were never at risk of having their assets frozen.

I note that in practice asset freezing was done largely on the basis of lists of designated persons provided by the RCMP to financial institutions. There appears to be no dispute that these lists did not capture small-dollar donors or others with only a peripheral connection to the protests. This mitigated the effects of the provision.

A related scope issue that I heard evidence about pertained to joint bank accounts. An individual who had no connection to the protests could still have had their assets frozen under the *EEMO* if they held their accounts jointly with a protester. It is not difficult to imagine a scenario where an individual would participate in the protests without the involvement of their spouse (or, indeed, against the spouse's wishes). It is clearly unjust for individuals with no connection to the protests to have their accounts frozen.

The difficulty, however, is that this appears to have been unavoidable. None of the parties made submissions on how the *EEMO* could have been structured to avoid this consequence, and I am unable to think of an obvious mechanism myself. The question then is whether the inevitable impact of the *EEMO* on innocent third parties rendered the measure inappropriate. Again, and not without some hesitation, I conclude that the measures were still appropriate. Excluding joint accounts from the *EEMO* would have allowed the protesters to easily and quickly circumvent it by using or creating joint accounts.

A fifth feature of the *EEMO* is that it imposed a blanket requirement to freeze assets without any type of discretion or exceptions for humanitarian considerations. I heard evidence of the *EEMO* interfering with the ability to purchase necessary medicines or

interfering with child and spousal support payments. The *EEMO* did not intend such consequences.

In my view there ought to have been a provision granting flexibility in the *EEMO*'s application. Unlike the impact of asset freezing on joint accounts, which appeared to be an inevitable consequence of the *EEMO* regime, this measure could have been drafted to permit at least some type of humanitarian exception. Indeed, it appears that this was a matter of discussion between financial institutions and the Department of Finance while the *EEMO* was in effect. The absence of such a provision was concerning.

My criticism here is tempered by the reality that the *EEMO* was drafted quickly and was in force for only a short period of time. While officials from the Department of Finance ought to have anticipated the need for some type of exception regime when designing the *EEMO*, I am prepared to accept that the speed in which the measures had to be drafted may have made this challenging to do. Had the *EEMO* been in effect for a longer period of time, I would have expected that a system of exceptions or flexibility would have been introduced.

A sixth feature of the asset freezing regime is that it did not provide for adequate procedural protections. There were two components to this criticism: the absence of adequate notice to persons whose assets were to be frozen, and the absence of any unfreezing mechanism.

I do not accept that there was a failure to provide adequate notice. While there was no formal obligation in the *EEMO* for financial institutions to tell their customers about asset freezing, I do not think it was necessary to include such a rule. What was required was for protesters to know ahead of time that they were at risk of having their assets frozen if they continued in the conduct that qualified them as designated persons. I am satisfied that the police and the Federal Government went to considerable lengths to inform protesters about the invocation of the *Emergencies Act* and the possible

consequences that they would face if they continued in their participation in the protests. Although there was less publicity with respect to the prohibition on making donations, there is also no indication that any donors had their accounts frozen.

The absence of a delisting mechanism is more troubling. If one of the objectives of the freezing regime was to convince people to leave protest sites, the regime should have had a mechanism to unfreeze accounts once people complied. The absence of any specific rules about unfreezing caused concern for financial institutions, who were unclear how to determine when an individual listed on a report provided by the RCMP was no longer a designated person. The Department of Finance initially expected that financial institutions would, as a result of their obligation to monitor client relationships on an ongoing basis, unfreeze accounts once they confirmed that individuals were no longer involved in the prohibited activities. However, security concerns began to arise for front-line workers at financial institutions regarding individuals coming in and demanding to have their accounts unfrozen.

The absence of any rules was also a problem from the perspective of protesters. They received no direction on what they should do to have their accounts unfrozen, beyond leaving the protests. They were not told who to contact or what information they should provide. This lack of direction may well have contributed to the frustration and the security concerns mentioned previously.

The lack of an unfreezing mechanism was a failing of the *EEMO*. The Government ought to have anticipated the need to give former protesters prompt access to their funds. Greater attention ought to have been paid to this issue at the outset. However, I am satisfied that, with more time, such a system would have been developed. Department of Finance officials were already working with the RCMP to develop such a process when, on February 21, the RCMP issued a blanket notice to financial institutions that it no longer viewed any of the previously listed individuals to be “designated persons.” This was, for all intents and purposes, a clear statement that financial institutions should unfreeze accounts.

There is one aspect of the freezing regime that was, in my view, inappropriate in principle: the suspension of vehicle insurance. While intended to be another measure to discourage participation, it was in fact counterproductive and if implemented, would have been potentially dangerous. As police explained, it would be dangerous to suspend the insurance on these vehicles, as it would mean that either the protesters would have to leave without their vehicles, or they would have to drive away in uninsured vehicles. If they were then involved in an accident, innocent people might have been unfairly impacted by the absence of insurance. This measure was viewed as sufficiently problematic that the RCMP decided not to provide its designated persons lists to insurance companies. Quite simply, they did not want this part of the *EEMO* to be used. While perhaps well intentioned, I do not view this measure as having been either necessary or appropriate.

Given the overall effectiveness of the asset-freezing regime in bringing the emergency to a safe and speedy resolution, I conclude that it was an appropriate and effective measure. As I have found, there ought to have been mechanisms providing for flexibility in the application of the regime and for the unfreezing of accounts, and the insurance provision should not have been included. Viewed as a whole, however, it was a powerful tool to discourage participation and to incentivise protesters to leave. I am satisfied that it played a meaningful role in shrinking the footprint of the protests, and in doing so, made a meaningful contribution to resolving the Public Order Emergency.

29.14 Reporting to Financial Transactions and Reports Analysis Centre of Canada

The measures requiring Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) reporting by payment processors and crowdfunding platforms were a function of a legislative gap that pre-dated the protests. As Deputy Prime

Minister Chrystia Freeland put it, FINTRAC’s monitoring authorities “were appropriate for a 20th century economy, but not for a 21st century economy.”⁶⁴

While the changes may have enhanced the integrity of Canada’s anti-money laundering and terrorist financing regime, they had no impact on resolving the protests. According to FINTRAC itself, the changes did not result in any shift in reporting patterns and had no impact on its ability to fulfill its mandate because they were not in place long enough to have an effect.

While I am mindful that this was not argued or explored during the hearing, it strikes me that s. 4(2) of the *EEMO*, which required payment processors and crowdfunding platforms to report transactions reasonably suspected of being related to the commission of a money laundering or terrorist activity financing offence by a designated person, may have been unnecessary simply because it was largely redundant given other provisions in the *EEMO*. Crowdfunding platforms and payment processors were listed entities under section 3 of the *EEMO*. Section 2 of the *EEMO* required listed entities to cease dealings with designated persons. Thus, there would be no completed transactions by designated persons for the entities to report to FINTRAC. Meanwhile, under section 5 of the *EEMO*, the entities would have to report the existence of property in their possession belonging to a designated person, as well as any information about transactions or attempted transactions in respect of that property, to the RCMP or the Canadian Security Intelligence Service (CSIS). It is difficult to see, then, why reporting to FINTRAC under s. 4(1) was necessary.

The types of reporting obligations that section 4(3) of the *EEMO* imposes on crowdfunding platforms and payment processors already exist for other money services businesses. While I appreciate that this measure was important to fill a gap in the architecture of Canada’s financial reporting and intelligence scheme, I have difficulty seeing how it was necessary for the specific purpose of dealing with the

⁶⁴ Evidence of Deputy Prime Minister Freeland, Transcript, November 24, 2022, pp. 15 and 16.

Public Order Emergency, particularly since it was acknowledged that this measure would take a long time to have an effect. Based on the information I have, I would conclude it was not appropriate as an emergency measure, but I recognize that there may be evidence and arguments on this point that were not before me.

30. Conclusion

Many have called the events of January and February 2022 exceptional. I think that is an apt description. There was much about that period that was, if not wholly unprecedented, then at the very least extraordinary. One exceptional event, and the focus of this Inquiry, was the use of the *Emergencies Act* for the first time in its 35-year history.

It is unsurprising that the *Emergencies Act* had never been used until now. It is exceptional legislation, meant for exceptional times. It can only be invoked when a multi-layered series of preconditions are satisfied. Its invocation triggers a series of review, oversight, and accountability mechanisms that serve as a check against governments using the Act when they should not, and as a means to restrain overreach. The cumulative effect of these preconditions and mechanisms is that resort to the *Emergencies Act* will be rare.

I have concluded that in this case, the very high threshold for invocation was met. I have done so with reluctance. The state should generally be able to respond to circumstances of urgency without the use of emergency powers. It is only in rare instances, when the state cannot otherwise fulfill its fundamental obligation to ensure the safety and security of people and property, that resort to emergency measures will be found to be appropriate. As for the measures Cabinet put in place in response to the emergency, I conclude that while most of the measures were appropriate and effective, others fell short.

It is regrettable that such a situation arose here, because in my view, it could have been avoided. As I have explained in this Report, the response to the Freedom Convoy involved a series of policing failures. Some of the missteps may have been small, but others were significant, and taken together, they contributed to a situation that spun out of control. Lawful protest descended into lawlessness, culminating in a national emergency.

The failures were not only in policing. The events of January and February 2022 can also be seen as a failure of federalism. In Canada, our federal system of government enriches democracy by striving to maintain national unity while supporting regional diversity. But fulfilling these promises depends on co-operation and collaboration. Responding to situations of threat and urgency in a federal system requires governments at all levels, and those who lead them, to rise above politics and collaborate for the common good. Unfortunately, in January and February 2022, this did not always happen.

The Freedom Convoy was a singular moment in history, in which simmering social, political, and economic grievances were exacerbated by the COVID-19 pandemic, shaped by a complex online landscape rife with misinformation and disinformation, and unleashed in a torrent of political protest and social unrest. Though extraordinary, it was not entirely unpredictable. Historically, it is common for pandemics to be accompanied by a decline in social cohesion and a surge in civil unrest. This one has been no exception.

It was the failure to anticipate such a moment and to properly manage the legitimate protests that emerged, especially the protest in Ottawa, that resulted in the 2022 Public Order Emergency. Had various police forces and levels of government prepared for and anticipated events of this type and acted differently in response to the situation, the emergency that Canada ultimately faced could likely have been avoided. Unfortunately, it was not.

Fortunately, the Parliament that passed the *Emergencies Act* had the wisdom to create a statute with both the powers needed to protect Canadians in times of crisis, and the safeguards needed to ensure restraint and accountability.

There are important systemic lessons to be learned for both police and governments from the events in January and February 2022. I have recommended legislative amendments that I hope will result in improvements to the *Emergencies Act*. I have also suggested best practices that I hope will better prepare governments and police to respond to situations that risk becoming public order emergencies.

I also hope that through the work of this Commission and this Report, I have provided the public with the transparency and accountability that Parliament intended from this Inquiry.

Consolidated List of Recommendations



Consolidated List of Recommendations

1. Policing

Recommendation 1: The federal government — in conjunction with provincial, Indigenous, and territorial governments; police and intelligence agencies; the Canadian Association of Police Chiefs; and other stakeholders — should develop or enhance protocols on information sharing, intelligence gathering, and distribution that:

- a. identify how and by whom information and intelligence should be collected, analyzed, and distributed for major events, such as protests, that have multijurisdictional or national significance;
- b. enhance the ability to collaboratively evaluate information collected for reliability;
- c. adhere to the *Canadian Charter of Rights and Freedoms* and the reasonable expectations of privacy of those affected;
- d. enhance record-keeping regarding the collection, analysis, and distribution of information and intelligence;
- e. ensure compliance with legislative mandates, for example, statutory limits on surveillance of lawful protests by the Canadian Security Intelligence Service (CSIS);

- f. promote appropriate access to and interpretation of social media and open-source materials;
- g. ensure that — where appropriate — comprehensive, timely, and reliable intelligence be communicated to police and government, within their appropriate spheres of decision making; and
- h. promote objective, evidence-based risk assessments that are written to both acknowledge information deficits and avoid misinterpretation.

Recommendation 2: The stakeholders identified in Recommendation 1 should consider the creation of a single national intelligence coordinator for major events of a national or interprovincial or interterritorial dimension.

Recommendation 3: Police and other law enforcement agencies should develop, in conjunction with affected governments, protocols around requests for additional law enforcement resources, where a police service is unable to respond on its own to major events, including certain protests. Such protocols should address:

- a. whether a municipal police service should request additional resources in Ontario through the OPP or concurrently directly with other police services and/or the RCMP;
- b. whether and when such requests should prioritize provincial policing resources before calling on the RCMP or other federal agency resources;
- c. to whom such requests should be directed and in what circumstances;
- d. to what extent governments should participate in these requests for resources;

- e. what, if any, circumstances (such as a plan acceptable to the agency providing substantial resources or the creation of an integrated or unified command) should exist before external resources are provided and to what extent such circumstances should be memorialized in writing;
- f. in situations involving limited resources that cannot be deployed at the same time to multiple jurisdictions, what factors inform the jurisdiction given first or primary access to such resources, and to what extent can government be involved in the prioritization of limited resources to specific events; and
- g. in Ontario, whether the OPP commissioner should be given formal authority to address the provision and allocation of policing resources where other police services require external assistance.

Recommendation 4: All police services boards in jurisdictions that may be the subject of or adversely affected by major events including large-scale protests should create policies, consistent with the Morden and Epstein reports and their statutory-defined responsibilities, that delineate their oversight and governance roles in addressing those events. Such policies should, at a minimum:

- a. articulate what constitutes a “critical point”;
- b. articulate what kinds of activities constitute best practices, including what they can and should do to ensure adequate and effective policing in their jurisdiction — such as setting priorities, asking questions, and providing non-binding advice in relation to operational matters — and obtaining such information as may be needed for them to facilitate resourcing issues. These activities might well include post-event evaluations of lessons learned, particularly in connection with unplanned major events, and the identification of best practices in policing, going forward;

- c. differentiate, where appropriate, between planned and unplanned events insofar as this distinction may affect the nature and timing of civilian oversight when an event rises to the level of a “critical point”;
- d. articulate the scope and meaning of prohibitions against interference or direction of day-to-day operations and when directions to the chief of police should be memorialized in writing;
- e. articulate the role of boards in supporting requests for additional resources or an integrated command and control to address major events;
- f. ensure that information conveyed outside of board meetings is shared with all board members;
- g. provide for training and education of board members and senior police leadership on the contents of such policies and best practices; and
- h. where appropriate, require that the police service create complementary procedures and practices to support these policies.

Recommendation 5: Governments should consider incorporating the points in Recommendation 4, in whole or in part, in policing legislation and/or mandating the creation of board policies that incorporate these points.

Recommendation 6: The Ontario Ministry of the Solicitor General should consider formalizing the responsibilities of its police services advisors in interacting both with police services boards and the Ministry. The process of doing so should be informed by the issues identified in this Report.

Recommendation 7: The Province of Ontario should create protocols to be potentially incorporated into its policing legislation, regulations, or policing manual that:

- a. articulate criteria for the exercise of the powers set out in sections 9 and 55 of the Ontario *Police Services Act* and in Ontario's successor legislation;
- b. articulate the structure of an integrated or unified command and control model, and best practices around how it is created and operationalized; and
- c. create criteria and a clear process for compelling, in exceptional circumstances, a municipal police service to accept an integrated or unified command and control model for managing a major event. The authority to compel a municipal police service may be conferred, for example, on the OPP commissioner or the inspector general of policing.

Recommendation 8: The federal government, other provincial and territorial governments, and Indigenous governments should create similar protocols or memoranda of understanding to address either major events other than in Ontario or territories, or major events of a national or interprovincial / territorial dimension.

Recommendation 9: All governments and their police services should work cooperatively to create, to the extent possible, national standards on how these issues are addressed.

Recommendation 10: The Province of Ontario should consider the creation of a major event management unit, analogous to the unit created for major case management of investigations. A major event management coordinator could ensure that integrated command and control is immediately initiated where identified criteria are met and could facilitate the sharing of intelligence and other information, as well as the accumulation of resources. Requirements to notify the coordinator when certain criteria are met would also promote accountability and a seamless transition to integrated command, where appropriate.

Recommendation 11: Other jurisdictions in Canada should consider analogous changes to existing legislation, regulations, policies, and procedures to provide for the creation of such units.

Recommendation 12: The federal government should similarly consider the creation of a major event management unit or major event management coordinator to address and coordinate policing responses across the country to major events of a national dimension.

Recommendation 13: Federal, Indigenous, provincial, and territorial governments should consider either the creation of national standards for policing a major event, or changes to existing legislation, regulations, policing manuals, policies, and procedures that identify essential elements of strategic, operational, and tactical planning for major events, such as protests.

Recommendation 14: Based on the lessons learned at this Inquiry, such standards, frameworks, legislation, policies, procedures, or manuals should include, but not be limited to:

- a. processes to identify strategic, operational, and tactical commanders together with succession planning;
- b. building redundancies in command to ensure 24/7 coverage and address continuity of command;
- c. identifying lawful alternate sites for continuing protests, where applicable;
- d. health and wellness planning for officers;
- e. ongoing assessment of community impact;

- f. pre-event planning and ongoing dialogue with protesters by trained and, where applicable, culturally competent officers; and
- g. coordination with non-policing first responders and relevant public authorities or agencies (for example, through the creation of executive tables).

Recommendation 15: The RCMP should consider leading an initiative, working with other police agencies, for police services across the country to adopt a single command and control model, with shared nomenclature to facilitate integrated operations in appropriate situations.

Recommendation 16: Where feasible, police services should have a contingent of trained PLT officers or have entered into an agreement with another service to access such officers or appropriate expertise, as needed.

Recommendation 17: Police services should create procedures, if they do not already exist, that clearly articulate the role of PLT officers within the context of major events. The procedures should adopt, with appropriate modifications for local conditions, frameworks such as the OPP Framework for Indigenous Incidents Protests and/or the CACP National Framework.

Recommendation 18: PLT officers and major event commanders, as well as senior leadership, should receive specialized training and education on, among other things, the OPP Framework and/or the CACP National Framework, and the role to be played by PLT officers and leadership in relation to major events.

Recommendation 19: In relation to Recommendation 18, police services should recognize the unique considerations that should inform a policing response to Indigenous-based protests, including the need for cultural competencies in addressing such protests. This recognition should also extend, more generally, to the development

of national policing standards, frameworks, legislation, policies and procedures, and manuals.

Recommendation 20: The federal government, working together with other affected governments, should develop an expedited accreditation process for RCMP or interprovincial officers to exercise legal authority to enforce provincial legislation or municipal by-laws where applicable, and where their training and education ensure that they are competent to exercise such authority.

Recommendation 21: Any expedited accreditation process should address police oversight and accountability mechanisms.

Recommendation 22: Municipalities, police services boards, and police services should, when dealing with major events, provide the public with accurate, useful, and regularly updated information.

Recommendation 23: The federal government, in conjunction with other governments and with police services and other stakeholders, should comprehensively examine the scope and limitations on police powers in relation to protest activities. This examination should ultimately result in the clarification of such powers, whether in legislation or through the development of policing protocols that draw upon the lessons learned at this Inquiry.

Such protocols should, among other things, articulate the extent to which the police may lawfully restrict access to an area within or outside a city, or at or adjacent to a border crossing, by protesters and/or certain types of vehicles; and criteria for the exercise of such restrictions that remain compatible with the lawful rights under the Charter to protest and peacefully assemble.

Recommendation 24: Consultations and discussions should continue, through a working group, led by the federal government but including other governments, police agencies, and the Parliamentary Protective Service, to study, on a priority basis,

whether changes should be made to the division of responsibilities for policing and security in the National Capital Region. The working group’s discussion should be informed, in part, by the contents of this Report.


Recommendation 25: Where the Federal Government proposes to declare a public order emergency and introduce law enforcement measures, it should, circumstances permitting, obtain, through direct consultation or through an appropriate intermediary such as the RCMP commissioner, the views of those law enforcement agencies likely to be primarily affected by these proposed decisions.

Such consultation should be specifically directed to what, if any, law enforcement-related measures are needed to address the emergency, and whether the consulted agencies have any concerns about the consequences of declaring a public order emergency.

Recommendation 26: The perspectives of affected law enforcement agencies should, circumstances permitting, be summarized in writing and made available to decision makers.

Recommendation 27: The federal government should develop, on a priority basis and in consultation with subject matter experts, publicly available guidelines that set out, in clear and accessible language:

- a. First:
 - i. the basic principles that operate to limit information that can be requested of police;
 - ii. the “lines” differentiating, with scenario-driven examples, what is permitted from what is not permitted; and

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- iii. the extent to which distinctions should be drawn between the circumstances in which it is acceptable for elected officials (and exempt staff supporting them) or for public officials to request information from the police.
- b. Second:
- i. whether there are circumstances in which the police, when dealing with major events, should on their own initiative provide information to elected officials and/or senior government officials; and
 - ii. if so, the types of information that should be provided.

2. Federal intelligence collection and coordination

Recommendation 28: The federal government, while mindful of concerns related to privacy and government intrusiveness, should examine the question of whether a department or agency of government should have the authority and responsibility to monitor and report on information contained in social media for appropriate purposes and with appropriate safeguards.

Recommendation 29: The federal government should initiate a review to ensure that the federal government agencies with a responsibility for the collection or analysis of security intelligence are fully coordinated among themselves. The overall goals to be achieved are to minimize duplication, and to promote integration and effective and timely sharing at the federal level and among stakeholders at other levels of government.

3. Critical trade corridors and infrastructure

Recommendation 30: The federal government should initiate discussions with provincial and territorial governments, in consultation with Indigenous governments and affected municipalities, to promptly identify critical trade transportation corridors and infrastructure, and establish protocols to protect them and respond to interference with them.

4. *The Emergencies Act*

Recommendation 31: The incorporation by reference into the *Emergencies Act* of the definition of “threats to the security of Canada” from the *CSIS Act* should be removed.

Recommendation 32: There should be an in-depth review of Part II of the Act dealing with public order emergencies with a view to:

- a. ensuring that the definition of a public order emergency is modernized in order to capture the situations that could legitimately pose a serious risk to the public order, now and in the foreseeable future;
- b. providing the government with the tools necessary to address these situations; and
- c. ensuring that the threshold remains high, the invocation of the Act remains exceptional, and all appropriate safeguards are put in place to maintain Parliament’s ultimate and effective control over the steps taken by the Government in response to a public order emergency.

Recommendation 33: Section 25 of the *Emergencies Act* should be amended to include a requirement to consult with the territories.

Recommendation 34: The federal government should engage in discussions with Indigenous communities to establish the appropriate parameters for consultations regarding possible recourse to the Act.

Recommendation 35: Should invocation of the *Emergencies Act* be necessary and to the extent that circumstances permit, the federal government should co-operate with the provinces to ensure that the measures it adopts to deal with the emergency comply with the requirements of subsection 19(3) of the Act so as to mitigate any infringement on provincial jurisdiction.

Recommendation 36: Although not determinative, the views of provincial, territorial, and Indigenous governments that such measures are not needed within their jurisdictions should be considered in the development of the measures and the jurisdictions to which they are made applicable.

Recommendation 37: Section 63 of the *Emergencies Act* should be amended to require that the inquiry be called pursuant to Part I of the *Inquiries Act*.

Recommendation 38: The *Emergencies Act* should be amended to provide greater direction to the commission of inquiry established in consequence of the declaration of a public order emergency and, at a minimum, direct it to examine and assess the basis for the declaration and the measures adopted pursuant thereto.

Recommendation 39: The prospective commissioner of a commission of inquiry pursuant to the Act should be consulted as to the substance of the terms of reference for the inquiry.

Recommendation 40: The *Emergencies Act* should be amended to require that, at the time a commission of inquiry into the declaration of a public order emergency is established, the Government deliver to the commission a comprehensive statement setting out the factual and legal basis for the declaration and measures adopted, including the view of the Minister of Justice of Canada as to whether the decision

to proclaim an emergency was consistent with the purposes and provisions of the *Emergencies Act*, and whether the measures taken under the Act were necessary and consistent with the *Charter*.

Recommendation 41: Amendments should be made to the *Emergencies Act* to impose upon the Government the obligation to create and maintain a thorough written record of the process leading to a decision to declare a public order emergency. That obligation should apply to both elected officials (and their exempt staff) and public servants.

Recommendation 42: The Government should commence the work of collecting and organizing its documents and information as soon as the decision to declare a public order emergency is made. Such records should be produced to the commission at the outset of its work or as soon thereafter as is feasible.

Recommendation 43: A Government that has declared a public order emergency should be bound to produce to the resulting commission of inquiry all of the inputs to Cabinet and to ministers on the issue. “Inputs to Cabinet” should be understood as encompassing all information, advice, and recommendations provided to Cabinet, Cabinet Committees, or individual ministers.

Recommendation 44: The government should have the obligation to provide a commission of inquiry with all of its documents and information holdings without redactions on account of irrelevance, or on account of national security confidentiality and similar public interest privileges.

Recommendation 45: Should a future commission of inquiry create a working group to work through challenges to claims of national security and related privileges, the Government should actively engage in the working group with a view to resolving issues expeditiously.

Recommendation 46: The *Emergencies Act* should be amended to allow the commissioner appointed for the inquiry to appoint an individual who will have jurisdiction to resolve any claim of privilege that would normally be within the jurisdiction of a superior court judge in accordance with such expedited procedures as adopted by the adjudicator.

Recommendation 47: Where it can reasonably be anticipated that claims will be made by the government pursuant to section 38 of the *Canada Evidence Act*, a request should be made to the chief justice of the Federal Court to appoint a judge to determine all challenges to such claims on an expedited basis.

Recommendation 48: The *Emergencies Act* should be amended to give the commission the power to order a person to produce any information, document, or thing under the person's power or control.

Recommendation 49: The *Emergencies Act* should be amended, subject to any constitutional constraints, to clarify that a federal Parliamentarian may not claim Parliamentary privilege to refuse to testify before a commission of inquiry into a public order emergency.

Recommendation 50: The *Emergencies Act* should be amended such that:

- a. The 360 days within which an inquiry must complete its work should start to run on the day that the Order in Council creating the commission is made.
- b. The commissioner heading a public order emergency inquiry should have the power to extend the time within which the commission's report must be produced by up to six months.

Recommendation 51: Section 62 of the *Emergencies Act* should be amended:

- a. to clarify that the mandate of the Parliamentary Review Committee is to oversee how the government is exercising its powers and performing its duties and functions while a declaration of an emergency is in effect; and
- b. to provide that the Parliamentary Review Committee is to be struck as soon as possible, and no later than seven days after the proclamation of the emergency.

Recommendation 52: Subsection 28(1) of the *Federal Courts Act* should be amended to add: (1) a commission of inquiry established pursuant to section 63 of the *Emergencies Act*; and (2) the Governor in Council when it issues a proclamation pursuant to subsection 17(1) of the Act among matters the Federal Court of Appeal has jurisdiction to hear applications for judicial review.

5. Other areas for further study

Recommendation 53: All levels of government should continue to study the impact of social media, including misinformation and disinformation, on Canadian society, with a focus on preserving freedom of expression and the benefits of new technologies, while addressing the serious challenges that misinformation, disinformation, and other online harms present to individuals and Canadian society. Governments should coordinate their work in this area to ensure that any jurisdictional issues may be addressed.

Recommendation 54: The federal government should continue with its study into cryptocurrencies. This study should be informed by the findings of this Commission. Federal officials should seek to collaborate with counterparts at other levels of

government to benefit from existing study in this area and to ensure that any jurisdictional issues may be addressed.

6. Follow-up and accountability

Recommendation 55: Within twelve months following the tabling of the commission's report, the Government should issue a public response identifying which recommendations it accepts and rejects. For the recommendations the Government accepts, it should provide a detailed timeline for their implementation. For the recommendations the Government rejects, it should provide a detailed explanation of its refusal to implement them.

Recommendation 56: The Government's response should be referred to an implementation committee, the mandate and composition of which are to be determined by Parliament.

Acronyms, Initialisms, and Other Abbreviations



Acronyms, Initialisms, and Other Abbreviations

Abbreviation	Full Title
ADM NS Ops	Assistant Deputy Ministers' Committee on National Security Operations
APMA	Automotive Parts Manufacturing Association
ASI	Advanced Symbolics Inc.
BIA	Business Improvement Area
BLRS	By-law and Regulatory Services (Ottawa)
BOC	Border Operations Centre (CBSA)
CACP	Canadian Association of Chiefs of Police
CAF	Canadian Armed Forces
CBA	Canadian Bankers Association
CBSA	Canada Border Services Agency
CCLA	Canadian Civil Liberties Association
CCMG	Consultative Conflict Management Group
CCUA	Canadian Credit Union Association
CEA	the <i>Canada Evidence Act</i>
Cell (the)	Integrated Planning Cell
CIC	Critical Incident Command(er)
CIG	Combined Intelligence Group
CME	Canadian Manufacturers & Exporters
CN Rail	Canadian National Railway
CSE	Communications Security Establishment



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CSIS	Canadian Security Intelligence Service
<i>CSIS Act</i>	<i>Canadian Security Intelligence Service Act</i>
CVOR	Commercial vehicle operator's registration
DHS	Department of Homeland Security
DLT	Divisional Liaison Team
DMOC	Deputy Ministers' Committee on Operational Coordination
DND	Department of National Defence
DSC	Deputy Secretary to Cabinet
<i>EA</i>	<i>Emergencies Act</i>
<i>EEMO</i>	<i>Emergency Economic Measures Order</i>
<i>EMCPA</i>	<i>Emergency Management and Civil Protection Act</i>
<i>EMR</i>	<i>Emergency Measures Regulations</i>
EOC	Emergency Operations Centre (Ottawa)
EPCRS	Emergency Preparedness and COVID Recovery Secretariat
FINTRAC	Financial Transactions and Reports Analysis Centre of Canada
FMM	First Ministers' Meeting
FPT	federal – provincial – territorial
FPT CPPC	Federal, Provincial, and Territorial Crime Prevention and Policing Committee
Freedom Corporation	Freedom 2022 Human Rights and Freedoms Non-Profit Corporation
GAC	Global Affairs Canada
GDP	Gross Domestic Product



GIC	Governor in Council
GOC	Government Operations Centre
IAS	Intelligence Assessment Secretariat
ICS	Incident Command System
IGA Secretariat	Intergovernmental Affairs Secretariat
IMCIT	Ideologically Motivated Criminal Intelligence Team (RCMP)
IMVE	ideologically motivated violent extremism
IRG	Incident Response Group
ITAC	Integrated Terrorism Assessment Centre
JCCF	Justice Centre for Constitutional Freedoms
JIG	Joint Intelligence Group
MCM	Major Case Management
MLA	Member of the Legislative Assembly
MOU	memorandum of understanding
National Framework	National Framework for Police Preparedness for Demonstrations and Assemblies
NCC	National Capital Commission
NCR	National Capital Region
NCRCC	National Capital Region Command Centre
<i>NDA</i>	<i>National Defence Act</i>
NSIA	National Security and Intelligence Advisor
OCPC	Ontario Civilian Police Commission
OPP	Ontario Provincial Police



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OPS	Ottawa Police Service
OPSB	Ottawa Police Services Board
<i>PCMLTFA</i>	<i>Proceeds of Crime (Money Laundering) and Terrorist Financing Act</i>
PCO	Privy Council Office
PIU	Protective Intelligence Unit (RCMP)
PLT	Police Liaison Team (OPS)*
PLT	Provincial Liaison Team (OPP)*
PMO	Prime Minister's Office
POE	Port of Entry
POGG power	Peace, Order, and good Government power
POU	Public Order Unit
PPS	Parliamentary Protective Service
PS	Public Safety
<i>PSA</i>	<i>Police Services Act</i>
PSPC	Public Services and Procurement Canada (department of)
RBC	Royal Bank of Canada
RCMP	Royal Canadian Mounted Police
RE	reporting entity
RFA	Request for Assistance
SIRA	Strategic Intelligence, Research, and Analytics Unit (FINTRAC)
SJAM	Sir John A. Macdonald Parkway
SPVG	Service de police de la Ville de Gatineau
SQ	Sûreté du Québec



Report of the Public Inquiry into the 2022 Public Order Emergency

SSE	Safety, Security, and Emergencies (Cabinet Committee)
TBOF	Taking Back Our Freedoms
TD	Toronto-Dominion Bank
TIMG	Traffic Incident Management Group
TPS	Toronto Police Service
TPSB	Toronto Police Services Board
<i>WMA</i>	<i>War Measures Act</i>
WPS	Windsor Police Service**
WPS	Winnipeg Police Service**
WPSB	Windsor Police Services Board

* PLT can refer to either Police Liaison Team or Provincial Liaison Team, depending on the context.

** WPS can refer to either Windsor Police Service or Winnipeg Police Service, depending on the context.