

# PUBLIC ORDER EMERGENCY COMMISSION

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## FACTUAL SUBMISSIONS OF THE CITY OF OTTAWA

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## I. OVERVIEW

1. The Commission heard considerable evidence about the Freedom Convoy's occupation of the City of Ottawa. Almost every witness who testified about the events in Ottawa agreed that the Freedom Convoy was an unprecedented, volatile and fluid event.
2. There was no debate during the factual phase of the inquiry that the Ottawa Police Service ("**OPS**") was the lead agency in responding to the Freedom Convoy. The Freedom Convoy constituted a risk to public order, the maintenance of which constitutes a police service per s. 4(2) of the *Police Services Act*.<sup>1</sup>
3. The City's role during the Freedom Convoy consisted of:
  - a) Supporting the police-led response;
  - b) Maintaining, to the extent possible, City services impacted by the Convoy; and
  - c) Convening representatives from other levels of government to assist.
4. The evidence at the hearing was that the City fulfilled the above roles. There was no question that the City supported the police-led operation when and as requested, including by advocating for additional police officers to support OPS and by negotiating with some of the protesters. The City was also a key participant at the tripartite meetings, and worked collaboratively with federal and provincial counterparts.
5. Ultimately, a large public order operation was required to clear the occupation. As the Commission has heard, this operation was the largest unplanned police deployment in Canadian history.
6. The City cannot direct police, or the Ottawa Police Services Board ("**OPSB**"). In this case, City Council did act so as to revoke Councillor Deans' appointment to the Board when it determined that her performance was unacceptable. The appointment of the municipally appointed OPSB members is at the sole discretion of City Council. Board members can be removed at anytime.
7. The City addressed the impacts of the Convoy on residents and businesses in its institutional report. We note that the Commission also heard from residents, business

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<sup>1</sup> *Police Services Act*, RSO 1990, c P.15, COM00000819.

representatives, and the Councillors whose wards were most affected at the outset of the hearing.

8. In planning for subsequent convoy-type protests, the City, jointly with police, has created motor vehicle exclusion zones. These zones have served to protect residents and businesses by preventing another occupation. At the same time, they support lawful protest and peaceful assembly by allowing protesters to park and travel to the protest site on foot or via public transit.

## **II. FACTUAL AND POLICY ISSUES**

9. Pursuant to Order-in-Council P.C. 2022-392, the Commission must:
  - a) Examine and report on the circumstances that led to the federal declaration of a public order emergency and the measures taken pursuant thereto;
  - b) To the extent relevant, examine issues with respect to:
    - i. The evolution and goals of the Convoy;
    - ii. The impact of domestic and foreign funding;
    - iii. The role of misinformation and disinformation;
    - iv. The impact of the blockades; and
    - v. The efforts of police and other responders prior to and after the declaration.
10. The City's submissions address the evolution of the Convoy and the efforts of police and other responders. In particular, these submissions address the following issues:
  - a) The City's reliance on OPS for intelligence and planning for the Convoy
  - b) The City's efforts in advocating for additional officers in support of OPS and the delays in receiving those officers
  - c) The use of injunctions to respond to protests
  - d) The limited utility of municipal declarations of emergency
  - e) Political engagement with protesters including the Mayor's deal
  - f) The City's limited role in overseeing police

11. In lieu of a conclusion, the City addresses the lessons learned as a result of the Freedom Convoy and its subsequent use of motor vehicle exclusion zones during Rolling Thunder and other convoy protests.
12. The City has addressed the impacts of the occupation in its institutional report,<sup>2</sup> and will not repeat them here.

### III. FACTUAL AND POLICY SUBMISSIONS

#### **(a) City Relied on OPS for Intelligence and Planning for the Convoy**

##### ***i. OPS was the Lead Agency in Response to the Freedom Convoy***

13. There was no dispute during the inquiry that the OPS, as police of jurisdiction, was the lead agency in responding to the Freedom Convoy. Chief Sloly confirmed as much during his cross-examination.<sup>3</sup> As set out below, the Commission heard from multiple witnesses that the OPS has considerable experience managing protests in the national capital region (“NCR”).
14. The risk posed by the protest was to the maintenance of public order. Maintenance of public order constituted a police service pursuant to s. 4(2) of the *Police Services Act*, and is a necessary component of adequate and effective police services.

##### ***ii. The City Relied on OPS for Intelligence and Planning for the Convoy***

15. The City relied on the OPS for information about the protest, and it relied on OPS to validate any additional information the City received from third parties.<sup>4</sup> The City has no independent source of intelligence outside of law enforcement, and no independent way to validate information.<sup>5</sup> As explained by the City Manager, Mr. Kanellakos, the “police were responsible, and are responsible and have access to the intelligence and the information across the federal and provincial level to make the risk assessment that we all need to participate in [sic] to be able to respond appropriately.”<sup>6</sup> In addition to

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<sup>2</sup> City of Ottawa, Institutional Report, OTT.IR.00000001 at pp 18-26.

<sup>3</sup> Peter Sloly, Cross-Examination, TRN00000013 at p 128 lines 27—28 and p 129 lines 1—9.

<sup>4</sup> Steve Kanellakos, Interview Summary, WTS.00000001 at pp 2—3.

<sup>5</sup> Steve Kanellakos, Interview Summary, WTS.00000001 at p 2.

<sup>6</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 12, lines 23—28 and p 13, lines 1—4.

providing a risk assessment, the City relies on OPS to develop strategies to mitigate those risks.<sup>7</sup>

16. The City of Ottawa had confidence in OPS' assessment and planning given OPS' extensive experience managing demonstrations in the nation's capital.<sup>8</sup> Mr. Kanellakos explained that OPS has extensive experience with demonstrations and respond to them on a regular basis, sometimes almost weekly. In his view, the OPS had always managed demonstrations very well. For this reason, the City had "confidence in [OPS]' assessment of the situation to guide us in terms of what to expect and what posture we should be at to be able to deal with the risks that were being proposed."<sup>9</sup>
17. This view was widely shared by other police agencies.
18. Commissioner Carrique of the Ontario Provincial Police ("OPP") testified that the "Ottawa Police Service has always been very highly regarded and respected for its ability to manage protests, lawful and otherwise." This was something he said he experienced first hand during his own deployment to OPS' Public Order Unit when he was a Sergeant.<sup>10</sup>
19. Deputy Commissioner of the RCMP, Michael Duheme, likewise testified that the "Ottawa Police Service has managed several large-scale events throughout the years where you'd have 100,000 people in the streets on Canada Day. You look at the work they'd done with --- they did with Rolling Thunder when it came in afterwards. They did an excellent job there."<sup>11</sup>
20. OPP Superintendent Craig Abrams stated that he had a lot of experience working with the Ottawa Police Service for other major events and commented that OPS were a "very professional organization."<sup>12</sup>

**iii. OPS' Assessment was that this would be a Weekend Protest**

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<sup>7</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 13, lines 5—13.

<sup>8</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 13, lines 21—28 and p 15 lines 1—10.

<sup>9</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 15, lines 1—10.

<sup>10</sup> Thomas Carrique, Examination-in-Chief, TRN00000011 at p 22, lines 22—28.

<sup>11</sup> Michael Duheme, Examination-in-Chief, TRN0000023 at p 222, lines 15—19.

<sup>12</sup> Craig Abrams, Examination-in-Chief, TRN0000006 at p 212, lines 21—24.

21. Leading up to the Convoy, OPS' assessment was that this would be a weekend protest.
22. Mr. Kanellakos and Kim Ayotte, the General Manager of Emergency and Protective Services (“**EPS**”), first learned of the Freedom Convoy around mid-January.<sup>13</sup> Mr. Ayotte received further information about the Convoy from INTERSECT, an OPS-led intelligence sharing group,<sup>14</sup> on January 21, 2022.<sup>15</sup> INTERSECT meets monthly to monitor threats across the NCR.<sup>16</sup> It is made up of NCR law enforcement agencies and the cities of Ottawa and Gatineau.<sup>17</sup> On January 21, 2022, INTERSECT anticipated that the Freedom Convoy would be a regular protest<sup>18</sup> and that protestors' intentions were to “hold a peaceful demonstration and there is no indication of hostility.”<sup>19</sup>
23. Senior City staff received further information from INTERSECT on January 26, 2022.<sup>20</sup> Police advised that, “all open-source information and our interactions with organizers indicate that this will be a significant and extremely fluid event that could go on for a prolonged period.”<sup>21</sup> A draft email update to the OPSB prepared by the OPS on January 25, 2022, confirms that by “prolonged period”, OPS was referring to that first weekend:

Chair and Members of the Board:

The purpose of this email is to provide you with an operational update on the preparations underway for an expected demonstration involving a trucker convoy (known as the Freedom Convoy) that is scheduled to arrive in Ottawa beginning Friday, January 28<sup>th</sup>.

...

At this time, the exact number of participants is not known. However, all open source information and our interactions with organizers indicate that this will be a significant, peaceful and extremely fluid event that could go on for **a prolonged period (January 28 to 30)**. Our operational planning

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<sup>13</sup> Kim Ayotte, Interview Summary, WTS.0000002 at p 2; Steve Kanellakos, Interview Summary, WTS.00000001 at pp 2—3.

<sup>14</sup> Steve Kanellakos, Interview Summary, WTS.00000001 at p 2.

<sup>15</sup> Kim Ayotte, Interview Summary, WTS.00000020 at p 2.

<sup>16</sup> Kim Ayotte, Interview Summary, WTS.00000020 at p 2; Craig Abrams, Examination-in-Chief, TRN0000006 at p 207, lines 6—17.

<sup>17</sup> Kim Ayotte, Interview Summary, WTS.00000020 at p 2.

<sup>18</sup> Kim Ayotte, Interview Summary, WTS.00000020 at p 2.

<sup>19</sup> INTERSECT email, January 21, 2022, OTT00000013.0001.

<sup>20</sup> INTERSECT email, January 26, 2022, OTT00000259.

<sup>21</sup> INTERSECT email, January 26, 2022, OTT00000259.



reflects this assessment and is being designed to adapt to multiple scenarios ...<sup>22</sup>

24. Mr. Kanellakos testified that during the week leading up to the Convoy, there were different pieces of information coming in, and the expected number of protesters varied and grew.<sup>23</sup> He explained that it was not unusual for people to express different views about the likely size and duration of a protest, and that “there were all kinds of opinions on what that would be.”<sup>24</sup> He explained that this was consistent with his experience of almost every other protest in the City of Ottawa, including the G8, G20, and the farmers’ protests. As the Commission has heard, the 2006 farmers’ protest involved large tractors and farm vehicles that drove into downtown Ottawa and protested on Wellington Street in front of Parliament Hill.<sup>25</sup> They came, they protested, and they left, without incident.<sup>26</sup>
25. In all of these cases, the anticipated number of protesters varied widely leading into the actual protest event.<sup>27</sup>
26. Mr. Kanellakos explained that the City planned for this event on the basis of the OPS’ initial assessment that the Convoy would last through the weekend, at which point the majority of protesters would leave, although a smaller group might remain until the following Wednesday.<sup>28</sup> The City received this information on January 26 from the Chief, the OPS, and the National Capital Region Command Centre (“**NCRCC**”).<sup>29</sup>
27. As the Commissioner has heard, the NCRCC is a police-led coordination hub<sup>30</sup> that may be stood up as Area Command in response to major multi-jurisdictional incidents in the NCR. The NCRCC is comprised of all representatives involved in responding to an incident, including the RCMP, the OPP, the OPS, Parliamentary Protective Services (“**PPS**”), and the City of Ottawa.<sup>31</sup>

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<sup>22</sup> Draft email update to OPSB prepared by John Steinbachs, January 25, 2022, OPS00002964 (emphasis added).

<sup>23</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 13, lines 5—9.

<sup>24</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 13, lines 5—9.

<sup>25</sup> Patricia Ferguson, Cross-Examination, TRN00000006 at p 155, lines 7—16.

<sup>26</sup> Patricia Ferguson, Cross-Examination, TRN00000006 at p 155, lines 17—21.

<sup>27</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 15, lines 18—26.

<sup>28</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 13, lines 21—28 and p 14, lines 1—11.

<sup>29</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 14, lines 16—22.

<sup>30</sup> Michael Duheme, Examination-in-Chief, TRN00000023 at p 23, lines 22—26.

<sup>31</sup> City of Ottawa, Institutional Report, OTT.IR.00000001 at p 11.

28. In addition to information received through the NCRCC, Chief Sloly briefed the Mayor, City Manager, and General Manager of EPS on January 26, 2022.<sup>32</sup> Chief Sloly and others confirmed that the information shared with the City in preparing for the Convoy was high level.<sup>33</sup> In particular, the City did not have access to the OPP Project Hendon Reports. Project Hendon Reports include a reference to the Third Party Rule, which prevents the police service receiving the reports from sharing them outside the police service.<sup>34</sup> Practically speaking, the City had no choice but to rely on OPS' risk assessment.

**iv. City Forwarded Hotel Association Email to OPS for Assessment**

29. The Commission heard considerable evidence about an email a member of the Mayor's office received from Steve Ball, President of the Ottawa Gatineau Hotel Association, on January 25, 2022.<sup>35</sup> Mr. Ball forwarded a reservation inquiry on behalf of the Canada United Truckers Convoy looking for hotel rooms for 10,000 to 15,000 people to accommodate the protestors. The Mayor's office forwarded this information to Mr. Ayotte and Mr. Kanellakos.<sup>36</sup> The City then passed on the information to OPS, the lead agency, for validation.<sup>37</sup>

30. During his examination, Deputy Chief Bell of the OPS recalled that the email was sent to OPS' Emergency Operations Centre and given to OPS' Intelligence Group for follow-up.<sup>38</sup> A member of OPS' Police Liaison Team ("PLT") then contacted Mr. Ball. The OPS determined that the booking requested was for a smaller group who booked a three-day stay.<sup>39</sup>

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<sup>32</sup> Kim Ayotte, Examination-in-Chief, TRN00000004 at p 213, lines 3—7.

<sup>33</sup> Peter Sloly, Cross-Examination, TRN00000013 at p 129, lines 11—26; Russel Lucas, Cross-Examination, TRN00000009 at p 54, lines 14—21.

<sup>34</sup> Diane Deans, Cross-Examination, TRN00000005 at p 100, lines 2—7 and p 101, lines 1—7.

<sup>35</sup> Email from Steve Ball to Mathieu Gravel re: Membership Assistance, January 25, 2022, OTT00000070.0001.

<sup>36</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 9, lines 10—17; Email from Mathieu Gravel to Steve Kanellakos, Steve Box, and Kim Ayotte re: Membership Assistance, January 25, 2022, OTT00000101.0001.

<sup>37</sup> Email from Beth Gooding to Eustace Roberts re: Sharing for Info, January 25, 2022, OTT00000070.0001; Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 10, lines 17—28 to p 11, lines 1—3.

<sup>38</sup> Steve Bell, Examination-in-Chief, TRN00000008 at p 45, lines 5—24.

<sup>39</sup> Steve Bell, Examination-in-Chief, TRN00000008 at p 45, lines 5—24; Steve Bell, Cross-Examination, TRN00000008 at p 252, lines 20—28 and p 253, lines 1—20.

31. Acting Deputy Chief Ferguson of the OPS was also asked about the information provided by the Hotel Association. She described the hotel reservation request as an example of the sources of information, misinformation, and disinformation that OPS was receiving. This factored into OPS' assessment of the email. Acting Deputy Chief Ferguson also confirmed that OPS contacted Steve Ball to determine how many rooms had been booked and continually sought this information over the course of the Convoy. Despite the information contained in the email, Acting Deputy Chief Ferguson explained that “the reality was that our hotels were not able to be booked to capacity because they did not have the staff.<sup>40</sup> We were still in the sixth wave of COVID and they were working at very limited capacity at that point in time.”<sup>41</sup> Along the same lines, Mayor Watson testified that the number of rooms requested corresponded to the total number of hotel rooms in the City.<sup>42</sup>
32. As explained above, the City of Ottawa relied on the police to “gather that information, collate that with all of the information they have, and make a risk assessment to provide to the City in terms of the strategies they’re going to take to mitigate that risk.”<sup>43</sup>

**v. OPS Prepared a Traffic Plan to Manage the Convoy**

33. Leading up to the first weekend (January 29-30), OPS believed that the Freedom Convoy would be a traffic event.<sup>44</sup> OPS prepared an initial plan for the Freedom Convoy dated January 29, 2022.<sup>45</sup> Acting Deputy Chief Ferguson described this plan as “more of a traffic plan based on experience rather than one that was truly led by intelligence.”<sup>46</sup> Based on their plan, OPS believed they could accommodate up to 3,000 vehicles in the City.<sup>47</sup> Contrary to the approach that the Toronto Police Service (“TPS”) and others

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<sup>40</sup> Patricia Ferguson, Examination-in-Chief, TRN00000006 at p 12, lines 13—24.

<sup>41</sup> Patricia Ferguson, Examination-in-Chief, TRN00000006 at p 12, lines 13—24.

<sup>42</sup> Jim Watson, Examination-in-Chief, TRN00000004 at p 6, lines 8—12.

<sup>43</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 13, lines 14—20.

<sup>44</sup> Patricia Ferguson, Examination-in-Chief, TRN00000006 at p 23, lines 9—15.

<sup>45</sup> Ottawa Police Service, Freedom Convoy – Canada Unity Operational Plan, OPP00004262.

<sup>46</sup> Patricia Ferguson, Cross-Examination, TRN00000006 at p 115, lines 26—28 and p 116, lines 1—3.

<sup>47</sup> Ottawa Police Service, Freedom Convoy – Canada Unity Operational Plan, OPP00004262; Craig Abrams, Examination-in-Chief, TRN00000006 at p 211, lines 18—28 and p 212, lines 1—6; Peter Sloly, Examination-in-Chief, TRN00000012 at p 213, lines 22-28 and p 214, lines 1—6.

would later take, OPS did not proactively lock down Wellington and the downtown core before the first trucks arrived.<sup>48</sup>

34. OPP Superintendent Craig Abrams was aware of the plan to accommodate 3,000 vehicles in the City before the Convoy arrived.<sup>49</sup> He was not concerned about the number of heavy commercial vehicles that would enter downtown Ottawa.<sup>50</sup> In fact, he believed that it would have been difficult to keep those vehicles parked further away from the City given the distance they travelled to protest.<sup>51</sup> While TPS opted to lock down the area around Queen's Park when a convoy travelled to Toronto, they had the benefit of learning from Ottawa's experience. As confirmed by Acting Deputy Chief Ferguson, Chief Ramer of TPS explained that TPS' decision to lock down Toronto would not have been an acceptable tactic but for the events in Ottawa.<sup>52</sup>
35. Mr. Kanellakos was questioned about OPS' rationale for allowing the trucks to come downtown. The strategy, as far as Mr. Kanellakos understood it, was to "try and get [the protestors] into a footprint to be able to contain them and be able to manage the protestors in a smaller area."<sup>53</sup> Mr. Kanellakos believed that OPS' underlying assumption was that the Freedom Convoy would leave after the first weekend.<sup>54</sup> This assumption was consistent with past experience, such as the farmers' protest, where heavy trucks and tractors entered the downtown core but left after the protest concluded.<sup>55</sup>
36. The City notes, however, that at least two Councillors questioned Chief Sloyly about allowing trucks into the downtown core.<sup>56</sup>

**vi. *The City's Role was to Support the OPS Plan and Maintain Emergency Lanes***

37. The City's primary goal on the first weekend, in support of the OPS plan, was to maintain the emergency lanes to ensure that emergency vehicles could make their way around

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<sup>48</sup> Patricia Ferguson, Cross-Examination, TRN00000006 at p 155, lines 2—6.

<sup>49</sup> Craig Abrams, Examination-in-Chief, TRN00000006 at p 211, lines 18—28 and p 212, lines 1—6.

<sup>50</sup> Craig Abrams, Examination-in-Chief, TRN00000006 at p 213, lines 3—14.

<sup>51</sup> Craig Abrams, Examination-in-Chief, TRN00000006 at p 213, line 28 and p 214, lines 1—9.

<sup>52</sup> Patricia Ferguson, Cross-Examination, TRN00000006 at p 155, lines 22—28 and p 156, lines 1—4.

<sup>53</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 18, lines 17—28 and p 19, line 1.

<sup>54</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 18, lines 12—15.

<sup>55</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 18, lines 10—18.

<sup>56</sup> Mathieu Fleury, Cross-Examination, TRN00000002 at p 298, lines 1—11 to p 299, lines 10—17; see also comments of Councillor Brockington, Minutes of January 26, 2022 OPSB meeting, OPB00001257 at p 5.

the City.<sup>57</sup> Both Mr. Ayotte and Acting Deputy Chief Ferguson testified as to the City and OPS' success in keeping emergency lanes open. Mr. Ayotte stated that, for the most part, the emergency lanes that were identified by the City were maintained throughout the protest.<sup>58</sup> Acting Deputy Chief Ferguson concurred with Mr. Ayotte and stated that the City and OPS were generally successful at keeping emergency lanes open and clear.<sup>59</sup> There were two exceptions: Kent Street and Wellington Street. Kent Street never had an emergency lane open, while Wellington Street's emergency lane was lost during the first weekend.<sup>60</sup> This represented a public safety concern, which the City did its utmost to mitigate.

38. In addition to working to maintain emergency lanes, the City's by-law services assisted with the initial response. As the Commission heard, however, as early as January 29, by-law officers were reporting that they were being threatened and felt unsafe. Police requested that the City pull their by-law officers back.<sup>61</sup> As set out in the City's institutional report, by-law officers were not requested to assist with enforcement until February 4, 2022.<sup>62</sup>

39. As set out further below, everything changed on Monday, January 31. At that point, it became obvious that the Convoy was not leaving, and that OPS needed to "pivot".<sup>63</sup>

## **(b) City Advocates for Additional Officers in Support of OPS but there are Delays in Receiving Them**

### ***i. From Protest to Occupation: the Pivot***

40. After the first weekend, it became apparent that the protest had become an occupation. The OPS needed a new plan, and it needed a massive number of additional officers.

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<sup>57</sup> Kim Ayotte, Examination-in-Chief, TRN00000004 at p 212, lines 23—26.

<sup>58</sup> Kim Ayotte, Examination-in-Chief, TRN00000004 at p 229, lines 3—25.

<sup>59</sup> Patricia Ferguson, Cross-Examination, TRN00000006 at p 157, lines 6—12.

<sup>60</sup> Patricia Ferguson, Cross-Examination, TRN00000006 at p 157, lines 13—21.

<sup>61</sup> Russell Lucas, Cross-examination, TRN00000009 at p 59, lines 3—16.

<sup>62</sup> City of Ottawa, Institutional Report, OTT.IR.00000001 at p 15.

<sup>63</sup> Peter Sloly, Examination-in-Chief, TRN00000012 at pp 61—62.

41. By Monday, January 31, 2022, a significant number of trucks had not left the City. According to evidence submitted by OPS, approximately 500 of the thousands of trucks that arrived on the weekend remained in the City.<sup>64</sup> Mayor Watson’s testimony reflected the thoughts and feelings of many witnesses at that time: “whether it’s the Monday or the Tuesday, and then certainly that was solidified in my mind that they weren’t going to leave on the weekends.”<sup>65</sup> The OPS came to the same conclusion.
42. All members of OPS’ Executive Command testified that by Monday, January 31, OPS understood the protest had changed and that OPS had to pivot. Acting Deputy Chief Ferguson testified that the Freedom Convoy was no longer merely a traffic event, but a critical incident and occupation.<sup>66</sup> Mr. Sloly testified the same.<sup>67</sup>
43. As recorded in the notes of the January 31 Executive Command Briefing, OPS needed a reset and a new plan. The Freedom Convoy was “no longer a protest but an occupation now; need to move away from operational plan and reset – new plan needed to go forward; model needs to radically change; wider and different operation now; reconvene INTERSECT; troops top hold the line while new plan is developed; comms, expectations, injunction – need messaging.”<sup>68</sup> Acting Deputy Ferguson testified that she recalled these words coming from Mr. Sloly.<sup>69</sup>
44. Mr. Sloly testified that as part of the OPS’ pivot, he was asking what resources the OPS would need.<sup>70</sup> By Monday, January 31, 2022, the “...number one thing at that point was staffing, staffing, staffing, staffing.”<sup>71</sup> He described how the OPS considered redeploying from its own policing complement and collapsing three shifts into two. OPS also started making external resource requests.<sup>72</sup> During a meeting with the Mayor, the City Manager, affected Councillors and the Chair of the OPSB on January 31, Chief Sloly advised that he was seeking more resources from the OPP and RCMP, and asked the

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<sup>64</sup> Ottawa Police Service, Institutional Report, OPS.IR.00000001 at p 13.

<sup>65</sup> Jim Watson, Examination-in-Chief, TRN00000004 at p 7, lines 8—19.

<sup>66</sup> Patricia Ferguson, Cross-Examination, TRN00000006 at p 158, lines 4—17.

<sup>67</sup> Peter Sloly, Cross-Examination, TRN 00000013 at p 130, lines 1—6; Peter Sloly, Examination-in-Chief, TRN 00000012 at p 61, lines 20—28 and p 62, lines 1—9.

<sup>68</sup> Ottawa Police Service, Notes from Command Briefing #7, January 31, 2022, OPS00004880 at p 2.

<sup>69</sup> Patricia Ferguson, Examination-in-Chief, TRN00000006 at p 31, lines 15—26.

<sup>70</sup> Peter Sloly, Examination-in-Chief, TRN 00000012 at p 62, lines 16—22.

<sup>71</sup> Peter Sloly, Examination-in-Chief, TRN00000012 at p 63, lines 22—26.

<sup>72</sup> Peter Sloly, Examination-in-Chief, TRN00000012 at p 64, lines 28 and p 65, lines 1—21.

City to start a dialogue with the provincial and federal governments. According to notes of the meeting, the City Manager responded that the City would take its lead from the Chief on whether he needed more supports.<sup>73</sup>

45. It was well known by all involved that OPS needed additional resources. Indeed, Deputy Minister of Public Safety Rob Stewart recalled that Chief Sloly was adamant from the outset that he needed more resources at his disposal to dismantle the occupation.<sup>74</sup>
46. The Commission also heard that it took OPS well over a week to prepare a new or evolved plan to address what had become an occupation. The fact remains, however, that OPS also needed significantly more resources than it had under its command. During the first week and leading into the second weekend, Acting Deputy Chief Ferguson testified that unfortunately the service was “floundering a little bit in terms of our staffing, in terms of our ability to really take stock of what was going on and then move forward and come up with a plan to get out it...” She added, “I think we lost some time there.”<sup>75</sup>
47. During his testimony, Deputy Chief Bell reflected how “most of that [OPS’] expertise had been lost to retirement, but beyond that a two year – we had a two and a half year window of pandemic where there was no major planning that was occurring.” So the OPS “had a less experienced team and a less experienced organization as this unprecedented massive event came at it.”<sup>76</sup> Consistent with this, the Commission heard evidence that Acting Deputy Chief Ferguson was newly in that role,<sup>77</sup> and that Deputy Chief Bell had just taken over responsibility for intelligence at a strategic level.<sup>78</sup> Likewise, Deputy Chief Bell was supported by Superintendent Mark Patterson, who was newly assigned to lead the Intelligence Unit on January 1, 2022.<sup>79</sup> It is possible this contributed to the sense of “floundering” Acting Deputy Chief Ferguson described after the first weekend of the Convoy.

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<sup>73</sup> Notes of Christiane Huneault, Ottawa Police Service, OPS00014454 at pp 6 and 10.

<sup>74</sup> Rob Stewart, Cross-Examination, TRN00000022 at p 121, lines 21—26.

<sup>75</sup> Patricia Ferguson, Cross-Examination, TRN00000006 at p 103, lines 18—28.

<sup>76</sup> Steve Bell, Cross-Examination, TRN00000008 at p 231, lines 9—26.

<sup>77</sup> Peter Sloly, Examination-in-Chief, TRN00000012 at p 20, lines 6—11.

<sup>78</sup> Steve Bell, Examination-in-Chief, TRN00000008 at p 5, lines 1—8.

<sup>79</sup> Steve Bell, Examination-in-Chief, TRN00000008 at p 4, lines 24—28.

48. The Commission heard considerable evidence about OPS' efforts to revise its operational plan. In this respect, Acting Deputy Chief Ferguson explained that that they were will working on it when the Integrated Planning Team led by OPP Chief Superintendent Carson Pardy arrived in Ottawa on February 8, 2022.<sup>80</sup> At the same time, however, the fact remained that the service needed additional officers – both to maintain the existing perimeter (mainly frontline and traffic officers) and to resolve the occupation (in particular, public order units).

***ii. OPS Requests Additional Resources***

49. As set out above, it was clear by January 31 that OPS did not have the resources it needed to manage the Freedom Convoy. The Mayor was aware that Chief Sloyly had contacted Commissioner Lucki to ask for more resources.<sup>81</sup> As the Commission heard, there was a delay on the part of the RCMP in providing the resources requested to the OPS. In his witness summary, Deputy Commissioner Duheme was unable to provide an explanation for this delay, saying that a “deeper dive” was necessary to identify the impediments to faster mobilization.<sup>82</sup>

50. During a call on January 31, 2022, Mayor Watson relayed to the Prime Minister that the OPS needed more resources, although he did not yet have the exact number that Chief Sloyly required.<sup>83</sup> According to a readout of their call, the Prime Minister told Mayor Watson that he understood there was “an order to these things and that the OPS was to go to the province first, before going to the federal government for assistance.”<sup>84</sup> However, comments from both the Deputy Minister of Public Safety and Commissioner of the RCMP indicate the process is not quite this clear or rigid.

51. Deputy Minister Stewart confirmed his understanding that technically speaking, the OPS should have gone to the OPP for resources first. But he elaborated that the situation in Ottawa was “not a situation in which you go by the book.”<sup>85</sup> He also testified that as late

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<sup>80</sup> Patricia Ferguson, Examination-in-Chief, TRN00000006 at p 55, lines 27—28 and p 56, lines 1—28 and p 57, lines 1—2; Patricia Ferguson, Cross-Examination, TRN00000006 at p 161, lines 3—21 and p 139, lines 3—6.

<sup>81</sup> Jim Watson, Examination-in-Chief, TRN00000004 at p 13, lines 2—9.

<sup>82</sup> Michael Duheme, Interview Summary, WTS.00000068 at p 5.

<sup>83</sup> Jim Watson, Examination-in-Chief, TRN00000004 at p 13 lines 10—19.

<sup>84</sup> Read Out: Mayor Jim Watson Call with Prime Minister, January 31, 2022, SSM.CAN.NSC.00002812.

<sup>85</sup> Rob Stewart, Cross-Examination, TRN00000022 at p 128, lines 8—13.



as February 4, 2022, there were still ongoing internal discussions in terms of the process for OPS to request law enforcement resources from the RCMP.<sup>86</sup>

52. Commissioner Lucki's evidence confirmed that the RCMP itself was unsure of the proper sequence the OPS was to follow in seeking additional resources. She stated that, at the outset of the Freedom Convoy she "didn't know the nuances of the Ontario *Police Act* [sic]" and that, "at the beginning, we just provided resources directly to Ottawa Police Service. They didn't go through the OPP. This was, you know, assistance to a neighbouring police service and we provided that."<sup>87</sup> She further testified that "even subsequent requests was not going through that" and that it was not until she "got that big ask" from the OPS that the OPP Commissioner explained the process under the Ontario *Police Services Act* to her.<sup>88</sup>
53. The Minister of Emergency Preparedness, William Blair, testified that it was unnecessary for the OPS to make a request to the OPP before going to the federal government "if the police services, the OPP, the RCMP, and other police services were willing and able to send their people..."<sup>89</sup>
54. On February 2, Chief Sloly publicly stated that there may not be a policing solution to the occupation, or words to that effect.<sup>90</sup> According to Mr. Sloly, the statement was intended to reflect that the OPS could not end the occupation alone. During his testimony, Mr. Sloly recalled making that statement after being questioned by the Mayor and City Councillors about what he and the OPS were doing, what their plan was, and when the occupation would end.<sup>91</sup> He added that, upon reflection, he should have been more clear about what he meant, which was that "the Ottawa Police Service is doing and will continue to do everything we can possibly do", and that "we'll continue to do

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<sup>86</sup> Rob Stewart, Cross-Examination, TRN00000022 at p 121, lines 5—20; Email re: Questions re: Process for RFAs, February 4, 2022, PB.NSC.CAN.00009542.

<sup>87</sup> Brenda Lucki, Examination-in-Chief, TRN00000023 at p 35, lines 6—12.

<sup>88</sup> Brenda Lucki, Examination-in-Chief, TRN00000023 at p 35, lines 6—21.

<sup>89</sup> William Blair, Examination-in-Chief, TRN00000027 at p 192, lines 15—27.

<sup>90</sup> Peter Sloly, Examination-in-Chief, TRN00000012 at p 73, lines 10—18.

<sup>91</sup> Peter Sloly, Examination-in-Chief, TRN00000012 at p 75, lines 16—21.

everything we can on a repeat loop, but at some point this isn't going to end just by the Ottawa Police Service."<sup>92</sup>

55. The City Manager was surprised by Chief Sloly's statement, and did not understand what he meant at the time.<sup>93</sup> Nonetheless, the fact remains that the service needed additional officers.
56. On February 3, 2022, Mayor Watson attended a call with federal Ministers. By then, he was growing extremely anxious to secure more resources for the City of Ottawa.<sup>94</sup> Chief Sloly testified that by the second weekend (February 5-6), "The entire Service is fully deployed and exhausted. We are getting massive complaints from our community, and they are suffering."<sup>95</sup>
57. On February 5, the OPSB held an emergency meeting.<sup>96</sup> During the public portion of the meeting the Chair of the OPSB, Diane Deans, asked Chief Sloly whether he could still provide adequate and effective policing and if not, "what legal authorities, what resources from the Board, or what assistance the board can provide to the OPS at that time."<sup>97</sup> The meeting continued in camera and the Chair again asked the Chief "what he needs exactly, what the service isn't doing right now that needs to be done."<sup>98</sup>
58. Chief Sloly testified that during the public session of that meeting he understood that he "received a direction from the Chair of the board to produce a list of all the resources that we thought we would need to – my words – safely, successfully, lawfully end the events in Ottawa."<sup>99</sup> He recalled asking whether this was something the Chair required on the spot or if he could take it to his team and provide a more thoughtful response.<sup>100</sup> Ultimately, Mr. Sloly was given time to prepare a response.

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<sup>92</sup> Peter Sloly, Examination-in-Chief, TRN00000012 at p 75, lines 7—25.

<sup>93</sup> Steve Kanellakos, Interview Summary, WTS.00000001 at p 6.

<sup>94</sup> Jim Watson, Examination-in-Chief, TRN00000004 at p 178, lines 9—21

<sup>95</sup> Peter Sloly Examination-in-Chief, TRN00000012 at p 82, lines 11—12 and p 84, lines 18—22.

<sup>96</sup> Peter Sloly, Examination-in-Chief, TRN00000012 at p 150, lines 13—18.

<sup>97</sup> Board Meeting Summary Note for Inspector General of Policing, February 5, 2022, ONT00001115 at p 1.

<sup>98</sup> Board Meeting Summary Note for Inspector General of Policing, February 5, 2022, ONT00001115 at p 2.

<sup>99</sup> Peter Sloly, Examination-in-Chief, TRN00000012 at p 150, lines 10—18; Board Meeting Summary Note for Inspector General of Policing, February 5, 2022, ONT00001115; Speaking Notes of Diane Deans, OPB00000655.

<sup>100</sup> Ottawa Police Services Board Minutes 51: Special Meeting, February 5, 2022, CCF00000035 at p 4; Peter Sloly, Examination-in-Chief, TRN00000012 at p 150, lines 19—25.

**iii. The Mayor's Request for Resources in Support of OPS**

59. On February 6, 2022, the OPS sent Chair Deans and Mayor Watson “the list of Ottawa Police Service asks to the Federal, Provincial and Municipal levels of government that was requested by the Board.” Police advised that, “These asks are designed to assist with the management and safe conclusion of the demonstration.”<sup>101</sup> The OPS requested that the Mayor “play advocacy role with other jurisdictions on the below asks:

The Service requires 1800 additional staffing and enforcement resources: 1000 regular officers, 600 public order officers, 100 investigative officers, 100 civilian staff, and all supporting resources. This includes cyber investigative capacity, digital and social media forensics, and financial forensics.”<sup>102</sup>

60. The Chair of the OPSB reported to the Mayor's Chief of Staff, Serge Arpin, that the OPS had been unsuccessful in its attempts to secure additional resources from the OPP and RCMP.<sup>103</sup> She implored the Mayor's Office to write to both the Prime Minister and the Premier asking for additional resources.<sup>104</sup> Mr. Arpin testified that he communicated to the Chair that in his 11 years working with the Mayor, he had never made a request for police officers to any politician at any level of government.<sup>105</sup>

61. The City cannot direct the Chief of Police or the OPSB. As discussed in more detail at section (f), below, although the City appoints a majority of its members, the Board operates separately and independently from the City of Ottawa. The City was nonetheless willing to do all it could to assist the police in responding to the Convoy.

62. The OPSB Chair provided Mr. Arpin with a letter she believed should be sent to the Premier and Prime Minister. Although he initially recommended that the Mayor not send the letter,<sup>106</sup> Mr. Arpin explained that the Mayor ultimately agreed to send letters seeking additional police resources from federal and provincial partners, co-signed by the Board

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<sup>101</sup> Email from John Steinbachs to Jim Watson et al re: Request List, February 6, 2022, OTT00018172.0001 at p 2.

<sup>102</sup> Email from John Steinbachs to Jim Watson et al re: Request List, February 6, 2022, OTT00018172.0001 at p 2.

<sup>103</sup> Serge Arpin, Examination-in-Chief, TRN00000003 at p 236, lines 6—11.

<sup>104</sup> Serge Arpin, Examination-in-Chief, TRN00000003 at p 236, lines 6—11.

<sup>105</sup> Serge Arpin, Examination-in-Chief, TRN00000003 at p 236, lines 12—19.

<sup>106</sup> Serge Arpin, Examination-in-Chief, TRN00000003 at p 236, lines 20—23.

Chair. The letters, which were sent on February 7, 2022,<sup>107</sup> were addressed to the Minister of Public Safety, the Minister of Emergency Preparedness, the Premier of Ontario, and the Solicitor General of Ontario, to emphasize the scale and scope of the crisis taking place in Ottawa.<sup>108</sup>

63. At the time, it was Mr. Arpin's understanding that OPS had already made similar requests for additional resources.<sup>109</sup> Indeed, the Mayor's Office had advised Chair Deans that the OPS needed to send a letter to its federal and provincial counterparts prior to the Mayor contacting provincial and federal ministers.<sup>110</sup>
64. The Commission heard evidence from OPP Superintendent Abrams about an OPS video call in which he participated on the evening of February 6, 2022.<sup>111</sup> During the video call, Mr. Sloly asked his team to send him the number of officers they needed from partner agencies.<sup>112</sup> Superintendent Abrams reported to his Deputy Commissioner that the Chief told his staff "if they need 100 he will ask for 200, if they need 200 he will ask for 400. He seemed very comfortable asking for twice what he really needed."<sup>113</sup> The City was unaware of this at the time the Mayor sent the February 7 requests. Moreover, the Mayor received the OPS' request for 1800 officers at 16:07, before the video call took place.<sup>114</sup> The City has no information on what impact, if any, Mr. Sloly's direction during the video call had on the request for 1800 additional officers.
65. The City did not take any steps to validate OPS' request. The question of how many officers were needed was an issue for police and, potentially, the Board.

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<sup>107</sup> Serge Arpin, Examination-in-Chief, TRN00000003 at p 236, lines 4—11.

<sup>108</sup> Serge Arpin, Examination-in-Chief, TRN00000003 at p 237, lines 1—11.

<sup>109</sup> Serge Arpin, Examination-in-Chief, TRN00000003 at p 237, lines 15—21.

<sup>110</sup> Email from John Stienbachs to Peter Sloly et al re: Mayor's Office Request, February 7, 2022, OPS00008325.

<sup>111</sup> Email from Craig Abrams to Chris Harkins re: OPS asks for resources, February 7, 2022, OPS00001546 at p 1.

<sup>112</sup> Will Say Statement of Craig Abrams, OPP00000773 at p 5.

<sup>113</sup> Email from Craig Abrams to Chris Harkins re: OPS asks for resources, February 7, 2022, OPS00001546 at p 1.

<sup>114</sup> Email from John Steinbachs to Mayor Watson et. al. re: Requested List, February 6, 2022, OTT00018172.0001 at p 2.

66. Up until the Mayor and Chair Deans sent the request for additional officers on February 7, there were roughly 50 uniformed RCMP officers in Ottawa under OPS command.<sup>115</sup> Deputy Commissioner Michael Duheme and Commissioner Lucki confirmed during their testimony that OPS' calculation of 50 to 60 RCMP officers per day was reasonable.<sup>116</sup> These numbers remained the same until February 12, 2022.<sup>117</sup>
67. In response to the ask for 1800 officers, the Integrated Planning team led by Chief Superintendent Party of the OPP and Superintendent Lue of the RCMP was established on February 8, 2022.<sup>118</sup> The request for 1800 officers was also discussed during the three so-called tripartite meetings, the first of which took place on February 7, the same day the Mayor and Chair Deans sent their request on behalf of OPS.<sup>119</sup>
68. Before addressing the delays in obtaining the additional officers request, the City wishes to clarify that it was Chief Sloly, not the Mayor or City Staff, that made the request for 1800 officers public. He confirmed as much in his witness summary and during cross-examination.<sup>120</sup>

***iv. Delays in Obtaining Additional Resources***

69. As set out above, Chief Sloly requested additional resources as early as Monday, January 31. The Mayor and Chair Deans amplified his request on February 7 with a letter asking for 1800 additional officers. The evidence is that there were considerable delays before those additional officers arrived.
70. The Commission heard considerable evidence that there were issues with the OPS plan, including conflicting evidence about whether the plan, or the officers, should come first. The Commission also heard evidence about personality conflicts and difficulties integrating command for what turned out to be a joint operation. The City does not intend to comment on these issues as part of these submissions.

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<sup>115</sup> Rob Stewart, Cross-Examination, TRN00000022 at p 123, lines 5—18; Email from Mary-Liz Power to Katie Telford et al, re: Readout – SSE Committee – Convoy Discussion, SSM.CAN.NSC.00002661.

<sup>116</sup> Brenda Lucki and Michael Duheme, Cross-Examination, TRN00000023 at p 202, lines 2—10.

<sup>117</sup> Brenda Lucki and Michael Duheme, Cross-Examination, TRN00000023 at p 202, lines 2—10.

<sup>118</sup> Craig Abrams, Examination-in-Chief, TRN00000007 at p 24, lines 1—9.

<sup>119</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 66, lines 4—8.

<sup>120</sup> Peter Sloly, Witness Summary, WTS.00000040 at p 32; Peter Sloly, Cross-Examination, TRN00000013 at p 152, lines 1—8.

71. The City would urge the Commission to review the deployment numbers that former Chief Sloy prepared for the OPSB,<sup>121</sup> which show just how long it took for the OPS to receive the additional officers requested.
72. In cross-examination, Commissioner Lucki also admitted that while she had briefed cabinet that the RCMP had fulfilled all OPS asks, it “would have been more accurate to say that [the RCMP] had fulfilled all asks for frontline officers and were assessing the latest OPS request for resources.”<sup>122</sup>
73. Similarly, the Commission heard that the Solicitor General’s office and federal government representatives were communicating the cumulative number of officers deployed to Ottawa – which, in the case of the RCMP, included officers assigned to protect federal properties and not under OPS command. These numbers may have contributed to the public’s frustration that the OPS was not doing enough to dismantle the operation, by creating the impression that the OPS had many more officers under its command than it did at that time.
74. Leaving aside these issues, the City submits that by February 7, the priority for law enforcement was to clear the Ambassador Bridge. As a policy matter, the City would urge the Commission to consider who decided that Windsor was a priority, who was legally entitled to make that determination, and who should be held accountable for that decision.
75. On February 7, 2022, protestors blockaded the Ambassador Bridge.<sup>123</sup> OPP Superintendent Earley was appointed the OPP Critical Incident Commander (CIC) for that operation. Deputy Commissioner Chris Harkins and Deputy Commissioner Rose DiMarco communicated to her that Windsor was “the” or at least “a” priority and that she would receive whatever resources she needed.<sup>124</sup> On February 10, 2022, Deputy Commissioners Harkins and DiMarco again advised Superintendent Earley that there

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<sup>121</sup> Ottawa Truck Demonstration 2022 – Deployments prepared by OPS for OPSB Chair Deans, February 13, 2022, OPB00001014.

<sup>122</sup> Brenda Lucki and Michael Duheme, Cross-Examination, TRN00000023, at p 207, lines 3-10.

<sup>123</sup> Dana Earley, Interview Summary, WTS.00000022 at p 1.

<sup>124</sup> Dana Earley, Interview Summary, WTS.00000022 at p 2. While her witness summary speaks to Windsor being “the” priority, she testified that it was “a” priority: Dana Earley, Examination-in-Chief, TRN00000019 at p 30, lines 7—17. In our submission, nothing turns on this semantic distinction.

was an urgent need to resolve the blockade. Superintendent Earley understood that resolution was urgent because the bridge closure was having massive economic impacts, including job layoffs.<sup>125</sup>

76. Consistent with the above, Superintendent Earley advised Superintendent Abrams, who was Strategic Commander in Ottawa, that, “Windsor is priority according to Deputy [Harkins].”<sup>126</sup> According to her notes, Superintendent Abrams confirmed that, with respect to staffing, Windsor was the priority and that Ottawa would take their “leftovers.”<sup>127</sup> Although he was unable to recall their conversation, Superintendent Abrams ultimately accepted that that the exchange occurred, based on the notes.<sup>128</sup>
77. OPP Chief Superintendent Carson Pardy confirmed that it, while the operation in Windsor was ongoing, it took three days for the OPP to fulfill the OPS’s staffing request for the frontline and traffic officers required just to maintain the existing perimeter.<sup>129</sup>
78. Finally, Deputy Duheme also confirmed that Windsor was a priority. His notes for February 9, 2022, indicate, “Let’s not worry about Ottawa.”<sup>130</sup> He explains in his witness summary that this represents a shift in focus from Ottawa to Windsor, where the RCMP mobilized on February 10, 2022.<sup>131</sup> In his interview, he explained that his notes captured the thought “Let’s not concentrate on Ottawa now, because there is no plan there for us to be part of, and we need to help in Windsor.”<sup>132</sup>
79. Finally, Commissioner Carrique also admitted that Windsor was the priority, though he also suggested that they were not ready to proceed in Ottawa.<sup>133</sup>

## **(c) The Use of Injunctions to Respond to Protests**

### ***i. Early Police Consideration of Injunction***

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<sup>125</sup> Dana Earley, Interview Summary, WTS.00000022 at 2.

<sup>126</sup> Notes of Dana Earley, OPP00004543 at p 14.

<sup>127</sup> Notes of Dana Earley, OPP00004543 at p 15.

<sup>128</sup> Craig Abrams, Cross-Examination, TRN00000007 at p 83, lines 5—12.

<sup>129</sup> Carson Pardy, Cross-Examination, TRN00000007 at p 247, lines 14—28 to p 248, lines 1—7.

<sup>130</sup> Notes of Michael Duheme, Royal Canadian Mounted Police, PB.NSC.CAN.00008074 at p 85; Michael Duheme, Interview Summary, WTS.00000068 at p 14.

<sup>131</sup> Michael Duheme, Interview Summary, WTS.00000068 at p 14.

<sup>132</sup> Michael Duheme, Interview Summary, WTS.00000068 at p 14.

<sup>133</sup> Thomas Carrique, Examination-in-Chief, TRN00000011 at p 81, line 5—10.

80. The Commission heard evidence about the use of injunctions as an additional tool to manage protests. Prior to the Freedom Convoy's arrival, the OPS engaged in internal discussions on a "range of options as mitigating factors, risk-reducing factors and an injunction was one of them."<sup>134</sup> OPS' General Counsel reached out to the City Solicitor as early as January 28 about a potential injunction.<sup>135</sup> Mr. Sloly testified that by the week of January 31, however, the possibility of seeking an injunction to deal with the protest was no longer theoretical and became a "real discussion about the real problem."<sup>136</sup>
81. The OPS and the City first seriously contemplated an injunction on January 30, 2022. As the Commission heard, Mr. Sloly spoke with the City Solicitor and then with Mr. Kanellakos.<sup>137</sup> Mr. Sloly explained that he contacted Mr. Kanellakos to ask the City to get involved,<sup>138</sup> and to "start to put their minds clearly to the possibility of an injunction."<sup>139</sup> He clarified that the OPS did not strongly recommend an injunction, but was simply trying to engage the fullest range of City supports that they could.<sup>140</sup> By this point, the protest was turning into an occupation and the force had been forced to "pivot". Mr. Sloly described part of that "pivot" as looking at all of the options the OPS had.<sup>141</sup>
82. An injunction was not a high priority for the service. Mr. Sloly explained that, "on the spectrum of million things we needed to get done in real time, this was probably middle to bottom half of it" and that the OPS was "busy on higher priority items at that point."<sup>142</sup>
83. Mr. Kanellakos testified that during his call with Mr. Sloly, the police chief was looking for more tools to put in his toolbox following his own discussion with OPS' Executive Command.<sup>143</sup> Mr. Kanellakos said he committed to Chief Sloly that the City would prepare the injunction and work with his team to see what that would look like.<sup>144</sup> After

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<sup>134</sup> Peter Sloly, Examination-in-Chief, TRN00000012 at p 220, lines 11—19.

<sup>135</sup> Text Messages between Mr. White and Ms. Huneault, January 28, 2022, OTT00010771.0001.

<sup>136</sup> Peter Sloly, Examination-in-Chief, TRN00000012 at p 220, lines 25—28 and p 221, lines 1—8.

<sup>137</sup> Email from Peter Sloly to Steve Kanellakos re: Injunction, January 30, 2022, OTT00002218 at p 1; Emails between Christiane Huneault and David White, January 31, 2022, OTT00002092.0001.

<sup>138</sup> Peter Sloly, Examination-in-Chief, TRN00000012 at p 220, lines 23—26.

<sup>139</sup> Peter Sloly, Examination-in-Chief, TRN00000012 at p 220, lines 25—28 to p 221 lines 1—8.

<sup>140</sup> Peter Sloly, Examination-in-Chief, TRN00000012 at p 221, lines 5—8.

<sup>141</sup> Peter Sloly, Examination-in-Chief, TRN00000012 at p 221, lines 19—24.

<sup>142</sup> Peter Sloly, Examination-in-Chief, TRN00000012 at p 226, lines 15—20.

<sup>143</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003, at p 52, lines 18—27.

<sup>144</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 53, lines 1—4.



the call, Mr. Sloly thanked Mr. Kanellakos by email for agreeing to prepare for and seek an injunction in relation to the protest.<sup>145</sup> He advised that OPS General Counsel, Christiane Huneault, would be the OPS lead on the injunction and had the full support of the OPS in providing the information the City required for the injunction application.<sup>146</sup>

**ii. Concerns about Proceeding with an Injunction**

84. According to the notes of the January 31 meeting between Chief Sloly and City officials and Councillors, it was recognized that a successful injunction application would “still will require a police intervention.”<sup>147</sup>

85. That same day, Chief Sloly raised the question of an injunction with RCMP Commissioner Brenda Lucki and OPP Commissioner Thomas Carrique. Both Commissioners raised concerns about proceeding with an injunction.<sup>148</sup> In particular, they were concerned that once an injunction was obtained, there would be a legal obligation to enforce it.<sup>149</sup> Commissioner Lucki’s comments indicate that, at this point, the RCMP believed the emphasis should be on de-escalation and negotiation.<sup>150</sup> Mr. Sloly testified that one of the major concerns was the ability to actually implement or enforce the injunction, which the OPS did not have the ability to do at any point while he was in office.<sup>151</sup> He explained that:

“In fact, there was a period of time where we were hoping there wouldn’t be any injunctions or emergency declarations because they would give us more powers and we didn’t have any resources to implement those powers, and then we would be accused again of not doing our jobs or not using powers available to us.”

86. He recalled discussions to the effect that injunctions and emergency declarations were maybe “something that we actually don’t want at this point.”<sup>152</sup>

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<sup>145</sup> Email from Peter Sloly to Steve Kanellakos re: Injunction, January 30, 2022, OTT00002218 at p 1.

<sup>146</sup> Email from Peter Sloly to Steve Kanellakos re: Injunction, January 30, 2022, OTT00002218 at p 1

<sup>147</sup> Notes of Christiane Huneault, General Counsel, OPS, January 31, 2022, OPS00014454 at p 6.

<sup>148</sup> Notes of OPS Briefing to RCMP and OPP by Chief Sloly, January 31, 2022, OPS00004927; Notes of Christiane Huneault, General Counsel, OPS, OPS00014454 at p 2; Peter Sloly, Cross-Examination, TRN00000013 at p 130, lines 16—26.

<sup>149</sup> Notes of OPS Briefing to RCMP and OPP by Chief Sloly, January 31, 2022, OPS00004927.

<sup>150</sup> Notes of OPS Briefing to RCMP and OPP by Chief Sloly, January 31, 2022, OPS00004927.

<sup>151</sup> Peter Sloly, Cross-Examination. TRN00000013 at p 130, lines 27—28, to p 131, lines 1—7.

<sup>152</sup> Peter Sloly, Examination-in-Chief, TRN00000012 at p 193, lines 18—27.

87. The comments of Commissioners Lucki and Carrique were discussed during an OPS Command Briefing the following day (February 1, 2022). The notes of that meeting confirm that “both Brenda Lucki and Tom Carrique did not seem in favour of going the injunction route.”<sup>153</sup> Those concerns were not shared with the City, and discussions between the OPS lawyers and the City lawyers continued.<sup>154</sup>
88. Although it was never advised of the OPP and RCMP’s views on the matter, the City had similar concerns about pursuing an injunction.<sup>155</sup> As explained by Mr. Kanellakos, the police did not have the resources necessary to enforce an injunction that sought to end the occupation. Such an outcome, it was feared, would erode public confidence and that of elected officials.<sup>156</sup> In response to concerns raised by Councillor Fleury, Mr. Kanellakos explained that once they secured the injunction, they had to actually action it.<sup>157</sup>
89. OPP Commissioner Carrique, the City Manager and Mr. Sloly elaborated on their concerns respecting a potential injunction during the hearing. Commissioner Carrique testified that he was not supportive of an injunction and his advice was that if police were going to seek an injunction, they ought to have an operational plan so that they could move to enforcement when appropriate and necessary.<sup>158</sup> He explained that you do not want to be in the “position of an injunction order, which implies you have a responsibility, and not have the capability and plan to effect the injunction order.”<sup>159</sup> Finally, Mr. Sloly acknowledged that OPS did not have the resources to effectively enforce an injunction and so was actively seeking significantly more resources from external police agencies.<sup>160</sup>
90. Along the same lines, the City wanted reassurance that an injunction would fit into police’s operational plan. The City requested that OPS identify the specific conduct that the Court would be asked to enjoin that could not otherwise be prevented through use

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<sup>153</sup> Notes from Command Briefing #8, February 1, 2022, OPS00005194 at p 2.

<sup>154</sup> Notes from Command Briefing #8, February 1, 2022, OPS00005194 at p 2.

<sup>155</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 55, lines 14—20.

<sup>156</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 55, lines 20—27.

<sup>157</sup> Emails between Steve Kanellakos and Mathieu Fleury, February 4, 2022, OTT00003935.0001.

<sup>158</sup> Thomas Carrique, Examination-in-Chief, TRN0000011 at page 33, lines 1—8.

<sup>159</sup> Thomas Carrique, Examination-in-Chief, TRN0000011 at page 33, lines 1—8.

<sup>160</sup> Peter Sloly, Interview Summary, WTS.00000040 at p 19.

of existing tools.<sup>161</sup> The City was concerned that the OPS “did not appear to have a clear idea of just what use they would make of an injunction, if one could be obtained, or that it would be effectively deployed to help manage the event.”<sup>162</sup> For this reason, the City Solicitor sent a list of a half dozen questions to Ms. Huneault in order to move forward with the injunction. He never received a reply.<sup>163</sup>

91. The Commission also heard evidence that the use of injunctions to manage protests may be problematic even when police have the resources to enforce an order. OPP Staff Sergeant Marcel Beaudin, a leading PLT expert, was taken to an email by OPP Sergeant Diana Hampson, in which she articulated further concerns about using injunctions to manage protests.<sup>164</sup> They include the following:

- Civil injunctions serve to inflame the group;
- Protestors burn injunction notices on delivery, ignore them, and force police to use contempt arrest authority where charges are eventually dropped;
- Academic literature demonstrates that negotiated solutions are more sustainable than injunctions;
- Injunctions put the Court at the centre of a political conflict;
- Police are required to implement enforcement clauses which may not be feasible in Ottawa due to towing and the numbers of arrested; and
- An injunction can impede the ability to mediate and negotiate towards resolution.<sup>165</sup>

92. During his cross-examination, Acting Superintendent Beaudin agreed that there are complexities around injunctions that go far beyond legal issues, and that injunctions take

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<sup>161</sup> Email from David White to Andrea Lanthier-Seymour, February 12, 2022, OTT00029695.0001.

<sup>162</sup> Email from David White to Andrea Lanthier-Seymour, February 12, 2022, OTT00029695.0001.

<sup>163</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 55, lines 2—10.

<sup>164</sup> Email from Diana Hampson to Members of OPS, January 31, 2022, OPP00000529; Marcel Beaudin, Examination-in-Chief, TRN00000009 at p 200, lines 5—28 to p 201, lines 1—2.

<sup>165</sup> Email from Diana Hampson to Members of OPS, January 31, 2022, OPP00000529.

place within a social dynamic.<sup>166</sup> Acting Superintendent Beaudin agreed that these complexities were the kind reflected in Sergeant Diana Hampson's email.<sup>167</sup>

### *iii. The Zexi Li Injunction*

93. On February 7, 2022, a private citizen, Ms. Zexi Li, obtained an injunction prohibiting honking overnight. As Mr. Kanellakos remarked, Ms. Li did a remarkable thing by seeking the injunction and it took a lot of courage.<sup>168</sup> The injunction had the effect of bringing down the horns and while the horns did come back later, Ms. Li's injunction "had a significant effect."<sup>169</sup>

94. At the outset of the hearing, Vanier Business Improvement Area ("**BIA**") president Ms. De La Ronde described the impact of the Li injunction:

"When the injunction was put in place, then it abated a bit between 11 o'clock at night, and then 7 o'clock, I could hear activity out on the street. I could hear a huge megaphone starting to advise, it seemed to me, a rolling thunder of horn-blowing starting at 7:30 in the morning, and then the loud, loud music would, which you could hear every word of the music they were -- the songs that were being sung. So your question in terms of how loud it was, how continuous it was. It was continuous. There was an abatement of horn blowing in such a crescendo between those hours, 11:00 at night and 7:00 in the morning. But the idling continued under my window, just with these huge vehicles, the sound of the idling echoing down in the canyon of our buildings all night. So there was no respite from an assault on hearing."<sup>170</sup>

95. Ms. Li similarly testified that "for a brief period shortly after the injunction, there was a clear silence from the noise that was previously constant. Shortly thereafter, there was a gradual ramp up in the honking again, but, however, it was more strategic and intermittent than it was previously, whereas it was constant" before.<sup>171</sup>

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<sup>166</sup> Marcel Beaudin, Cross-Examination, TRN00000009 at p 202, lines 5—18.

<sup>167</sup> Marcel Beaudin, Cross-Examination, TRN00000009 at p 202, lines 5—18.

<sup>168</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 57, lines 25—27.

<sup>169</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 57, lines 27—28 to p 58, line 1.

<sup>170</sup> Victoria De La Ronde and Zexi Li, Examination-in-Chief, TRN00000002 at p 19, lines 23—28 and p 20, lines 1—8.

<sup>171</sup> Victoria De La Ronde and Zexi Li, Examination-in-Chief, TRN00000002 at p 34, lines 10—18.

96. She also described a Friday or Saturday morning after the injunction was granted when the truckers collectively blew their horns at 6:59 am. This was about 20 days into the occupation. She then went outside to get “first hand evidence” of the convoy members defying the injunction order.<sup>172</sup>
97. Sean Flynn, a resident of New Edinburgh, Ottawa, submitted an affidavit to the Commission as a concerned citizen and resident. In his affidavit, Mr. Flynn describes how he regularly ventured around downtown Ottawa to witness the Freedom Convoy in the areas they occupied.<sup>173</sup> Mr. Flynn’s affidavit details the impacts of honking and noise caused by the Freedom Convoy throughout its time in the City. Mr. Flynn explains that while the honking was initially quieted upon Ms. Li’s injunction being granted,<sup>174</sup> it began to increase on February 11, 2022 and steadily increased thereafter.<sup>175</sup>
98. While initially helpful in reducing noise and honking, Ms. Li’s injunction created some difficulties for police. Mr. Sloly testified that one the difficulties with Ms. Li’s injunction was that it increased pressure on OPS to act. As he explained several times during the hearing, OPS did not have the resources to enforce the injunction at that time.<sup>176</sup> This outcome was consistent with the concerns the RCMP, OPP, OPS and City all shared about the efficacy of an injunction.
99. Tamara Lich also testified about the impact of the injunction and her perception of the February 7, 2022 interlocutory injunction order. The Order stated that “provided the terms of the Order are complied with, the defendants or other persons remain at liberty to engage in peaceful, lawful and safety protest.”<sup>177</sup> Ms. Lich testified that her understanding of the injunction was that, “so long as we remained peaceful and complied with the order we were permitted to stay.”<sup>178</sup> In this respect, the fact that the injunction

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<sup>172</sup> Victoria De La Ronde and Zexi Li, Examination-in-Chief, TRN00000002 at p 24, lines 12—28.

<sup>173</sup> Affidavit of Sean Flynn, Affirmed September 30, 2022, COA00000117 at p 1, para 2.

<sup>174</sup> Affidavit of Sean Flynn, Affirmed September 30, 2022, COA00000117 at p 4.

<sup>175</sup> Affidavit of Sean Flynn, Affirmed September 30, 2022, COA00000117 at p 5.

<sup>176</sup> Peter Sloly, Interview Summary, WTS.00000040 at p 33.

<sup>177</sup> Tamara Lich, Cross-Examination, TRN00000017 at p 58, lines 20—28 to page 59, lines 1—7; *Zexi Li v Chris Barber et al*, Order of Justice McLean, Thursday, February 7, 2022, HRF00000073 at p 2, para 7.

<sup>178</sup> Tamara Lich, Cross-Examination, TRN00000017 at p 58, lines 17—19.

only prohibited honking appears to have left a number of the protesters with the false impression that their conduct was otherwise lawful.

100. Part of the difficulty was that the events of early February were fluid, and the protesters engaged in various and shifting unlawful behaviour. As explained by Mayor Watson, the unlawful activity of the demonstrators in the red zone was not limited to honking. He testified that “People were having parties, there were open fires, and they were firing off fireworks that were a fire hazard to heritage buildings in the downtown core. They were harassing people in restaurants, tearing off their masks.”<sup>179</sup>
101. The narrow nature of Ms. Li’s injunction left other impacts of the protest unresolved. One of those was the nuisance of diesel fumes emanating from trucks. Ms. De La Ronde testified that “it [the smell of diesel fumes] was very strong in my apartment. It permeated drapes, blinds, bedding, and carpet. It had a – the whole unit had a dull gaseous odour about it.” She also described how there were “open bonfires, that they were roasting food out a few metres from my building, so there was such a potential for a fire, a huge fire, and an explosion.”<sup>180</sup>
102. While the honking injunction was undoubtedly beneficial in some ways, it also demonstrates the complexities associated with using injunctions to manage protests.

#### ***iv. The City’s February 14 Injunction***

103. As discussed above, the City of Ottawa worked with OPS to consider the usefulness of an injunction in quelling the protests and stopping unlawful behaviour. A fundamental concern shared by the OPS, the City, the RCMP, and the OPP at the time was that an injunction would be of limited use because OPS did not have the resources needed to enforce an injunction.
104. The Commission heard evidence of steps the City took in light of the shared concerns about a potential injunction. One of those was an amendment to the idling by-law.<sup>181</sup> The

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<sup>179</sup> Jim Watson, Examination-in-Chief, TRN00000004 at p 41, lines 6—10.

<sup>180</sup> Victoria De La Ronde and Zexi Li, Cross-Examination, TRN00000002 at p 54, lines 10—15.

<sup>181</sup> Catherine McKenney and Mathieu Fleury, Examination-in-Chief, TRN00000002 at p 225, lines 21—28 and p 226, lines 1—3.

amendment lowered the temperature at which idling was a by-law infraction.<sup>182</sup> The City also increased set fines for violating relevant by-laws, including noise and idling violations.<sup>183</sup>

105. On February 11, 2022, the City proceeded with its own injunction, seeking the Court's assistance in enforcing municipal by-laws. The City Manager testified that the City decided to proceed with an injunction because more resources were coming into Ottawa, the police presence was increasing, and the injunction was more limited in scope.<sup>184</sup> Indeed, the City's injunction was limited to the enforcement of its own by-laws, which protesters were violating.<sup>185</sup> The injunction was granted on February 14. The Order restrained and enjoined any person from breaching the Fireworks By-law, Noise By-law, Use and Care of Roads By-law, Open Air Fire By-law, and the Idling Control By-law.<sup>186</sup>
106. The City Manager testified that, "in hindsight, I wish things would have lined up where we could have got an injunction earlier, because it probably would have helped. But getting an injunction where police weren't in the position, from a resource perspective, to deal with it, and not being able to define what they needed, and that back and forth, it delayed it absolutely. And you know, looking back, is that something that, you know, could have been done sooner? Possibly. But we weren't prepared to go forward. I didn't think it was reasonable to go forward until we all understood how the injunction fit into the police operational plans."<sup>187</sup>

#### **(d) The Limited Utility of a Municipal Declaration of Emergency**

107. The City of Ottawa declared a state of emergency on February 6, 2022 pursuant s. 4(1) of the *Emergency Management and Civil Protection Act*, RSO 1990, c E.9 ("**EMCPA**").<sup>188</sup> Pursuant to s. 4 of the *EMCPA* the Mayor may declare that an emergency exists and may take such action and make such orders as he or she considers necessary and are

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<sup>182</sup> Catherine McKenney and Mathieu Fleury, Examination-in-Chief, TRN00000002 at p 225, lines 21—28 and p 226, lines 1—3.

<sup>183</sup> City of Ottawa, Institutional Report at p 15.

<sup>184</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 56, lines 14—24.

<sup>185</sup> *City of Ottawa v Persons Unknown*, 2022 ONSC 1151, BRB00000091 at p 9, para 63.

<sup>186</sup> *City of Ottawa v Persons Unknown*, Order of Justice McWatt, BRB00000087 at p 2, para 2(a).

<sup>187</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 57, lines 3—18.

<sup>188</sup> Declaration of Emergency in the City of Ottawa, Office of the Mayor of the City of Ottawa, OTT00004231.

not contrary to the law to implement the Plan and to protect the property and the health, safety, and welfare of the inhabitants of the emergency area.<sup>189</sup>

108. Declaring a state of emergency does not grant the Mayor any additional powers beyond those already provided by law or authorized by by-law.<sup>190</sup> Mayor Watson explained during his testimony that declaring a state of emergency has very little impact on public safety and is more of an administrative tool that allows the City to do things like bypass City procurement policy.<sup>191</sup>
109. The City Manager also testified that the municipal declaration of emergency does not give law enforcement, the Mayor, or By-law any additional authority. Primarily, it facilitates administrative processes by allowing the Mayor to bypass Council to take certain decisions and streamlines procurement. It also signals that there is a serious situation and that the City does not have the necessary resources to handle the emergency.<sup>192</sup>
110. The City notes that unlike Toronto,<sup>193</sup> Ottawa City Council has not delegated legislative powers to the Mayor upon a declaration of emergency.
111. When asked why he did not recommend declaring an emergency sooner, the City Manager emphasized again that there was very little that it would give the City. He stated that the “biggest thing on a state of emergency is ... get the attention of other levels of government that we’re in trouble and we need help.”<sup>194</sup> By February 6, 2022, Mr. Kanellakos testified that it was clear the protesters were not leaving and that the police did not have enough resources to end it.<sup>195</sup> Along the same lines, Mayor Watson also testified that he, Mr. Arpin and Mr. Kanellakos discussed how declaring a state of emergency might “put more pressure on the Province to come to the table.”<sup>196</sup>
112. During a call with federal and provincial officials on February 6, Mr. Kanellakos advised that Mayor Watson was going to declare an emergency later that day and that “the

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<sup>189</sup> City of Ottawa, Institutional Report, OTT.IR.00000001 at p 8.

<sup>190</sup> City of Ottawa, Institutional Report, OTT.IR.00000001 at p 8.

<sup>191</sup> Jim Watson, Examination-in-Chief, TRN00000004 at p 21, lines 11—20.

<sup>192</sup> Steve Kanellakos, Interview Summary, WTS.00000001 at pp 6—7.

<sup>193</sup> See Toronto Municipal Code, Chapter 59, Emergency Management, Article 6.

<sup>194</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 45, lines 12—27.

<sup>195</sup> Steve Kanellakos Examination-in-Chief, TRN00000003 at p 46.

<sup>196</sup> Jim Watson, Examination-in-Chief, TRN00000004 at p 23, lines 3—9.



expressed intent of this declaration is to put pressure on the Premier to exercise powers to resolve this.”<sup>197</sup> Mr. Kanellakos testified that he had hoped that the municipal declaration of emergency would encourage the province to declare an emergency as well and potentially avail itself of additional legislative authorities.<sup>198</sup> Until that point, the province had largely taken a hands off approach and adopted the posture that this was a law enforcement issue.<sup>199</sup>

## **(e) The Mayor’s Deal**

### ***i. Political Engagement as a Tool in Responding to Protests***

113. As the Commission has heard, the Mayor reached an agreement with some of the leaders of the Freedom Convoy on February 13, 2022. The City submits that it is critical to put this agreement in context. At the outset, there is no question that protesters wanted to meet with political leaders, and there is also no question that such engagement can be useful in managing large protests, depending on the circumstances.
114. As explained by Keith Wilson and others, members of the Freedom Convoy had expressed interest in meeting with politicians to explain their concerns. Mr. Wilson testified that, in his view, there was a desire to meet with federal Ministers. The purpose of the meeting would be to agree on a process involving the formal presentation of briefs and scientific information to try and persuade the government to review its COVID-related mandates and policies.<sup>200</sup>
115. The desire of some members of the Freedom Convoy to meet with members of the City of Ottawa was evident by February 7, 2022. On that day, Staff Sergeant Ferguson sent an email to his colleagues notifying them that PLT had engaged with Tom Marazzo, whom he described as “one of the main organizers.”<sup>201</sup> John Ferguson is an OPS Staff Sergeant who led the OPS PLT group during the Freedom Convoy.<sup>202</sup> He also notified

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<sup>197</sup> Summary of Call with City of Ottawa, Federal Government and Provincial Government, February 6, 2022, ONT00000311.

<sup>198</sup> Steve Kanellakos Examination-in-Chief, TRN00000003 at p 49, lines 12—16.

<sup>199</sup> Steve Kanellakos Examination-in-Chief, TRN00000003 at p 48, lines 20—27.

<sup>200</sup> Keith Wilson, Examination-in-Chief, TRN00000015 at p 84, lines 21—28.

<sup>201</sup> Email from John Ferguson to Mark Patterson and Robert Drummond, February 7, 2022, OPS00008464 at p 2.

<sup>202</sup> Steve Bell, Examination-in-Chief, TRN00000008 at p 105, lines 19—23.

his colleagues that “Marazzo indicated that they were willing to work on the horn issue if they are able to meet with a representative of the City of Ottawa. Once the meeting with Marazzo is finished we should have a better idea of our PLT/Negotiation strategy.”<sup>203</sup>

116. There are advantages to engaging politicians to assist with responding to a protest. An RCMP officer, John Brewer, articulated some of these in an email to Commissioner Lucki sent during the events of the Freedom Convoy, on February 2, 2022.<sup>204</sup> In his email, Mr. Brewer explained how his team had been “heavily engaged with these sort of ideologically driven protest for awhile now” and that “these types of protests leave very limited capacity for police to solve this situation, without some movement by government to allow protestors to have a ‘win’ of sorts.”<sup>205</sup> In support of his view, Mr. Brewer points to pipeline protests and recent rail line blockages where “face to face meetings with government officials provides an ‘off ramp’ for the majority, thus leaving the fringe isolated with diminished support.”<sup>206</sup>
117. Mr. Brewer cautioned that while such meetings may not provide an immediate solution, they “create a much better operational climate for the majority to move on and police to deal with the criminality of the protest from fringe elements.”<sup>207</sup>
118. In cross-examination, Commissioner Lucki was asked whether she agreed with the proposition set out in Mr. Brewer’s email. She agreed that it was a reasonable approach depending on the circumstances.<sup>208</sup>
119. The City submits that this approach is also consistent with evidence of best practices provided by the OPP’s PLT expert, Acting Superintendent Marcel Beaudin.<sup>209</sup> He explained how, in the context of large demonstrations, the role of PLT is to build relationships, which involves creating trust.<sup>210</sup> That process includes values and actions

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<sup>203</sup> Email from John Ferguson to Mark Patterson and Robert Drummond, February 7, 2022, OPS00008464 at p 2.

<sup>204</sup> Email from John Brewer to Brenda Luck, February 2, 2022, OPP00000601 at p 2—3.

<sup>205</sup> Email from John Brewer to Brenda Luck, February 2, 2022, OPP00000601 at p 2—3.

<sup>206</sup> Email from John Brewer to Brenda Luck, February 2, 2022, OPP00000601 at p 2—3.

<sup>207</sup> Email from John Brewer to Brenda Luck, February 2, 2022, OPP00000601 at p 2—3.

<sup>208</sup> Brenda Lucki, Cross-Examination, TRN00000032 at p 200, lines 4—28 and p 201, lines 1—7.

<sup>209</sup> Marcel Beaudin, Examination-in-Chief, TRN00000009 at p 102, lines 11—20.

<sup>210</sup> Marcel Beaudin, Examination-in-Chief, TRN00000009 at p 109, lines 21—25.

such as “ongoing communication”, “respect”, “rapport”, and “reciprocity.”<sup>211</sup> In his view, “it’s really important to recognize the person knows that I have their best interests in mind, you know, I’m competent” and that “ultimately, I do what I say I’m going to do.”<sup>212</sup> By building relationships, Acting Superintendent Beaudin described how police agencies can “get into agreements or ideas of what the protest, the demonstration, occupation may look like.”<sup>213</sup> He analogized these agreements to contracts with demonstrators that define the boundaries of the relationship.<sup>214</sup>

120. Acting Superintendent Beaudin’s comments were consistent with the National Framework for Police Preparedness for Demonstrations and Assemblies (the “**National Framework**”), which he confirmed applies to any mass demonstration.<sup>215</sup> The National Framework is premised on seven foundational principles, one being the “Measured Approach”, which Acting Superintendent Beaudin regarded as the most important. The Measured Approach is a philosophy that emphasizes “deliberate employment of proactive engagement, communication, mitigation and facilitation measures while preserving the option to employ a variety of tactical responses as necessary and seeking to respect the lawful exercise of personal rights and freedoms.”<sup>216</sup>
121. The City submits that its engagement, negotiation, and agreement with protestors was consistent with this principle and Acting Superintendent Beaudin’s evidence about the importance of building trust with demonstrators. As set out below, by the time OPS approached Mr. Kanellakos to meet with protesters, the relationship between police and the protesters had been significantly undermined.

*ii. Situation in Ottawa Becomes Dire*

122. The City submits that the Mayor’s deal must be understood in light of the events that led to the City’s involvement in meeting and negotiating with protesters.

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<sup>211</sup> Marcel Beaudin, Examination-in-Chief, TRN00000009 at p 109, lines 21—25.

<sup>212</sup> Marcel Beaudin, Examination-in-Chief, TRN00000009 at p 104, lines 9—22.

<sup>213</sup> Marcel Beaudin, Examination-in-Chief, TRN00000009 at p 104, lines 20—22.

<sup>214</sup> Marcel Beaudin, Examination-in-Chief, TRN00000009 at p 104, lines 23—25.

<sup>215</sup> Marcel Beaudin, Examination-in-Chief, TRN00000009 at p 108 lines 10—28, to p 109, lines 1—9.

<sup>216</sup> The National Framework for Police Preparedness for Demonstrations and Assemblies, COM0000666 at p 3; Marcel Beaudin, Examination-in-Chief, TRN00000009 at p 108 lines 22—28 to p 109, lines 1—9.

123. The Commission heard considerable evidence about the events that unfolded at Coventry Road on February 6, 2022. Very briefly, PLT worked hard to achieve the removal of fuel from the encampment. When the protesters left the parking lot, OPS decided to conduct enforcement without notifying PLT. This undermined the trust that PLT had built with protesters.<sup>217</sup>
124. Acting Deputy Chief Ferguson testified that PLT felt “betrayed” by the enforcement action and agreed that the unexpected enforcement caused a “significant” breakdown in the relationship between PLT and the protestors.<sup>218</sup>
125. Her testimony is supported by contemporaneous documents and the evidence of other police officers. Peter McKenna, a member of the PLT, set out PLT’s concerns in an email to Inspector Russel Lucas.<sup>219</sup> He shared his belief that “PLT will lose some PLT capacity in the next 24-48 hrs with the Truckers as the PLT have effectively been made liars. The PLT team was not properly informed of enforcement efforts prior to them taking place. The PLT learned of enforcement messaging through a protestor pointing out a Facebook post about arrests for transporting fuel.”<sup>220</sup> He further explained that the approach had “escalated the demonstrators and strengthened their resolve. We will see a rough patch in the short term if we do not examine further into how this will play out and adjust accordingly.”<sup>221</sup> He also noted that PLT felt “absolutely betrayed.”<sup>222</sup> Inspector Lucas forwarded the email to Acting Deputy Ferguson, noting he shared Mr. McKenna’s concerns.<sup>223</sup>
126. The OPP was also concerned. Acting Superintendent Beaudin wrote to Superintendent Patterson, who was then OPS Event Commander, and requested that, “there be a written overview of major tasking’s to PLT moving forward so miscommunication like the one we just experienced does not jeopardize our future negotiations with individual trucking groups, the trucking community, and other stakeholders involved in this

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<sup>217</sup> Marcel Beaudin, Cross-Examination, TRN00000009 at p 203, lines 3—18.

<sup>218</sup> Patricia Ferguson, Cross-Examination, TRN00000006 at p 160 lines 6—28 to p 161 lines 1—2.

<sup>219</sup> Email from Peter McKenna to Russel Lucas, February 6, 2022, OPS00008055 at p 2.

<sup>220</sup> Email from Peter McKenna to Russel Lucas, February 6, 2022, OPS00008055 at p 2.

<sup>221</sup> Email from Peter McKenna to Russel Lucas, February 6, 2022, OPS00008055 at p 2.

<sup>222</sup> Email from Peter McKenna to Russel Lucas, February 6, 2022, OPS00008055 at p 2.

<sup>223</sup> Email from Russel Lucas to Patricia Ferguson, February 6, 2022, OPS00008055 at p 1.

demonstration.”<sup>224</sup> In his view, the “overall goal at this time is to minimize the current footprint on ground, while building trust and confidence with stakeholders, which the team has displayed they can do many times.”<sup>225</sup>

127. By February 8, 2022, the City was 11 days into the Freedom Convoy. The OPS did not have the 1800 resources it needed, or that were required, to effectively end the protests.<sup>226</sup> The OPS also lacked an operational plan to dismantle the occupation. OPS members were mentally and physically exhausted.<sup>227</sup> Ottawa residents, particularly in the red zone, were frustrated and exhausted.<sup>228</sup> The situation in Ottawa was nothing short of dire.<sup>229</sup>

### ***iii. OPS Engages the City in Protestor Negotiations***

128. The City only engaged with protesters at the request of OPS.

129. On February 7, Superintendent Patterson, then OPS Event Commander, advised Deputy Chief Bell that Mr. Marazzo had “requested a meeting with an elected official or City manager level member. He has indicated that if we coordinate a meeting, around noon tomorrow, that he could facilitate the remove of trucks (unknown number).”<sup>230</sup> He then asked Deputy Chief Bell to provide him with “a name that would be willing to participate in this discussion.”<sup>231</sup> The following morning, on February 8, 2022, Deputy Chief Bell asked whether the group Mr. Marazzo represented wanted to meet with “a political person like the mayor” or “someone like Steve K?”<sup>232</sup>

130. Deputy Chief Bell called Mr. Kanellakos in the early hours of February 8, 2022.<sup>233</sup> He told Mr. Kanellakos he was sending over members of the PLT, that they wanted to meet with Mr. Kanellakos, and that they wanted “to discuss opening up some line of

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<sup>224</sup> Email from Marcel Beaudin to Mark Patterson, February 10, 2022, OPP00000164 at p 2.

<sup>225</sup> Email from Marcel Beaudin to Mark Patterson, February 10, 2022, OPP00000164 at p 2.

<sup>226</sup> Patricia Ferguson, Cross-Examination, TRN00000006 at p 161, lines 3—11.

<sup>227</sup> Patricia Ferguson, Cross-Examination, TRN00000006 at p 161, lines 3—27.

<sup>228</sup> Patricia Ferguson, Cross-Examination, TRN00000006 at p 161, lines 28 and p 162, lines 1—6.

<sup>229</sup> Patricia Ferguson, Cross-Examination, TRN00000006 at p 161, lines 13—28 and p 162, lines 1—8.

<sup>230</sup> Email from Mark Patterson to Steve Bell, February 7, 2022, OPS00008464 at p 2.

<sup>231</sup> Email from Mark Patterson to Steve Bell, February 7, 2022, OPS00008464 at p 2.

<sup>232</sup> Email from Mark Patterson to Steve Bell, February 7, 2022, OPS00008464 at p 1.

<sup>233</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 74, 1—11.

communications with the protest leaders.”<sup>234</sup> On the morning of February 8, 2022, Superintendent Patterson informed OPS Executive Command that “Steve K has been assigned to work with PLT members to negotiate with TM.”<sup>235</sup>

131. Mr. Kanellakos agreed to meet with PLT.<sup>236</sup> The PLT members told Mr. Kanellakos that communications had “broken down with protest leaders”, and that this was a “significant issue in their ability to try and negotiate...”<sup>237</sup> They advised Mr. Kanellakos that the protestors wanted to meet with “someone from the City and they want to meet with me to be able to discuss the situation and what’s happening.”<sup>238</sup>
132. Mr. Kanellakos testified that he was initially reluctant to meet with the protestors.<sup>239</sup> He told the PLT members that he needed to speak with the Mayor.<sup>240</sup> The Mayor and his Chief of Staff were “very reluctant”.<sup>241</sup> Mr. Kanellakos decided to meet with protestors on his own, without the Mayor.<sup>242</sup>
133. Mr. Kanellakos then told the PLT members that if he was going to meet with protestors, he needed something in return.<sup>243</sup> A police officer suggested to him that “maybe we can start getting them – ask them to move the trucks out of some of the neighbourhoods.”<sup>244</sup> Mr. Kanellakos agreed that this would relieve the pressure on people living in those neighbourhoods.<sup>245</sup>
134. Mr. Kanellakos’ testimony was corroborated by Deputy Chief Bell. During his cross-examination, Deputy Chief Bell confirmed that the idea to move the trucks came from the OPS and not the City.<sup>246</sup> Acting Deputy Chief Ferguson confirmed that the OPS saw

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<sup>234</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 74, 1—11.

<sup>235</sup> Notes of Convoy Briefing #18, Tuesday, February 8, 2022, OPS00008418 at pp 4—5.

<sup>236</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 74, lines 1—27.

<sup>237</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 75, lines 3—11.

<sup>238</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 75, lines 3—12.

<sup>239</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 76, lines 13—18.

<sup>240</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 76, lines 3—8.

<sup>241</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 76, lines 12—21.

<sup>242</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 76, lines 12—21.

<sup>243</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 78, lines 7—16.

<sup>244</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 78, lines 7—16.

<sup>245</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 78, lines 7—16.

<sup>246</sup> Steve Bell, Cross-Examination, TRN00000008 at p 164, lines 18—28 to p 165, lines 1—11.

the movement of the trucks as a win, “in terms of re-establishing trust” between authorities and truckers so that the two parties could “get to a negotiated solution.”<sup>247</sup>

135. The City Manager met with Mr. Marazzo at City Hall later in the day on February 8. Mr. Kanellakos recalled that the four PLT members returned around 13:00, accompanied by three Freedom Convoy representatives: Tom Marazzo, Eva Chipiuk, and Keith Wilson.<sup>248</sup> Mr. Marazzo asked if he could speak with Mr. Kanellakos alone.<sup>249</sup> They went into a boardroom while everyone else waited outside.<sup>250</sup> After some introductions, Mr. Marazzo told Mr. Kanellakos that they wanted a meeting with the Mayor.<sup>251</sup> Mr. Kanellakos told Mr. Marazzo that if a meeting with the Mayor was to occur, the protestors would need to give something back in good faith.<sup>252</sup>
136. Mr. Kanellakos said that he and Mr. Marazzo then rejoined the PLT members, Ms. Chipiuk, and Keith Wilson.<sup>253</sup> The members of the Freedom Convoy said they were willing to move the trucks and everyone left with the understanding that they would reconnect as to the details of the agreement to move the trucks.<sup>254</sup> The meeting ended around 14:25.<sup>255</sup>
137. The following day, OPS Superintendent Drummond, who was overseeing OPS PLT, informed Chief Soly, Acting Deputy Chief Ferguson, and Deputy Chief Bell about the outcome of the meeting with PLT and protestors.<sup>256</sup> While the OPS Executive had some concerns about logistics, they were aware that the concept at the time was to pursue an agreement that would see trucks move out of residential neighbourhoods in exchange for a meeting with the Mayor.<sup>257</sup>

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<sup>247</sup> Patricia Ferguson, Cross-Examination, TRN00000006 at p 162, lines 18—28.

<sup>248</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 77, lines 4—11.

<sup>249</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 77, lines 17—24.

<sup>250</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 77, lines 17—24.

<sup>251</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 78, lines 2—16.

<sup>252</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 78, lines 2—16.

<sup>253</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 79, lines 2—13.

<sup>254</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 79, lines 4—13.

<sup>255</sup> Notes of Robert Drummond, OPS00014455 at p 56.

<sup>256</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 9—15.

<sup>257</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 80, lines 18—28 to p 81, lines 1—8.

138. At this juncture, the City of Ottawa would like to draw the Commission's attention to some inconsistencies in the evidence of Superintendent Drummond and Mr. Marazzo with regard to the circumstances and content of the meetings set out above.
139. First, Mr. Marazzo testified that he never wanted to meet with any elected official from the City of Ottawa and had no interest in meeting Mr. Kanellakos.<sup>258</sup> This testimony lacks credibility entirely and should be rejected. Mr. Marazzo's testimony is contradicted by Superintendent Drummond's notes<sup>259</sup>, Mr. Kanellakos' testimony, and the witness summary of Staff Sergeant Ferguson.<sup>260</sup>
140. Second, Superintendent Drummond testified that he had been told that PLT members did not participate in the meeting with Mr. Marazzo. This testimony should also be rejected. Mr. Drummond did not actually attend the meeting. Moreover, his evidence is contradicted not only by the evidence of Mr. Kanellakos, who was there, but also by that of Keith Wilson, who attended the meeting on behalf of the Convoy organizers.<sup>261</sup>

***iv. An Agreement to Move Trucks Takes Shape***

141. Two days after Deputy Chief Bell asked Mr. Kanellakos to meet with OPS PLT and members of the Freedom Convoy, Mayor Watson was contacted by Dean French.<sup>262</sup> Mr. French is the former Chief of Staff to Premier Doug Ford.<sup>263</sup> Mayor Watson testified that Mr. French said he had contacts with some of those involved in the Freedom Convoy and wanted to help.<sup>264</sup>
142. Mayor Watson knew of Mr. French and had worked with him during Mr. French's time in politics.<sup>265</sup> Mr. Watson testified that, while skeptical of Mr. French's intentions at first, he was supportive of the idea of Mr. French brokering some kind of a deal that would move

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<sup>258</sup> Tom Marazzo, Examination-in-Chief, TRN00000015 at p 152, lines 20—28.

<sup>259</sup> Notes of Robert Drummond, OPS00014455 at p 52.

<sup>260</sup> John Ferguson, Interview Summary, WTS.00000027 at p 11, para 3.

<sup>261</sup> Keith Wilson, Interview Summary, WTS.00000058 at p 7.

<sup>262</sup> Jim Watson, Examination-in-Chief, TRN00000004 at p 98, lines 8—11.

<sup>263</sup> Jim Watson, Interview Summary, WTS.00000018 at p 5.

<sup>264</sup> Jim Watson, Examination-in-Chief, TRN00000004 at p 96, lines 9—22.

<sup>265</sup> Jim Watson, Examination-in-Chief, TRN00000004 at p 96, lines 26—28 and p 97, lines 1—2.



truckers out of residential neighbourhoods. He referred him to his Chief of Staff, Mr. Arpin.<sup>266</sup>

143. Mr. Arpin recalls that the Mayor asked him to call Mr. French to see whether there was any potential for some kind of an agreement that “would help relieve the extraordinary stress that our residents were under in the residential districts.”<sup>267</sup> Mr. Arpin spoke with Mr. French who reiterated his desire to do something that would help. Mr. Arpin understood that Mr. French was only speaking on behalf of the moderate groups and because of this, he understood that not all protestors were involved.<sup>268</sup> Finally, Mr. Arpin testified that “we would not have involved ourselves had the PLT team not approached the City Manager and sought the City and the mayor's involvement in such a dialogue.”<sup>269</sup>
144. Over the next few days, Mr. Arpin described how the City’s goal was to have protestors “recognize through Mr. French that they were hurting local communities, and if there was no agreement on that notion then there was nothing to discuss.”<sup>270</sup> To this end, Mr. Arpin testified that he began drafting some conditions, which he sent to Mr. French, that were the Mayor’s opening position to the Freedom Convoy as to what the City required in return for any meeting with the Mayor.<sup>271</sup>
145. Mr. Arpin testified that the agreement was not meant to achieve a permanent resolution to the protest. It was viewed by the City as a temporary solution aimed at taking down the temperature and re-establishing communications with the Convoy.<sup>272</sup>
146. The final agreement was reflected in Mayor Watson’s February 12, 2022, letter to Tamara Lich.<sup>273</sup> The letter to Ms. Lich was prepared in consultation with the City Manager’s Office and Mr. Ayotte, whom Mr. Arpin understood were liaising with the OPS and discussing the logistics and plans for the removal of trucks.<sup>274</sup> Mr. Kanellakos

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<sup>266</sup> Serge Arpin, Examination-in-Chief, TRN00000003 at p 200, lines 21—28.

<sup>267</sup> Serge Arpin, Examination-in-Chief, TRN00000003 at p 198, lines 20—24.

<sup>268</sup> Serge Arpin, Examination-in-Chief, TRN00000003 at p 200, lines 11—28.

<sup>269</sup> Serge Arpin, Examination-in-Chief, TRN00000003 at p 198, lines 26—28.

<sup>270</sup> Serge Arpin, Examination-in-Chief, TRN00000003 at p 201, lines 5—12.

<sup>271</sup> Serge Arpin, Examination-in-Chief, TRN00000003 at p 202, lines 3—16.

<sup>272</sup> Serge Arpin, Examination-in-Chief, TRN00000003 at p 205, lines 4—12.

<sup>273</sup> Serge Arpin, Examination-in-Chief, TRN00000003 at p 202, lines 17—21.

<sup>274</sup> Serge Arpin, Examination-in-Chief, TRN00000003 at p 203, lines 23—28 and p 204, lines 1—11.

confirmed during his testimony that he received input from the OPS and provided some suggesting on the drafting of letters based on his discussions with police.<sup>275</sup>

147. Notes of a February 11 call between Mr. Kanellakos and Chief Sloly confirm that they discussed the ongoing negotiations: “Negotiation - make sure we are getting results – are we really getting them or is it there bad intentions.”<sup>276</sup> On February 12, 2022, Mr. Kanellakos provided Chief Sloly with further information about the potential deal. According to notes of the call, Mr. Kanellakos “Advised over last 24 hours, the key organizer reached out to the Mayor and there had been ongoing discussions and negotiation to get demos out of the downtown core.”<sup>277</sup> The notes further state that “SK advised he would keep us updated with the negotiations” and “asked for maximum confidentiality.”<sup>278</sup>
148. Mr. Sloly recalled the conversation and Mr. Kanellakos’ request that their discussions remain confidential.<sup>279</sup> He felt that keeping the negotiations confidential was reasonable given that there had not been any outcome yet and it did not have any major impact on OPS operations.<sup>280</sup> Chief Sloly was supportive, provided that “it cannot direct policing operations, and it cannot run counter to the operational plan that was under the control of the Incident Command.”<sup>281</sup>
149. Following their call, Chief Sloly met with Deputy Chief Bell and OPS lawyer Christiane Huneault. According to notes, he advised that “update from City that they are negotiating with core trucking group, they might be able to find a solution to the demo over the next 48 hours.”<sup>282</sup>
150. The City Manager advised Chief Sloly at 09:26 on February 13 that a “deal has been done” and that an announcement would likely be made in the afternoon.<sup>283</sup> OPS senior leadership met with the Mayor and City Manager at noon that day. While Chief Sloly

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<sup>275</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 83, lines 7—11.

<sup>276</sup> Notes of Mr. Sloly’s Scribe Vicky Nelson, February 11, 2022, OPS00011037 at p 3.

<sup>277</sup> Notes of Mr. Sloly’s Scribe Vicky Nelson, February 12, 2022, OPS00010638 at p 2.

<sup>278</sup> Notes of Mr. Sloly’s Scribe Vicky Nelson, February 12, 2022, OPS00010638 at p 2.

<sup>279</sup> Peter Sloly, Examination-in-Chief, TRN00000012 at p 260, lines 10—26.

<sup>280</sup> Peter Sloly, Examination-in-Chief, TRN00000012 at p 260, lines 10—26.

<sup>281</sup> Peter Sloly, Examination-in-Chief, TRN00000012 at p 260, lines 2—9.

<sup>282</sup> Notes of Mr. Sloly’s Scribe Vicky Nelson, February 12, 2022, OPS00010638 at p 4.

<sup>283</sup> Notes of Mr. Sloly’s Scribe Vicky Nelson, February 13, 2022, OPS00011039 at p 4.

raised some concerns about the resource requirements to execute the operation, Acting Deputy Chief Ferguson and Deputy Chief Bell were supportive of the arrangement, which they thought “would help reduce the footprint and make it more manageable for their resources because they were spread too thin covering that large a geography.”<sup>284</sup> Acting Deputy Ferguson expressed the view that “this is exact direction we need to go in” and that “we can look at the logistics on moving them out.”<sup>285</sup> They agreed that the OPS would be involved in negotiating the logistics of the movement of trucks. The City Manager advised that “we can tell them where and when to park but we need the police at the table to confirm location.”<sup>286</sup>

**v. *The Agreement takes Effect***

151. Following the noon meeting on February 13, and before the letters between the Mayor and Ms. Lich were made public, the City sent copies to Chief Sloly and other members of OPS.<sup>287</sup> Chief Sloly updated the OPP that an announcement would be made at 15:00.<sup>288</sup> He also spoke to RCMP Commissioner Lucki, who was aware of the agreement.<sup>289</sup>
152. After the letters were made public, Mr. Dichter tweeted that the agreement was “fake news” and that “no deal has been struck. The federal government has not yet lifted its mandates and passports. Do not watch #fakenews” and “this is completely false.”<sup>290</sup> Ms. Lich clarified later that day that the Mayor’s deal was legitimate.<sup>291</sup>
153. That evening, City representatives met with protesters and with OPS Superintendent Drummond, who had been assigned by OPS to deal with logistics.<sup>292</sup> Mr. Ayotte and Mr. Kanellakos attended on behalf of the City.<sup>293</sup> Convoy representatives were clear that they did not represent all the protesters, and acknowledged that they were going to have

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<sup>284</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 89, lines 18—28 to p 90, lines 1—8.

<sup>285</sup> Notes of Mr. Sloly’s Scribe, February 13, 2022, OPS00011039 at p 4.

<sup>286</sup> Notes of Mr. Sloly’s Scribe Vicky Nelson, February 13, 2022, OPS00011039 at p 5.

<sup>287</sup> Email from Steve Kanellakos to Peter Sloly, February 13, 2022, OTT00006990 at 1.

<sup>288</sup> Notes of Mr. Sloly’s Scribe Vicky Nelson, February 13, 2022, OPS00011039 at p 6.

<sup>289</sup> Notes of Mr. Sloly’s Scribe Vicky Nelson, February 13, 2022, OPS00011039 at p 6.

<sup>290</sup> Benjamin Dichter, Examination-in-Chief, TRN000000016 at p 66, lines 1—16; COM831

<sup>291</sup> Commission Timeline of Events, COM.OR.00000004 at p 11.

<sup>292</sup> Steve Kanellakos, Examination-in-Chief, TRN000000003 at p 88, lines 25—27; Robert Drummond, Examination-in-Chief, TRN0000000010 at p 204, lines 14—18.

<sup>293</sup> Kim Ayotte, Cross-Examination, TRN000000004 at p 249, lines 19—23.

trouble getting everyone on board.<sup>294</sup> Superintendent Drummond testified, and his notes confirm, that the protesters were told they could not remain on Wellington indefinitely.<sup>295</sup>

154. Further to the agreement, at around 12:30 on February 14, the first trucks began to move. It was Mr. Barber's understanding that they had 72 hours to get as many vehicles out of the downtown core as possible.<sup>296</sup> He testified that the deal broke down towards the end of the day, although he believed there were "so many more places on Wellington, we were – we could have put more trucks. We mapped out everything, we had guys who were ready to move. We ran out of time in the day, on the Monday. And then planned to continue moving on the Tuesday. And, like I said, something fell apart; we were done."<sup>297</sup>
155. The Mayor's letter did not set a deadline for moving the trucks. Instead, the letter acknowledged that moving the trucks was a significant logistical undertaking that may take 24—72 hours to move.<sup>298</sup>
156. On February 15, 2022, Mr. Ayotte followed up with Mr. Barber by text. Mr. Barber wrote they had moved 40 trucks the day before and that they were getting ready to move some more that day.<sup>299</sup> The City submits that the evidence of Mr. Ayotte, Mr. Kanellakos, Mr. Barber and Superintendent Drummond confirms that approximately 40 heavy trucks moved out of residential areas, plus an undetermined number of smaller vehicles.<sup>300</sup>
157. Shortly after this, the effort to move the trucks stopped. Mr. Barber indicated that the police were no longer allowing trucks on Wellington Street.<sup>301</sup> This was Mr. Ayotte's understanding as well.<sup>302</sup>

**vi. Mayor's Deal Consistent with Police Objectives**

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<sup>294</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 92, lines 4—12.

<sup>295</sup> Robert Drummond, Examination-in-Chief, TRN0000000010 at p 217, lines 7—27; Notes of Robert Drummond, OPS00014455 at p 88.

<sup>296</sup> Chris Barber, Cross-Examination, TRN000000014 at p 97, lines 8—15.

<sup>297</sup> Chris Barber, Cross-Examination, TRN000000014 at p 97, lines 16—28 to p 98, line 1.

<sup>298</sup> Letter from Mayor Jim Watson to Tamara Lich, February 12, 2022, OPS00010659.

<sup>299</sup> Kim Ayotte, Examination-in-Chief, TRN000000004 at p 233, lines 13—28 to p 234, lines 1—8;

<sup>300</sup> Kim Ayotte, Examination-in-Chief, TRN000000004 at p 234, lines 1—8 and lines 20—22; Chris Barber, Examination-in-Chief, TRN000000014 at p 66, lines 19—28 and p 67, lines 1—7; Robert Drummond, Cross-Examination, TRN000000010 at p 280, lines 21—25; Steve Kanellakos, Cross-Examination, TRN000000003 at p 112, lines 7—10.

<sup>301</sup> Kim Ayotte, Examination-in-Chief, TRN000000004 at p 234 lines 23—28 to p 235 lines 1—5.

<sup>302</sup> Kim Ayotte, Cross-Examination, TRN000000004 at p 251, lines 18—24.

158. OPS asked the City to become involved, was aware of the Mayor’s negotiations, and took the lead with respect to the logistics of moving trucks. They never told the City not to proceed, or that the deal would negatively impact police operations.
159. Mr. Sloly was pressed by Commission Counsel on whether the Mayor’s negotiations interfered with police operations, suggesting that a potential conflict between the negotiations and the OPS plan might have occurred. They asked Mr. Sloly whether Superintendent Bernier should have contacted the Mayor’s office and put parameters around their negotiations to ensure there was no conflict with the OPS plan.<sup>303</sup>
160. Mr. Sloly responded that in the event of any conflict, he would “have defaulted to the OPS plans.”<sup>304</sup> Regardless, Mr. Sloly confirmed that one of the conditions he gave Mr. Kanellakos was that Mr. Kanellakos could not negotiate something without OPS input, or OPS could prevent it from moving forward.<sup>305</sup>
161. Rather than impede police operations, the Commission heard evidence that the negotiations aligned with the OPS’ plan at that point in time. Superintendent Bernier, who as then Event Commander, commented that not only were the Mayor’s negotiations “very much aligned with what was happening on the provincial and national level” but that, as of February 13, 2022, with “wanting to reduce the footprint and have – negotiating protesters out of the area, it aligned with our plan.”<sup>306</sup> Generally speaking, Superintendent Bernier expressed his view at the time as being “if this happens and people leave, then that is a benefit to the operation.”<sup>307</sup> According to Chief Sloly’s scribe notes of an OPS meeting that took place at 13:00 on February 13, Superintendent Bernier said that “the plan aligns with what we planned and accelerates it. No concerns.”<sup>308</sup>
162. While Superintendent Bernier suggested that he was concerned the deal might be a ruse, and that he shared this concern with his Deputy Event Commander, OPP Inspector

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<sup>303</sup> Peter Sloly, Examination-in-Chief, TRN00000012 at p 262, lines 3—5.

<sup>304</sup> Peter Sloly, Examination-in-Chief, TRN00000012 at p 262, lines 19—23.

<sup>305</sup> Peter Sloly, Examination-in-Chief, TRN00000012 at p 262, lines 24—28.

<sup>306</sup> Robert Bernier, Examination-in-Chief, TRN00000010 at p 28, lines 10—28.

<sup>307</sup> Robert Bernier, Examination-in-Chief, TRN00000010 at p 29, lines 1—6.

<sup>308</sup> Robert Bernier, Cross-Examination, TRN00000010 at p 127, lines 25—28 to p 128, lines 1—9; Notes of Mr. Sloly’s Scribe, February 13, 2022, OPS00011039 at p 6.

Dave Springer, he agreed that he did not share it with his Executive Command.<sup>309</sup> He also emphasized that he supported the deal, notwithstanding this concern.<sup>310</sup> In cross-examination, he agreed that his primary concern about the Mayor' deal was that the agreement and operational plan required to support it were developed outside of his purview as Event Commander.<sup>311</sup> He further agreed that there were issues internally with communications within the Service.<sup>312</sup>

163. Support for the Mayor's agreement went beyond the municipal level. Commissioner of the RCMP, Brenda Lucki, provided talking points to Jody Thomas, the National Security and Intelligence Advisor, which stated that the Mayor's deal was "a step in the right direction in terms of reducing the truckers' footprint and impact on the residents of Ottawa."<sup>313</sup> The Commissioner also noted that "[t]his agreement compliments the plan to reduce the footprint through the work of the public liaison team. Integrated command planners need to now incorporate this development into their resources and enforcement plan."<sup>314</sup> While Commissioner Lucki stated that the deal was "not a win," NSIA Thomas understood that to simply mean that it would not bring the entire convoy to an end.<sup>315</sup> Indeed, this was never the intention behind the Mayor's agreement. Rather, the Mayor's goal and that of the City was to alleviate the impacts of the demonstrations on residents who were the most affected.

164. As a final note, the City emphasizes that OPS PLT had been negotiating the movement of 38 trucks from the Rideau and Sussex intersection onto Wellington Street. A few days before the Mayor's deal was reached, OPS Event Commander Mark Patterson approved the movement of 38 trucks from Rideau/Sussex onto Wellington Street.<sup>316</sup> PPS also approved the move, albeit begrudgingly.<sup>317</sup> The negotiation with the protesters at Rideau/Sussex fell through. Nonetheless, the impact of the Mayor's deal, which

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<sup>309</sup> Robert Bernier, Cross-Examination, TRN00000010 at p 136, lines 26—28 to p 137, lines 1—2.

<sup>310</sup> Robert Bernier, Cross-Examination, TRN00000010 at p 137, lines 4—10.

<sup>311</sup> Robert Bernier, Cross-Examination, TRN00000010 at p 138, lines 2—13.

<sup>312</sup> Robert Bernier, Cross-Examination, TRN00000010 at p 138, lines 14—20.

<sup>313</sup> PB.NSC.CAN.00003245, pp 3-4.

<sup>314</sup> PB.NSC.CAN.00003245, p 4.

<sup>315</sup> Jody Thomas, Cross-Examination, TRN00000025 at p 256, lines 17—28 to p 257, lines 1—3.

<sup>316</sup> Robert Drummond, Cross-Examination, TRN00000010 at p 266, lines 3—11.

<sup>317</sup> Russell Lucas, Cross-Examination, TRN00000009 at p 62, lines 17—28 to p 63, lines 1-5.

ultimately saw 40 heavy trucks move onto Wellington Street, ended up being the same as the deal OPS negotiated, albeit unsuccessfully, with a separate group.

## **(f) Responsibility for Police Oversight**

### ***i. The City Does Not Oversee Police***

165. The City's ability to influence the police-led response to the Freedom Convoy was extremely limited. The City cannot direct police, nor can it direct the OPSB.
166. Pursuant to s. 4(1) of the *Police Services Act*, the City of Ottawa is required to provide adequate and effective police services in accordance with its needs.<sup>318</sup> Police services include law enforcement, public order maintenance, and emergency response.<sup>319</sup> The City has opted to discharge its responsibility by establishing the OPS. The *Police Services Act* requires that a police force consist of a Chief of Police and such other police officers and employees employed by the Police force as are adequate, and further provides that the force shall be provided with adequate equipment and facilities.<sup>320</sup>
167. Members of OPS are under the jurisdiction of the OPSB. The OPSB operates separately and independently from the City. Pursuant to s. 31(1) of the *Police Services Act*, the OPSB:
- Appoints the members of the municipal police force;
  - Generally determines, after consultation with the Chief of Police, objectives and priorities with respect to police services in the City;
  - Establishes policies for the effective management of the Police force;
  - Recruits and appoints the Chief of Police and any Deputy Chief of Police; and
  - Directs the Chief of Police and monitors his or her performance.

### ***ii. City Council's Sole Power is to Appoint and Remove Members of OPSB***

168. Other than approving the police and Board budget on global basis, the City's role in overseeing police is limited to appointing four members of the OPSB.

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<sup>318</sup> City of Ottawa, Institutional Report, OTT.IR.00000001 at p 6.

<sup>319</sup> City of Ottawa, Institutional Report, OTT.IR.00000001 at p 6.

<sup>320</sup> City of Ottawa, Institutional Report, OTT.IR.00000001 at p 6.

169. The OPSB consists of seven members. City Council is responsible for appointing two City councillors to the OPSB and a third member who is not a councillor. The Mayor is guaranteed one seat, but can decline to sit, in which case Council may appoint another councillor by resolution. The Lieutenant Governor in Council appoints the remaining three members.<sup>321</sup>
170. Mayor Watson chose not to sit on the OPSB during his last mayoral term. As a result, Councillor Deans served in Mayor Watson's seat. During the Freedom Convoy, and up until February 16, 2022, councillors King and Meehan were also members of the OPSB. City Council had also appointed Sandy Smallwood as a lay member.<sup>322</sup> Councillor Deans chaired the OPSB until her appointment was revoked on February 16, 2022. The OPSB is supported by City services, including the City's Legal Services Branch. During the Freedom Convoy, the Board retained external counsel for advice.<sup>323</sup>
171. City Council has the absolute right to appoint and remove members of the OPSB. This was confirmed expressly by Police Services Advisor Graham Wright, in an email to Councillor Deans.<sup>324</sup>
172. Pursuant to s. 31(3) of the *Police Services Act*, the Board may give orders and directions to the Chief of Police. Pursuant to s. 31(4), however, the Board shall not direct the Chief of Police with respect to specific operational decisions or with respect to the day-to-day operation of the police force.<sup>325</sup>
173. There is no legal authority for Council, the Mayor or City staff to direct the Chief of Police. The Chief of Police reports to the OPSB.<sup>326</sup> The Chief administers the police force and oversees its operation in accordance with the objectives, priorities and policies established by the Board. In addition, he or she ensures that the members of the police force carry out their duties in a manner that reflects the needs of the community, and that the police force provides community-oriented police services.<sup>327</sup>

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<sup>321</sup> City of Ottawa, Institutional Report, OTT.IR.00000001 at p 6.

<sup>322</sup> City of Ottawa, Institutional Report, OTT.IR.00000001 at p 6.

<sup>323</sup> City of Ottawa, Institutional Report, OTT.IR.00000001 at p 6.

<sup>324</sup> Email from Graham Wright to Diane Deans re: Ottawa, February 16, 2022, ONT00001121 at p 1.

<sup>325</sup> City of Ottawa, Institutional Report, OTT.IR.00000001 at p 7.

<sup>326</sup> City of Ottawa, Institutional Report, OTT.IR.00000001 at p 7.

<sup>327</sup> City of Ottawa, Institutional Report, OTT.IR.00000001 at p 7.



**iii. City Council Exercises its Power to Revoke Councillor Deans' Appointment to the OPSB**

174. City Council exercised its power to revoke an appointment to the OPSB when a majority of Council voted to remove Councillor Deans from the OPSB on February 16, 2022.<sup>328</sup>
175. Council had growing concerns about the Board's performance of its oversight function. Councillor Moffat, seconded by Councillor Dudas, brought a motion to remove Councillor Deans and Councillor Meehan from the Board. The recitals for the motion expressly stated that "the Ottawa Police Service Board has also not been effective to date in their oversight function."<sup>329</sup>
176. While the concerns about the Board's performance had been growing, Mayor Watson testified that he lost confidence in Councillor Deans over her signing a contract with an external police chief in the middle of the crisis. Upon learning that this was a possibility, the Mayor held a teleconference with Councillor Deans on the morning of February 16. During the call, the Mayor advised Councillor Deans that he did not support the hiring of an external chief. Interim Chief Bell had been appointed only the day before and the Mayor believed that having three police chiefs in three days would destabilize OPS at a critical point in time.<sup>330</sup> Mayor Watson believed that hiring an external chief was a poor decision given what was going on the ground.<sup>331</sup>
177. When the Mayor learned later in the day that Councillor Deans had gone ahead and signed the contract with the external chief, he lost confidence in her.
178. Unbeknownst to the Mayor at the time, his concerns about the hiring of an external chief were shared by others. OPP Commissioner Thomas Carrique testified that he had significant reservations about bringing in a new chief at a point when the execution of the long-awaited operational plan was imminent.<sup>332</sup> Commissioner Carrique had complete confidence in Interim Chief Bell's ability to lead the operational plan.
179. Similarly, Mr. Stewart, the federal Deputy Minister of Public Safety, expressed significant concerns about the hiring and went so far as to speak to the City Manager, Steve

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<sup>328</sup> Ottawa City Council Minutes 71, Wednesday February 16, 2022, OTT00029487.

<sup>329</sup> Ottawa City Council Minutes 71, Wednesday February 16, 2022, OTT00029487 at p 4.

<sup>330</sup> Serge Arpin, Witness Summary, WTS.00000015 p 4—5.

<sup>331</sup> Jim Watson, Examination-in-Chief, TRN00000004 p 105—106.

<sup>332</sup> Thomas Carrique. Examination-in-Chief, TRN00000011 at p 118, lines 21—28 and p 119, lines 1—23.

Kanellakos, about those concerns. Mr. Kanellakos assured Deputy Minister Stewart that the City had already formed these concerns.<sup>333</sup>

180. During the in camera debate, Councillor Moffat, who had brought the motion, referenced sections of the Board's code of conduct which he believed had not been adhered to, including the requirement to keep information disclosed in camera confidential.<sup>334</sup> He also stated that he believed that the board had failed to discharge its duties in a manner that inspired public confidence in the abilities and the integrity of the Board.<sup>335</sup>
181. Councillor Dudas, who seconded the motion, expressed concern that it had taken the board nine days to hold a meeting and that when the meeting took place, it appeared frantic and scattered. Councillor Dudas also expressed concern that there was a lack of communication from Chair Deans to Members of Council during the occupation.<sup>336</sup> These concerns were echoed by Councillors Tierney and Egli.<sup>337</sup>
182. The motion sought to replace Councillor Deans and Councillor Meehan with Councillors with more experience in police governance and emergency operations (Councillors El-Chantiry and Harder).<sup>338</sup>
183. A majority of Council (15 YEAS to 9 NAYS) voted to replace Councillor Deans with Councillor El-Chantiry.<sup>339</sup> The motion to remove Councillor Meehan failed, but she resigned her position on the Board in solidarity with Councillor Deans. Prior to the vote taking place, Councillor King had also resigned from the OPSB.
184. As a result, all three Councillors on the Board were replaced.
185. Councillor Deans suggested during her evidence that the Board's performance was compromised because Mayor Watson and the City Manager failed to share relevant information with her.
186. This assertion does not withhold scrutiny.

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<sup>333</sup> Rob Stewart, Examination-in-Chief, TRN00000022 at p 221—223.

<sup>334</sup> Special Ottawa City Council In Camera Minutes 71, Wednesday February 16, 2022, OTT00029762 at p 7.

<sup>335</sup> Special Ottawa City Council In Camera Minutes 71, Wednesday February 16, 2022, OTT00029762 at p 7.

<sup>336</sup> Special Ottawa City Council In Camera Minutes 71, Wednesday February 16, 2022, OTT00029762 at p 4.

<sup>337</sup> Special Ottawa City Council In Camera Minutes 71, Wednesday February 16, 2022, OTT00029762 at p 4—5.

<sup>338</sup> Ottawa City Council Minutes 71, Wednesday February 16, 2022, OTT00029487 at p 4.

<sup>339</sup> Ottawa City Council Minutes 71, Wednesday February 16, 2022, OTT00029487 at p 9.

187. Councillor Deans testified that the first time she heard that police resources were being delayed because the Chief lacked an operational plan, was when Mr. Kanellakos testified in the inquiry on October 17, 2022.<sup>340</sup> On cross-examination, Councillor Deans' memory was refreshed by her own witness summary. During an interview with Commission Counsel two months earlier, on August 16, 2022, she had suggested that "there is a possibility that resources were being held up because Chief Sloly did not have a plan for the use of those resources."<sup>341</sup>
188. While Councillor Deans attempted to reconcile this contradiction by stating that she did not have the level of detail that the Mayor and Mr. Kanellakos had, in fact, they testified that any information they received was very high-level. The Mayor's Chief of Staff appears to have only learned about the link between the delay in resources and the lack of an approved plan on February 12. Mike Jones, Chief of Staff to Public Safety Minister Mendicino, advised Mr. Arpin in a text exchange on that date that the RCMP was still waiting for Chief Sloly to sign off on a plan. Mr. Arpin was furious and stated that he could not believe it had been 10 days and they were only just hearing about the issues with the plan. In his words, this was "brutal."<sup>342</sup>
189. By contrast, Chair Deans was well-aware that the Chief did not have a plan. Indeed, she advised Council that the Board had become increasingly frustrated by the lack of a visible plan.<sup>343</sup> Chair Deans also testified at length about her efforts to obtain further information about the plan from the Chief.<sup>344</sup> Even if she did not know that resources were being delayed to the lack of a plan, which is denied, it remains unclear what Chair Deans would have done differently. The fact is that the Board was already demanding more details about the plan from former Chief Sloly.
190. During the policy roundtable on police-government relations, Mr. Teschner, the Executive Director of the Toronto Police Services Board, emphasized that, "the burden, in my view, is on the chief to take initiative in ensuring that the board is probably [sic:

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<sup>340</sup> Diane Deans, Cross-Examination, TRN00000005 at p 123, lines 19—28 and p 124, lines 1—3.

<sup>341</sup> Diane Deans, Interview Summary, WTS.00000010 at p 3.

<sup>342</sup> Text Messages between Serge Arpin and Mike Jones, PB.CAN.00001859\_REL.0001 at pp 7—9.

<sup>343</sup> Special Ottawa City Council in Camera Minutes 71, Wednesday February 16, 2022, OTT00029762 at p 6.

<sup>344</sup> Diane Deans, Examination-in-Chief, TRN00000005 at p 10—11.

properly] informed about matters; past, present, or future, that fall under the purview of the board's responsibilities."<sup>345</sup>

**iv. Provincial Responsibility for Police Oversight**

191. Under the *Police Services Act*, the Solicitor General has the residual obligation to ensure that adequate and effective police services are provided in a municipality. Section 3(2) provides that “the Solicitor General shall (a) monitor police forces to ensure that adequate and effective police services are provided at the municipal and provincial levels.”<sup>346</sup>
192. The Supreme Court of Canada has interpreted this requirement as imposing on the Solicitor General a “duty to ensure that the Board provides ‘adequate and effective’ police services in the municipality.”<sup>347</sup> The Deputy Solicitor General of Ontario, Mario di Tomasso, testified that the Solicitor General discharges this obligation in various ways, including through the provision of Police Service Advisors to local boards.<sup>348</sup> He also stated that if there was a concern that a Police Service Board was not providing adequate and effective police services, there is a provision in the Act for the Solicitor General to ask the Ontario Civilian Police Commission (“**OCPC**”) to start an investigation under section 25 of the *Police Services Act*.<sup>349</sup> Section 9(2) provides that “if the Commission finds that a municipal police force is not providing adequate and effective police services or is not complying with this Act or the regulations, it may communicate that finding to the board of the municipality and direct the board to take the measures that the Commission considers necessary.
193. In this case, a significant issue arose in terms of whether the police and the Board were in fact able to provide adequate and effective policing in Ottawa. The issue came to a head during the February 5, 2022 OPSB meeting. The Ministry Police Services Advisor Lindsay Gray was in attendance and provided a report to the Inspectorate of Policing.<sup>350</sup>

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<sup>345</sup> Ryan Teschner, TRN00000035 at p 43, lines 13—16.

<sup>346</sup> *Police Services Act*, RSO 1990 c. P-15, s. 3(2), COM00000819 at p 7.

<sup>347</sup> *Odhavji Estate v Woodhouse*, 2003 SCC 69, [2003] 3 SCR 26 at para. 71.

<sup>348</sup> Mario di Tomasso, Cross-Examination, TRN00000021 at p 363, lines 2—11.

<sup>349</sup> Mario di Tomasso, Examination-in-Chief, TRN00000021 at p 142, lines 12—17.

<sup>350</sup> Board Summary Policing Note for Inspector General of Policing, February 5, 2022, ONT00001115.

According to her report, Chair Deans called the meeting to ask the Chief one question: did he still believe that he was able to provide adequate and effective policing to the City of Ottawa?<sup>351</sup> Based on Ms. Gray's notes, the Chief never answered in the affirmative. He instead prevaricated and questioned how the definition of adequate and effective policing applied to a city under siege.<sup>352</sup>

194. Notwithstanding the failure to provide the requested confirmation, the Ministry took no steps to intervene. Asked why alarm bells were not ringing, Mr. Di Tomasso stated that he was confident that the OPP was assisting and there was no need for the Ministry to act.<sup>353</sup> This assertion is belied by Mr. Di Tomasso's earlier testimony that he was aware that the OPP required an acceptable operational plan to dismantle the occupation before it would commit the resources that OPS required.<sup>354</sup> By this point, Chief Sloly had also made his public statement that there may not be a policing solution to the occupation. Mr. Di Tomasso confirmed that he did hear that statement at the time.<sup>355</sup>
195. Ms. Gray's notes reflect that Chair Deans had also asked what authorities the Board had in the event the Chief was unable to provide adequate and effective policing in the municipality.<sup>356</sup> Again, the Ministry took no steps to advise Chair Deans of the authorities the Board had at its disposal.
196. The OPSB continued to request assistance from the Ministry. On February 9, 2022, the Board asked numerous questions in relation to its authorities and obligations during the crisis.<sup>357</sup> The list was provided to Ken Weatherill, the Inspector General of Policing. Mr. Weatherill commented that there were "some very good questions."
197. Of note, the Ministry's response did not include any mention of section 9 of the *Police Services Act*.<sup>358</sup> As noted above, s. 9 speaks directly to a situation where a municipal

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<sup>351</sup> Board Summary Policing Note for Inspector General of Policing, February 5, 2022, ONT00001115, at p 1, second bullet.

<sup>352</sup> Board Summary Policing Note for Inspector General of Policing, February 5, 2022, ONT00001115, at p 1, fourth bullet.

<sup>353</sup> Mario di Tomasso, Cross-Examination, TRN00000021 at p 365, lines 15—28 and p 366, lines 1—8.

<sup>354</sup> Mario di Tomasso, Examination-in-Chief, TRN00000021 at p 172, lines 19—28 and p 173, lines 1—25.

<sup>355</sup> Mario di Tomasso, Examination-in-Chief, TRN00000021 at p 140, lines 4—19.

<sup>356</sup> ONT00001115, at p 1, third bullet.

<sup>357</sup> Emails between Lynne Haves, Kenneth Weatherill, and Lindsey Gray, February 9, 2022, ONT00001111.

<sup>358</sup> Q&A to Support Ottawa PSB Meeting re: Board Roles and Responsibilities, February 2022, ONT00001118.

police force is not providing adequate and effective police services. Subsection 9(5) states that a board may, by resolution, request that the Commissioner have the OPP give assistance. As explained by Commissioner Carrique, this is one of the ways in which a change of command to the OPP can be effected.<sup>359</sup>

198. At no point did the Police Services Advisor or anyone else at the Ministry suggest to the Board that this provision should be considered, or even make reference to that possibility.<sup>360</sup>

199. Similarly, the Solicitor General did not make a complaint to OCPC that could trigger a direction to the Board to formally request OPP assistance. Mr. Di Tomasso testified that this was not a viable option due to the potential time that it would take, based on his previous experience.<sup>361</sup> Notwithstanding the above, it does not appear that Mr. Di Tomasso or anyone else at the Ministry inquired into whether the OCPC had capacity to address the matter on an urgent basis. Contrary to the evidence of Mr. Di Tomasso, RCMP Commissioner Brenda Lucki noted on February 12, 2022 that the OPP Commissioner advised her that there is a pretty straightforward way for the OPP to take over whereby the Minister goes directly to the OCPC.<sup>362</sup>

#### **IV. LESSONS LEARNED: ROLLING THUNDER AND THE USE OF MOTOR VEHICLE EXCLUSION ZONES**

##### **(a) The Use of Motor Vehicle Exclusion Zones**

200. Since the events of the Freedom Convoy, the City has worked collaboratively with the OPS to exercise their authorities to create motor vehicle exclusion zones when warranted, based on information provided by OPS.<sup>363</sup> The Commission heard from

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<sup>359</sup> Thomas Carrique, Examination-in-Chief, TRN00000011 and p 14, lines 17—25.

<sup>360</sup> Q&A to Support Ottawa PSB Meeting re: Board Roles and Responsibilities, February 2022, ONT00001118; Mario di Tomasso, Examination-in-Chief, TRN00000021 at p 370, lines 19—28 and p 371, lines 1—9.

<sup>361</sup> Mario di Tomasso, Examination-in-Chief, TRN00000021 at p 142 lines 23—28 and p 143 lines 1—8.

<sup>362</sup> Messages between Brenda Lucki, Patrik Vezina, Michael Duheme et al., February 12, 2022, PB.NSC.CAN.00008040\_REL.0001 at p 5.

<sup>363</sup> Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 189, lines 17—24.

multiple witnesses that this approach was successful during the Rolling Thunder event.<sup>364</sup>

201. A motor vehicle exclusion zone excludes only motor vehicles taking part in a demonstration, event, protest, or rally. Barricades, heavy equipment or police officers and vehicles are located at various access points surrounding the exclusion zone to filter lawful traffic onto those streets. The roads are not closed, and normal traffic circulation is permitted. Thus, motor vehicles not participating in a demonstration, event, protest, or rally, as well as pedestrians and cyclists, are able to enter and exit the zone. Parking and stopping in the zone or in part thereof may be prohibited, to ensure roadways remain clear for all traffic. Any motor vehicles failing to observe road signs may be ticketed and towed.<sup>365</sup>

**(b) The City and Police Work Together to Create Motor Vehicle Exclusion Zones**

202. Both police and municipalities have the authority to create vehicle exclusion zones. Ontario's *Highway Traffic Act*<sup>366</sup> allows police to close a highway or any part thereof to vehicles where reasonably necessary to ensure the orderly movement of traffic or prevent injury, or in an emergency.

203. The City also has authority to restrict access to public roads. Pursuant to s. 10(2) of the *Municipal Act, 2001*,<sup>367</sup> the City of Ottawa has the authority to pass by-laws respecting a number of matters, including the health, safety and well-being of persons, and the protection of persons and property. Section 65 of the *Traffic and Parking By-Law* (By-Law No. 2017-301) authorizes a police officer or the General Manager of Transportation Services to prohibit or regulate the movement of vehicles on any highway during an emergency. In addition, the *Delegation of Authority By-Law* (By-Law 2022-253) provides authority for the City Manager or a General Manager to take action in an emergency.

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<sup>364</sup> Patricia Ferguson, Cross-Examination, TRN00000006 at p 156, lines 5—22; Steve Kanellakos, Examination-in-Chief, TRN00000003 at p 189, lines 25—28; Michael Duheme, Examination-in-Chief, TRN00000023 at p 222, lines 15—19.

<sup>365</sup> City of Ottawa Institutional Report, OTT.IR.00000001 at p 12.

<sup>366</sup> *Municipal Act, 2001*, RSO 1990, c H-8, s 134, CCF00000010 at p 320.

<sup>367</sup> *Highway Traffic Act*, SO 2001, c 25.

204. While the City may have independent authority to create a motor vehicle exclusion zone, practically speaking, it can only exercise that authority jointly with police. There are several reasons for this. First, police are responsible for managing demonstrations, including establishing safe routes into the City. Second, the City relies on PLT to work with demonstration organizers to ensure a peaceful event. Third, the City relies on the Police Service's risk assessment in planning for a demonstration as it has no mechanism to independently validate information it receives about an upcoming protest. Finally, motor vehicle exclusion zones are physically staffed by police.<sup>368</sup>

**(c) The Use of Motor Vehicle Exclusion Zones in Circumstances like those of the Freedom Convoy is Constitutionally Justified**

205. The City submits that where authorities have information that a convoy of vehicles intends to travel to a specific site or location to protest, and are provided with information that participants intend to remain beyond a reasonable timeframe, they should consider whether to create temporary motor vehicle exclusion zones. Provided they are used appropriately and when warranted, the City submits that the strategy is legally sound and constitutionally justified.

206. With respect to the Freedom Convoy, given the sheer number of vehicles, especially heavy tractor-trailers, and the information circulating that they intended to remain beyond the weekend, the City submits that it would have been reasonable to restrict how protesters wanted to protest. The City could have required protesters to park outside of the downtown core, and to take public transit or travel to the protest site on foot or by bicycle. It is not necessary for the Commission to decide whether such restrictions would be reasonable for all convoys, since the necessity and appropriateness of such a strategy would need to be evaluated on a case by case basis. In this respect, and as recognized by Professor Cameron, the use of vehicles to occupy a neighbourhood for a long period is qualitatively different from a flow-through demonstration.<sup>369</sup>

207. While motor vehicle exclusion zones may limit the manner in which individuals assemble and protest, they can also facilitate peaceful assembly and lawful protest by avoiding the

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<sup>368</sup> City of Ottawa Institutional Report, OTT.IR.00000001 at pp 13—14.

<sup>369</sup> Professor Jamie Cameron, TRN000000032, page 72 lines 4 – 7.



forceful removal that occurred in Ottawa. The City urges the Commission to consider Professor Mathen's proposal that, in some contexts, it might actually be more beneficial to regulate an assembly proactively, since doing so can assist in creating space for maximum enjoyment and give meaningful effect to the right of peaceful assembly. On the other hand, failing or choosing not to interfere can result in an entrenched assembly that must be dealt with in a more intrusive way, as was the case in Ottawa.<sup>370</sup>

208. As recognized by Professor MacDonnell, one of the legal and policy challenges in managing protests is sorting out when and how the state should respond when a protest interferes with the rights of others. She emphasizes that in some circumstances, the state might actually have an obligation to respond and to balance competing *Charter* rights.<sup>371</sup> This may be the case even though the state only has imperfect or incomplete information about the protesters' intent and the risks to residents.<sup>372</sup>
209. Motor vehicle exclusion zones facilitate continued protest while preserving the safety and security of residents living in the protest area and protecting them from being compelled by their proximity to the protest site to participate in the assembly.<sup>373</sup> The Commission heard that residents living near the protest side or red zone felt as though they were effectively held hostage by the protesters. It is worth considering whether the actions of the Convoy may have violated residents' *Charter* right to be free from coerced assembly. The case law has made clear that the right to freedom of expression includes the freedom against compelled speech.<sup>374</sup> It follows that the freedom of peaceful assembly should similarly be interpreted to include the freedom against compelled assembly.

#### **(d) A Legal Framework for Section 2(c) of the *Charter***

210. The City recognizes that it may not be necessary for the Commission to consider whether the use of motor vehicle exclusion zones in circumstances similar to the

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<sup>370</sup> Professor Carissima Mathen, TRN00000032 at page 33, lines 7 – 13

<sup>371</sup> Professor Vanessa MacDonell, TRN00000032 at page 19, lines 6 – 15, see also page 7, lines 19 – 25.

<sup>372</sup> Professor Vanessa MacDonnell, TRN00000032 at page 74, lines 21 – 27.

<sup>373</sup> Professor Mathen, TRN00000032 at page 32, lines 7 – 17.

<sup>374</sup> *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038; *National Bank of Canada v Retail Clerks' International Union*, [1984] 1 SCR 269; *RJR-MacDonald Inc. v Canada (Attorney General)*, [1995] 3 SCR 199.

Freedom Convoy is consistent with the right to peaceful assembly in s. 2(c) of the *Charter*, or whether it must be justified by the state pursuant to s. 1. To the extent that the Commission intends to consider this question, however, the City submits that the internal limit to the freedom of assembly – which protects only peaceful assembly – should be given meaning.

211. Where a *Charter* right contains an internal limit – as is the case with s. 7 and with the right to minority language instruction contained in s. 23 of the *Charter* -, courts have suggested that it will be difficult to justify a breach of the right under s. 1.<sup>375</sup> Indeed, the Supreme Court of Canada has never determined that an infringement of s. 23 was justified under s. 1.<sup>376</sup> The Supreme Court recently adopted a particularly stringent standard for justifying an infringement of the right to minority language instruction under s. 1.<sup>377</sup> Among other things, the Court emphasized that s. 23 has an internal limit, the numbers warrant requirement, according to which the exercise of the right for which the section provides will be warranted if there are a sufficient number of students.<sup>378</sup>
212. The City emphasizes that s. 2(c) is the only fundamental freedom in s. 2 of the *Charter* that is internally limited. Professor Cameron suggested in her paper and during the roundtable on fundamental rights and freedoms that only a violent assembly would lose the constitutional protection afforded by s. 2(c). The difficulty with this approach is that courts have recognized that violence, including threats of violence, is not constitutionally protected under s. 2(b) even in the absence of an internal limit. If the use of the word “peaceful” in s. 2(c) served only to deny violent assemblies constitutional protection, then it would serve no purpose.
213. In its policy comments, the City urged the Commission to consider moving away from the dichotomy between violence and disruption, pursuant to which assemblies only lose constitutional protection when they become violent, and not merely when they engage in unlawful or disruptive conduct. Instead, the City suggested that a harm-based framework would be more appropriate. While perhaps not violent, the conduct of the Convoy in Ottawa did more than annoy, offend, temporarily hinder third parties, or disrupt

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<sup>375</sup> With respect to s. 7 of the *Charter*, see, for example, *R. v Michaud*, 2015 ONCA 585 at para 83.

<sup>376</sup> *Conseil scolaire francophone de la Colombie-Britannique v British Columbia*, 2020 SCC 13 at para 143.

<sup>377</sup> *Conseil scolaire francophone de la Colombie-Britannique v British Columbia*, 2020 SCC 13 at para 147.

<sup>378</sup> *Conseil scolaire francophone de la Colombie-Britannique v British Columbia*, 2020 SCC 13 at para 150.

traffic and daily activities. As the Commission has heard, it resulted in the loss of some emergency lanes and impacted basic municipal services, including snow-removal, waste collection, transit, and community and social services. The City submits that the impact of the at times incessant honking also went beyond mere annoyance or offence, and may have effectively compelled residents to join the assembly.

214. The City appreciates that a harm-based test for defining what constitutes a peaceful assembly may be more difficult to apply than one that only excludes constitutional protection for violent assemblies. With respect to the Freedom Convoy, however, the City submits that the blockading of downtown Ottawa for a significant length of time rendered the assembly not peaceful.
215. The City takes this opportunity to thank the Commission for allowing it to participate in this very meaningful process.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 9<sup>TH</sup> DAY OF DECEMBER 2022.



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