



**PUBLIC ORDER
EMERGENCY
COMMISSION**

**COMMISSION
SUR L'ÉTAT
D'URGENCE**

Public Hearing

Audience publique

**Commissioner / Commissaire
The Honourable / L'honorable
Paul S. Rouleau**

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Ottawa, Ontario

1
2 --- Upon commencing on Thursday, November 17, 2022 at 9:29 a.m.

3 **THE REGISTRAR:** Order. À l'ordre. The Public
4 Order Emergency Commission is now in session. La Commission sur
5 l'état d'urgence est maintenant ouverte.

6 **COMMISSIONER ROULEAU:** Good morning. Bonjour.
7 Nice wintery day.

8 We're starting off with some bulk entries, I
9 believe?

10 **MR. ERIC BROUSSEAU:** That's correct,
11 Commissioner. Eric Brousseau, Commission Counsel.

12 This is just to formally enter 286 documents by
13 way of bulk entry, which is actually the sort of combination of
14 a couple of weeks of lists. We are playing catch-up.
15 Objections were moved, they are being dealt with.

16 These documents are largely sort of municipal and
17 provincial documents, including documents produced by the
18 Governments of Manitoba, Saskatchewan, Nova Scotia; the
19 institutional report for the Government of Manitoba and
20 Saskatchewan; and several witness statements as well. And it
21 was circulated to the parties -- the final list was circulated
22 recently, and they will be entered as exhibits today.

23 **COMMISSIONER ROULEAU:** Okay, thank you.

24 And now, I understand we have a panel. Judging
25 by the arrangement, I gather there are three? Okay. And
26 Commission Counsel?

27 **MR. GORDON CAMERON:** Good morning,
28 Mr. Commissioner. Gordon Cameron on behalf of

1 Commission Counsel. And you have before you this morning a
2 panel of witnesses representing the Department of Finance of the
3 Government of Canada.

4 Could I ask that the witnesses be sworn or
5 affirmed?

6 **THE REGISTRAR:** Ms. Jacques, will you swear on a
7 religious document or do you wish to affirm?

8 **ADM ISABELLE JACQUES:** I swear.

9 **THE REGISTRAR:** We have the Bible, the Koran, or
10 the Torah available.

11 **ADM ISABELLE JACQUES:** The Bible.

12 **THE REGISTRAR:** For the record, please state your
13 full name and spell it out.

14 **ADM ISABELLE JACQUES:** Isabelle Jacques,
15 I-S-A-B-E-L-L-E J-A-C-Q-U-E-S.

16 **--- ADM ISABELLE JACQUES, Sworn:**

17 **THE REGISTRAR:** Mr. Sabia, will you swear on a
18 religious document or do you wish to affirm?

19 **DM MICHAEL SABIA:** Bible's good.

20 **THE REGISTRAR:** For the record, please state your
21 full name and spell it out.

22 **DM MICHAEL SABIA:** Michael Sabia, M-I-C-H-A-E-L
23 S-A-B-I-A.

24 **--- DM MICHAEL SABIA, Sworn:**

25 **THE REGISTRAR:** Mr. Mendes, will you swear on a
26 religious document or do you wish to affirm?

27 **ADM RHYS MENDES:** I'll swear on the Bible.

28 **THE REGISTRAR:** For the record, please state your

1 full name and spell it out.

2 ADM RHYS MENDES: Rhys Mendes, R-H-Y-S
3 M-E-N-D-E-S.

4 --- ADM RHYS MENDES, Sworn:

5 --- EXAMINATION IN-CHIEF BY MR. GORDON CAMERON:

6 MR. GORDON CAMERON: Good morning, and bonjour,
7 panel.

8 We will begin with some formalities, the adoption
9 of your witness statements and the such, and I will ask you
10 questions for 20 minutes or so, then I will hand it over to my
11 colleague, Ms. Shuhaibar, who will cover a specific topic with
12 some of you, and then I'll come back up to finish it off.

13 So if we could begin with those formalities. We
14 want you to put onto the record some of the documents that
15 you've prepared for the Commission and that Commission Counsel
16 prepared in conjunction with you. And in particular, if I could
17 begin by talking about the institutional report that was filed
18 by the Department of Finance.

19 And it doesn't matter which of you adopts it for
20 these purposes, but I'll ask you, Mr. Sabia, if you reviewed
21 that document, confirmed it for its accuracy and can adopt it as
22 part of the evidence in the Department of Finance before the
23 Commission?

24 DM MICHAEL SABIA: Yes, I can.

25 MR. GORDON CAMERON: Thank you. And you were
26 interviewed as part of a panel, and a interview summary was
27 generated as a result of that interview. And for each of you,
28 I'd like to confirm that you reviewed that summary of your

1 interview for accuracy, that you do believe it is accurate, and
2 that you adopt it as part of your evidence before the Commission
3 today. Can I ask each of you to confirm that?

4 DM MICHAEL SABIA: In my case, yes.

5 ADM RHYS MENDES: Yes.

6 ADM ISABELLE JACQUES: Yes.

7 MR. GORDON CAMERON: Thank you. Now, I'll ask
8 you the easiest questions, I think, for today, which is to
9 introduce yourselves to the Commissioner, with a description of
10 who you are and what your role is in the Department of Finance.

11 And so let me begin with you, Mr. Sabia. If you
12 could tell us your title, your role, and how that fits with the
13 Department of Finance.

14 DM MICHAEL SABIA: I'm the -- Commissioner, I'm
15 the Deputy Minister of Finance. So I'm the most senior
16 non-elected official in the Department. And we all work, and I
17 report directly to the Deputy Prime Minister and the Minister of
18 Finance Chrystia Freeland.

19 Do you want me to talk about what the Department
20 does?

21 MR. GORDON CAMERON: That would be helpful. What
22 the Department does and how you oversee those activities.

23 DM MICHAEL SABIA: Well, how I oversee those
24 activities is the interesting question, but the... So we're --
25 I guess it would be fair to say we're the government department
26 that's charged with the oversight, stewardship if you will, the
27 oversight of the Canadian economy.

28 That has several dimensions in our work. So

1 we're responsible for tax and fiscal policy on behalf of the
2 Government of Canada. For -- we're responsible for the
3 financial and fiscal dimension of federal/provincial relations.
4 We're responsible for international economic policy, especially
5 related to trade and some other things. We're responsible for
6 the spending side of economic development and social policy of,
7 again, across the government.

8 And my two colleagues, who will introduce
9 themselves, we're also responsible for economic analysis and
10 economic forecasting on behalf of the Government of Canada.
11 That's what Rhys Mendes on my left is responsible for. And then
12 on my right, another dimension of our work is our responsibility
13 for policy with respect to the financial sector in Canada, and
14 Isabelle Jacques is the Assistant Deputy Minister responsible
15 for that.

16 **MR. GORDON CAMERON:** Thank you. And with that
17 introduction, perhaps, Ms. Jacques, you could describe your
18 responsibilities in the Department of Finance.

19 **ADM ISABELLE JACQUES:** Yes. I'm Isabelle
20 Jacques. I'm the Assistant Deputy Minister responsible for the
21 financial sector policy. We're responsible for the development
22 of policy in the financial sector, as I mentioned.

23 In my team, I have five directorate, five
24 divisions.

25 Two of them were involved in the work that we did
26 for the Economic Order. The first one was the Financial Crime
27 and Security Division. The second one was the Financial
28 Institution Division. So we are involved in a number of policy

1 work. And in this case, we worked on both the *Proceeds of Crime*
2 *(Money Laundering and Terrorist Financing Act* and also did work
3 with respect to potential amendments to the *Bank Act* that made
4 their way into the Emergency Order.

5 MR. GORDON CAMERON: Just so that I can make sure
6 it's clear to the people observing who aren't as familiar with
7 all of these process as some of us have become so far, is it
8 correct to say, Ms. Jacques, that you and the people who work
9 with you in your section were primarily responsible for
10 developing the legislative instruments and then particularly the
11 Emergency Economic Measures Order that we will end up talking
12 about today?

13 ADM ISABELLE JACQUES: That is accurate.

14 MR. GORDON CAMERON: Thank you.

15 Mr. Mendes, could you describe your role?

16 ADM RHYS MENDES: Yes, I'm Assistant Deputy
17 Minister for Economic Policy in the Department of Finance. I
18 report to Mr. Sabia. My branch is divided into two divisions.
19 The first division focusses on assessing the current state of
20 the economy, monitoring the evolution of the economy in the near
21 term, and assessing the economic outlook. That was the division
22 that was involved in assessing the economic impact of the
23 blockades.

24 The second division focusses more on longer term
25 research and analysis of structural issues and policy issues
26 affecting the Canadian economy.

27 MR. GORDON CAMERON: Thank you very much. And I
28 think we'll probably find that most of Ms. Shuhaibar's questions

1 will be directed to you, but if you have something to contribute
2 to the questions I ask, please feel free to do so.

3 If I could begin by asking you, beginning at the
4 beginning chronologically, when, from the Department of
5 Finance's point of view, the convoy and protest events that
6 we've been talking about in this Commission first came on the
7 horizon as an issue for the Department of Finance?

8 **DM MICHAEL SABIA:** We, as a standard practice,
9 review on a real-time basis, events that we believe that are
10 occurring that can have a meaningful impact on the Canadian
11 economy. That's a core part of what Rhys's group does. So this
12 issue came on our radar screen, I would say, sort of late
13 January as events were unfolding and there were the beginnings
14 of blockades at the Canada/U.S. border.

15 So let me just back up a little bit from that and
16 explain why this became such a focus of concern on our part.
17 There are two, I think, quite important things playing out in
18 the background here. First, as you'll recall, at the time,
19 there was a great deal of speculation, and indeed in retrospect,
20 Russia's invasion of Ukraine was imminent, and that was
21 something that we were very focussed on and very concerned about
22 the economic consequences that that would have globally and the
23 therefore spillover consequences that that would have for
24 Canada.

25 And then second, because it was late January and
26 February in the usual budget cycle, we were fully engaged in the
27 preparation of what became the April '22 budget of the
28 Government of Canada. And as you know, budget making is a lot

1 about understanding what the next period of time looked like for
2 the Canadian economy. And this is, I think, important in
3 understanding the origins of our concerns.

4 So if you'll recall, January/February of '22, our
5 economy was just exiting from all of the COVID lockdowns. And
6 we were very concerned about the extent of that recovery, the
7 pace of that recovery, how fast we would recoup lost output, how
8 fast we would recoup lost jobs, because really, throughout the
9 COVID crisis, one of the government's objectives had been to
10 minimize any economic scarring, longer term scarring that would
11 be the result of the COVID crisis. So that, given our focus on
12 economic recovery and the pace of recovery, there were two or
13 three things in the environment that we were especially
14 concerned about. These are not necessarily new things. One, as
15 everyone knows now, the extent of the damage to supply chains
16 and the impact that that would have on the pace of recovery.
17 Relatedly, the, at the time, incipient issue of inflation,
18 something that was partly the result of the supply chains, but
19 also, it likely would flow from events in Ukraine because of the
20 sanctions, et cetera that would follow, and the impact on the
21 energy markets, and how that would also flow through into
22 inflation.

23 So supply chain was an issue, inflation was an
24 issue, and then third, so was the level of business investment,
25 which is a chronic issue for Canada. So all of these things,
26 and business investment, as you know, Commissioner, they --
27 business investment is very much something influenced by
28 business confidence. So you take together all of these factors,

1 and then these disruptions come along, and they obviously
2 contribute to the extent of the concern that we have because the
3 Canadian economy, in our view at the time, was at a very, very
4 fragile moment. So that was one set of concerns and very
5 significant concerns on our part and on the part of the
6 government.

7 Relatedly, particularly to the issue of business
8 investment, playing again in the background of all of this
9 activity was pretty big changes in what was going on in trading
10 patterns in the world. Now, that sounds like an abstract idea,
11 but it's actually not because the Americans at the time, with
12 Build Back Better, with the rejigging of their own supply
13 chains, of the tendency within the United States to want to have
14 more resilience of supply chains, many of them anchored in the
15 United States itself, that represented a very, very major
16 challenge to Canada because of the degree of integration of our
17 economy with the United States. Seventy-five (75) percent of
18 our exports go into that market.

19 So as a result of that, and we were doing work
20 with the Americans at the time, for instance, with respect to
21 the treatment of electric vehicles, something that was critical
22 to the future of the automotive industry in Canada, there was a
23 tendency in the United States to want to treat that as an
24 America only issue. And then again, these disruptions come
25 along and raise issues in the eyes of the United States and in
26 the eyes of the U.S. administration, raise issues around the
27 reliability of Canada as a trading partner. Significant issues.
28 To the point where issues -- you know, I'm sure we'll end up

1 discussing this -- where issues that rose to the level of
2 President Biden and our Prime Minister in bilateral
3 conversations. So these were very meaning -- very meaningful
4 issues that arose in the Canada/U.S. relationship.

5 So that too very much entered into our thinking
6 here that if these border disruptions that we were experiencing
7 at the time, if they were to continue for a period of time and
8 became a more -- an even more significant threat to the American
9 perception of Canada as a reliable trading partner, that that
10 was something with very severe long-term consequences, not just
11 for the Canadian automotive industry but for a whole range of
12 industries that we export into the United States, but the
13 automotive industry was the centre piece, at least at that time.

14 So that was the backdrop of why this was on our
15 radar screen and how it became increasingly important on our
16 radar screen going forward.

17 **MR. GORDON CAMERON:** Now that was very helpful,
18 including because it just cleared out about five pages of
19 questions that I ---

20 **DM MICHAEL SABIA:** So now I don't feel so bad
21 about having talked so long.

22 **MR. GORDON CAMERON:** No, that's exactly what I
23 was hoping you would talk about, and as a matter of fact, you
24 said we might get into more detail about the specifics of how
25 these events had an impact on your thinking about Canada's
26 reputational concerns and trading concerns, so if you have more
27 to say about that, please elaborate.

28 **DM MICHAEL SABIA:** No, I think for now that's

1 probably all right. I mean, I think that sets the scene of why
2 this was an issue for us. It had meaningful macroeconomic
3 consequences for us in the near term, particularly given this
4 point I've made about just the sensitivity, the specific moment
5 we were at, from an economic point of view. I mean, this was a
6 very, very delicate time, coming out of COVID. And I think, in
7 retrospect, we've seen all that now; we've seen how it was easy
8 to shut down an economy but very difficult to open it up again.
9 And we were in the process of opening up the economy, as every
10 other country in the world was, at this -- for pretty well, at
11 the same time.

12 So that was -- you know, it was a very, very
13 sensitive, delicate moment, from our point of view.

14 And then this broader issue with the United
15 States. I mean, we were -- there was, you know -- the Governor
16 of Michigan, was very active and very critical of what was
17 happening; there were multiple comments in the public media from
18 Members of Congress, from Michigan, and other states. There was
19 concern within the American federal government within the White
20 House, about this issue, hence my reference to a conversation
21 between the Prime Minister and President Biden about this.

22 I mean, this was -- you know, this was not -- how
23 can I put this? This was not a second-tier issue in the Canada-
24 US relationship; this was a first-tier issue. And, you know, we
25 were subsequently able to negotiate an arrangement with the
26 Americans on electric vehicles, but there was no doubt that this
27 -- these disruptions coming when they did in that process
28 brought with them the risk that we would not be able to get the

1 North American treatment that we were eventually able to
2 negotiate with the Americans with respect to electric vehicles.

3 And as I said, electric vehicles are the future
4 of the automotive industry. So if we had not succeeded in doing
5 that, then the particular consequences of that for the central
6 Canadian-based automotive industry would've been, you know,
7 very, very serious.

8 So I think probably I'll leave it there.

9 **MR. GORDON CAMERON:** Okay. Thank you.

10 And on that note, which I think is a good segue,
11 I will hand the podium over to Ms. Shuhaibar, who will have some
12 questions about the economic impacts that were of concern to the
13 department, and how that played out.

14 (SHORT PAUSE)

15 **--- EXAMINATION IN-CHIEF BY MS. DAHLIA SHUHAIBAR:**

16 **MS. DAHLIA SHUHAIBAR:** Good morning, good to see
17 you again. For the record, I am Dahlia Shuhaibar.

18 **DM MICHAEL SABIA:** I would like to say it's nice
19 to see you and be there again, but that would be playing fast
20 and loose with the truth.

21 **MS. DAHLIA SHUHAIBAR:** Well, here we are.

22 **DM MICHAEL SABIA:** Here we are. Here we are.

23 **MS. DAHLIA SHUHAIBAR:** So I will be asking some
24 questions about Finance's work on assessing the economic impact
25 of the blockade. And I think you've set the stage very well
26 with sort of the less quantifiable impacts, and now we're going
27 to be looking at more of the quantifiable ones. And I'll be
28 directing these primarily to you, Mr. Mendes, but I, of course,

1 welcome other panel member's views.

2 So, Mr. Mendes, I understand that your division
3 produced two formal economic analyses on February 10th and 22nd,
4 is that right?

5 **ADM RHYS MENDES:** Yes. I mean, the second one
6 was an updated version of the first, ---

7 **MS. DAHLIA SHUHAIBAR:** Okay.

8 **ADM RHYS MENDES:** --- but yes.

9 **MS. DAHLIA SHUHAIBAR:** And were these shared with
10 Minister Freeland?

11 **ADM RHYS MENDES:** I shared them with Mr. Sabia.
12 I -- you'd have to ask him beyond that.

13 **MS. DAHLIA SHUHAIBAR:** Mr. Sabia, did ---

14 **DM MICHAEL SABIA:** Yes.

15 **MS. DAHLIA SHUHAIBAR:** Yes. And do you know if
16 she shared them with the Incident Response Group or with her
17 Cabinet colleagues?

18 **DM MICHAEL SABIA:** Now I need some guidance,
19 Cabinet confidences and stuff.

20 **MS. DONNAREE NYGARD:** Yeah, it's fine. Inputs
21 into Cabinet are fine; discussions with Cabinet ---

22 **DM MICHAEL SABIA:** Yes, she did.

23 **MS. DONNAREE NYGARD:** --- are not.

24 **DM MICHAEL SABIA:** Yes, she did.

25 **MS. DAHLIA SHUHAIBAR:** Thank you.

26 So I'll be getting to these analyses momentarily,
27 but first can you describe the kind of information that Finance
28 was receiving from Transport Canada and other departments?

1 ADM RHYS MENDES: Yeah, so I would say the
2 principal source of information that we were receiving was from
3 Transport Canada. There was information on the amount and type
4 of trade that was disrupted, or potentially disrupted. And
5 there was also Transport Canada's analysis on the impacts of the
6 trade disruptions on economic activity.

7 MS. DAHLIA SHUHAIBAR: So I'd like to pull that
8 up, actually. So that's PBCAN00000840.

9 And this is the February 11th backgrounder I think
10 you were referring to from Transport Canada. And this was
11 shared with Finance, right?

12 ADM RHYS MENDES: It was, yes.

13 MS. DAHLIA SHUHAIBAR: Yes.

14 If we go to page 3, please. It sets out three
15 macroeconomic scenarios on the impact of the closure of the
16 bridge. And I appreciate that you didn't produce this, but can
17 you walk us through those scenarios?

18 ADM RHYS MENDES: Well, as you said, I didn't
19 produce the specific scenarios, and we relied specifically in
20 our quantitative work on the first scenario.

21 MS. DAHLIA SHUHAIBAR: Okay.

22 ADM RHYS MENDES: The first scenario really
23 focuses on a shutdown in the automotive sector, that -- a
24 shutdown in the automotive sector that is -- the logic of that,
25 I believe, is really the just-in-time nature of inventory
26 management in the automotive sector. So in the automotive
27 sector, you know, a short disruption to transportation --
28 because it's so integrated across the Canada-US border, a short

1 disruption to transportation, even if there's rerouting
2 possible, can cause disruptions, because oftentimes trucks are
3 making multiple trips back and forth between plants. And so
4 just an added couple of hours can disrupt the timelines, cause
5 drivers to time out, in terms of the amount of time they can
6 safely and legally drive.

7 So that's why I think they focused on the ---

8 **MS. DAHLIA SHUHAIBAR:** Sorry; can I interrupt for
9 one quick second?

10 **ADM RHYS MENDES:** Yeah.

11 **MS. DAHLIA SHUHAIBAR:** You mentioned just-in-time
12 delivery; can you just explain that?

13 **ADM RHYS MENDES:** So it's a form of inventory
14 management in which, in the case of an auto plant, the various
15 parts that they need to produce the automobiles that they're
16 building at the plant come in literally just in time to be used
17 in the production process, so they don't store a stock of
18 inventories to any great extent. So, really, even a 24-hour
19 disruption to sort of the flow of these inputs can cause
20 production to shut down, or at least be reduced.

21 **MS. DAHLIA SHUHAIBAR:** Okay. Thank you.

22 So the first scenario was about the auto sector
23 shutting down ---

24 **ADM RHYS MENDES:** Yeah, and it allowed for other
25 sectors, I think they'd -- they assumed that they could largely
26 mitigate the effects of the blockade and continue to operate
27 fairly normally.

28 **MS. DAHLIA SHUHAIBAR:** And I think that's where

1 Scenarios 2 and 3 come in?

2 **ADM RHYS MENDES:** Yeah, so Scenarios 2 and 3
3 really focus on an escalation. So Scenario 2 expands to take
4 account of other manufacturing sector -- other parts of the
5 manufacturing sector, beyond automobiles. These sectors also
6 rely a lot on trade across the Canada-US border. They are
7 somewhat less reliant -- they tend to have more inventories in
8 stock, and so they can continue for somewhat longer than the
9 automobile sector before they face large shutdowns. So I sort
10 of think of that second scenario as, you know, had the blockades
11 continued, you could start to move into that second scenario.

12 And then the third scenario is a case where
13 really the -- it becomes very difficult to reroute, difficult or
14 impossible to reroute around the blockades. And in that case,
15 they -- the shutdowns become more widespread across the economy.

16 **MS. DAHLIA SHUHAIBAR:** Okay. So there's some
17 emails produced to us from your team that suggest they thought
18 Scenarios 2 and 3 were pretty unlikely. Did you have a view on
19 that at the time?

20 **ADM RHYS MENDES:** My recollection is that that -
21 - those emails were around February 14th, and so that was after
22 the situation at the Ambassador Bridge had been resolved. And
23 so I think that there was a clear direction at that point, in
24 terms of -- so I think that it was the additional information
25 that they had ---

26 **MS. DAHLIA SHUHAIBAR:** Right.

27 **ADM RHYS MENDES:** --- at that point that allowed
28 them to have that view of Scenarios 2 and 3.

1 MS. DAHLIA SHUHAIBAR: Okay. And what about
2 Scenario 1; did you think that was a likely scenario, or...?

3 ADM RHYS MENDES: Scenario 1 we used as the basis
4 for our main approach, in terms of thinking about the economic
5 impact, so yes. I mean, I think Scenario 1, you know, didn't
6 play out perhaps exactly as it was modelled, but largely as it
7 was modelled.

8 MS. DAHLIA SHUHAIBAR: Okay. So, I'd like to
9 pull up the first analysis; it's SSMCAN00000177.

10 And so you said that you used this -- the
11 backgrounder we just looked at as a starting point. But I
12 understand this analysis differed in some ways. Can you expand
13 on that?

14 ADM RHYS MENDES: So this is the February 10th ---

15 MS. DAHLIA SHUHAIBAR: Yeah.

16 ADM RHYS MENDES: --- version. So in this
17 version we really focused on highlighting, number one, the
18 amount of trade that was at risk; the fact that at the
19 Ambassador Bridge alone, 30 percent of all road trade between
20 Canada and the US crosses that bridge alone. Every year about
21 390 million goods crossing each day. That, to us, was the thing
22 that we wanted to focus on in terms of communicating just how
23 much the risk was in terms of a prolonged disruption there, a
24 prolonged disruption there that causes a prolonged disruption in
25 trade traffic, and therefore a significant impact on economic
26 activity.

27 I believe we also highlighted -- if you can
28 scroll down. Can we scroll down a bit further, please?

1 Yeah, so at the end of that last paragraph, we
2 also highlight the reputational risk that several U.S. lawmakers
3 had pointed the situation to argue for "Buy America" policies
4 and other protectionist policies, which would mean less reliance
5 on buying goods from Canada and obviously would have an adverse
6 impact on Canada, even over the longer term.

7 **MS. DAHLIA SHUHAIBAR:** Okay. But at this stage,
8 you didn't attempt to quantify the impacts yet, I believe?

9 **ADM RHYS MENDES:** We did not attempt to quantify
10 the impact in this document.

11 **MS. DAHLIA SHUHAIBAR:** And why is that?

12 **ADM RHYS MENDES:** Well the situation was fluid.
13 So at this stage, you know, quantifications would have been what
14 if scenarios. And I think that the -- you know, quantifying
15 sort of what ultimately happened, which was, you know, a
16 limited, more short-lived disruption, wasn't really going to
17 convey the larger point. And the larger point was really that
18 the risk that, you know, if these -- if the blockades spread or
19 if they persisted, that there would be a very significant impact
20 on economy activity, and that there was a building reputational
21 impact.

22 **MS. DAHLIA SHUHAIBAR:** Okay. So I'd like to go
23 to page 2.

24 **ADM RHYS MENDES:** Could I just add something to
25 that?

26 **MS. DAHLIA SHUHAIBAR:** Oh, of course.

27 **ADM RHYS MENDES:** In thinking about the
28 quantitative impact, so we actually, as part of what we do on a

1 regular basis, we monitor economic activity in the Canadian
2 economy. So that means we try to come up with a view of what
3 economic activity is in the current quarter, so before
4 Statistics Canada puts out the official statistics and it will
5 be in the next quarter. And we rely on various high frequency
6 data to do that, but we're also look at significant events that
7 may have an impact.

8 And so part of, you know, our ultimate
9 quantitative assessment of the GDP impact was to feed into that
10 monitoring process, but of course that requires having a more
11 concrete sense of how the situation is playing out than we had
12 at this stage.

13 **MS. DAHLIA SHUHAIBAR:** I see. Thank you.

14 So on page 2, the bullet that begins "economic
15 impacts". Scroll down a little bit. Yeah. There we go.

16 So about half way into the paragraph, it says:

17 "In the near-term, most manufacturers are
18 likely to continue producing as they find
19 alternative shipping routes and/or through
20 inventory management (in anticipation of a
21 resolution of the blockades). Still, the
22 macro-economic impacts could quickly rise
23 depending on how long the protests last
24 and whether they spread further, with
25 production eventually forced to slow."

26 So can you expand on how the possibility of
27 rerouting and inventory management sort of factored into your
28 analysis?

1 ADM RHYS MENDES: Yeah, so the Ambassador Bridge
2 was completely shut down at this point, but there were other
3 bridges nearby through which traffic was being rerouted. I
4 mean, you can see that in the statistics in terms of the
5 increases in traffic at other bridges, which I believe is later
6 in this document.

7 MS. DAHLIA SHUHAIBAR: M'hm.

8 ADM RHYS MENDES: Increases in traffic at other
9 nearby bridges.

10 We say most manufacturers here, and that's
11 because, as I was saying earlier, it specifically, within the
12 set of manufacturers, it's specifically auto production that
13 tends to have -- tends to carry very little in terms of
14 inventory on hand, and so is most at risk of being disrupted
15 very quickly.

16 So as you'll note, the last sentence of the
17 paragraph you were referring to, we were already seeing some
18 plants starting to see reduced production.

19 MS. DAHLIA SHUHAIBAR: Can you comment on ---

20 DM MICHAEL SABIA: Can I ---

21 MS. DAHLIA SHUHAIBAR: Oh, of course.

22 DM MICHAEL SABIA: Is it okay if I ---

23 MS. DAHLIA SHUHAIBAR: Of course. Yeah. Go
24 ahead.

25 DM MICHAEL SABIA: So just to build on what Rhys
26 just said, just to elaborate a little bit on Rhys' last
27 sentence, given how time sensitive the supply chains are in the
28 automotive industry and how integrative production is, I mean, I

1 think it's -- parts -- a car being assembled, actually the parts
2 cross the border between Canada and the United States six
3 different times in the process of producing a car. So there's a
4 high degree of integration here. And you add to that the just
5 in time delivery of Rhys' point that Rhys made.

6 So we were seeing, at the time, I mean, this was
7 having real world impacts. In Canada, on the Canadian side of
8 the border, Ford, GM, Toyota, Stellantis, and Honda were either
9 reducing shifts or in fact had shut down some plants because
10 parts were no longer available.

11 And then on the U.S. side, they were experiencing
12 the same thing because of that integration. So Ford, GM,
13 Stellantis, and Toyota in the United States were again either
14 shut down or had substantially reduced shifts, which obviously
15 has a pretty significant impact on not just the companies, but
16 on workers.

17 So that was actually -- that was happening at the
18 time. I mean, this was not something that was going to happen.
19 These plants were being affected in real time.

20 **MS. DAHLIA SHUHAIBAR:** That's helpful. Thank
21 you.

22 **ADM RHYS MENDES:** And the context, as Mr. Sabia
23 alluded to earlier -- okay. The context here was that auto
24 production had been adversely affected prior to this by
25 shortages in semi-conductors, principally, and so we were coming
26 into this after a period where we already hadn't been producing
27 as many autos as we normally would have. And that was having an
28 obvious effect on the market. Anyone who went to buy a car

1 would have noticed that.

2 MS. DAHLIA SHUHAIBAR: So if we go to page 2, to
3 the bullet that starts "Occupations of downtown cores"? Maybe
4 the next -- sorry, the next page, I guess. Yes. There we go.

5 So:

6 "The occupations in certain cities
7 (notably downtown Ottawa) [are] having
8 important economic and social impacts on
9 local residents and businesses. If the
10 disruptions remain contained and end soon,
11 it is unlikely to have a significant
12 impact on the wider economy given the
13 relatively small size of the impacted
14 areas and likely diversion of activity to
15 other parts of the cities."

16 So ---

17 COMMISSIONER ROULEAU: Can you just ---

18 MS. DAHLIA SHUHAIBAR: Yeah.

19 COMMISSIONER ROULEAU: --- slow down for the
20 interpreters, ---

21 MS. DAHLIA SHUHAIBAR: Yeah.

22 COMMISSIONER ROULEAU: --- please? Thanks.

23 MS. DAHLIA SHUHAIBAR: Absolutely. Sorry.

24 So is it fair to say that during this period,
25 Finance was primarily focused on the border blockades, rather
26 than the protests in cities? Or the economic impacts of those?

27 ADM RHYS MENDES: In terms of the economic
28 impacts, we believe the border blockades posed the greater risk.

1 MS. DAHLIA SHUHAIBAR: I guess they would affect
2 the whole economy, whereas cities were more localized?

3 ADM RHYS MENDES: Yeah, so the impacts -- the
4 impacts of the border blockade, because the effected sectors
5 have linkages to the -- greater linkages to the rest of the
6 economy, did have the potential to have much broader effects.

7 MS. DAHLIA SHUHAIBAR: Okay. So the next bullet,
8 "Implications for Monitoring", it's a big one, but we'll just
9 start it.

10 So:

11 "Up to now, the blockades had mainly
12 delayed trade activities of goods (valued
13 at around \$500 million per day) and
14 increased shipping costs. This represents
15 the value of goods being delayed and does
16 not translate into direct permanent loss.
17 If the disruptions were to end now, most
18 losses could be recouped leaving little
19 impact on economic activity in [the first
20 quarter of 2022]."

21 Just pausing there, can you expand on the idea
22 that the delays would not translate into direct permanent loss?

23 ADM RHYS MENDES: Yeah. So there's a distinction
24 here between short delays, ---

25 MS. DAHLIA SHUHAIBAR: M'hm.

26 ADM RHYS MENDES: --- and a short disruption, and
27 a longer disruption.

28 MS. DAHLIA SHUHAIBAR: M'hm.

1 ADM RHYS MENDES: And the reason is, so if you
2 imagine an auto plant, for instance, if they lose a short period
3 of production, it may be feasible to make that up to a
4 significant extent in subsequent weeks, but there's a limit to
5 how much production can be made up because, you know, there's
6 only 24 hours in a day, people can only work so much, you can
7 only work the plant for 24 hours a day at most. And, you know,
8 even that there are limits, because there's downtime needed for
9 maintenance, et cetera.

10 So a short production -- a short disruption to
11 production, it's possible to make that up. It's not free,
12 because, you know, there's a reason that the plants and the
13 workers weren't working those extra hours to begin with. Most
14 likely, you know, there's time needed to maintain the plant, for
15 people to rest, et cetera.

16 But it is possible, with a short enough
17 disruption, to make up at least some of the lost production.

18 With a longer production, as the amount of loss
19 production accumulates, it just becomes more and more difficult
20 to actually feasibly make that up, given the constraints in
21 terms of how much you can actually increase production once the
22 disruption ends.

23 MS. DAHLIA SHUHAIBAR: Okay.

24 DM MICHAEL SABIA: Can I just...?

25 MS. DAHLIA SHUHAIBAR: Of course.

26 DM MICHAEL SABIA: Again, I just want to draw
27 this out because I think in the subsequent discussion, this
28 point, I think, is important, and it's got to do with, a short

1 disruption is one thing. As Rhys has said, a longer term one is
2 a completely different story, and that is what led us, within
3 the department, to be so focused on this question about finding
4 measures that could be delivered with speed, because the
5 objective was to try to keep the disruptions to as short a
6 period of time as possible, for two reasons. First, if shorter,
7 based on Rhys's analysis, then the macroeconomic effects of them
8 are -- other things being equal, are more likely to be
9 relatively more modest. But second, and really important, if
10 they were to continue, then on this other point that I made
11 earlier about the impact on the Canada/US trading relationship
12 and the longer-term consequences of the Americans reassessing
13 Canada's reliability as a trading partner, that if we could keep
14 things short, the damage to that overall relationship is
15 something that we would probably be able to manage our way
16 through. If, on the other hand, the disruptions continued for a
17 period of time, then a core concern we had was that that could
18 have at a time when the Americans were reassessing their trading
19 relationships with the world, and certainly with us, that that
20 could have a very significant and durable negative impact on
21 Canada's economic prospect.

22 So this issue about trying to move quickly to
23 keep the disruptions to a relatively finite and short period of
24 time, this is something that was -- it was just right at the
25 core of all of our thinking within the department.

26 **MS. DAHLIA SHUHAIBAR:** That's very helpful and I
27 think my colleague will be exploring a bit more about what
28 measures you took and why. That's very good context, so...

1 We're going to be getting into some technical
2 points now, and so I think it would be helpful to clarify some
3 concepts for those of us who are not economists, including
4 myself.

5 So am I right that, at a basic level, GDP is the
6 value of goods and services produced by a country in a given
7 period of time?

8 **ADM RHYS MENDES:** Yes.

9 **MS. DAHLIA SHUHAIBAR:** Yes. And it's often
10 considered in different quarters of the year?

11 **ADM RHYS MENDES:** Yes.

12 **MS. DAHLIA SHUHAIBAR:** Okay. And so can you
13 explain the difference between the level of GDP and the growth
14 of GDP?

15 **ADM RHYS MENDES:** Yes. So the level of GDP is
16 essentially what you just described; the flow value of the goods
17 and services produced in an economy during a period of time.
18 The growth rate is the change in that level between two
19 different periods.

20 **MS. DAHLIA SHUHAIBAR:** Okay, thank you.

21 I'd like to pull up SSMCAN00003771.

22 **ADM RHYS MENDES:** I should say the growth level
23 if the change in the level between two different periods
24 expressed as a percentage.

25 **MS. DAHLIA SHUHAIBAR:** Okay, thank you.

26 And we'll see that this is an email from February
27 10th from Julie Turcotte, who I believe is the Director General
28 of Economic Analysis and Forecasting.

1 And so at the top here, she says:

2 "FYI. Bloomberg is suggesting a 0.1
3 [pp]..."

4 Which is, "percentage points," I think:

5 "...direct drag on annualized GDP
6 growth (for each week of major
7 slowdowns, seems large to me?!) and an
8 extra 0.2-0.3 [percentage points]
9 indirect effects ... (of course, too
10 cute to be really backed by analysis,
11 and most likely overstated to make up
12 for nice media attention)"

13 So when they say, "A 0.1 percentage points,
14 direct drag on annualized GDP growth," can you explain that in
15 simple terms for us?

16 **ADM RHYS MENDES:** Yeah. So it's basically
17 reducing the rate of growth by .1 percentage point in this case,
18 is what they're saying. And what -- I don't know exactly what
19 they mean by "drag" because my recollection is that the
20 Bloomberg article in question doesn't specifically lay out the
21 methodology and detail. But I would suspect it means the impact
22 on the sectors that are directly affected by the trade
23 disruptions.

24 **MS. DAHLIA SHUHAIBAR:** And maybe that's a
25 contrast to the 0.2 to 0.3 in indirect effects?

26 **ADM RHYS MENDES:** Yeah. And so, again, I don't
27 know what that means. That language often -- indirect is often
28 used to refer to the impact of a disruption in one sector as it

1 spreads through the economy onto other sectors.

2 MS. DAHLIA SHUHAIBAR: So it seems like Ms.
3 Turcotte is a little bit sceptical about these conclusions.
4 Like, did you have a view at the time, or...?

5 ADM RHYS MENDES: I don't recall having a
6 specific view at the time on the Bloomberg estimates.

7 I'll say part of what you're seeing here is just
8 in the normal course of, you know, assessing all of the incoming
9 information, we do try to play a bit of a challenge function,
10 and I think, you know, and trying to take a sceptical view of
11 things in order to assess the validity of a given number. And
12 over time, you know, as more information comes in, that can
13 change. I think the .1, you know, that ended up being, you
14 know, in the same vicinity as the sorts of numbers we came up
15 with. If you add up the .1 plus the .2 to .3 and get .3 to .4,
16 that ends up being a larger number than what we came up with.
17 But of course that -- we hadn't done that analysis at this
18 point. So at this point they were just trying to sort of have a
19 discussion around what they thought of these numbers.

20 MS. DAHLIA SHUHAIBAR: Fair enough.

21 So I'd like to pull up SSMCAN00000095.

22 And these are minutes from the February 13th
23 meeting of the Incident Response Group, which I believe, Mr.
24 Sabia, you were attending, is that right?

25 If we can go page 6, once you have it up?

26 I think this is the only unredacted sentence, so:

27 "The Minister highlighted ongoing
28 economic losses of 0.1 percent to 0.2

1 percent of GDP for every week the
2 blockades continue." (As read)

3 So this is Minister Freeland?

4 **DM MICHAEL SABIA:** Yes.

5 **MS. DAHLIA SHUHAIBAR:** Yes. And as you just
6 said, at this stage you had not provided a figure like this to
7 Ms. Freeland.

8 **DM MICHAEL SABIA:** Right. That's correct.

9 **MS. DAHLIA SHUHAIBAR:** Yes. And so when she --
10 and she actually told us in the interview she had got this from
11 the Bloomberg report.

12 **DM MICHAEL SABIA:** Yes.

13 **MS. DAHLIA SHUHAIBAR:** And when she speaks about,
14 "Ongoing losses of GDP every week," is it fair to say it's not
15 clear whether she's talking about level or growth?

16 **ADM RHYS MENDES:** Well, if it's from the
17 Bloomberg article they were referring to growth.

18 **MS. DAHLIA SHUHAIBAR:** Okay.

19 **ADM RHYS MENDES:** From the minutes, it's --
20 you're right, it's not ---

21 **MS. DAHLIA SHUHAIBAR:** Yeah.

22 **ADM RHYS MENDES:** It's ambiguous.

23 **MS. DAHLIA SHUHAIBAR:** And could that ---

24 **DM MICHAEL SABIA:** And that's something -- Rhys
25 may want to elaborate on this but the way the Bloomberg piece
26 got done, it established a set of numbers, and it conveyed that
27 if it went on for X-number of weeks, you would just add up that
28 number; it was, like, .1 or .2 for each week. And I think

1 that's what the Minister, given that this is based on Bloomberg,
2 that that's what the Minister is commenting on here.

3 Our thinking, and eventually in a further
4 discussion with the Minister, was that actually while Bloomberg
5 may have got some things right, what we think that they did not
6 get right was that the impact grows over time. So for every
7 unit of time, you get more impact than just if you're able to
8 contain the disruptions to whatever; a week, two weeks,
9 whatever, but a very short period of time. That's one thing.
10 But as it goes on and the indirect effects spill over into other
11 sectors, you get more disruptions of supply chains, then that
12 number will tend to grow over time as you go through it week by
13 week. So, again, coming back to this point I made earlier, sort
14 of time is everything here.

15 **MS. DAHLIA SHUHAIBAR:** Right.

16 **DM MICHAEL SABIA:** If you can contain it, that's
17 one thing. If you can't and it gets bigger and bigger, then
18 you're facing bigger and bigger economic flow.

19 **ADM RHYS MENDES:** Yeah. And as we were
20 discussing earlier, inventory plays a key part in this, that the
21 auto sector got hit first because it tends to operate with a
22 just-in-time delivery model.

23 **MS. DAHLIA SHUHAIBAR:** Right.

24 **ADM RHYS MENDES:** Other manufacturing sectors
25 would have been hit subsequently as they started to draw down
26 their inventories. You know, sectors like food and beverage
27 that rely on perishable inputs that cross the border would have
28 started to be more affected also. So I think that the -- the

1 economic impact would spread the longer it lasted, and so the
2 number wouldn't be the same for each week, it would grow.

3 **MS. DAHLIA SHUHAIBAR:** Okay, that's helpful.
4 Can we pull up SSMCAN00001980?

5 (SHORT PAUSE)

6 **MS. DAHLIA SHUHAIBAR:** And so this is an email
7 that you sent, Mr. Mendes, to Mr. Sabia on February 22nd.

8 And so if you scroll down a little bit. Yeah:

9 "Michael, [A]s requested, here is our
10 best current estimate of the impact of
11 the blockades: With the current
12 information, we estimate that the
13 border blockades would reduce the level
14 of GDP in 2022Q1 by 0.03 to
15 0.05 percent. In terms of annualized
16 growth, this would knock off about 0.1-
17 0.2 percentage points in [the first
18 quarter]. Much of the impact on the
19 level of GDP will likely be recouped in
20 the [the second quarter] as production
21 catches up."

22 And so when you say there would be a reduction in
23 the level in the first quarter by 0.3 to 0.05 percent, 0.03,
24 excuse me, so that means the economy would have produced 0.03 to
25 0.05 percent less than expected? Is that what it means?

26 **ADM RHYS MENDES:** Less than it otherwise would
27 have in the absence of the disruptions.

28 **MS. DAHLIA SHUHAIBAR:** Okay. And on the part

1 about annualized growth, can you just explain that one, the
2 reduction in 0.1 to 0.2 percentage points?

3 **ADM RHYS MENDES:** Yeah. So that is just saying
4 that the change, the percentage change in GDP between the first
5 quarter of 2022 and the fourth quarter of 2021 would be reduced
6 by .1 to .2 percentage points.

7 **MS. DAHLIA SHUHAIBAR:** And can you elaborate on
8 this sentence about how the level -- the impact on the level of
9 GDP would likely be recouped in the second quarter?

10 **ADM RHYS MENDES:** Yeah. So again, we had a
11 discussion earlier around, you know, a short disruption makes it
12 feasible to catch up on that lost production subsequently, and
13 so given -- you know, this email was February 22nd. By this
14 point we knew the duration of the disruptions, in the event, you
15 know, that they were limited in duration, and so at this point,
16 we believed that it was possible for the lost production to be
17 made up by subsequently, you know, people working overtime,
18 factories running overtime.

19 As I said earlier, that's not free because, you
20 know, there's a reason you don't run your factory overtime in a
21 day, just because you need downtime for maintenance, you need
22 downtime for people to actually rest, and you know, running
23 overtime can lead to productivity issues and stuff. But
24 overall, we believed it was possible, given the limited time of
25 the disruption.

26 **MS. DAHLIA SHUHAIBAR:** And so if the level could
27 possibly be recouped, does that also mean that the effects on
28 annual growth could be offset or do they not operate that way?

1 ADM RHYS MENDES: It may not completely offset.
2 There's -- you mean in terms of annual growth quarter to
3 quarter? So basically what this means is that you'd see growth
4 in the second quarter being a bit stronger than it otherwise
5 would have as you see the catch-up in production.

6 MS. DAHLIA SHUHAIBAR: Okay. And so the next
7 bullets we've sort of covered already. We talk about the -- you
8 talk about the supply chains being under stress already, and
9 then the major impact of the auto disruption?

10 DM MICHAEL SABIA: If I could?

11 MS. DAHLIA SHUHAIBAR: Yeah.

12 DM MICHAEL SABIA: When I look at that, and
13 indeed, when that analysis surfaced, I hope you'll understand
14 what I mean when I say this, but that analysis says to me
15 success. Success in that the disruptions, at least at that
16 point, it seemed as though they -- we had succeeded, the
17 government had succeeded in keeping those disruptions at --
18 within a relatively short period of time.

19 So the fact that almost ex post Rhys and his
20 folks could do that analysis and say, "Well, we pretty much know
21 what the duration is; therefore, we have a pretty good idea of
22 this", that said to us that, well, as I said, that's pretty much
23 success, given the disruptions that we faced earlier on and the
24 decisions that needed to be made when the duration of the
25 disruption was still an open question. The fact that we were
26 able to do this ex post said to us, you know, in a way, success
27 or mission accomplished.

28 MS. DAHLIA SHUHAIBAR: Right. So it could have

1 been way worse, but thankfully it wasn't, basically?

2 DM MICHAEL SABIA: (Inaudible response)

3 MS. DAHLIA SHUHAIBAR: Okay. So the last two
4 bullets, they say:

5 "The ultimate impact, will, among other
6 things depend on [the] ability of
7 affected businesses to increase
8 production beyond normal levels to
9 catch up on lost output in the coming
10 weeks."

11 And:

12 "These economic impacts could quickly
13 escalate in the event that blockades
14 were to [re-emerge] and if other
15 crossings had become unavailable."

16 So I think we've sort of covered these points,
17 but anything you want to add about those?

18 ADM RHYS MENDES: I think we've ---

19 MS. DAHLIA SHUHAIBAR: It sort of looks good,
20 but...

21 ADM RHYS MENDES: Yeah. I think we've covered
22 the first point in terms of the length of the disruption is
23 really what drives the ability of businesses to catch up in
24 part. On the last bullet, I mean, I think that just speaks to
25 the point Michael just made, that, you know, it was really the
26 fact that the blockades had been ended within a limited time is
27 what prevented the economic impact from escalating much further.

28 MS. DAHLIA SHUHAIBAR: I'd like to pull up

1 SSM.CAN.00007571.

2 And this is the second analysis from
3 February 22nd. And I don't propose to walk through it in the
4 same way because I think we've covered a lot of it. And --
5 would you agree that a lot of it expands on your email that we
6 just saw?

7 **ADM RHYS MENDES:** Yes.

8 **MS. DAHLIA SHUHAIBAR:** Yes. But I will look at a
9 few things.

10 So in the big "Economic impacts" paragraph on
11 page 1, there's a fair bit of detail about the delays in trade
12 and effects on auto production. And the last two sentences say:

13 "Though the Bridge has reopened, it
14 will likely take time to return to the
15 pre-disruption pace of trade and
16 production. In addition, the fallout
17 could be even greater if producers
18 choose to source their supply chains
19 elsewhere in the longer term, for fear
20 of these disruptions re-occurring."

21 And so this idea that producers might source
22 their supply chains elsewhere, was this something that Finance
23 was hearing? And perhaps, Mr. Sabia, you might want to speak to
24 it, I'm not sure.

25 **DM MICHAEL SABIA:** Well, look, I think that's
26 just another way of -- Rhys may want to elaborate on the point
27 because there's an analytical point here. But I mean, that's
28 consistent with the point I made earlier about the strength of

1 the reaction that was being reported in the public media from
2 U.S. lawmakers at a time when they were attempting to pass
3 legislation that could have a pretty significant impact on the
4 re-engineering of their supply chains to repatriate.

5 I mean, you'll recall, I mean, this issue is
6 still very much, you know, in front of us today, that as we move
7 to a different structure of global trade than we have had for
8 the last 25 or 30, 40 years, all of these issues about sourcing
9 and structure of supply chains, these are all -- they've all
10 become open questions. So you know, the concern that we had
11 here was, again, that this is in the world of confidence and
12 perception, if American companies or the American government
13 began to think that they could not count on us as a reliable
14 source of supply, then they probably would shift production.
15 And if they were to shift production, that would have a,
16 obviously, pretty significant, very, not pretty, a very
17 significant impact on, well, both the level of GDP and the
18 growth rate of GDP.

19 But do you want to...

20 **ADM RHYS MENDES:** Yeah, and I guess I would say
21 that this sentence is in part trying to convey the longer term
22 uncertainty.

23 **MS. DAHLIA SHUHAIBAR:** Right.

24 **ADM RHYS MENDES:** But you know, the limited
25 duration, the fact that the blockades were ended within a
26 limited duration I think helped to avert some of the near term
27 risks. You know, Michael talked about the negotiations with the
28 U.S. over electric vehicles and... So that is clear that there

1 was a helpful -- that it was helpful in the near term.

2 What we don't know, is, you know, five years from
3 now, when an automaker has to decide where to put their new
4 plant, will this be a consideration. Hopefully the fact that
5 the disruptions were relatively short-lived mitigates that
6 issue, but that sentence was just a reminder that there is that
7 longer term uncertainty.

8 **MS. DAHLIA SHUHAIBAR:** Okay.

9 If we go to page 5, please, to the second table.
10 It's called Economic Impact of Border Blockades.

11 And so the first column says:

12 "Value of goods per day prevented of
13 free flow, \$511M per day at the peak."

14 And the second column says:

15 "Estimated economic costs per day,
16 between \$28M and \$56M per day at the
17 peak."

18 Can you explain the two columns and how they
19 interact?

20 **ADM RHYS MENDES:** Yeah. So the first column is
21 the sum of trade at the Ambassador Bridge and at the points of
22 entry at Emerson and Coutts that were blockaded.

23 The second column is our estimate of the economic
24 impacts, so the impact on GDP per day during the week where we
25 think the impacts peaked, so that was I guess the week of
26 February 6th or 7th when the -- the week during which the
27 Ambassador Bridge was blocked.

28 So that second column, the way we come up with

1 that is we start -- we take as a starting point Transport
2 Canada's scenario 1, which we discussed earlier, which estimated
3 an impact from the Ambassador Bridge disruption at \$45 million a
4 day. We then make assumptions to get effects on -- you know,
5 get estimates of the impacts stemming from the disruptions at
6 the points of entry at Coutts and Emerson, and that gets us from
7 the 45 to the \$56 million a day. The 28 million reflects the --
8 you know, there was uncertainty about the overall impact. You
9 know, we -- you saw in discussions earlier and in one of the
10 emails I think you put up earlier there was a discussion around
11 how should we think about the \$45 million disruption that
12 Transport Canada had? Should we think of it as an upper bound?
13 So the 28 reflects that uncertainty. So we wanted to be
14 cautious in terms of the economic impacts that we estimated. So
15 it's simply half of the 56 million to reflect that there's a
16 range of uncertainty about what the true impact is.

17 **MS. DAHLIA SHUHAIBAR:** I'd like to pull up
18 SSM.CAM.00003807. And so this is a draft of the Section 58
19 explanation, so the formal explanation the government gave for
20 the *Emergencies Act*. And I can pull up an email if you like,
21 but do you recall it being sent to you, this draft, Mr. Mendes,
22 on February 16th or so?

23 **ADM RHYS MENDES:** I remember a draft being sent
24 to me. I don't remember the precise date.

25 **MS. DAHLIA SHUHAIBAR:** Okay. If we go to page 6,
26 please? The second full paragraph says,

27 "The economic impact to date is
28 estimated at approximately 0.1 per cent

1 of Canada's GDP per week; however, the
2 impact on important trade corridors and
3 the risk to the reputation of Canada as
4 a stable, predictable and reliable
5 location for investment may be
6 jeopardized if disruptions continue."

7 And so I can pull it up if you like, but do you
8 recall writing an email saying that you had asked for this
9 paragraph to be removed?

10 **ADM RHYS MENDES:** I had asked for the reference
11 to the GDP impact be removed, yes.

12 **MS. DAHLIA SHUHAIBAR:** And why did you ask for
13 that?

14 **ADM RHYS MENDES:** So a few reasons. One is that
15 the -- you know, the -- we hadn't completed our GDP impact
16 estimates ---

17 **MS. DAHLIA SHUHAIBAR:** M'hm.

18 **ADM RHYS MENDES:** --- because in part we were
19 still evaluating the situation. It was evolving.

20 **MS. DAHLIA SHUHAIBAR:** M'hm.

21 **ADM RHYS MENDES:** I did not think that the -- as
22 Michael discussed earlier, the per week characterization I
23 thought missed the point that the GDP impact would rise with
24 each subsequent week, it wouldn't be the same every week, the
25 longer that the effects went on. And I think most importantly,
26 the real issues here were the risk of a more prolonged or more
27 widespread disruption to cross-border trade that would have led
28 to a much larger GDP impact and the reputational risk that

1 affected our reputation as a reliable trading partner and as a
2 good destination for investment.

3 **MS. DAHLIA SHUHAIBAR:** Okay. I just have one
4 last document. So it's SSM.CAN.0000498.

5 And so this is a memo from April 6th that was
6 prepared by the Privy Council Office for the Prime Minister.
7 And we can see at the top it's called "Merchandise Trade in
8 February 2022." If we go down to page 2, just the first bullet
9 under "PCO Comment".

10 "February data confirm that the border
11 crossing blockades in February had
12 limited impact on the flow of goods, as
13 lower traffic at the impacted border
14 crossings was partly offset by
15 increased trade activity at other
16 crossings. This suggests that border
17 protest did not significantly disrupt
18 the Canadian economic activity in
19 February, in line with the advanced
20 real GDP estimate, which anticipates a
21 growth of 0.8%."

22 Do you agree with the conclusion that there
23 wasn't a significant impact on the economy?

24 **ADM RHYS MENDES:** So I think this -- the last
25 estimate we did of this was the .1 to .2 percent impact on the
26 first quarter, quarter over quarter growth. And so we haven't
27 revisited that. That said, I think that the -- it's fair to say
28 that the economic impact was limited, but it was limited because

1 the duration of the blockades was limited. So I think, again,
2 it comes back to the fact that because the duration was limited,
3 there was some ability to ramp up production after the blockades
4 had ended and trade had resumed. Because the blockades weren't
5 more widespread, as in affecting bridges that were being used to
6 reroute some of the traffic that would have gone over the
7 Ambassador Bridge in particular, that helped to limit the
8 impact. But had the blockades been more widespread or longer
9 lasting, the impact would have been much bigger.

10 I would also just add that it's not possible to
11 say that they didn't have any impact because we know that auto
12 plants had either shut -- many auto plants had either shut down
13 or reduced hours, reduced shifts, so there was clearly an impact
14 in real time. That's -- that information is clear in the public
15 record.

16 **MS. DAHLIA SHUHAIBAR:** Right.

17 **ADM RHYS MENDES:** When we look at the data, so
18 data collected, for instance, by Warren's, which is a company
19 that collects data on the automotive industry among other
20 things, if you compare their forecast for what February
21 production would have been at the -- when they made the forecast
22 at the beginning of February versus when it actually turned out
23 to be, it ended up being close to 10 percent below what their
24 initial forecast is. And I think it's reasonable to assume that
25 at least part of that was due to the blockades, given that we
26 know that there were shutdowns and reduced hours at many plants.

27 **MS. DAHLIA SHUHAIBAR:** Okay. Just as my last
28 question, I understand that Finance didn't do sort of an after-

1 the-fact assessment, and can you explain why, of the impact of
2 the GDP?

3 **ADM RHYS MENDES:** Yeah, so, I mean, you know, we
4 often do assessments of things -- of events that are likely to
5 have an economic impact in real time, because as I was
6 mentioning earlier, we are trying to monitor the evolution of
7 the economy. You know, we try to come up with an estimate for
8 GDP in the current quarter and the next on an ongoing basis. So
9 we're often doing real-time assessments, whether it's, you know,
10 a flood or other weather event, or something like the blockades.
11 We generally don't do ex post assessments of the impacts of
12 events like this. The reason is, it's very difficult to
13 actually identify the impact ex post. So, you know, you think
14 about all of the February data that we're looking at, so whether
15 it's the trade data, or GDP, or labour force data, there were
16 confounding factors affecting things.

17 So, you know, for instance, there was an Omicron
18 wave in January of this year, which adversely affected -- which
19 would have adversely affected economic activity, and therefore,
20 would have affected the growth rate of economic activity between
21 January and February, would have affected hours worked. And so
22 there was also -- for instance, there were auto production
23 issues in January unrelated to the blockades but related to
24 shortages of semiconductors and other inputs, which caused auto
25 production in January to be adversely affected. So, you know,
26 there would be normally some ramp up in February to try to make
27 up for that if the parts started to come in. That sort of
28 confounds the ability to see the full effect of the blockades on

1 auto production.

2 So there were these various confounding factors
3 that are always in play because there are always multiple things
4 going on in the economy that make it difficult to provide an ex
5 post estimate of the impact with any degree of confidence.

6 MS. DAHLIA SHUHAIBAR: So, basically, it's hard
7 to isolate the impact of one single ---

8 ADM RHYS MENDES: Precisely.

9 MS. DAHLIA SHUHAIBAR: Okay. So those are all my
10 questions. I'll turn it back to Mr. Cameron. Thank you.

11 ADM RHYS MENDES: Thank you.

12 --- EXAMINATION-IN-CHIEF BY MR. GORDON CAMERON (cont'd):

13 MR. GORDON CAMERON: Thank you. Well, the good
14 news for you, Mr. Mendes, is you can probably get through the
15 rest of this without answering any more questions. Feel free to
16 if you have input, but you've had your workout for this morning.

17 Where we'd like to go now is the approach that
18 the Department took as the convoy was becoming an issue and your
19 department was being approached to consider possible options
20 from the Department of Finance's point of view for dealing with
21 the issues that the Government was facing with respect to the
22 convoy.

23 And let me ask you to just begin by describing
24 when this approach was made to you, how did the Department of
25 Finance view the tools that it could add to the Government's kit
26 for dealing with this situation?

27 DM MICHAEL SABIA: Sure. Let me start, and then
28 Isabelle, you may want to add.

1 So look, as the disruptions, on the one hand,
2 continued to materialize, and in some cases intensify, and the
3 disruptions in Ottawa continued on, there was a general sense
4 across the government and, you know, an interest that was
5 expressed to have every department trying to think about are
6 there ways in which we can develop ideas that would help bring
7 to an end, in a good way, this very difficult situation.

8 So there was a general interest in developing
9 ideas, which obviously included us, but beyond that, the sort of
10 general interest, there were a couple of other things in our
11 minds motivating our work to try to find things that could
12 contribute to a solution.

13 On the one hand, I won't belabour this again,
14 because, you know, with the previous conversation and Rhys'
15 comments, I think the extent of our concern with respect to the
16 economic issues is pretty straight forward, pretty clear. And
17 this intense focus we had on are there things that can help end
18 this quickly? Because as Rhys and I have tried to explain,
19 duration is everything here in terms of its disruptive impact on
20 the Canadian economy.

21 So quite aside, or in addition to the general
22 interest in various departments, can they develop ideas that can
23 be helpful here, we wanted to, given our responsibilities for
24 the Canadian economy, we wanted to find ways, and that was a
25 significant motivator.

26 The other one was we are also, given our
27 responsibilities for the financial sector, we also take
28 seriously our responsibility to ensure the integrity of Canada's

1 financial system. And Canada's financial system being used for
2 these kinds of purposes is not consistent, in our view, with
3 maintaining the integrity of the financial system. So it was
4 both our response to a general request for ideas, but within the
5 department, it was what can we do to shorten the duration of
6 these disruptions, given their economic consequences, and then
7 finally, this concern that we take very seriously about the
8 integrity of Canada's financial system and that we safeguard
9 that integrity all of the time.

10 So those three factors led us to start some work
11 on what can we do, given the legislation that we're responsible
12 for. So we began thinking about are there ways in which we
13 could use the *Bank Act* or other pieces of legislation really
14 centred pretty heavily on the *Bank Act*, also the *Money*
15 *Laundering and Terrorist*, the ---

16 ADM RHYS MENDES: PCMLTF.

17 ADM ISABELLE JACQUES: Yes.

18 DM MICHAEL SABIA: Yeah.

19 ADM RHYS MENDES: The acronym is too long.

20 ADM ISABELLE JACQUES: Yes. *Proceeds of Crime*
21 *(Money Laundering) and Terrorist Financing Act*.

22 DM MICHAEL SABIA: That's -- that's -- she's got
23 it.

24 Those two pieces of legislation.

25 So we started thinking about, "Well, is there
26 something constructive that could be done through FINTRAC?"
27 Which is the agency responsible for *Proceeds of Crime (Money*
28 *Laundering) and Terrorist Financing* -- or terrorist activity.

1 Could we do something there? And could we do something using
2 the Minister's authority for the *Bank Act*?

3 And then to make a long story short, in the
4 media, it was widely publicized, and it was very public, that
5 crowdsourcing platforms were being used as a source of financing
6 for these activities. Similarly, payment processors. And
7 neither of those were within the regulatory perimeter of
8 FINTRAC. So one thought process was, "Well, is there something
9 we can do around that?" And then the second, with respect to
10 the *Bank Act*, is, is there some way that we can use the *Bank Act*
11 to have -- to give banks the capability to freeze bank accounts
12 if, in their judgement, those bank accounts are being used for
13 an inappropriate purpose?

14 Now, again, just high-level summary here, there
15 were a series of issues with that.

16 One, we couldn't do anything outside of federal
17 jurisdiction, because the *Bank Act* only applies to federally
18 regulated financial institutions. But there's a whole wrath of
19 financial institutions in Canada that are not federally
20 regulated, particularly, say, credit unions, types of insurance
21 companies, et cetera.

22 So because we couldn't do anything outside of
23 federal jurisdiction, that really made pretty academic whether
24 we could or could not do anything in federal jurisdiction,
25 because money is fungible and it can just move from institution
26 to another. So if we couldn't do something that was more
27 comprehensive, that was a pretty significant limitation on what
28 could be accomplished.

1 There was also a fairness issue there. I'll give
2 you an example. In Quebec, Banque Nationale, that's a federally
3 regulated institution, but Desjardins is not. And Desjardins,
4 anyone who lives in Quebec knows that Desjardins and Banque
5 Nationale compete pretty intensively between the two
6 organizations. So to treat one one way and the other another
7 way, that seemed to us to be -- you know, that's just one
8 example, but that seemed to us to be a pretty big problem. So
9 that was one piece.

10 The second piece, coming back to something
11 earlier that I said, was whatever we could do, we wanted to do
12 quickly, because doing it quickly meant shortening duration, and
13 shortening duration meant avoiding the worst economic
14 consequences that we were concerned about.

15 But of course, pretty much anything that we could
16 do would require a legislative change, and legislative changes,
17 by their nature, take an extended period of time.

18 So if our thinking process was how do we manage
19 duration here of the disruptions, anytime we bumped into
20 something that required a legislative change is something that
21 was, by its nature, less attractive because we couldn't do it
22 quickly, and by not being able to do it quickly, it didn't
23 really deliver what we needed, which was relatively speedy
24 action to shorten the duration of these disruptions.

25 **MR. GORDON CAMERON:** Okay. But we are going to -
26 - for the reasons you just mentioned, we'll leapfrog your
27 initial interest in seeing if there was something you could do
28 under either the *Proceeds of Crime* legislation or the *Bank Act*.

1 But the memo that you did for your Minister on that point
2 happens to capture some thoughts that I want to use as we move
3 ahead into the legislation that was actually used.

4 So if I could ask the Court to call up
5 SSM.CAN.00003764? And this is a memorandum from you, Mr. Sabia,
6 to the Deputy Prime Minister and Minister of Finance,
7 Minister Freeland. And because you seem to have some law
8 against dating documents in the federal government, I've had to
9 figure out that this is a February 9th memo. Does that sound
10 about right?

11 **DM MICHAEL SABIA:** Yeah, that's about right.
12 February 8 or 9, yes ---

13 **MR. GORDON CAMERON:** Right.

14 **DM MICHAEL SABIA:** --- that's about. If it makes
15 you feel any better, it drives me crazy too.

16 **MR. GORDON CAMERON:** And this...

17 If the clerk could just scroll down.

18 It basically describes exactly what you just
19 encapsulated in your earlier comments, Minister Sabia.

20 Keep scrolling, please.

21 There, we have the initial point, the possibility
22 of looking at this under the proceeds of crime legislation, and
23 then there's a page of that. And if you get up to the top of
24 page 3, where there are some redactions, you see -- now these
25 are options under the *Bank Act*, as you'll remember from the time
26 at which this particular memorandum was developed, but they
27 ended up being brought forward into the legislation.

28 And by the way, Ms. Jacques, please feel free to

1 chime in if this is your territory. But in terms of what we'll
2 call "freezing accounts", but I think there's a more cumbersome
3 way of describing it, refusing to have dealings with or
4 transactions with the customer, et cetera, et cetera, but if
5 you'll -- I think you'll understand what I mean when I talk
6 about freezing accounts.

7 **ADM ISABELLE JACQUES:** Yes.

8 **MR. GORDON CAMERON:** The two options here, if I
9 can describe them compactly, the first one is that the
10 government create some sort of authority which simply directs
11 banks to freeze accounts without the bank having any discretion
12 in the matter. Is that right?

13 **ADM ISABELLE JACQUES:** That is correct.

14 **MR. GORDON CAMERON:** And then the second option
15 is one in which the bank is -- the person is identified, but the
16 bank then exercises its discretion as to whether or not that
17 person is engaging in activity that should result in their bank
18 accounts being frozen. Is that fair?

19 **ADM ISABELLE JACQUES:** That's fair. They had to
20 review their business relationship to see whether any of the
21 funds were used in a manner that was concerning.

22 **MR. GORDON CAMERON:** Right.

23 **ADM ISABELLE JACQUES:** And in these options, of
24 course, under the *Bank Act*, these would not apply to, you know,
25 provinces nor territories.

26 **MR. GORDON CAMERON:** Right. And so as Deputy
27 Minister Sabia said, the option that had more attraction to you
28 because it was much faster, you didn't need legislation, and

1 because it was national and could cover both categories of
2 institutions.

3 And I think, just to complete that point,
4 Mr. Sabia, you would add the ability to capture insurance -- the
5 insurance industry if you were able to have a regime that
6 covered the whole country?

7 **ADM ISABELLE JACQUES:** Correct.

8 **DM MICHAEL SABIA:** Yes.

9 **ADM ISABELLE JACQUES:** But at the time, certainly
10 when we're looking at these options, you know, the situation was
11 evolving. So we started from a situation when we're monitoring
12 these activities where the, you know, the -- there seems to be
13 peaceful manifestation ongoing, and certainly the situation
14 degenerated. So when we started looking at this we were looking
15 at options under the *Bank Act*.

16 **MR. GORDON CAMERON:** Right. And at the time you
17 were developing these options, and this is February 9th, things
18 were moving quickly at this stage and transitioned into
19 consideration of the possibility of incorporating similar
20 authorities in emergency legislation, I understand you were
21 having consultations with the financial services industry as to
22 how they would be able to work with these if you did enact them.
23 And one of you could describe that for the Commissioner.

24 **DM MICHAEL SABIA:** Yeah, that -- that started, I
25 don't recall the exact dates, but sometime in the week of this
26 memo, I think a little bit earlier. I had some -- I mean, as
27 the principal regulator, OSFI and ourselves, in terms of
28 financial -- higher-level financial policy, we have a lot of

1 contact with the Canadian banks, Canadian financial institutions
2 in general. So I am, as is Isabelle and her team, we are in
3 regular contact with Canadian financial institutions pretty much
4 of all kinds, A, because of our role in that sector; and B,
5 because they're a very good way of listening and understanding
6 more about what's going on in the Canadian economy than any one
7 point.

8 So I had some conversations, particularly with
9 bank CEOs, during that week to get their sense of what was
10 happening and reaction to these disruptions, and in those
11 conversations, we were talking about that, the general -- their
12 general take on these events and what they thought the
13 government should or shouldn't be doing about it. And then
14 second, general conversations around what could be done.

15 In those early days, I did not raise the
16 specifics of these options which would have been inappropriate
17 at the time. We were not at that point, and we had not had a
18 conversation with our Minister about it. So these specifics in
19 those early conversations were not really on the table.

20 Then a little bit later, I think toward the end
21 of that, we have to check these dates, but toward the end of
22 that week, the -- I started having conversations, collective
23 conversations with all of the bank CEOs, and the Minister
24 eventually joined me in some of those conversations.

25 **MR. GORDON CAMERON:** Now, can you describe the
26 feedback you got from those institutions, in particular, their
27 reaction to how they would administer a regime in which they
28 were being asked to freeze accounts?

1 DM MICHAEL SABIA: Yeah. Well, we need to be
2 careful here. Prior to the possibility or likelihood that the
3 government would invoke the *Emergencies Act*, that was a very
4 important dividing line here. So prior to that, in the week
5 that we're talking about here, my conversations there would have
6 been much more general and much more general -- much more
7 focussed on, you know, what are they hearing from companies,
8 what are they hearing from investors, how do they gauge the
9 situation? It was much more our trying to understand by talking
10 to other people whether or not our perception of the situation
11 was aligned with how other people were perceiving it.

12 I would say there was very much alignment around
13 the concerns that Rhys and I have talked about earlier, and what
14 we were hearing from institutions that basically spanned the
15 Canadian economy and are constantly in touch with clients, and
16 their clients are businesses and individuals across the Canadian
17 economy, so they're good listening posts.

18 So that was prior to the possibility of the
19 *Emergencies Act*. Because as per this memo, as you can see, the
20 conclusions that we were coming up to, they were arriving at,
21 were conclusions that actually there wasn't really, other than
22 through FINTRAC and that side, there really wasn't a lot that we
23 could do in the near term without passing legislation, which as
24 I said, would take a considerable period of time.

25 Now, as the possibility or likelihood of the
26 *Emergencies Act* being invoked, then that changed the nature of
27 those conversations. And through I think that weekend, I forget
28 -- the dates would have been sort of the 12th, 13th, or

1 something of -- you have to check -- you'll have to doublecheck
2 the dates, but you know, 11, 12, 13, somewhere in there, we then
3 began to have conversations about in the event that the
4 government were to decide to move down this path, because it
5 hadn't been decided yet, how could this be done.

6 And I would say that the reaction that we got to
7 those initial conversations was pretty much, you know,
8 consistent with what I had heard in the earlier conversations,
9 which is, you know, to shorten what were long conversations
10 that, you know, this is a serious issue and a threat to Canada's
11 economy, what can we do to help. So there was an openness on
12 the part of the bank CEOs to working with us to try to find
13 solutions that would bring a peaceful end to what was a
14 difficult circumstance. So in those conversations, we did talk
15 about, you know, how could this work? What would you do? What
16 would be feasible for you? Because we wanted to learn as much
17 as we could about the actual operation of this from the people
18 who actually operate in the day-to-day financial system of the
19 country. So that was the nature of those conversations.

20 And then as the weekend and time progressed and
21 it became more apparent of the possibility that the government
22 would move in this direction, then Minister Freeland joined me
23 for one or two of those calls, where at that point, we were
24 saying, okay, well, if we're going to go down this path, you
25 know, our expectation would be for you to be able to do A, B and
26 C. Are those feasible things? How would you do that?

27 **MR. GORDON CAMERON:** And in A, B and C, we'll
28 just talk about A and B, and the first is, you're saying to the

1 banks, "We can either give you a list of people whose bank
2 accounts need to be frozen and then you freeze them, that's
3 option one, or you, the manager of the bank, can watch the news
4 and read the paper and look at your customers and try to figure
5 out which ones of them are engaged in illegal activities and
6 what you should do about their accounts." The way I've
7 described it, Mr. Sabia, I think you're probably going to
8 foresee what the reaction was of the financial industry as to
9 which of those two options they would have found easier to
10 administer.

11 **DM MICHAEL SABIA:** Yeah, I think the less, I
12 think, statement to the obvious, the less discretion that they
13 had, or in other words, the less onus you were putting on the
14 financial institutions, you know, from their perspective, the
15 easier for them.

16 **MR. GORDON CAMERON:** Right. And again, for one
17 of you, perhaps now we're over to Ms. Jacques again, as I read
18 the Emergency Economic Measures Order, it ended up being a
19 hybrid of those two options, one and two. Can you describe that
20 for us?

21 **ADM ISABELLE JACQUES:** Yes, it was. So,
22 basically, under the *Emergencies Act*, certainly, financial
23 institution had an obligation to review on an ongoing basis
24 their relationship with their clients to ensure that they were
25 not using property to further the illegal activities that were
26 ongoing. And certainly, in doing so, if they found out that
27 they did have any of these property that they would have to
28 suspend the services they provide and they need to freeze those

1 accounts.

2 MR. GORDON CAMERON: Right.

3 ADM ISABELLE JACQUES: So and in trying to come
4 to the knowledge and conclusion as to whether you had business
5 relationship of such nature, they could do two things. The
6 first, they could on their own, on an ongoing basis using their
7 algorithm or processes that they have, identify suspicious
8 transactions, or, as we allowed in the -- as we specified in the
9 legislation, obtain information from enforcement officers, could
10 be from federal or provincial. So we provided for information
11 to be shared by the, you know, federal or provincial or
12 territorial governments with the financial institution to help.

13 What occurred in the end was that the RCMP shared
14 information with the financial institutions, financial service
15 providers, to help them identify those people and to vet the
16 information they received.

17 MR. GORDON CAMERON: And sorry, you trailed off
18 at the very end of that.

19 ADM ISABELLE JACQUES: And vet the information
20 they received. So the obligation was on the financial
21 institution to determine, in the end, whether or not they were
22 going to freeze bank accounts.

23 MR. GORDON CAMERON: Now that -- I want to chase
24 down exactly those last words you used including the word "vet".
25 So they would -- the idea is -- of the Regulation as you
26 conceived it and as ultimately it was enacted, was that the
27 banks would receive some information from police authorities.
28 As you say it turned out to be the RCMP. And then they would

1 vet that information and exercise some discretion as to whether
2 or not they should take measures under the Order to, as we're
3 saying, compactly freeze the accounts; is that right?

4 **ADM ISABELLE JACQUES:** Yes, I would say so. I
5 mean, if you received information from the RCMP, the financial
6 institution, financial payments service providers would have to
7 review the information they receive and ensure that the people
8 that are named are actually the people that are -- have accounts
9 with that financial institution, so that's number one.
10 Certainly, they had to, you know, ensure they had the right
11 people, but also, on their own, as I mentioned before, they
12 could review the information they have, use the systems they
13 have, their algorithm to detect suspicious transaction, which
14 they did. And on their own, they did freeze bank accounts
15 without information received from the RCMP.

16 **MR. GORDON CAMERON:** Okay. So they could take
17 option number two, if they were able to with, as you described,
18 their algorithms if they could detect suspicious activity. They
19 could come to their own conclusion and freeze an account. But
20 to go back up to option number one, which is the one that I was
21 concentrating on, if the RCMP gave them information, you
22 describe them as vetting that information and deciding whether
23 they should freeze the account.

24 **ADM ISABELLE JACQUES:** What I mean by vetting is
25 being -- they -- if you read the language of the legislation,
26 the financial service providers are responsible for taking the
27 action, ultimately. It's their responsibility under the Act.
28 So, certainly, they received information from the RCMP with

1 respect to persons, entities involved in illegal activities.
2 They looked at the information. They had to certainly confirm.
3 I don't know what their internal process were, but I certainly
4 know that they -- you know, from -- they reviewed the
5 information to ensure that the people that, you know, with whom
6 they had business dealings with people that were signalled or
7 identified by the RCMP. But I'm sure that the financial service
8 providers could tell you exactly how they went about that.

9 **MR. GORDON CAMERON:** If we could call up, Mr.
10 Clerk, PB.CAN.00000781?

11 Thank you. And I don't know if you would -- if
12 any of you would recognize this. Denis Beaudoin is an officer
13 with the RCMP, and he filed this affidavit in the context of
14 some of the litigation that's going on in connection with the
15 invocation of the Act. And if you could scroll down ---

16 **ADM ISABELLE JACQUES:** Sorry, the file is with
17 respect to?

18 **MR. GORDON CAMERON:** Sorry, if it's important to
19 you, I'll just explain. This is an affidavit that was filed in
20 court in the context of litigation that was initiated in
21 challenging the invocation of the Act, so the RCMP is explaining
22 what they did and with the Regulations that we're talking about
23 here.

24 **ADM ISABELLE JACQUES:** The Regulations or the
25 Order?

26 **MR. GORDON CAMERON:** Sorry?

27 **ADM ISABELLE JACQUES:** The Regulations or the
28 Order?

1 MR. GORDON CAMERON: Sorry, the Order, yes. And
2 if you could scroll down, Mr. Clerk? It's just to the body of
3 the -- and at paragraphs 8 and 9 of this affidavit he's
4 describing your Regulations and then as not specifying,

5 "...a procedure through which the
6 financial service[s] providers would
7 identify individuals..."

8 And then in paragraph 9 -- can you scroll down a
9 bit further? Thank you.

10 He says,

11 "In practice, the police provided
12 financial service providers with
13 information about particular
14 individuals or entities, which the
15 financial service providers could use
16 in conjunction with other information
17 at their disposal to make their own
18 determinations about whether they
19 needed to take [any] steps to comply
20 with the Order."

21 Do you see that?

22 ADM ISABELLE JACQUES: Yes, and that's what I
23 mean by vetting.

24 MR. GORDON CAMERON: Thank you.

25 Now do you recall that in your own institutional
26 report, and, Mr. -- I wish we could keep two things up at once,
27 Mr. Clerk. I might ask you to go back and forth, but in any
28 event, if you could call up DOJ.IR 0000000030? And go to page

1 11 of that document. And then a little -- scroll down just a
2 bit further. Thank you. That's perfect. The paragraph that
3 begins "The Department of Finance did not have any
4 information..." That's not surprising. If you look at the
5 second sentence,

6 "The Department of Finance played no
7 role in the process through which
8 financial institutions identified the
9 accounts that they froze. The RCMP has
10 stated that at no time did it provide a
11 list of donors to financial
12 institutions. The Department
13 understands that the RCMP provided a
14 list that included identities of
15 individuals who were influencers in the
16 illegal protest in Ottawa, and owners
17 and/or drivers of vehicles who did not
18 want to leave the site. At no time was
19 that list provided to the Department."

20 Now what we have here then is the Department of
21 Finance, and this is your Regulation, Ms. Jacques, so you
22 probably had something to do with the drafting of this part of
23 your institutional report; is that correct?

24 **ADM ISABELLE JACQUES:** Yes, it was our
25 Emergencies Measure Order, yes.

26 **MR. GORDON CAMERON:** Yes. Thank you.

27 **ADM ISABELLE JACQUES:** We did not take part in
28 drafting the Regulations.

1 MR. GORDON CAMERON: Fair enough. Did the
2 Regulation or the -- sorry, did the Emergency Economic Measures
3 Order in effect get drafted by you and your department?

4 ADM ISABELLE JACQUES: It was -- the policy was
5 developed by the Department of Finance by my branch and the
6 drafting was done by the Department of Justice, yes.

7 MR. GORDON CAMERON: Fair enough. Okay.

8 And the point here is that you take no
9 responsibility for -- that is, the Department of Finance takes
10 no responsibility for which accounts got frozen, that is, you
11 just drafted the regime that allowed that act -- that freezing
12 of accounts to take place; is that right?

13 ADM ISABELLE JACQUES: Well, you have to go back
14 in time certainly. When we were working and that there was a
15 decision to -- we found out that there's a possibility that the
16 *Emergency Act* would be enacted, we started looking at policies
17 and options as to how we could implement and take action fairly
18 rapidly. So we did, obviously, develop the policy that would
19 enable for a number of, you know, federal, provincial players,
20 like the -- in the enforcement, the RCMP could share information
21 with the financial service providers, so that was something that
22 was important, to help financial service providers to identify
23 people that could be involved in illegal activities. So that
24 was number one.

25 And number two, we were thinking that -- knowing
26 that on their own they could also detect fraudulent activity or
27 suspicious activity, that they could do that as well. But as
28 far as sharing the information, the Department of Finance does

1 not receive information from the RCMP. That was solely between
2 the RCMP and the financial service providers. And it was up to
3 the financial service providers to make the determination as to
4 whether or not to freeze bank accounts, based on the information
5 they had. So it could be their own information, or a mixture of
6 information received using their own, you know, risk based
7 analysis to make a determination as to whether they would
8 freeze.

9 MR. GORDON CAMERON: Okay. Now, Mr. Clerk, as I
10 said, we are going to hop back, if we could, to 781, same
11 section.

12 So the RCMP gets -- I'm going to call it a hot
13 potato, but gets tossed this hot potato of these Regs to freeze
14 bank accounts. And it's about to toss the potato over to the
15 banks and with the caveat that Officer -- or I believe it's
16 Superintendent Beaudoin makes that -- and I'm reading from
17 paragraph 9. Thank you.

18 "...the financial service providers
19 with information about particular
20 individuals [...], which the [...]
21 service providers could use in
22 conjunction with other information at
23 their disposal [et cetera]."

24 Now you might have heard or seen in the CBA's
25 institutional report in this proceeding that as far as they were
26 concerned, and I think they gave this feedback directly to the
27 Department of Finance as well, when they got that list from the
28 RCMP, they considered it to be effectively binding on them to

1 seize the account. That they did not, in fact, have any
2 discretion. Do you remember hearing that from them?

3 **ADM ISABELLE JACQUES:** Well, what I certainly
4 heard is that they heavily relied on it, but that they did, you
5 know, some analysis to ensure that the people that were on the
6 list were banking in their institutions and that knowing that
7 they were involved in illegal activities and that they had
8 accounts, they made a decision to freeze.

9 **MR. GORDON CAMERON:** So ---

10 **ADM ISABELLE JACQUES:** But it's certainly based
11 on -- heavily I know that they relied on the information
12 provided by the RCMP. That is accurate.

13 **MR. GORDON CAMERON:** Right. When you say part of
14 the exercise of their discretion was making sure the person
15 whose name was given to them by the RCMP was one of their
16 customers, that's just a name check; right? That's not an
17 exercise of discretion?

18 **ADM ISABELLE JACQUES:** Well, in the end, the
19 decision -- maybe not call it exercise of discretion, the
20 decision was -- lied, in accordance with the Emergency Order,
21 lied with the financial institution to make the final decision -
22 --

23 **MR. GORDON CAMERON:** So they make -- they do a
24 name check and that's the extent of their final decision?

25 **ADM ISABELLE JACQUES:** I do not know. You would
26 have to talk to the financial service providers to see what
27 procedure they put in place. Once they receive -- you know, we
28 were not party to that. So I know that the RCMP did provide

1 information. I do not know the nature and the extent of the
2 information. And how did the bank go about freezing the
3 accounts after that, what analysis did they do and how they went
4 ahead, I'm not privy to the details of that operational -- those
5 are operational steps.

6 MR. GORDON CAMERON: Okay. Fair enough. Mr.
7 Clerk, could you just scroll further down in this document, and
8 we're going to go a few pages down until we get to Exhibit A.
9 Right there.

10 So this is an exhibit to the affidavit of
11 Superintendent Beaudoin. And if we go down, we see -- do you
12 recognize that form, Ms. Jacques?

13 ADM ISABELLE JACQUES: No. No, I do not. I've
14 never seen that form.

15 MR. GORDON CAMERON: We don't have enough time,
16 so I'm going to ask you to take my word for it. This is the
17 form that the RCMP developed to give to the banks; okay? And
18 then there's some verbiage there that we're going to come back
19 to in a second, but, Mr. Clerk, can you scroll down a little bit
20 further? There's the page where the RCMP fills in the
21 information, the owner of the vehicle perhaps that's parked in
22 the blockade, or who knows what other information CPIC checks,
23 the Canadian Police Information Centre and other information.
24 So this is the form that goes to the bank.

25 ADM ISABELLE JACQUES: I've never seen the form.
26 We were not privy to any exchange of information.

27 MR. GORDON CAMERON: I take your point, as you
28 put it earlier, we were not a party to that process, so I will

1 accept that qualification.

2 Now, Mr. Clerk, could you go back up to that
3 paragraph that -- the thing the bank sees when they get this
4 form with a name on it, that they've got to decide is one of
5 their customers.

6 And look at the paragraph that begins, "The
7 information." The information which -- I'll ask you to go along
8 with me; it's the information that I just scrolled you down to
9 about the information on the person who might be the bank's
10 customer:

11 "The information being disclosed is
12 relevant to individuals or entities
13 that are engaged, directly or
14 indirectly in an activity prohibited by
15 sections 2 to 5 of the above noted
16 *Emergency Measures Regulations.*"

17 And the paragraph above that, the second
18 sentence:

19 "I am engaged in the collection and
20 disclosure of information to
21 entities..."

22 That's the banks; right, Ms. Jacques?

23 "...to entities that have a duty to
24 determine as defined in Section 3 of
25 the *Emergency Economic Measures Order.*"

26 S, can you follow the thrust of this document,
27 that this is what the RCMP gave to the bank to do what has been
28 called, both by your description and your information -- sorry;

1 your Institutional Report, and by the RCMP and Supt. Beaudin's
2 affidavit, the exercise of their discretion whether or not to
3 freeze this bank account. They are being told that they are
4 being given information about a person who is a designated
5 person under your *Emergency Measures Order*, right?

6 **ADM ISABELLE JACQUES:** Well, if I was -- well, as
7 I mentioned before, I've never seen this form, but if, you know,
8 I put my shoes -- myself in the shoes of a financial service
9 provider, seeing this form and saying -- basically, it's saying
10 that this is information about a person involved in illegal
11 activities, and they're providing that information to the
12 financial service provider. I mean, that is information on
13 which I would rely.

14 And as it says here, it says that the entities
15 have a duty to determine, as defined in section 3, so I'd have
16 to refresh my memory and look to section 3, but I presume that,
17 you know, once -- yeah, the section 3 says:

18 "...the entities must determine on a
19 continuing basis whether they are in
20 possession or control of property that
21 is owned, held or controlled by, or on
22 behalf, of a designated person."

23 So if the RCMP comes to them to say this is the
24 information about a designated person, financial institution is
25 reviewing, in an ongoing basis, their relationship, they would,
26 and this is a client of theirs, I would think that, you know,
27 they will do -- as I said, they will do their vetting; "Is this
28 one of my client? I'm informed by the RCMP, yeah, this form

1 that the person is engaged in these illegal activities." I
2 would rely on that, personally. So if the financial institution
3 did, I wouldn't be surprised.

4 MR. GORDON CAMERON: I ---

5 ADM ISABELLE JACQUES: But I can't -- again, I'm
6 making a lot of presumptions.

7 MR. GORDON CAMERON: But I think you've captured
8 well what probably the average reader would infer from the
9 documents we've just been looking at. If you're a bank manager,
10 and you get this -- the RCMP sends you this form, and it says
11 the person listed below is a designated person under the
12 *Emergency Measures Regulations*, and you, as that financial
13 institution ---

14 MS. DONNAREE NYGARD: I'm sorry; the form doesn't
15 actually say if the person is a designated person. So this is a
16 form the witness hasn't seen before today ---

17 ADM ISABELLE JACQUES: We're seeing ---

18 MS. DONNAREE NYGARD: --- and if you're going to
19 characterize it, please be very accurate about it.

20 MR. GORDON CAMERON: Okay. Let's take that
21 quibble from the Government of Canada's counsel. It doesn't say
22 the person is, it says:

23 "The information being disclosed is
24 relevant to individuals or entities
25 that are engaged directly or
26 indirectly, in...activity..."

27 And Ms. Jacques, you know that what that is, is
28 the definition of a designated person under the Order, right?

1 ADM ISABELLE JACQUES: Yes, I know that.

2 MR. GORDON CAMERON: Thank you.

3 ADM ISABELLE JACQUES: But, I mean, to answer
4 your questions, I have to make a lot of suppositions, but I take
5 it for granted that...

6 MR. GORDON CAMERON: If you're a bank manager and
7 you get what -- this piece of paper from the RCMP, and you do
8 the name check, you freeze the account, right?

9 ADM ISABELLE JACQUES: I do not know that, but
10 that would seem reasonable to me.

11 MR. GORDON CAMERON: Thank you.

12 So you say we were not a party to this part of
13 the process, we had D/Comm. Duheme say, "I didn't write this
14 law; we just implemented it this way, and it was up to the banks
15 to decide." And so the question is, if the Government is saying
16 that these measures were the right thing to do, right, and the
17 Department of Finance says, "We had no part in the enforcement
18 of this," and the people who had enforcement in this stage, "We
19 didn't write this law," who takes responsibility for the fact
20 that these accounts were frozen; that people couldn't pay their
21 rent, that people couldn't buy their groceries; who takes
22 responsibility for that?

23 ADM ISABELLE JACQUES: We certainly designed the
24 measures and the -- with respect to the implementation, we once,
25 you know, had discussions with various departments as we -- you
26 have to understand that this moved very, very quickly. We went
27 from a situation where we're looking at potential policy options
28 under the *Bank Act*, to very rapidly looking at the possibility

1 of implementing the Emergencies -- you know, the *Emergencies*
2 *Act*, and developing these Orders.

3 In developing those Orders, we tried to be as
4 practical and targeted as possible. And that's why we wanted to
5 ensure that information could be shared with various enforcement
6 forces, including the RCMP. We had discussions with the RCMP
7 and with the financial institution to ensure that we basically
8 implemented or helped, to the extent possible, provide the
9 information with respect to the *Emergencies Act* and these
10 Orders. These are not the type of Orders -- I mean, it was the
11 first time, I think, in 35 years, or if ever, that the
12 *Emergencies Act* was ever used. We're working on very tight
13 timelines, and the implementation was quite rapid.

14 We're also working with evolving facts. We
15 didn't know what we were looking at. You know, the situation
16 was evolving, there were various information circulating. And
17 when you're trying -- anybody that has tried to develop
18 policies, even in normal circumstances, and to ensure that these
19 policies are properly reflected into law and to apply that law.
20 I mean, if -- just even that is not a simple factor. So I think
21 to the extent that we develop the Emergency -- the Order, and
22 that we had a successful implementation of that Order, in my
23 view, was quite a feat. Because we focus on the people that
24 were -- the focus was on the people that were involved in
25 illegal activities, and that were, you know, funding those
26 illegal activities.

27 We also told people ahead of time that if they
28 continue to fund illegal activities, or be involved in those

1 illegal activities, that the bank accounts could be frozen.
2 People had notice ahead of time, and if a decision was made to
3 stay on the premises, to continue to stay involved in those
4 activities, these people knew what could happen.

5 MR. GORDON CAMERON: Let's move to that point
6 exactly. In your Institutional Report, and we can call it up if
7 you want, but you described one of the purposes of the *Emergency*
8 *Economic Measures Order* as to dissuade ongoing participation in
9 the protest; remember that?

10 ADM ISABELLE JACQUES: Yes, I do.

11 MR. GORDON CAMERON: And you might not have heard
12 the evidence of D/Comm. Duheme, but he used the expression,
13 "Deter and disrupt". So the concept of deterrence from the
14 RCMP; from Department of Finance we have the concept of
15 dissuasion, so probably synonyms for the same concept.

16 DM MICHAEL SABIA: I think a better word for how
17 we were thinking about this is to create a set of incentives to
18 bring a peaceful end to these disruptions.

19 MR. GORDON CAMERON: I'll just expand on that, or
20 allow you to expand on that, Mr. Sabia, because I think that's a
21 good point.

22 One of the prime objectives of dealing with the
23 convoy problems in a way that the *Emergency Economic Measures*
24 *Order* was fashioned, was to find a way to bring a peaceful end
25 to the demonstration, because if you could do it with freezing
26 bank accounts, or whatever other measures were necessary, that
27 was a awful lot better than having to go in with police and
28 clubs, right?

1 **DM MICHAEL SABIA:** I think it's a -- again, a
2 statement of the obvious; ---

3 **MR. GORDON CAMERON:** Yes.

4 **DM MICHAEL SABIA:** --- a peaceful end to almost
5 anything ---

6 **MR. GORDON CAMERON:** So ---

7 **DM MICHAEL SABIA:** --- is a better than a non-
8 peaceful end. And that's very much what we were focused on
9 here, was to create, as I've said, a set of incentives for, the
10 point having been made -- I mean, people have every right to
11 protest; that's an important part of our democratic system. And
12 there were no easy answers here. But finding instruments that
13 create an environment where people have an incentive to go home
14 having made their point, that seems to us to be a path worth
15 pursuing.

16 **MR. GORDON CAMERON:** And again, I think I'm
17 trying to amplify your point, better than going in with the
18 police, if you can get it to happen the way you just described?

19 **DM MICHAEL SABIA:** Well I think, you know, if you
20 -- from what I understand, the testimony that this Commission's
21 been hearing from law enforcement and I think from Supt. Beaudin
22 as well, I think there's a pretty wide acknowledgement that
23 these financial measures did help law enforcement to being an
24 end to these in as peaceful a way as they possibly could. And I
25 think law enforcement has been pretty consistent on
26 acknowledging the positive contribution that these measures have
27 made.

28 And if I can, I'd just like to go back to your

1 previous set of questions?

2 MR. GORDON CAMERON: By all means.

3 DM MICHAEL SABIA: I mean, I will admit to being
4 a little puzzled about your point.

5 So in my mind, this is actually pretty straight
6 forward. Now, you know, I didn't go to law school, so maybe I'm
7 missing something.

8 MR. GORDON CAMERON: That's an advantage.

9 DM MICHAEL SABIA: Well my daughter is finishing
10 law school. So I don't know. I'm of two minds about whether
11 this is a good thing or a bad thing. In any event.

12 So what did we do? At the Department of Finance,
13 we basically set policies. So we set a policy that said under
14 the authority of the *Emergencies Act*, the *Emergencies Act* having
15 already declared certain activities illegal, we set a policy
16 that said the financial system, bank accounts, other types of
17 accounts, should not be used in support of what was then
18 declared illegal activity. Point 1.

19 Point 2, we -- the way the system worked, which
20 seemed to us to be pretty logical, which is the RCMP working
21 with other areas of law enforcement, the people on the ground
22 who had the information were then providing that information to
23 a set of financial institutions who had their own processes,
24 which they use every day for other types of fraud and other
25 things, as Isabelle has mentioned, and they put those two things
26 together.

27 So that seemed, to me, to be a pretty good
28 outcome, in that the people who had the microscopic information

1 or the micro information of who was doing what was feeding that
2 into financial institutions and financial institutions were
3 using that as a positive input into the decision making that
4 they were going to have to do.

5 And then empirically, I mean, I think of the 280
6 accounts that ended up being frozen. You might want to check my
7 numbers, but something like 256 or 257 of them came from the
8 RCMP. So obviously there's a pretty high correlation there.
9 Doesn't mean that the banks didn't do some additional things,
10 because obviously there's a difference between 257 and 280.

11 But yes, your point being that the RCMP's work,
12 based on in the field, understanding of who was doing what, had
13 a significant bearing on what the banks did.

14 So that seems to me to be pretty reasonable -- in
15 terms of implementing a policy, a pretty reasonable set of ways
16 of going about doing it.

17 **MR. GORDON CAMERON:** It's a logical sequence.
18 What I'm trying to find is who says, "We were the ones who
19 seized the bank accounts or froze the bank accounts"? You know,
20 the banks say, "We were told to do it." The RCMP says, "We
21 didn't tell anybody to do it." You say, "We weren't involved in
22 this."

23 **DM MICHAEL SABIA:** We set ---

24 **ADM ISABELLE JACQUES:** No.

25 **DM MICHAEL SABIA:** --- a policy.

26 **ADM ISABELLE JACQUES:** Yeah, we set ---

27 **DM MICHAEL SABIA:** We set a policy. And we are
28 accountable for that policy.

1 MR. GORDON CAMERON: And thank you. That is
2 exactly what I wanted to make sure we got to before we finished
3 with the panel.

4 Now, on a related point, I was moving on to the
5 issue of the idea of the use of these account freezing or
6 otherwise preventing people from dealing with their savings, as
7 a deterrent, as opposed to a tool to stop the criminal activity
8 or the illegal activity because it's -- you'll appreciate,
9 you're nodding, Ms. Jacques, they're two different concepts.
10 One is you cut off the flow of money to stop the illegal
11 activity, and the other is you deprive the person of access to
12 their funds as a deterrent so they go home and hopefully go home
13 without the police having to engage in public order activity.
14 Those are the two different concepts?

15 ADM ISABELLE JACQUES: Yes, as a deterrent, ---

16 MR. GORDON CAMERON: Right.

17 ADM ISABELLE JACQUES: --- on your second point.
18 Yes.

19 DM MICHAEL SABIA: One thing I should clarify,
20 when I say "we", I mean the Department of Finance, we're not --
21 I mean, we as in the government.

22 MR. GORDON CAMERON: Thank you. That's how I'd
23 understood it, but I appreciate the refinement.

24 As I say, the first concept, I think, is
25 intuitive to the observer. That is, stop the money from going
26 to the people who are committing the activity.

27 But did you appreciate that you were moving to a
28 different level? I mean, in the first -- when you go to the

1 deterrent mode, because you're starting to affect more than the
2 protestor, and you know that; right? In the first scenario,
3 you're saying to the protestor, "We are going to cut off the
4 money you're using to buy gas for your truck," or whatever. And
5 in the second mode, you're saying, "We are going to cut off your
6 family's money that they use to buy groceries and pay their
7 rent. So you'd better get out of this protest." Right? You're
8 nodding.

9 **ADM ISABELLE JACQUES:** Well I'm nodding. I mean,
10 I just understand what you're saying. The question ---

11 **MR. GORDON CAMERON:** And the question is, did you
12 appreciate the significance? Are there other examples where the
13 Department of Finance has used its authority, or the Government
14 has used the authority on the instruction or advice of the
15 Department of Finance to have that type of effect? Where you're
16 not just trying to stop illegal activity by cutting off the
17 funds that flow to it, but you're trying to deter the illegal
18 activity by getting at the family and the other people who need
19 that money.

20 **ADM ISABELLE JACQUES:** Well that's not accurate.
21 We were not, definitely -- the intent was not to get at the
22 family or to have any, you know, of those impacts. That was not
23 the focus.

24 The focus was to be able to act quickly and it
25 had two prongs. Like, we're thinking, you know, we wanted to
26 stop the flow of funds to fund those illegal activities and we
27 wanted it to act as a deterrent. So for those people on the
28 Hill or in other border crossings involved in illegal

1 activities, we wanted to dissuade them from continuing their
2 participation.

3 As we said repeatedly, what was important was
4 that one of the key features was we wanted to act quickly, as we
5 said before. So as quickly as we could freeze -- the accounts
6 could be frozen, they could be unfrozen as well. And the person
7 that made a decision to stay involved in those criminal
8 activities or illegal activities, it was their decision to stay
9 there.

10 Certainly are we conscious of the fact that we do
11 not want, of course, you know, we did have questions and we had
12 discussions with the CBA with respect to, you know, court order,
13 like, for child support for example. We certainly said, as you
14 saw in the Emergency Order, there is a section that basically
15 indemnifies people from, you know, implementing -- doing their
16 best to use their judgement to implement the order and the
17 measures that are there.

18 Certainly we said the goal was not to punish or
19 prevent, you know, payments of child support. That was not the
20 goal. The goal was to ensure that people who were involved
21 would make a decision to leave. Those funds would have been
22 unfrozen if they had, you know, made that decision, very
23 quickly.

24 **MR. GORDON CAMERON:** Right. And I don't know if
25 you followed the evidence before the commission, but apropos the
26 point of the deterrence, that there have been police witnesses
27 who've said they saw your measures work because they heard of
28 people getting calls back from North Battleford or whatever, ---

1 ADM ISABELLE JACQUES: Exactly.

2 MR. GORDON CAMERON: --- "Come home. The account
3 is frozen and I can't buy groceries." Right? The police saw
4 that as your measures working, because they were affecting
5 people who had nothing to do with the protests other than that
6 they were family members.

7 So I put it to you that you must have realized
8 that would be one of the effects of freezing the accounts in the
9 way that they were?

10 ADM ISABELLE JACQUES: When we -- certainly when
11 we developed the policy, we were focusing on those people
12 involved in the illegal activities, and certainly in our
13 discussions, daily discussions with the CBA and, you know, we
14 had discussion with the RCMP, certainly these issues came to
15 light.

16 That was not the focus of the policy development.
17 We understand that that was maybe some people were impacted, but
18 we had discussions in the application to say our focus was
19 certainly on these people involved in the activity.

20 MR. GORDON CAMERON: Thank you very much.

21 And Mr. Commissioner, I've used up my time, so
22 I'll pass the podium over to those who want to cross-examine and
23 perhaps pursue some of these issues further.

24 COMMISSIONER ROULEAU: Okay. Thank you.

25 I guess we'll take the morning break at this
26 point to give everyone a chance to stretch a bit. So we'll come
27 back in 15 minutes and start with the cross-examinations.

28 THE REGISTRAR: The Commission is in recess for

1 15 minutes. La Commission est levée pour 15 minutes.

2 --- Upon recessing at 11:39 a.m.

3 --- Upon resuming at 11:56 a.m.

4 **THE REGISTRAR:** Order. À l'ordre. The
5 Commission has reconvened. La Commission reprend.

6 **--- ADM ISABELLE JACQUES, Resumed:**

7 **--- DM MICHAEL SABIA, Resumed:**

8 **--- ADM RHYS MENDES, Resumed:**

9 **COMMISSIONER ROULEAU:** Okay. First, the convoy
10 organisers, please.

11 **--- CROSS-EXAMINATION BY MR. BRENDAN MILLER:**

12 **MR. BRENDAN MILLER:** Good morning. My name's
13 Brendan Miller, and I am counsel for Freedom Corp, which is the
14 entity that represents the protesters that were in Ottawa in
15 January and February of 2022. I have a few questions for the
16 three of you, and hopefully we can get through this in the
17 20 minutes that I have.

18 So first, I want to talk to you about money
19 laundering and terrorist financing. You've kind of mentioned
20 that previously. And of course, that's dealt with by the
21 FINTRAC legislation; correct?

22 **ADM ISABELLE JACQUES:** That is correct.

23 **MR. BRENDAN MILLER:** And you can agree with me
24 that the protesters in Ottawa were not terrorists; correct?

25 **ADM ISABELLE JACQUES:** I have no information to
26 that effect.

27 **MR. BRENDAN MILLER:** You have no information to
28 the effect that they were terrorists; right?

1 ADM ISABELLE JACQUES: That is correct. I
2 wouldn't -- that's not information that I'd be privy to.

3 MR. BRENDAN MILLER: And you have no information
4 that the protesters in Ottawa were laundering money. Isn't that
5 right?

6 ADM ISABELLE JACQUES: As a -- the Department of
7 Finance did not receive any information to that effect.

8 MR. BRENDAN MILLER: Right.

9 ADM ISABELLE JACQUES: It's not information that
10 we would ---

11 MR. BRENDAN MILLER: Right.

12 ADM ISABELLE JACQUES: --- to be received.

13 MR. BRENDAN MILLER: But Deputy Minister, you can
14 agree that during the IRG meetings you were present?

15 DM MICHAEL SABIA: Yes.

16 MR. BRENDAN MILLER: Right. And at no time
17 during those meetings were you ever informed that any of the
18 protesters in Ottawa were terrorists or were money laundering.
19 Is that correct?

20 MS. DONNAREE NYGARD: Sorry, just to interject
21 for a moment. In as far as the question is asking what Ministers
22 may have discussed amongst themselves in those meetings, that
23 would be covered by Cabinet.

24 MR. BRENDAN MILLER: I'll rephrase.

25 Between the dates of February 10 and
26 February 14th, 2022, at no time were you informed that there was
27 terrorists within the protesters in Ottawa; correct?

28 DM MICHAEL SABIA: All I can say in reaction to

1 your question is that there -- the responsible agencies were
2 watchful on that point, and it was not an area ---

3 MR. BRENDAN MILLER: Sir?

4 DM MICHAEL SABIA: --- where ---

5 MR. BRENDAN MILLER: Sir?

6 DM MICHAEL SABIA: --- we had any expertise.

7 MR. BRENDAN MILLER: Sir, I understand that, but
8 I'm not asking that. I just want a yes or no. You were never
9 informed that these individuals in Ottawa, between the dates of
10 February 10th and February 14th were terrorists; correct?

11 DM MICHAEL SABIA: We had no information one way
12 or the other on that issue.

13 MR. BRENDAN MILLER: Right. So the answer's no.

14 DM MICHAEL SABIA: I said we had no information
15 one way or the other on that.

16 MR. BRENDAN MILLER: No, so you have no
17 information one way or the other. Let's make it clear, you were
18 not informed, you were given no information that these
19 individuals in Ottawa protesting were terrorists. Yes or no?

20 DM MICHAEL SABIA: Well, I'm not going to give
21 you a yes or no answer because my answer is that we didn't have
22 information on that one way or the other. It's just not an
23 issue that we were involved in, cognizant of, et cetera.

24 MR. BRENDAN MILLER: But was it not the -- I
25 understand from the records that FINTRAC and the Ministry of
26 Finance, based on a report in the media on January 25th, with
27 respect to the crowdfunding, all right, that is what brought
28 this to their attention and FINTRAC and the Department of

1 Finance started to look at these individuals in Ottawa with
2 respect to financing. Can you agree with that?

3 **DM MICHAEL SABIA:** Well, no, I can't because I
4 don't have enough information to enable me to. What -- I mean,
5 at the time, we are not -- and it's quite appropriate, we are
6 not privy to information that FINTRAC has. That information --
7 FINTRAC, as you know, is an agency that is all about
8 intelligence gathering, detection, et cetera. It's not about
9 enforcing.

10 **MR. BRENDAN MILLER:** Okay. So ---

11 **DM MICHAEL SABIA:** And so that information --
12 just hang on one sec. That that information goes directly -- in
13 the case of suspicious transactions or concerns about money
14 laundering, whatever, that information goes directly from the
15 leadership of FINTRAC to law enforcement authorities. It never
16 comes our way.

17 **MR. BRENDAN MILLER:** Right. And I take it that
18 between February 10th and February 14th, no law enforcement
19 official informed you that there was money laundering going on
20 with respect to the protest in Ottawa; did they?

21 **DM MICHAEL SABIA:** I was not informed of anything
22 with respect to money laundering one way or the other.

23 **MR. BRENDAN MILLER:** So and I think, you know,
24 it's fair to say then that FINTRAC legislation and the
25 legislation dealing with Paris financing and money laundering
26 simply had no application to the protesters; did it?

27 **DM MICHAEL SABIA:** No, it did. Maybe I'm
28 misunderstanding your question, but it did in that -- through

1 that process, it confirmed that we needed to adjust the
2 regulatory perimeter of FINTRAC to include crowd-funding
3 platforms and payment processors. So we did do that on a
4 temporary basis under the authority of the *Emergencies Act*, and
5 we applied it only to -- in that Act, only to crowd funding and
6 payment processors ---

7 MR. BRENDAN MILLER: Okay.

8 DM MICHAEL SABIA: --- who had information ---

9 MR. BRENDAN MILLER: Right, and I understand
10 that.

11 DM MICHAEL SABIA: --- with these elicit
12 activities.

13 MR. BRENDAN MILLER: So ---

14 DM MICHAEL SABIA: Then we made it longer term.

15 MR. BRENDAN MILLER: --- before that protest and
16 before the invocation of the *Emergencies Act*, there was no
17 authority to do that; right? That's why you needed the --
18 you're saying that's why you needed this; is that fair?

19 DM MICHAEL SABIA: The crowd-funding platforms
20 and payment processors were not subject to review by FINTRAC.
21 Yes, that's ---

22 MR. BRENDAN MILLER: Right.

23 DM MICHAEL SABIA: --- that's accurate.

24 MR. BRENDAN MILLER: And but even if they were
25 not crowd funding, et cetera, if there was terrorist financing
26 and there was money laundering, then you could apply FINTRAC and
27 the *Criminal Code* to crowd funding, right, without the
28 *Emergencies Act*?

1 DM MICHAEL SABIA: I can't answer that question
2 because I'm not expert enough in FINTRAC's legislation.

3 MR. BRENDAN MILLER: Okay. So I want to talk to
4 you a bit about some crowd funding. With respect to crowd
5 funding, you can agree it's done by way of people donating to a
6 fund online; right?

7 DM MICHAEL SABIA: Yes.

8 MR. BRENDAN MILLER: And people donate to that
9 fund typically to support a cause?

10 DM MICHAEL SABIA: I guess that's one, yes.

11 MR. BRENDAN MILLER: And ---

12 DM MICHAEL SABIA: So ---

13 MR. BRENDAN MILLER: --- can you agree with me
14 that some causes set up in crowd funding are set up for a
15 political cause?

16 DM MICHAEL SABIA: I'm sure that's probably true.

17 MR. BRENDAN MILLER: And can you agree that a
18 protest on a government policy or legislation is a political
19 cause?

20 DM MICHAEL SABIA: Well, I'm not going to answer
21 your question in my capacity as the Deputy Minister of Finance.
22 I guess I'm going to answer your question in my capacity as a
23 citizen. And I guess my answer as a citizen is, yeah, that
24 sounds like it makes sense to me.

25 MR. BRENDAN MILLER: Right. And can you admit
26 that the GoFundMe and the GiveSendGo for crowd funding set up by
27 Ms. Lich and the protesters in Ottawa were a crowd fund set up
28 to support a political cause?

1 DM MICHAEL SABIA: Well, I guess, you know, as
2 you know well, GoFundMe ended up, in effect, refusing to
3 continue to provide its platform for these funding activities,
4 so ---

5 MR. BRENDAN MILLER: We'll get into that.

6 DM MICHAEL SABIA: --- crowds -- so GoFundMe
7 obviously came to some conclusions about what was underway here
8 that caused them to be uncomfortable enough that they wanted to
9 ---

10 MR. BRENDAN MILLER: Right.

11 DM MICHAEL SABIA: --- restrict this from their
12 platform.

13 MR. BRENDAN MILLER: Right. I understand that.
14 But can you agree that when the GoFundMe was set up in January
15 14th, prior to the protest, prior to them arriving, that this
16 GoFundMe and this crowd fund was set up to support a political
17 cause?

18 DM MICHAEL SABIA: Well, it was set up to support
19 the fundraising activities of the people who were protesting
20 both in Ottawa and I guess across the country.

21 MR. BRENDAN MILLER: Right. And you agree that
22 the protests are a political cause?

23 DM MICHAEL SABIA: Well, they were about a
24 political issue, yeah.

25 MR. BRENDAN MILLER: Right. And so let me just
26 put this to you. This is in one of the reports already that's -
27 - overview reports that has been put in evidence, and I'm just
28 going to read it to you and then ask you a question about it.

1 But the original GoFundMe on January 14th as amended later and
2 put into the overview report states this as the reason to
3 donate.

4 "To our fellow Canadians, the time for
5 political overreach is over. Our
6 current government is..." (As read)

7 **COMMISSIONER ROULEAU:** Can you read more slowly?

8 **MR. BRENDAN MILLER:** Yes, sir.

9 "Our current government is implementing
10 rules and mandates that are destroying
11 the foundation of our businesses,
12 industries and livelihoods. Canadians
13 have been integral to the fabric of
14 humanity in many ways that have shaped
15 the planet. We are a peaceful country
16 that has helped protect nations across
17 the globe from tyrannical governments
18 who oppress their people. Well, now it
19 has happened to us. We are taking our
20 fight to the doorstep of the federal
21 government and demanding that they
22 cease all mandates against its people.
23 Small businesses are being destroyed.
24 Homes are being destroyed. And people
25 are being mistreated and denied
26 fundamental necessities to survive.
27 It's our duty as Canadians to put an
28 end to this mandate. It is imperative

1 that this happens because if we don't,
2 our country will no longer be the
3 country we have come to love. We are
4 doing this for our future generations
5 and to regain our lives back. We are
6 asking for donations to help with the
7 cost of fuel, food and lodging, to help
8 ease the pressure of this arduous task,
9 but it's a small price to pay for our
10 freedoms. We thank you all for
11 donations and know that you are helping
12 to reshape this once beautiful country
13 back the way it was." (As read)

14 So can you agree that premise that I've just read
15 to you for seeking donations, I know it was speaking as a
16 citizen, you can agree that that's asking for donations to
17 support a political cause; right?

18 **DM MICHAEL SABIA:** I think it's asking for
19 donations to support somebody's particular view about a public
20 issue.

21 **MR. BRENDAN MILLER:** Right, and that's a
22 political cause.

23 **DM MICHAEL SABIA:** Well, I'm not going to judge
24 whether it is or not. It's a public policy issue that people
25 have a right, perfect right ---

26 **MR. BRENDAN MILLER:** M'hm.

27 **DM MICHAEL SABIA:** --- to agree with or disagree
28 with, and I guess this group of people were out using a crowd-

1 funding platform as a source of raising money for it.
2 Obviously, it ended up being pretty problematic because crowd --
3 GoFundMe walked away.

4 MR. BRENDAN MILLER: And we're going to get into
5 it. So you agree that many people donated to both the GoFundMe
6 and the GiveSendGo; right?

7 DM MICHAEL SABIA: I don't know what the numbers
8 are, how many people donated.

9 MR. BRENDAN MILLER: And you know that those
10 donations, based on what I've just said to you, were made on the
11 premise of that statement. The money donated was to be used to
12 support the protest; right?

13 DM MICHAEL SABIA: I can't speculate as to why
14 people made those donations or not.

15 MR. BRENDAN MILLER: And ---

16 DM MICHAEL SABIA: I don't have any access to
17 that information.

18 MR. BRENDAN MILLER: --- as the Deputy Minister
19 of Finance, I'm sure you know that before the protesters even
20 got to Ottawa, that on -- as of January 25th, the GoFundMe had
21 already raised more than \$4.5 million. You know that; right?

22 DM MICHAEL SABIA: I do not -- I did not know
23 that at the time, no.

24 MR. BRENDAN MILLER: All right. And I take it
25 you are aware and had some discussion that donations to
26 political causes are a form of freedom of expression as
27 protected under Section 2(b) of the *Canadian Charter of Rights*
28 *and Freedoms*. Did you -- were you aware of that?

1 DM MICHAEL SABIA: I'm aware that the *Charter*
2 protects the right to free expression.

3 MR. BRENDAN MILLER: Right. And were you aware
4 that donations to a political cause have been interpreted and
5 continue to be interpreted by the highest court as being part of
6 freedom of expression; were you aware of that?

7 DM MICHAEL SABIA: Yeah. I'm a -- like, the
8 issue here, at least in my opinion, is not about donations,
9 because nobody acted. Even in the context of the *Emergencies*
10 Act, no one -- I mean, the RCMP was I think quite clear and
11 publicly clear that their intention here was not to take action
12 on people who had made -- in most cases, I think relatively
13 modest donations. So the -- there really wasn't action here, as
14 best I can detect, action here with respect to the activity of
15 making donations.

16 MR. BRENDAN MILLER: I understand that. But the
17 making of the donation, right, you make a donation under the
18 auspices that it's going to be used for the cause; right?
19 That's when the -- that's how the donation, why the donation is
20 made. You can agree with that.

21 DM MICHAEL SABIA: Well, I guess that would be
22 the donor's expectation.

23 MR. BRENDAN MILLER: Right.

24 DM MICHAEL SABIA: Whether or not it happened or
25 not ---

26 MR. BRENDAN MILLER: Right.

27 DM MICHAEL SABIA: --- is something that I can't
28 comment on because I don't know.

1 MR. BRENDAN MILLER: And so when the Government
2 interferes with what is to be done with those funds, do they not
3 -- can you not agree that it interferes with those donor's
4 freedom of expression? Can you agree with that?

5 DM MICHAEL SABIA: Look, the Government took a
6 decision that these activities were illegal.

7 MR. BRENDAN MILLER: Right, and we've been having
8 some trouble in establishing what that is, and we're going to
9 get into that. But I'm going to move on to another part.

10 This Commission has heard evidence that the money
11 from GoFundMe, all right, you talked about it being frozen, it
12 was frozen following a request at a meeting between the City of
13 Ottawa; the Municipality, the Mayor; and the Ottawa Police
14 Service. Are you aware of that?

15 DM MICHAEL SABIA: I have absolutely no awareness
16 of that, nor is it relevant to our work in the Department of
17 Finance.

18 MR. BRENDAN MILLER: Right. But you said it was
19 relevant to -- you said it was relevant, just in your own
20 testimony.

21 DM MICHAEL SABIA: No, I did not say it was
22 relevant ---

23 MR. BRENDAN MILLER: No, no, no.

24 DM MICHAEL SABIA: --- to our work in the
25 Department of Finance.

26 MR. BRENDAN MILLER: Let me finish my question,
27 sir.

28 DM MICHAEL SABIA: I did not say that.

1 MR. BRENDAN MILLER: Sir, let me just finish my
2 question. You had said it was relevant that GoFundMe on their
3 own accord froze these accounts; right? You just said to that,
4 they obviously saw an issue, and you said that just in your
5 evidence while I was examining you. So I'm going to ask you a
6 little bit about; okay?

7 And you can agree with me that the City of
8 Ottawa, the Ottawa Police Service, their government entities,
9 that's not debatable. Right?

10 DM MICHAEL SABIA: They're not Federal Government
11 entities.

12 MR. BRENDAN MILLER: Right, I know, but they're -
13 --

14 DM MICHAEL SABIA: And they don't have anything
15 to do with our job in the Department of Finance.

16 MR. BRENDAN MILLER: I understand. But you can
17 agree that they are government entities, they are provincial and
18 municipal government entities; right?

19 DM MICHAEL SABIA: I guess so, if I go back to
20 civics class. Yeah, I guess.

21 MR. BRENDAN MILLER: Yeah. Well, I'm glad that
22 you're thinking about civics ---

23 DM MICHAEL SABIA: It was a long time ago in my
24 case.

25 MR. BRENDAN MILLER: --- because that's part
26 about what this case is about.

27 Can you agree that when a municipal government or
28 a mayor of a city or municipal police service, like the Ottawa

1 Police Service, requests of a bank, or GoFundMe in this
2 instance, to freeze funds that that is government action. Can
3 you agree with me on that?

4 **DM MICHAEL SABIA:** Just so that I understand what
5 you just said, that...

6 **MR. BRENDAN MILLER:** Where a government entity
7 requests a fund or requests a bank or an institution to freeze
8 private funds of donations, of private bank accounts, or
9 anything like that, or they make that request, and it's from the
10 government, is that a government action?

11 **DM MICHAEL SABIA:** Well, yes, I think so. I
12 think it's -- yeah.

13 **MR. BRENDAN MILLER:** And I take, to your
14 knowledge, that there's no legislative authority that you know
15 of, federally or provincially, that would authorise a
16 municipality or a police force to make such a request?

17 **DM MICHAEL SABIA:** Look, all I can do is comment
18 on this from the perspective of, A, the Department of Finance;
19 and B, the Federal Government. And the Federal Government, in
20 the *Emergencies Act*, declared that these activities were
21 illegal. As with -- as to your point about ---

22 **MR. BRENDAN MILLER:** I ---

23 **DM MICHAEL SABIA:** --- GoFundMe ---

24 **MR. BRENDAN MILLER:** I understand, I understand.

25 **DM MICHAEL SABIA:** --- GoFundMe took an
26 independent decision that had absolutely to do with ---

27 **MR. BRENDAN MILLER:** So, sir ---

28 **DM MICHAEL SABIA:** --- government activities.

1 MR. BRENDAN MILLER: Sir, the mandate of this
2 Commission is to look at the circumstances surrounding the
3 invocation. I understand what the Government did, we're trying
4 to find out why. Okay?

5 So let me ask you again, to your knowledge, I
6 take it that you know that there is no legislation in Ontario or
7 federally, all right, that would authorise a municipality or a
8 police force to request an institution, a bank, GoFundMe to
9 freeze accounts. Can you agree with that?

10 DM MICHAEL SABIA: Look, you're asking me
11 questions that we in the Department of Finance have absolutely
12 nothing to do with.

13 MR. BRENDAN MILLER: You're saying that you have
14 nothing ---

15 DM MICHAEL SABIA: If you want to ask me
16 questions about our role in Finance, that's fair enough, but
17 these questions are -- they're not what we do.

18 MR. BRENDAN MILLER: But you understand financial
19 legislation, do you not? You understand that legislation
20 governs your Ministry; right?

21 DM MICHAEL SABIA: Of course.

22 MR. BRENDAN MILLER: Right. and then you also
23 look at the legislation in provinces, and you try to make them
24 interact and work together. Is that not fair? Cooperative
25 federalism, I'm sure you've heard that principle.

26 DM MICHAEL SABIA: Well, with respect to the --
27 broadly understood the operation of the economy and other
28 things, yeah.

1 MR. BRENDAN MILLER: Right. And ---

2 DM MICHAEL SABIA: But we're not a public safety
3 institution, we're not an institution that is responsible for
4 law enforcement in any other -- in any way. There are lots of
5 other agencies of the Government of Canada that are responsible
6 for those things and are responsible for the interactions that
7 you're ---

8 MR. BRENDAN MILLER: So ---

9 DM MICHAEL SABIA: --- drawing attention to, but
10 it's not the Department of Finance.

11 MR. BRENDAN MILLER: So if that's the case, then
12 why did they even ask you to come to the IRG? Why?

13 DM MICHAEL SABIA: I think the answer to that's
14 pretty straightforward. There was a very substantial
15 preoccupation on the part of the Government with respect to the
16 economic consequences of the disruptions that were occurring in
17 the country. And our role at the time, we were people doing
18 quite a bit of work on that issue, and that was extremely
19 relevant to ---

20 MR. BRENDAN MILLER: Okay.

21 DM MICHAEL SABIA: --- the decision-making that
22 was underway ---

23 MR. BRENDAN MILLER: So ---

24 DM MICHAEL SABIA: --- across the Government of
25 Canada at the time.

26 MR. BRENDAN MILLER: I understand that. I'm not
27 trying to cut you off, but I'm just trying to stay under my time
28 limit.

1 So here's the thing, on February 10th, the IRG
2 minutes that we do have, that are unredacted, the Prime Minister
3 advises we have two tracks. He went into it with two tracks.
4 The first was to use general legislative authority, and the
5 second track was to use the *Emergencies Act*. All right? And I
6 take it -- and there was tasks. We have that evidence. Tasks
7 were given to your Ministry, tasks were given to other
8 ministries. I can you with respect to the options that were
9 being put forward outside of the *Emergencies Act*, we don't know
10 what those were because the Government has claimed
11 solicitor/client privilege and section 39 Cabinet confidence, so
12 I have no idea.

13 But I take it that there had been enquiries with
14 your Ministry between February 10th and February 14th about what
15 legislation could be used in order to deal with the
16 crowdfunding.

17 **DM MICHAEL SABIA:** Look, I don't know whether you
18 were in the room this morning or not, but I thought we had a
19 pretty thorough discussion of that with Commission's counsel.

20 **MR. BRENDAN MILLER:** I understand, but -- and
21 sir, I understand you're asking me questions, but if we're both
22 asking questions ---

23 **DM MICHAEL SABIA:** No, I didn't ask you a
24 question.

25 **MR. BRENDAN MILLER:** I get it. I understand.
26 But if we're both asking questions none of us will have answers.
27 So let me just ask the questions and we'll go on; all right?

28 So I want to talk to you now about the

1 legislative change versus regulations and Orders in Council
2 really quickly.

3 And can you agree ---

4 **COMMISSIONER ROULEAU:** You're going to have to
5 make it quick because you're already over your time.

6 **MR. BRENDAN MILLER:** Thank you, sir.

7 Two points. The legislative change versus
8 regulations. You said you couldn't deal with this by way of
9 regular legislation through Parliament. Why?

10 **DM MICHAEL SABIA:** No, what I -- what we said, I
11 think what both Isabelle and I said earlier was in the
12 circumstance where our concern was limiting the duration of
13 these disruptions as much as possible, that the legislative
14 process was something that took a considerable amount of time,
15 and therefore, was not really a very effective instrument for
16 dealing with a situation where time was a significant impact,
17 was a significant determinant of the extent of its impact on the
18 national economy.

19 **MR. BRENDAN MILLER:** Okay. But you can agree
20 that the legislative process with Parliament as a whole is far
21 more democratic than a meeting in Cabinet that's essentially
22 in-camera and privileged, it's -- there's no debate from
23 opposing parties, these things are then just passed by the
24 Executive; right? Like it's -- it doesn't represent input from
25 the rest of Parliament; correct?

26 **DM MICHAEL SABIA:** Look, I think the Government
27 took a decision as the duly elected Government of the country to
28 invoke a -- the *Emergencies Act*, which is itself a piece of

1 legislation that was through Parliament, and the Government took
2 a decision to use that in this circumstance, and has been, I
3 believe, scrupulous in how it was used, kept the duration of the
4 *Emergencies Act* to an absolute minimum, I mean, it was what,
5 seven, eight days maximum ---

6 MR. BRENDAN MILLER: Okay.

7 DM MICHAEL SABIA: --- for the whole thing. So I
8 think the Government has proceeded in a manner completely
9 consistent with the laws of Canada.

10 MR. BRENDAN MILLER: I understand. But you can
11 agree that in invoking the *Emergencies Act*, Parliament, via that
12 legislation lays out criteria that have to be met to invoke it;
13 right?

14 DM MICHAEL SABIA: Yes, but the *Emergencies Act*
15 had to be -- there was a parliamentary process that followed the
16 Government's invocation of the *Emergencies Act* in a manner
17 consistent with the laws of Canada, and that was done.

18 MR. BRENDAN MILLER: Right. And the documents to
19 date show that because they were able, the NDP -- okay I'm going
20 to ask, and we'll deal with this last question, the NDP, before
21 the debate even took place, had already agreed to support the
22 motion. Okay. That's in evidence.

23 The question is this. So they support the
24 motion. It goes to the Senate. They get indication that the
25 Senate is not going to vote in their favour, so they pull it.
26 In my submission to you, that's the Parliamentary process;
27 right? Because if there was no grounds to invoke it and the
28 Senate was going to revoke it, that's a good process; isn't it?

1 DM MICHAEL SABIA: I'm not going to comment on
2 that. It's ---

3 MR. BRENDAN MILLER: Didn't think you would.
4 Thank you.

5 COMMISSIONER ROULEAU: Okay. Next I'd like to
6 call on the CCLA, please.

7 --- CROSS-EXAMINATION BY MS. EWA KRAJEWSKA:

8 MS. EWA KRAJEWSKA: Good afternoon. My name is
9 Ewa Krajewska and I'm counsel for the Canadian Civil Liberties
10 Association.

11 I'd like to start off by going back to before the
12 Emergencies Orders and the options that your Ministry was
13 considering.

14 And if I could ask the Registrar to pull up
15 SSM.CAN.00003761?

16 This is a memo that was attached to an email, Mr.
17 Sabia, that you sent to Deputy Prime Minister Freeland on
18 February 8th at 1700 hours, minus five. I think that's right.
19 Minus five.

20 And do you recognize this memo, sir?

21 DM MICHAEL SABIA: Yes, I think so.

22 MS. EWA KRAJEWSKA: So these are -- in this memo,
23 you lay out three options to the Deputy Prime Minister. The
24 first is the use of the *Bank Act*. The second option is redacted
25 on the basis of Cabinet confidence. I've asked my friend at the
26 DOJ if she would reconsider that, and I appreciate that will
27 take some time.

28 And then the third option is moral suasion. And

1 this is not something that you discussed with Commission Counsel
2 this morning. I just want you to take a look at that second
3 paragraph, where I think it was the Minister's expectations to
4 ask bank CEOs to remain vigilant in their review of business
5 relationships to ensure that they're not being used to support
6 illegal activities.

7 And is that one of the considerations that was
8 given to Minister Freeland into how she should deal with this
9 situation?

10 **DM MICHAEL SABIA:** No. What this is, is just a
11 summary of possible approaches that could be used. These are
12 not, and shouldn't be construed as recommendations to the
13 Minister in any way. And the description that you see in the
14 second paragraph is really about, well, if one were to go down
15 the path of moral suasion, here's the kind of thing that it
16 would involve.

17 **MS. EWA KRAJEWSKA:** Okay. And when you talk
18 about "support illegal activities", you would have to define
19 what that means in these circumstances; correct?

20 **DM MICHAEL SABIA:** Yes.

21 **MS. EWA KRAJEWSKA:** And I think you stated
22 earlier today that the Declaration of Emergencies and the Orders
23 underneath it defined what those illegal activities would be?

24 **DM MICHAEL SABIA:** The *Emergencies Act* did.
25 That's my understanding.

26 **MS. EWA KRAJEWSKA:** Yes, it did. Thank you. and
27 if I can move on to the scope of the measures, and many of these
28 questions will be to you, Mr. Sabia, and to you, Ms. Jacques.

1 You agree that the Emergencies Measure Order prohibited any
2 entity as defined in section 3 which covered both provincial and
3 federal institutions from dealing with any property held by a
4 designated person; right? That was the -- if I -- you'd agree
5 with that characterization of ---

6 **ADM ISABELLE JACQUES:** Can you pull up section 3?

7 **MS. EWA KRAJEWSKA:** Do you have section 3 before
8 you? If not, I'll pull it up. Yes. Oh no, wait. I left it at
9 my chair.

10 Sujit, can you help me with the SSM number?

11 **MR. SUJIT CHOUDHRY:** If you could please pull up
12 SSM.CAN.00001911_Rel.0001?

13 **MS. EWA KRAJEWSKA:** So this is the Emergencies
14 Measures Order, which is the financial order, and section 3 is
15 the one that covers the institutions that -- okay. Well I have
16 the wrong document.

17 Okay. There is a list of institutions that are
18 covered by the Order; correct? Those include financial
19 institutions, ---

20 **ADM ISABELLE JACQUES:** Yes.

21 **MS. EWA KRAJEWSKA:** --- credit unions, insurance
22 companies? Those cover both provincial and federal
23 institutions; correct?

24 **ADM ISABELLE JACQUES:** That is accurate.

25 **MS. EWA KRAJEWSKA:** Right. And it prohibits
26 those financial institutions with dealing with the property of
27 any designated person?

28 **ADM ISABELLE JACQUES:** That's correct.

1 MS. EWA KRAJEWSKA: Right. And that essentially
2 freezes their assets? The designated person's assets?

3 ADM ISABELLE JACQUES: Yes. It can suspend
4 dealings with those individuals and it could lead to the
5 freezing of ---

6 DM MICHAEL SABIA: Freezes an account, ---

7 ADM ISABELLE JACQUES: Right.

8 DM MICHAEL SABIA: --- not necessarily ---

9 ADM ISABELLE JACQUES: An account.

10 MS. EWA KRAJEWSKA: Well freezes their ability to
11 deal with their property held at those institutions?

12 ADM ISABELLE JACQUES: Yes.

13 MS. EWA KRAJEWSKA: I mean, I see you're nodding.

14 ADM ISABELLE JACQUES: Bank accounts.

15 MS. EWA KRAJEWSKA: Sorry, we need an audible.

16 Thank you.

17 DM MICHAEL SABIA: Yeah. Yeah.

18 MS. EWA KRAJEWSKA: And it applied -- you saw
19 that it applied to joint accounts, to registered savings
20 accounts, and to investment accounts?

21 ADM ISABELLE JACQUES: That is true.

22 MS. EWA KRAJEWSKA: And you're aware that the
23 Canadian Bankers Association voiced concerns to both you and the
24 RCMP about the scope of these orders?

25 ADM ISABELLE JACQUES: I don't recall the CBA
26 voicing concern with the scope of the orders. I do not recall
27 that.

28 MS. EWA KRAJEWSKA: Do you remember any

1 representatives from banking institutions raising concerns about
2 the scope of the orders?

3 **ADM ISABELLE JACQUES:** The scope, no, but the
4 impact. I mean, one concern that was raised with respect to the
5 impact it may have with respect to child support. That's the
6 only concern that I recall.

7 **MS. EWA KRAJEWSKA:** Okay. Do you remember that
8 they asked whether it applied to joint accounts?

9 **ADM ISABELLE JACQUES:** That's very possible. And
10 if they did, I would have said yes.

11 **MS. EWA KRAJEWSKA:** Right. And your office
12 prepared, or someone at the Department prepared a kind of
13 ongoing and consolidated questions and answers, kind of an FAQ
14 for banks; correct?

15 **ADM ISABELLE JACQUES:** Well not for banks. I
16 mean, we had ---

17 **MS. EWA KRAJEWSKA:** Sorry, I say banks, I mean
18 financial institutions.

19 **ADM ISABELLE JACQUES:** I mean, we had prepared
20 some frequent questions for internal purposes, yes.

21 **MS. EWA KRAJEWSKA:** This is -- if I could just
22 pull up SSM.CAN.00000002? And I think this is the Consolidated
23 FAQ. And there were questions about -- correct, thank you.
24 Page number 6. Scroll down to "RCMP" please. There we go.

25 "When we say 'accounts', what exactly is
26 being referred to?"

27 So those are the types of accounts that this
28 would apply to; correct?

1 ADM ISABELLE JACQUES: Yes.

2 MS. EWA KRAJEWSKA: And if we go to page 7, there
3 were questions about whether small donations were being
4 investigated?

5 ADM ISABELLE JACQUES: Yes.

6 MS. EWA KRAJEWSKA: And your response, or the
7 RCMP response was that they weren't; correct?

8 ADM ISABELLE JACQUES: They were not being
9 investigated. Yes. That was not the focus of their
10 investigation.

11 MS. EWA KRAJEWSKA: But you'd agree that on the
12 face of the Order, small donations were captured on the face of
13 the Order?

14 And Mr. Sabia, I think you even provided that
15 advice to Minister Freeland at some point?

16 DM MICHAEL SABIA: I don't recall. I may -- I
17 honestly don't recall that. But I mean I think that's true.

18 ADM ISABELLE JACQUES: Yes, they were captured.

19 DM MICHAEL SABIA: I think that's true that they
20 were captured, but nothing ---

21 MS. EWA KRAJEWSKA: Okay. I will just put it for
22 reference for the record that ---

23 ADM ISABELLE JACQUES: And on those small
24 donations, just to specify, yes, they were captured, but it's
25 important to note that certainly the Order was no retroactive.
26 So any donations that would have been given prior to the
27 *Emergencies Act* being enacted were not captured.

28 And as we said previously, it's important that

1 you look at the context as to when we came about to draft the
2 order, we didn't know how the situation would evolve. But in
3 the application of the order, certainly the focus was not on
4 those donations.

5 **MS. EWA KRAJEWSKA:** Correct. And Ms. Jacques, I
6 think it was you who provided answers to those questions at
7 SSM.CAN.00000054, where Minister Freeland had questions with
8 respect to the Order, and Mr. Sabia, you asked for responses on
9 those questions, and Ms. Jacques, you provided the answers in
10 red where you stipulated, this is on ---

11 **ADM ISABELLE JACQUES:** Can we see?

12 **MS. EWA KRAJEWSKA:** I know. I'm just going to
13 talk while they pull it up; otherwise, I run out of time.

14 **ADM ISABELLE JACQUES:** It would be good just to
15 read it.

16 **MS. EWA KRAJEWSKA:** You will -- I would for sure
17 give you a chance to see it.

18 **ADM ISABELLE JACQUES:** Thank you.

19 **MS. EWA KRAJEWSKA:** The question was:

20 "And what about people who were never
21 at the protest, but made donations?"

22 And your response was:

23 "As stipulated in the Order, it is
24 possible that a person who indirectly
25 funded the illegal protest for the
26 benefit of a person involved in the
27 protest had their account frozen. This
28 would only occur if they made a

1 donation after September [sic] 15th..."

2 Which is, as you were saying ---

3 **ADM MICHAEL SABIA:** February 15th.

4 **MS. EWA KRAJEWSKA:** --- February 15th, it was not
5 retroactive.

6 So if you go to page 2, there is the question,
7 the second paragraph. Do you see that?

8 **ADM ISABELLE JACQUES:** "And what about people"?
9 That one?

10 **MS. EWA KRAJEWSKA:** Yes.

11 **ADM ISABELLE JACQUES:** Yes.

12 **MS. EWA KRAJEWSKA:** That was the question from
13 the Minister Freeland, and then your answer is in the less dark
14 font.

15 **ADM ISABELLE JACQUES:** Yes.

16 **MS. EWA KRAJEWSKA:** Okay. And I think some of
17 the financial institutions asked if they were able to exercise
18 some humanitarian exceptions as well to the Orders. And maybe
19 this is what you referring to as child support; correct?

20 **ADM ISABELLE JACQUES:** And certainly, we -- yeah,
21 we told them to, and as they have, use their good judgement in
22 applying this Order throughout, yes.

23 **MS. EWA KRAJEWSKA:** And they also asked if they
24 could continue to process automated payments from the accounts;
25 correct?

26 **ADM ISABELLE JACQUES:** That I do not recall if
27 they asked me that question.

28 **MS. EWA KRAJEWSKA:** And the Order also applied to

1 auto insurance; correct?

2 ADM ISABELLE JACQUES: Yes.

3 MS. EWA KRAJEWSKA: Yes. But the RCMP decided
4 not to communicate with insurance companies, as they wanted to
5 ensure that it would be safe for vehicles to leave the
6 demonstration.

7 DM MICHAEL SABIA: Yeah, now this is an important
8 point because it goes to what we were trying to accomplish here.
9 So that created the possibility that that could occur. In
10 reality, in actuality it never occurred, but it did have a
11 helpful incentive effect, to use that word again, with respect
12 to wanting to find a peaceful solution to these disruptions.

13 So the RCMP's approach to this was, I think,
14 completely appropriate. The risk to the truck owner was there,
15 but action was not taken because if action -- if the action had
16 actually been taken it could have, in certain circumstances,
17 impeded the movement of the truck, which nobody wanted, but it
18 did create an issue of uncertainty that a truck driver would
19 have to assess and therefore, hopefully, encourage the truck
20 driver to leave peacefully, which was the objective all along.

21 MS. EWA KRAJEWSKA: So Mr. Sabia, I just want to
22 -- with respect to that answer, I think to me the Order did more
23 -- the Order did -- would have allowed the RCMP to ask for that
24 person's insurance to be cancelled, and what the RCMP did is
25 that it did not exercise their discretion under the Order to do
26 that. But the Order, on its face, and the insurance company
27 could have proactively cancelled that truck driver's insurance
28 and then it would not have been safe for that truck driver ---

1 DM MICHAEL SABIA: But it's instructive that that
2 never happened.

3 MS. EWA KRAJEWSKA: So it's good that it did not
4 happen, that that part of the Order was not exercised?

5 DM MICHAEL SABIA: It's positive that it had the
6 effect that it had, which it was creating a possibility that
7 that might happen, but that it never actually happened. That's
8 an almost ideal combination.

9 MS. EWA KRAJEWSKA: So in kind of economic terms,
10 it created a microeconomic incentive?

11 DM MICHAEL SABIA: It did.

12 MS. EWA KRAJEWSKA: And I want to go back to the
13 issue of what happened between the financial institutions and
14 the RCMP. It was not just that the RCMP provided information to
15 financial institutions, but under the Order, the financial
16 institutions were obligated to provide reporting to either the
17 RCMP or CSIS with respect to the freezing of accounts; correct?

18 ADM ISABELLE JACQUES: Yes.

19 MS. EWA KRAJEWSKA: So it was on -- it was the
20 financial institutions' onus to ensure that they were in
21 compliance with the Order.

22 ADM ISABELLE JACQUES: When they had information
23 -- yes. I mean, it was their ---

24 MS. EWA KRAJEWSKA: Not just when they had
25 information, but ---

26 ADM ISABELLE JACQUES: No, no. But do you mean -
27 -- it's their responsibility to be compliant with the law, yes,
28 and also, there is a clause that simply that they need to share

1 information that they have with the RCMP and/or CSIS.

2 **MS. EWA KRAJEWSKA:** Correct. And so -- and
3 Ms. Jacques, when you mentioned earlier an indemnity that was
4 provided, that indemnity was only provided to financial
5 institutions if they complied with the Order. It did not
6 provide an indemnity to financial institutions not to comply
7 with the Order or not to report to the RCMP. Correct?

8 **ADM ISABELLE JACQUES:** That is accurate.

9 **MS. EWA KRAJEWSKA:** Right. So the financial
10 institutions, if as you say they decided to exercise their
11 discretion for humanitarian or other purposes, they were taking
12 the legal risk for doing so.

13 **ADM ISABELLE JACQUES:** It was their decision to
14 make and do the assessment and consult internally, you know, and
15 receive the proper advice on their decision.

16 **MS. EWA KRAJEWSKA:** Because they would receive a
17 list of names or vehicles from the RCMP and then they would have
18 to report back to the RCMP of all the lists of accounts that
19 they froze, and so the RCMP could compare both lists later and
20 decide whether the financial institution complied with its legal
21 obligations.

22 **ADM ISABELLE JACQUES:** I don't know if there was
23 any such exercise of -- by the RCMP to review compliance with
24 the Order. I've never heard that in the past.

25 **MS. EWA KRAJEWSKA:** But the Order provided for
26 that information-sharing.

27 **ADM ISABELLE JACQUES:** It was to provide for the
28 information-sharing to help the RCMP and in pursuing some maybe

1 investigation, yes.

2 MS. EWA KRAJEWSKA: And then in -- and then I
3 understand that ---

4 ADM ISABELLE JACQUES: Not to go back -- not for
5 the RCMP to take account. That was not the purpose. It was to
6 share information to allow the RCMP to do their job.

7 MS. EWA KRAJEWSKA: But it could be -- it could
8 have been used to decide whether there had been compliance. It
9 could be read that way.

10 ADM ISABELLE JACQUES: I -- it was not intended
11 that way. I find that to be a stretch.

12 MS. EWA KRAJEWSKA: And in -- and I understand
13 that your department received aggregate information of how much
14 was frozen by financial institutions. You did not receive the
15 specific accounts, but you received the aggregate numbers;
16 correct?

17 ADM ISABELLE JACQUES: From the CBA, yes.

18 MS. EWA KRAJEWSKA: From the CBA. And I want to
19 -- so if I could take you to SSM.CAN.00000209. This is a long
20 email chain between Deputy Prime Minister Freeland's office and
21 the -- and your department regarding the enforcement of the
22 *Emergencies Act*.

23 And if we could go to the last page of this
24 document, page 8.

25 This is on February 16th, which is one day after
26 the Order is made public. Alexandre -- Alex Lawrence, who's the
27 Director of Communication for Deputy Prime Minister Freeland,
28 asks for tangible figures that could be made public the next

1 morning about how much -- about the enforcement measurements.

2 And if you go up...

3 I mean, I think you -- I'm not sure if you
4 personally were in communication, but your office was in
5 communication with the Deputy Prime Minister and to ensure that
6 she had updated numbers of -- the number of accounts that were
7 frozen and the quantum that was frozen, both were being provided
8 to the Deputy Prime Minister. Correct?

9 **ADM ISABELLE JACQUES:** Certainly, we provided the
10 information, usually via Michael.

11 **MS. EWA KRAJEWSKA:** Through Mr. Sabia?

12 **ADM ISABELLE JACQUES:** Yes.

13 **DM MICHAEL SABIA:** Yeah, so we were -- no mystery
14 here. We were wanting to track this information, again, as
15 you've said, not with respect to individual names, et cetera,
16 but aggregate data, we were wanting to track that, one, to see
17 whether or not this activity was actually underway, that what we
18 had set out to do was actually underway; and second, again, and
19 this is, you know, very important, we were tracking it because
20 the whole intent here was to have this in place for as short a
21 period as possible so that it could be -- that this kind of
22 activity could be removed as quickly as possible because
23 hopefully it was no longer needed. Because if it had the
24 intended effect of bringing a peaceful end or contributing to
25 bringing a peaceful end to these disruptions, then mission
26 accomplished and this whole thing should go away.

27 So in the interests of being able to do that as
28 promptly as possible, yes, we were tracking this fairly

1 carefully. And as you know, I think the -- I think as of
2 February, what, the 21st/22nd, pretty much all of these accounts
3 had been unfrozen. So it was actually quite -- it came and went
4 quickly, which is what our intent was at the time, because it
5 contributed to the peaceful end in a way that we had intended.

6 **MS. EWA KRAJEWSKA:** And Mr. Sabia, let me just
7 pick up on that point that you stated, that by the 22nd, you're
8 aware that the RCMP had communicated to financial institutions
9 that they should begin unfreezing certain accounts; correct?

10 **DM MICHAEL SABIA:** Well yes, because the
11 disruptions -- as the disruptions were coming to an end, the
12 RCMP was doing a good job of communicating that to the financial
13 institutions, and they were quickly unfreezing accounts.

14 **MS. EWA KRAJEWSKA:** And I'd suggest that there's
15 also maybe a third purpose to Mr. Lawrence's email, which is
16 that the Deputy Prime Minister wanted to be in a position the
17 next morning at the press conference to inform the public that
18 measures are being taken.

19 **DM MICHAEL SABIA:** Yeah, look, I can't speculate
20 as to what Alex's purpose was, or behind that email. The
21 Minister wanted to be kept in the loop on the level of activity
22 and whether we were seeing progress here, and we certainly kept
23 her informed of that.

24 **MS. EWA KRAJEWSKA:** Thank you. And this is going
25 to be my last question, which is with respect to FINTRAC, I
26 understand from the FINTRAC report that they did not see an
27 elevated level of suspicious transactions, or a noticeable
28 change in transaction levels during the period of the Freedom

1 Convoy. And you agree with that; correct?

2 DM MICHAEL SABIA: Well I think that period from
3 the invocation of the *Emergencies Act* to when the *Emergencies*
4 *Act* was then rescinded or removed was such a short period of
5 time that it's, you know, I think quite logical. I think there
6 were only -- I can't -- don't hold me to the number of five ---

7 MS. EWA KRAJEWSKA: There were five.

8 DM MICHAEL SABIA: --- or six transactions that
9 did surface as a result of that, because we're talking about a
10 period of what? Six or seven days.

11 MS. EWA KRAJEWSKA: Right. But I think FINTRAC's
12 report is more than that. Even in January, even to the leadup
13 to the convoy, and before the emergency period, they did not see
14 an increase in suspicious transaction reporting under the
15 PCLMFTA?

16 DM MICHAEL SABIA: Yeah, but the issue there, of
17 course, as you know, is that because the perimeter of what
18 FINTRAC was actively reviewing was probably narrower than it
19 should have been, because it didn't include crowd funding and it
20 didn't include payment processors, that clearly that was a gap
21 and that gap needed to be addressed, which we did temporarily --
22 on a temporary basis in the *Employment Act* -- the *Emergencies*
23 *Act*, and then on a longer term basis, in legislation and
24 regulations that followed.

25 MS. EWA KRAJEWSKA: Thank you very much.

26 And thank you, Commissioner, for the indulgence.

27 COMMISSIONER ROULEAU: Okay. Next I'll call on
28 the CCF, please.

1 --- CROSS-EXAMINATION BY MR. SUJIT CHOUDHRY:

2 MR. SUJIT CHOUDHRY: Good morning.

3 DM MICHAEL SABIA: Hi.

4 MR. SUJIT CHOUDHRY: Hi. My name is -- actually,
5 good afternoon. My name is Sujit Choudhry and I'm counsel for
6 the CCF, for the record.

7 So Ms. Jacques, I want to take you to the issue
8 of the freezing the accounts. I know that we've talked a lot
9 about that today. And I want to invite you to answer some
10 questions about lessons learned from that process and
11 experience, which I take it was fairly unprecedented in Canadian
12 history, because part of the Commissioner's mandate is to advise
13 governments in the future about how to -- if and how to use
14 these tools and how they might be adjusted. So if we could just
15 do that for a minute?

16 So you've heard that for some individuals, and
17 we've had testimony to that effect, that because their accounts
18 were frozen, they weren't able to meet their basic necessities.
19 It might be child support, rent, food. In one case, we had a
20 witness testify that he couldn't buy heart medication for his
21 son. And I think we can all agree that was not the intent of
22 the order.

23 And so I want to put to you this question that
24 you've said, "Listen, whatever the order said on its face, when
25 we provided advice to financial institutions about how to
26 administer it, we asked that they use discretion."

27 But wouldn't it have been better to put
28 humanitarian exception into the terms of the order itself to

1 ensure there was crystal clarity, not just to those
2 institutions, but to members of the public who could have looked
3 at the order online, but would not have had access to that
4 advice provided to banks and credit unions, that in fact they
5 had that right to obtain monies that they needed to make -- to
6 obtain monies that they required to meet their basic needs?

7 **ADM ISABELLE JACQUES:** Certainly. I mean,
8 looking at it -- you know, one of the key points that we did
9 look at at the outset when drafting, and you must understand we
10 were working on this fairly quickly, looking at a de minimis
11 amount. But you also understand that a number of people were
12 donating small amounts to crowd funding platforms; right? And
13 so there was always that possibility.

14 But looking at it, if we were to do it, I think
15 we could craft some exceptions for the application for very
16 specific cases. It's not something that we did in the time that
17 we had, but I don't disagree with you that it's something, you
18 know, in hindsight that we could look at in being more specific
19 in that regard, because the intent was not to effect -- unduly
20 effect, you know, payments of child support or other payments.

21 **MR. SUJIT CHOUDHRY:** Thank you. And maybe a
22 broader question on the same theme, or on a related theme, to
23 the panel as a whole, which is about consumer credit. And so I
24 think the panel would agree that credit histories and credit
25 scores, although kind of privately administered, are an
26 important form of social and economic capital that citizens
27 have. They require those scores to get credit cards, to get
28 mortgages, to get loans, and so forth. And there's been

1 evidence that you might not have heard, but I'll ask you to take
2 my word for it, that some individuals who had their accounts
3 seized, and subsequently those accounts released to them,
4 nonetheless have had lingering effects on their credit history
5 because of mis-payments.

6 And that might not be an effect -- and so to your
7 point, Mr. Sabia, that the Act was only used for a limited time
8 period, that might be true, but the lingering effects of a
9 decline in someone's credit history or credit score could take
10 place or be experienced over many months or many years. And
11 should there not have been some thought and some aspect of the
12 order that would have taken into account the long-term effects
13 on individual's credit histories and credit scores by the
14 temporary freezing of their accounts, even if only for a short
15 period of time?

16 **ADM ISABELLE JACQUES:** But you're talking about
17 people here that were involved in unlawful activities.

18 **MR. SUJIT CHOUDHRY:** Well ma'am, that's not true.
19 I mean, I think you've just said yourself that it was donors.

20 **DM MICHAEL SABIA:** To our knowledge, no donors
21 were affected by this -- the order.

22 **DM MICHAEL SABIA:** There were no accounts frozen
23 -- to the best of our knowledge, based on the information that
24 we've received, there were no accounts from donors that were
25 frozen.

26 **MR. SUJIT CHOUDHRY:** And so the long-term effects
27 on credit histories, that's not something that concerns you at
28 all?

1 DM MICHAEL SABIA: I think that's an issue for --
2 I think that's an issue for the financial institutions and how
3 the financial institutions administered these things. I don't
4 think that's something that is the ambit of the Government of
5 Canada. I think if -- I mean, that's something that, as you
6 know, in how the credit system works, that's something that the
7 credit system should be able to deal with on its own.

8 MR. SUJIT CHOUDHRY: And so, you know, Mr. Sabia,
9 I put to you that although it's correct that it's a privately
10 administered system, nonetheless, in this case, decisions of the
11 Government of Canada had a direct effect on how that system
12 operated, not just in the short term, but for many months, and
13 potentially for long after.

14 DM MICHAEL SABIA: Well I guess I would dispute
15 that. I think the Government of Canada made some decisions with
16 respect to the cessation of financial services, the freezing of
17 accounts, to individuals who were involved in illegal
18 activities, and all that those individuals had to do was to
19 leave. And the -- let's put this -- let's back up a little bit.
20 The government announced its intention to proclaim or to invoke
21 the *Emergencies Act* on the 14th. It was very clear, very clear,
22 as of that date, and the Minister of Finance was very clear as
23 of that date, that people involved in these disruptions ran the
24 risk of having their accounts frozen. That was very clear. So
25 there was a period of notice there and it was very clear that
26 all that had to happen was for those people to leave and as --
27 if they did, their accounts would never have been frozen, or
28 that they would be immediately unfrozen if they did leave. So I

1 think people had reasonable notice and it was a very simple
2 solution. All you had to do was leave.

3 MR. SUJIT CHOUDHRY: Sure. And, Mr. Sabia, I'd
4 just put to you one final point on this theme, which is that the
5 way you're describing the consequence on a credit score, you're
6 -- it seems to me that you would agree with me that that's yet
7 another economic incentive that individuals might weigh ---

8 DM MICHAEL SABIA: But that was never -- that was
9 never in our minds. That was never part of the intent of what
10 we were trying to do, because honestly, I think that the credit
11 system itself ought to be agile enough that those kinds of
12 outcomes not happen.

13 MR. SUJIT CHOUDHRY: Sure. And I'd tell you --
14 I'd say to you, Mr. Sabia, or suggest to you that if that had
15 been an intended consequence, that would be a form of extra
16 legal sanction that went beyond ---

17 DM MICHAEL SABIA: But it wasn't.

18 MR. SUJIT CHOUDHRY: --- the penalties in the
19 Orders.

20 DM MICHAEL SABIA: But it wasn't any part of our
21 intent ever.

22 MR. SUJIT CHOUDHRY: Could I take you to the
23 issue of crowdfunding and the Regulation of crowd funding? And
24 so I know that one of the many issues on your agenda during the
25 period leading up to the invocation of the *Emergencies Act* was
26 the question of the available legal tools to curtail the flow of
27 funds towards protesters participating in the various blockades.
28 And I recognize you're not lawyers, and I'm sorry to have to ask

1 you these legal questions ---

2 DM MICHAEL SABIA: Isabelle's a lawyer.

3 MR. SUJIT CHOUDHRY: Oh, Ms. Jaques? Well, it
4 might be that you are going to answer some of these questions,
5 but I put them to the whole panel.

6 DM MICHAEL SABIA: Probably should.

7 MR. SUJIT CHOUDHRY: And so what I'd like to do,
8 if I may, if I could call Mr. Clerk to call up the following
9 witness statement -- or interview summary for this panel, and
10 it's WTS many 0s 59, page 7.

11 DM MICHAEL SABIA: Some day you'll have to
12 explain to us, who comes up with this ---

13 MR. SUJIT CHOUDHRY: You know ---

14 DM MICHAEL SABIA: --- classification system?

15 MR. SUJIT CHOUDHRY: --- I'd -- I think Counsel
16 would like an explanation too, Mr. Sabia.

17 So if we could just scroll down a bit, there we
18 go. Thank you. So there are these two paragraphs here that I'd
19 like to put to you for the record. And so the first paragraph
20 is the one that begins,

21 "Finance also looked to options under
22 [what let's call it] the [...] (Money
23 Laundering) and Terroris[m] Financ[e]
24 [Statute]..."

25 And would you agree that it says there that,

26 "[Deputy Minister] Sabia and [Assistant
27 Deputy Minister] Jacques stated that it
28 quickly became clear that there was a

1 gap in the [Money Laundering and
2 Terrorism Finance Act]: it did not
3 apply to crowdfunding services [it]
4 applied only to certain payment service
5 providers [and] this was significant
6 [and so forth]..."

7 You agree -- and you agree you said that in the
8 interview. And then if I could take you to the next paragraph
9 again for the record, will you agree that you then added,
10 Deputy,

11 "...that an overriding issue with the
12 options considered by Finance was
13 timing [and] Any legislative amendments
14 would take a long time to pass, whereas
15 action was needed quickly."

16 You ---

17 **DM MICHAEL SABIA:** Yes.

18 **MR. SUJIT CHOUDHRY:** --- agree you said that?

19 And so ---

20 **DM MICHAEL SABIA:** And I said that this morning.

21 **MR. SUJIT CHOUDHRY:** Sure. I ---

22 **DM MICHAEL SABIA:** Or this afternoon.

23 **MR. SUJIT CHOUDHRY:** You -- I think you said it
24 both this morning and this afternoon. So is -- you didn't quite
25 say it this way but let me just put this to you. Are you saying
26 there that the only way that you saw, or that you were advised
27 to get the Money Laundering and Terrorism Finance Legislation to
28 apply to crowdfunding, absent using the *Emergencies Act* was a

1 legislative amendment, and that just was not viable at the time?

2 **DM MICHAEL SABIA:** Well, look, the gap here that
3 crowdfunding and payment processors were not in the ambit of
4 FINTRAC, this was something that people in Finance that had been
5 aware of for some time. This was not a revelation. So the
6 issue here -- so you got to separate two things. On the one
7 hand, this gap needed to be corrected, just because with the
8 rise in importance of crowdfunding, et cetera, this was an
9 obvious oversight. And it was the Department's intention to
10 recommend to the government that this be fixed, and it would
11 have been in the traditional way that you would go about
12 adjusting something like this. So that -- and that was in a --
13 let's call it a steady state world.

14 So in this circumstance, obviously, we were not
15 in a steady state world. And our intention here was to move as
16 quickly as we could to try to correct this gap. And given the
17 decision of the government to move in the direction of the
18 *Emergencies Act*, that created an opportunity to address the
19 specific case. But please note that in what we did here, we
20 only applied it to crowdfunding platforms and payment processors
21 who were in somehow, in some control of assets or capital of
22 financing that may be associated with these "illegal activities"
23 as declared by the *Emergencies Act*. So it was quite limited and
24 it was only in place for, what, a period of six or seven days.

25 We then, this issue having been resolved,
26 returned to the more status quo kind of approach and we did
27 correct this in the April budget I think ---

28 **ADM ISABELLE JACQUES:** VR Regulation.

1 DM MICHAEL SABIA: Yeah, yes.

2 MR. SUJIT CHOUDHRY: So could I just pick up on
3 what -- something you said. So, you know, you kind of drew a
4 distinction between let's call it government as usual, or
5 normal, and the urgent situation that was thrust upon you in
6 early February. And so -- and on -- in the government as normal
7 approach, which you say here is that there would be -- need to
8 be a legislative amendment, but that's not the moment that
9 Canada was in at that time you say. There was no time for a
10 legislative amendment to amend ---

11 DM MICHAEL SABIA: Well, legislative amendment or
12 even a regulatory change ---

13 MR. SUJIT CHOUDHRY: Oh ---

14 DM MICHAEL SABIA: --- because they too take ---

15 MR. SUJIT CHOUDHRY: So you've anticipated my
16 next question. So, look, I want to take you to the following
17 document. It's CCF many 0s 42.

18 Thank you, Mr. Registrar. If we could scroll
19 down, so -- okay. You can stop there actually. Sorry. You can
20 see these -- this is an amendment to the Regulations in relation
21 to the Money Laundering and Terrorism Finance Statute. It was
22 promulgated on April 5th by the Governor in Council. And as you
23 know, the Governor in Council just does that. There's no
24 legislative process involved there.

25 And then if you could scroll down, please, to
26 Section 2? And so here let's -- if you could go -- yes.
27 Actually, that's right.

28 "The Regulations are amended by adding

1 the following before section 30: [it
2 says] For the [paragraphs] of
3 subparagraphs 5(h)(v) and (h.1)(v) of
4 the Act, crowdfunding platform services
5 are a prescribed service."

6 So I'd put to you that what this Regulation did
7 was to extend FINTRAC's authority and the application of FINTRAC
8 to fund crowdfunding services; would you agree?

9 **DM MICHAEL SABIA:** Yes.

10 **MR. SUJIT CHOUDHRY:** But this could have been
11 done just as easily in early or mid February?

12 **DM MICHAEL SABIA:** Yeah, and not just as easily.

13 **MR. SUJIT CHOUDHRY:** Why is that?

14 **DM MICHAEL SABIA:** Just because the regulatory
15 process, there are several steps to it. It is quicker, you are
16 correct, than ---

17 **MR. SUJIT CHOUDHRY:** Yeah.

18 **DM MICHAEL SABIA:** --- in typical circumstances
19 than the legislative process, but there are a number of steps.

20 **MR. SUJIT CHOUDHRY:** Sure. But, Minister, sorry,
21 Deputy Minister ---

22 **DM MICHAEL SABIA:** Yeah, big difference.

23 **MR. SUJIT CHOUDHRY:** Sorry, excuse me. But I
24 take you -- if you'd like, I can take you to the Terrorism
25 Financing Legislation itself, but we don't have time, but I'd
26 put to you this, that there's nothing there in Section 73(1) --
27 or 73.1(1) that spell out a lengthy detailed regulatory process.
28 It might be that that is what normally is done, but as a matter

1 of law, that's not required. And so if that's true, then
2 couldn't the government, couldn't the Federal Cabinet just have
3 enacted this Regulation in February?

4 **DM MICHAEL SABIA:** Yeah, but I fail to see, given
5 how narrowly the *Emergencies Act* was used here in applying it
6 only in a very, very narrow slice of crowdfunding platforms and
7 payment processes, you know, I fail to see how there's really a
8 meaningful distinction, and importantly, that that very narrow
9 change was only in place for six or seven days, and we then
10 corrected it later, as per this process.

11 **MR. SUJIT CHOUDHRY:** So ---

12 **DM MICHAEL SABIA:** So I think we're kind of both
13 on the same page.

14 **MR. SUJIT CHOUDHRY:** So -- well, Deputy Minister,
15 let me just conclude by explaining to you what we see the
16 differences being and put it to you.

17 I take it you've read the *Emergencies Act*?

18 **DM MICHAEL SABIA:** (Inaudible response)

19 **MR. SUJIT CHOUDHRY:** And you've read section 3 of
20 the *Act*?

21 **DM MICHAEL SABIA:** Yes.

22 **MR. SUJIT CHOUDHRY:** And section 3 has at the end
23 of it a last resort clause. It says that the *Emergencies Act*
24 can only be triggered as a last resort if no other legal tools
25 are available and are effective. And I'd put to you that this
26 shows that in relation to FINTRAC there was another option
27 available to the Federal Government, absent or short of
28 declaring an emergency.

1 ADM ISABELLE JACQUES: I do not ---

2 MR. SUJIT CHOUDHRY: Ms. Jacques, I can see you
3 want to respond to that.

4 ADM ISABELLE JACQUES: Yeah, I didn't want to
5 reply for ---

6 DM MICHAEL SABIA: Oh, no, go ahead.

7 ADM ISABELLE JACQUES: --- Michael, but we could
8 have never drafted and passed those regulations in those
9 timelines.

10 MR. SUJIT CHOUDHRY: But Ms. Jacques, all that's
11 required here is a one paragraph amendment to the existing
12 regulation. These are shorter than the amendments -- than the
13 terms of the Economic Measures Order.

14 ADM ISABELLE JACQUES: It seems very simple
15 because, you know, you see the drafting of the amendments, it
16 doesn't seem to be very long, but the process to pass a
17 regulation it's not something that you can do in the timelines
18 that we had to enact and work on the Order.

19 MR. SUJIT CHOUDHRY: Commissioner, I think that -
20 - those conclude my questions. Thank you.

21 COMMISSIONER ROULEAU: Okay. So I think this is
22 the time for the lunchbreak. So we'll take a lunchbreak and
23 come back at two o'clock.

24 THE REGISTRAR: The Commission is in recess until
25 two o'clock. La Commission est levée jusqu'à 14 heures.

26 --- Upon recessing at 1:02 p.m.

27 --- Upon resuming at 2:02 p.m.

28 THE REGISTRAR: Order. À l'ordre. The

1 Commission is reconvened. La Commission reprend.

2 --- ADM ISABELLE JACQUES, Resumed:

3 --- DM MICHAEL SABIA, Resumed:

4 --- ADM RHYS MENDES, Resumed:

5 COMMISSIONER ROULEAU: Okay. Good afternoon.

6 The -- first up, I believe, is the City of Windsor.

7 --- CROSS-EXAMINATION BY MR. GRAHAM REEDER:

8 MR. GORDON CAMERON: Good afternoon. My name is
9 Graham Reeder, counsel for the City of Windsor. I'm going to
10 direct my questions to Mr. Sabia, but I invite input from
11 Ms. Jacques and Mr. Mendes should they be in a better position
12 to respond.

13 I have some questions about the work the
14 Department of Finance did to assess the economic impacts that
15 was detailed in the Department's institutional report. So your
16 study on the economic impact of the border blockades was
17 informed by figures from Transport Canada indicating that
18 roughly \$390 million in daily trade flows of goods were being
19 disrupted by the blockades at the Ambassador Bridge; is that
20 correct?

21 ADM RHYS MENDES: Yes.

22 MR. GRAHAM REEDER: And you testified this
23 morning that the Department of Finance concluded that the
24 Ambassador Bridge blockade was impacting Canada's GDP as a
25 whole, is that right?

26 ADM RHYS MENDES: Yes.

27 MR. GRAHAM REEDER: By roughly \$45 million per
28 day over the first week?

1 ADM RHYS MENDES: That is the estimate that
2 Transport Canada had, yes.

3 MR. GRAHAM REEDER: Okay. Thank you.

4 And the Department of Finance concluded that the
5 blockade jeopardized Canada's reputation as a reliable economic
6 partner for the US, is that right?

7 ADM RHYS MENDES: We believed, yes, that the
8 blockade did jeopardize our reputation. There were -- that was
9 based on a number of public statements by officials in the US.

10 MR. GRAHAM REEDER: Thank you. And the economic
11 policy branch concluded that the impacts would have compounded
12 over time as the blockade went on, is that right?

13 ADM RHYS MENDES: So we believed that the impacts
14 would grow as time went on, as I explained this morning.

15 MR. GRAHAM REEDER: Yeah, you gave the example of
16 the food and beverage industry and their inventory, right?

17 ADM RHYS MENDES: Yeah. And I mean, more
18 generally, I think that the impacts would've spread over time.

19 MR. GRAHAM REEDER: Okay. And the department
20 concluded that the impacts ultimately were likely transitory
21 because the closures were relatively short-lived, is that right?

22 ADM RHYS MENDES: Correct.

23 MR. GRAHAM REEDER: And the closures at the
24 Ambassador Bridge were short-lived, you'll agree with me,
25 because the Windsor Police and its policing partners cleared the
26 blockade by February 13th?

27 ADM RHYS MENDES: I'm not -- I'm not able to
28 speak to the reason that the blockades were shorter or the

1 manner in which they were cleared, but the date accords with my
2 memory.

3 **MR. GRAHAM REEDER:** Okay. Would you agree with
4 me that reopening the Ambassador Bridge was key to avoiding
5 long-term entrenched economic damage to the automotive sector,
6 Canada's GDP, and Canada's reputation as a reliable trading
7 partner?

8 **ADM RHYS MENDES:** I think a more prolonged
9 disruption at the Ambassador Bridge would have done greater
10 damage to our reputation as a good place to invest, our
11 reputation as a reliable trading partner.

12 **MR. GRAHAM REEDER:** And so clearing the
13 Ambassador Bridge helped avoid that?

14 **ADM RHYS MENDES:** Yes.

15 **MR. GRAHAM REEDER:** And are you aware that after
16 the bridge was reopened on February 13th, police maintained a
17 strong presence in the area; they erected concrete barriers
18 along the length of the municipal road, the Huron Church Road,
19 between the Ambassador Bridge and Highway 401?

20 **ADM RHYS MENDES:** I have some passing awareness
21 of that.

22 **MR. GRAHAM REEDER:** Okay. Thank you.

23 The -- this temporary hardening of the access
24 road to the bridge was implemented to prevent another blockade
25 to the bridge; does that accord with your understanding?

26 **ADM RHYS MENDES:** I believe that accords with my
27 understanding of what I've read about that, but I don't have any
28 specific information on that.

1 MR. GRAHAM REEDER: Understood. And this would
2 be to avoid -- this hardening would be to avoid compounded
3 economic impacts, and the risk to Canada's reputation as a
4 reliable trading partner?

5 ADM RHYS MENDES: Well, as we said in one of our
6 documents, a renewed blockade would have contributed to
7 escalating economic impacts. I can't speak to whether or not
8 the measures you're describing were necessary or not.

9 MR. GRAHAM REEDER: Understood.

10 So Mayor Dilkens in -- of -- the Mayor of Windsor
11 testified at this Commission that these efforts to protect the
12 bridge had a significant impact on the residents, businesses,
13 and students living, working, and studying around Huron Church
14 Road and the bridge. Have you completed any analysis of the
15 impact of the blockade on local businesses and the Windsor
16 economy?

17 ADM RHYS MENDES: No, we haven't.

18 MR. GRAHAM REEDER: Understood. But you would
19 expect that there would be local impacts that are distinct from
20 the impacts on Canada's GDP, Canada's trading reputation, the
21 auto industry, et cetera?

22 ADM RHYS MENDES: I haven't given that a full
23 enough consideration to give you a good answer, but I would -- I
24 don't disagree with the notion that there would be some impact.

25 MR. GRAHAM REEDER: Understood. Thank you.

26 It goes without saying that there are significant
27 costs associated with police and municipal actions to clear the
28 blockade and temporarily harden the route to the bridge to

1 prevent further blockades.

2 DM MICHAEL SABIA: Those things usually cost
3 money.

4 MR. GRAHAM REEDER: Right. Thank you.

5 The Ontario Ministry of Transportation sourced
6 many of the concrete barriers used in the police operations,
7 almost \$1 million worth. The Commission has heard evidence that
8 there was some confusion internally at MTO as to who would be
9 responsible to pay for these barriers. And the question is as
10 to whether the cost would be paid for by the MTO or others. And
11 the preliminary thought from the OPP was that the compensation
12 would be through federal funds available to support the
13 Emergency Response to reopening the crossing.

14 MTO ultimately did not cover the costs of the
15 barriers at the time. Windsor paid the costs to avoid any
16 delays, and has sought reimbursement. I understand that the
17 Department of Finance has not produced an *ex post* assessment of
18 the economic impacts of the blockades, is that right?

19 ADM RHYS MENDES: That's correct.

20 MR. GRAHAM REEDER: So I'm going ask the Clerk to
21 pull up WIN00002244, and this is a letter from Windsor Mayor
22 Dilkens to the Minister of Finance of Canada -- Ministers of
23 Finance of both Canada and Ontario, dated March 15th.

24 Did any of you see the letter at the time it was
25 sent, this letter?

26 DM MICHAEL SABIA: I saw the letter but not
27 immediately after it was sent, sometime thereafter.

28 MR. GRAHAM REEDER: Okay. On the third line in

1 the last paragraph of page 1, there we go, it reads:

2 "Since early February, the Windsor
3 Police Service, the City of Windsor and
4 our partners have experienced
5 significant costs associated with the
6 illegal occupation, and the ongoing
7 need to secure Huron Church Road
8 against continued risks. These costs
9 go well above the normal course for
10 municipal operations and are related to
11 the clearing of this international
12 gateway."

13 The Mayor goes on to request reimbursement of
14 these unforeseen costs, stating:

15 "It would be unreasonable to expect
16 municipal taxpayers to shoulder these
17 costs alone."

18 In his testimony at the Commission, Mayor Dilkens
19 testified that the City had incurred a cost of \$5.3 million in
20 response to the blockade. Are any of you involved in any
21 discussion around allocation of costs incurred to respond to the
22 blockades in general, or with respect to Windsor's cost
23 specifically?

24 **DM MICHAEL SABIA:** We're not involved in the kind
25 of generalized process that you refer to in the first part of
26 your question. But in the second part, any time we get a letter
27 of this kind seeking funding -- and I'll let you in on a secret;
28 we get a few of those -- we have -- obviously, those letters

1 they come from, you know, the Mayor of a city of importance of
2 Windsor, or lots of other people, we treat those letters
3 seriously, and there is an internal process around this kind of
4 request, and there will be discussion with the Minister of
5 Finance about it. As -- that's standard for how we treat this
6 kind of thing.

7 MR. GRAHAM REEDER: Understood.

8 And knowing that I'm at the end of my time, I
9 just have a few more short questions.

10 Would you agree with Mayor Dilkens that Windsor
11 municipal taxpayers should not be expected to shoulder the costs
12 of securing this key international gateway alone?

13 DM MICHAEL SABIA: I think now you're
14 negotiating.

15 MR. GRAHAM REEDER: Understood. Thank you.

16 In any event, do you agree that the issue of
17 which level of government in response for costs of a
18 multijurisdictional response is something that should be planned
19 in advance?

20 DM MICHAEL SABIA: Oh, I'm not sure about planned
21 in advance because the world is a changeable and unpredictable
22 place, so I'm not sure that this is always possible to do, in
23 advance. But if you're asking me -- to pre-empt, probably, your
24 next question -- whether, you know, trying to find some
25 reasonable outcome here involving the City, the Province, and
26 ourselves, whether we're open to having some kind of discussion
27 about that, I mean, I think the answer to that is we're always
28 open to having those kinds of discussions, and we'll see where

1 it takes us.

2 MR. GRAHAM REEDER: Thank you.

3 DM MICHAEL SABIA: But this isn't the place to
4 work out a deal.

5 MR. GRAHAM REEDER: Of course, of course.

6 My last question was just asking whether or not
7 some kind of advance planning would help avoid potential delays
8 in allocating costs.

9 DM MICHAEL SABIA: It would be if we had advance
10 notice of disruptions of this magnitude.

11 MR. GRAHAM REEDER: Of course.

12 Thank you very much.

13 DM MICHAEL SABIA: Which typically -- typically,
14 we don't get advance notice.

15 MR. GRAHAM REEDER: Thank you very much. Those
16 are my questions.

17 COMMISSIONER ROULEAU: Okay.

18 Next, following, the Government of Saskatchewan.

19 (SHORT PAUSE)

20 --- CROSS-EXAMINATION BY MR. MICHAEL MORRIS:

21 MR. MICHAEL MORRIS: Good afternoon. Mike
22 Morris. Counsel for the Government of Saskatchewan.

23 My questions will primarily be about the
24 Emergency Economic Measures Order, which I'll just call the
25 Order, and I gather you'll understand what I'm referring to.
26 Fair enough?

27 ADM ISABELLE JACQUES: Yes.

28 MR. MICHAEL MORRIS: Mr. Sabia, the Order came

1 into effect on February 15th; correct?

2 DM MICHAEL SABIA: Yes.

3 MR. MICHAEL MORRIS: And as of February 13th, the
4 Department of Finance was consulting with the CEOs of the major
5 banks about the types of measures that might be included in the
6 order; correct?

7 DM MICHAEL SABIA: Not specifically in the way
8 you put it. we were exploring A, their continuing reading of
9 the economic situation and how that was unfolding, and B, what
10 possible solutions could look like or possible actions that
11 could be taken to try, once again, I'll repeat myself, to bring
12 this difficult situation to a peaceable end. And that had many
13 forms, and there were a variety of options. The *Emergencies Act*
14 was nothing more than an option at that point.

15 MR. MICHAEL MORRIS: Yeah, but fair enough. You
16 were discussing potentialities that might find their way into
17 the order; correct?

18 DM MICHAEL SABIA: Sure. In the same way that we
19 discuss potentialities that might find their way into all kinds
20 of things all the time.

21 MR. MICHAEL MORRIS: And clearly the Department
22 of Finance thought that the input of the bank CEOs was valuable
23 then?

24 DM MICHAEL SABIA: Yes, because for a certain
25 category of actions that the government might or might not
26 decide to embark on would require the cooperation of those
27 institutions as those measures would be implemented. So
28 conversation with them seemed to us to make sense.

1 MR. MICHAEL MORRIS: But you'll agree there was
2 no obligation to consult with them under the *Emergencies Act*;
3 was there? The Act did not prescribe a requirement that the
4 government consult with bank CEOs before invoking the Act; did
5 it?

6 DM MICHAEL SABIA: No.

7 MR. MICHAEL MORRIS: That's all I want you to
8 say.

9 DM MICHAEL SABIA: Okay.

10 MR. MICHAEL MORRIS: And, sir, will you agree
11 with me that on the 13th, Cabinet met, February 13th, to discuss
12 the invocation of the *Emergencies Act*?

13 DM MICHAEL SABIA: Well I think that meeting was
14 -- it was broader than just a discussion of the implementation
15 of the *Emergencies Act*. There were -- no decisions had been
16 made at that point. That was, to the best of my recollection, a
17 much broader conversation around conditions in the country at
18 the time. There were reports that were inputs into that,
19 meaning from a variety of different agencies across the
20 Government of Canada, including National Security and others.

21 MR. MICHAEL MORRIS: Sure. I understand that,
22 sir.

23 DM MICHAEL SABIA: So there were a whole variety
24 of things.

25 MR. MICHAEL MORRIS: But at that point, any input
26 that Finance had received from the bank CEOs could have been
27 conveyed to Cabinet if it was appropriate; correct?

28 DM MICHAEL SABIA: Well if you're asking me

1 hypothetically could that had happened, I guess, yes,
2 theoretically, that could have happened.

3 MR. MICHAEL MORRIS: Sure. And Cabinet didn't
4 meet again until February 15th, after the *Emergencies Act* was
5 invoked? Is that correct?

6 DM MICHAEL SABIA: Well you need to separate
7 things. The Incident Response Group ---

8 MR. MICHAEL MORRIS: I just want to know full
9 Cabinet.

10 DM MICHAEL SABIA: Well full Cabinet, I have to
11 be reminded of the dates here, but full Cabinet, I believe met
12 on the Sunday evening, ---

13 MR. MICHAEL MORRIS: Correct.

14 DM MICHAEL SABIA: --- but I'm not -- I don't
15 have a perfect recall as to the timing of that. But I believe
16 there was a full Cabinet meeting on the Sunday evening.

17 MR. MICHAEL MORRIS: Okay. I'm going to go to
18 Ms. Jacques now.

19 Ms. Jacques, in terms of working up the order,
20 did you have the content that you wanted included in it
21 determined as of February 13th from a policy perspective?

22 ADM ISABELLE JACQUES: I mean, we had been
23 working in the previous week on a couple of options. One, as we
24 said, with respect to amending the *Bank Act*, and the other when
25 we heard later, much later in the week, that it was possible
26 that the *Emergencies Act* would be invoked, we started working on
27 potential orders.

28 MR. MICHAEL MORRIS: Okay. What I'd like to know

1 is whether the Department consulted with any Provincial
2 Governments about what it was proposing to include in the Order
3 before the Order was enacted on February 15th?

4 **ADM ISABELLE JACQUES:** I certainly did not, nor
5 did any member of my team, consult with Provincial Government.

6 **MR. MICHAEL MORRIS:** Okay. What about with
7 credit unions?

8 **ADM ISABELLE JACQUES:** We did not consult.

9 **MR. MICHAEL MORRIS:** What about with insurers?

10 **DM MICHAEL SABIA:** Well it depends what you
11 consider consultation. I had had some informal consultations,
12 but in the previous weeks, with some of the leadership of some
13 Canadian insurance companies.

14 **MR. MICHAEL MORRIS:** Okay. I actually want to
15 move on, because we're running a little slow here.

16 So I'm going to ask the Registrar to pull up
17 document CCU.IR.00000001.

18 And this is the Institutional Report of the
19 Canadian Credit Unit Association.

20 And I'd like us to go to page 3 of the report,
21 please. There will be a bullet point entitled "Lack of Clarity
22 Regarding Requirements."

23 We'll just -- I'll read this for you:

24 "When the measures were first announced,
25 it was [...] unclear to whom the financial
26 sanctions applied. Eventually it became
27 clear that the sanctions were aimed at a
28 very small list of individuals and

1 entities. However, in the early days,
2 there was some degree..."

3 **COMMISSIONER ROULEAU:** Go a little slower,
4 please. Can you just go a little slower? I'm sorry.

5 **MR. MICHAEL MORRIS:** Yes, sir. I'm mindful of my
6 time:

7 "...there was some degree of panic among
8 some Canadians that their accounts may be
9 frozen due to such things as small
10 donations to the "freedom convoy."

11 Can you agree with the statements I've read from
12 the Credit Unions Associations Institution Report?

13 **ADM ISABELLE JACQUES:** Well I became aware at one
14 point in time that there was some misinformation with respect to
15 small donations. People thought that donations that had been
16 made prior to the *Emergencies Act* being enacted would be subject
17 of potential freeze.

18 **MR. MICHAEL MORRIS:** Okay. I want to look to the
19 general and technical Q&As that the Department prepared, and to
20 do that, we need to pull up SSM.CAN.00000278. And I want to go
21 to page 5, if we could, of the PDF.

22 And in particular, question 13. Now, this has to
23 do with insurance. And I understand this document would have
24 been prepared by Finance for answering questions that might be
25 posed to it. Is that fair?

26 **ADM ISABELLE JACQUES:** I have not seen -- let me
27 see. I have not seen the beginning of the ---

28 **MR. MICHAEL MORRIS:** Okay. Let's look at the

1 first ---

2 ADM ISABELLE JACQUES: --- Q and A document, but
3 -- and at the bottom, does it say that it was prepared by
4 Canada? Of the document. We can't see it on the screen.

5 MR. MICHAEL MORRIS: It's one of your documents
6 produced by Canada.

7 ADM ISABELLE JACQUES: All right. Thank you.
8 Okay. Thank you.

9 MR. MICHAEL MORRIS: So if we go back to Question
10 13?

11 "Aren't you exposing others to risk if you
12 suspend protestors' vehicle insurance?"

13 And I'm interested in the answer, which is the
14 last sentence:

15 "We expect insurance companies to ensure
16 that third parties can continue to benefit
17 from an insurance payout."

18 And I'm interested because I see it this way.
19 Number 1, the Order directs insurers that they have to cancel
20 insurance policies for vehicles, but number 2, the Government
21 appears to be saying it still expects third parties to be paid
22 out by the insurers. If the insurance is cancelled, how can the
23 insurer possibly do that?

24 ADM ISABELLE JACQUES: No, I understand your
25 question. I do not know when this was prepared. I don't know
26 if there were -- I suspect that there may have been discussions,
27 I know there were discussions with various associations,
28 insurance associations, so I do not know if it's as a result of

1 those discussion that this answer was provided.

2 **DM MICHAEL SABIA:** But look, I would say, as I
3 read this now, I think this is poorly drafted.

4 **MR. MICHAEL MORRIS:** Agreed.

5 Ms. Jacques, as a lawyer, will you agree with me
6 that insurance is a form of personal property?

7 **ADM ISABELLE JACQUES:** Well insurance is ---

8 **UNIDENTIFIED SPEAKER:** Sorry, can I just -- Ms.
9 Jacques is here -- she happens to be a lawyer. She's not here
10 to provide her legal arguments.

11 **MR. MICHAEL MORRIS:** Okay, just with her own
12 personal knowledge, you know, I agree, she's not an expert
13 witness, certainly, but, in law, do you understand that
14 insurance can be characterized as personal property?

15 **UNIDENTIFIED SPEAKER:** Sorry, same objection.

16 **MR. MICHAEL MORRIS:** Okay, I'll move on. Were
17 the RCMP consulted about the insurance measures in the order
18 before the order was enacted?

19 **ADM ISABELLE JACQUES:** No, they were not
20 consulted about ---

21 **DM MICHAEL SABIA:** They were consulted
22 afterwards.

23 **ADM ISABELLE JACQUES:** Afterwards, yes.

24 **MR. MICHAEL MORRIS:** Afterwards, okay. And, you
25 know, my understanding is they -- there were not comfortable
26 with the insurance provisions in the order; is that your
27 understanding as well, Ms. Jacques?

28 **ADM ISABELLE JACQUES:** Well, what I understand is

1 that they made a decision not to share any information with
2 respect to people that own vehicles that were involved in the
3 illegal activities, and I would, you know, say that that was, in
4 my view, the right decision. The purpose when we drafted the
5 policy and the law -- I mean, as we have said many times, one of
6 the intent was to encourage people to leave and stop the illegal
7 activities in which they were engaged.

8 MR. MICHAEL MORRIS: Right. I just want to talk
9 a little bit more about what the Credit Unions Associations
10 Institutional Report states. It states that credit unions make
11 up 44 percent of the market share in Saskatchewan; were you
12 aware of that?

13 COMMISSIONER ROULEAU: Can I just interrupt for a
14 minute?

15 MR. MICHAEL MORRIS: Yes.

16 COMMISSIONER ROULEAU: You're going to have to
17 make it short because you're out of time.

18 MR. MICHAEL MORRIS: Okay, thank you, sir.

19 Were you aware of the market share of credit
20 unions in Saskatchewan, 44 percent?

21 DM MICHAEL SABIA: I think we were very much
22 aware of the fact that credit unions, for long historical
23 reason, have a substantial presence in Saskatchewan and in some
24 other provinces Canada.

25 MR. MICHAEL MORRIS: And one last question; it's
26 a pretty easy one. You'll agree with me that both credit unions
27 and insurers are provincially regulated; correct?

28 DM MICHAEL SABIA: Yes.

1 MR. MICHAEL MORRIS: Thank you. Those are my
2 questions.

3 DM MICHAEL SABIA: Thank you.

4 COMMISSIONER ROULEAU: Next, I'll call on the
5 JCCF and Democracy Fund.

6 --- CROSS-EXAMINATION BY MR. HATIM KHEIR:

7 MR. HATIM KHEIR: Good afternoon.

8 ADM ISABELLE JACQUES: Good afternoon.

9 MR. HATIM KHEIR: I'm Hatim Kheir, counsel for
10 the Justice Centre for Constitutional Freedoms and, given the
11 subjects of my questions, my questions will be for you, Ms.
12 Jacques. So, first of all, at the risk of stating the obvious,
13 this was unlike anything else your office had to deal with;
14 right?

15 ADM ISABELLE JACQUES: These were no ordinary
16 events, that is accurate.

17 MR. HATIM KHEIR: Right. And so essentially what
18 your office was tasked with was a way -- at first, anyways, was
19 to look for ways to use existing legislation or regulations to
20 respond to the situation at hand; right?

21 ADM ISABELLE JACQUES: Yes, we wanted to see if
22 we had any tools in place that could be useful ---

23 MR. HATIM KHEIR: Right. And ---

24 ADM ISABELLE JACQUES: --- from a financial
25 perspective.

26 MR. HATIM KHEIR: --- the need to respond arose
27 from -- in response to the massive amount of money that was
28 coming in to support the convoy; right?

1 ADM ISABELLE JACQUES: Well, certainly, that
2 triggered our interest as -- you know, as people are starting to
3 donate via crowdfunding platforms, we were looking at that.
4 But, you know, it was to support what was a peaceful event.

5 MR. HATIM KHEIR: M'hm. Now, we heard from Ms.
6 Lich that the amount of donations took her by surprise. I
7 imagine that they probably took you and your office by surprise
8 as well; right?

9 ADM ISABELLE JACQUES: Well, at the time when we
10 found out, we -- well, I suppose it was maybe surprising but we
11 were right in the middle of budget at the time and when we -- we
12 just basically read news articles that were incoming.

13 MR. HATIM KHEIR: M'hm. Tell me if you agree but
14 I'd go so far as to say that the amount of people donating to
15 the crowdfunding sites was shocking, right, especially as it was
16 just coming in from the news?

17 ADM ISABELLE JACQUES: Well, I couldn't tell you
18 how many people donated because you can't tell the size of the
19 donations, so -- but -- I mean the amount was substantial
20 amounts, yes.

21 MR. HATIM KHEIR: Okay. And now, essentially, in
22 trying to see what your office could do, you found out there was
23 a gap in the legislation and that you didn't have the tools that
24 you needed; right?

25 ADM ISABELLE JACQUES: Well, as we said, we knew
26 that in the past, from our work with the international
27 association organizations that, you know, crowdfunding platforms
28 and some -- most payment service providers were not captured by

1 the legislation.

2 MR. HATIM KHEIR: Okay. And the legislation
3 you're referring to is the *Proceeds of Crime (Money Laundering)*
4 *and Terrorist Financing Act*?

5 ADM ISABELLE JACQUES: That's right.

6 MR. HATIM KHEIR: Okay. And now, the problem
7 wasn't -- so, okay, you said that it doesn't apply to
8 crowdfunding sites, or it didn't, but it does apply to banks;
9 right?

10 ADM ISABELLE JACQUES: Yes, it does.

11 MR. HATIM KHEIR: So once any money from the
12 crowdfunding site got paid into a bank, it then be under the
13 purview of that legislation; right?

14 ADM ISABELLE JACQUES: If it was paid to the
15 bank, yes.

16 MR. HATIM KHEIR: Yeah. And -- but even then,
17 the Act still wasn't used in response to any funds received by
18 the banks; right?

19 ADM ISABELLE JACQUES: Well, I mean the *Proceeds*
20 *of Crime (Money Laundering) and Terrorist Financing Act*, I mean,
21 applied at the time, so if information was being provided to
22 FINTRAC, I wouldn't have known about that.

23 MR. HATIM KHEIR: Okay, but ---

24 ADM ISABELLE JACQUES: So it's possible that
25 information was being shared. I do not know.

26 MR. HATIM KHEIR: But part of the reason that
27 that Act wasn't helpful, even for the funds being paid into the
28 bank, was because this wasn't terrorist financing?

1 ADM ISABELLE JACQUES: Again, I can't say that.
2 I do not know what information was shared. I don't -- FINTRAC
3 would know if any information at the time had been shared with
4 them.

5 MR. HATIM KHEIR: Okay. Well, let's look at it
6 from the perspective of what your office was working. So the
7 emergency economic measures prohibited a whole list of activity
8 that basically amounts to providing funds to designated persons;
9 right?

10 ADM ISABELLE JACQUES: That's accurate.

11 MR. HATIM KHEIR: And "designated persons" were
12 people who were engaging in an assembly that was prohibited by
13 the Emergency Regulations?

14 ADM ISABELLE JACQUES: Yes, unlawful act, yes --
15 activities, yes.

16 MR. HATIM KHEIR: Well, specifically, under the
17 Emergency Regulations, to participating in a certain kind of
18 public assembly; right?

19 ADM ISABELLE JACQUES: Yes.

20 MR. HATIM KHEIR: Okay. So I mean this is
21 identifying a new category of conduct that these -- that this
22 kind of approach is now being applied to; right? This wasn't
23 conduct that was previously ---

24 ADM ISABELLE JACQUES: I -- but we were not
25 engaged in drafting the regulations. So we were engaged in what
26 became the Economic Measures Order but not the regulations.

27 MR. HATIM KHEIR: But then the economic order
28 works based off of people who are identified in the regulations?

1 ADM ISABELLE JACQUES: Of -- of the -- of what is
2 described as, as you -- I think you were just saying, "illegal
3 activities". Let me see. You'd have to bring me the -- you
4 know, we didn't work on those regulations, so which section were
5 you referring to, sorry?

6 MR. HATIM KHEIR: So Section 1, I believe, of the
7 Emergency Economic Measures identifies a designated person,
8 right, and that's someone who's committing something identified
9 in Sections 2 to 5 of the regulations?

10 ADM ISABELLE JACQUES: Correct, yes.

11 MR. HATIM KHEIR: Okay. So I mean those -- the
12 activity that's identified in Sections 2 to 5 is not activity
13 that was previously captured by the *Proceeds of Crime (Money*
14 *Laundering) and Terrorist Financing Act?*

15 ADM ISABELLE JACQUES: No, but I don't see the
16 link, I must admit.

17 MR. HATIM KHEIR: Sorry?

18 ADM ISABELLE JACQUES: I'm not sure that -- to
19 see the link. What is your question?

20 MR. HATIM KHEIR: Basically, that the money-
21 freezing provisions of the economic order ---

22 ADM ISABELLE JACQUES: Yes.

23 MR. HATIM KHEIR: --- to refer to it as that, is
24 now being applied to a new category of people that wasn't
25 previously captured by the *Proceeds of Crime (Money Laundering)*
26 *and Terrorist Financing Act.*

27 ADM ISABELLE JACQUES: I mean all that that did
28 was to extend the -- so under the PCMLTFA, the only requirement

1 was -- nothing was changing in the Act other than to extend to
2 crowdfunding platform and payment service provider the
3 obligation to register if they were in position of property that
4 were own by those designated people. So it was a very narrow
5 application.

6 **MR. HATIM KHEIR:** Okay, but what I'm trying to
7 get at is that that category of designated people, there wasn't
8 an equivalent under the *Proceeds of Crime (Money Laundering) and*
9 *Terrorist Financing Act*?

10 **ADM ISABELLE JACQUES:** Not to my knowledge, no.

11 **MR. HATIM KHEIR:** Okay. Then -- now, in terms of
12 what your office was doing prior to the use of the *Emergencies*
13 *Act*, I imagine it might have been rather frustrating, then, in
14 terms of the lack of tools available to respond to the
15 situation?

16 **ADM ISABELLE JACQUES:** Well, no, not frustrating.
17 I mean we're trying to help -- you know, all departments were
18 trying to help to find solutions.

19 **MR. HATIM KHEIR:** Okay. And at that time, you
20 guys didn't have the tools needed to stop the donations from
21 coming in; right?

22 **ADM ISABELLE JACQUES:** Well, under the -- well,
23 it's not to stop donations. That was not the purpose, but
24 certainly -- I mean we didn't have the tools to direct, you
25 know, financial service providers to review their relationship
26 with their clients or to freeze bank accounts, and certainly, we
27 didn't end the Act, the PS -- the *Proceeds of Crime, Money*
28 *Laundering, and Terrorist Financing Act* did not apply to a

1 crowdfunding platform and certain payments that was provided.

2 **DM MICHAEL SABIA:** I'm sure you're aware that
3 FINTRAC does have enforcement authorities?

4 **MR. HATIM KHEIR:** Right, but what -- my question
5 for -- actually, so perhaps we can take a step back. I remember
6 in the testimony in-chief it was identified that there were two
7 goals to the Emergency Economic Order.

8 **ADM ISABELLE JACQUES:** Yes.

9 **MR. HATIM KHEIR:** It was to -- the one was to cut
10 off the flow of support to the protest, and then the other was
11 to put a deterrent pressure on protesters, right?

12 **ADM ISABELLE JACQUES:** Correct.

13 **MR. HATIM KHEIR:** Okay. So in terms of that
14 first goal, essentially, the way that support was coming in was
15 through donations to crowdfunding sources or crypto currency
16 wallets, for example?

17 **ADM ISABELLE JACQUES:** Yes.

18 **MR. HATIM KHEIR:** And I mean, we heard from
19 previous testimony a couple of weeks ago that it basically costs
20 thousands of dollars in fuel to get a big truck across the
21 country and so that was one of the things that those donations
22 were going to, right, fuel?

23 **ADM ISABELLE JACQUES:** That's what I heard in the
24 news.

25 **MR. HATIM KHEIR:** Right, and food and lodgings?

26 **ADM ISABELLE JACQUES:** Again, I have no personal
27 knowledge, but yes, I read that.

28 **MR. HATIM KHEIR:** And would you agree that

1 essentially, the people who are making these donations, they're
2 doing that because that's their way of supporting the protest?

3 **ADM ISABELLE JACQUES:** I would imagine.

4 **MR. HATIM KHEIR:** Right. So these people
5 couldn't go to Ottawa themselves and this was their way of
6 participating in something that they believed in?

7 **ADM ISABELLE JACQUES:** I suppose so, yes.

8 **MR. HATIM KHEIR:** So I mean, at the end of the
9 day, really, what the goal here was a way to prevent Canadians
10 from expressing their support in a protest against the policy
11 they didn't believe in?

12 **ADM ISABELLE JACQUES:** I don't agree with that.
13 I mean, people can make donations and could still make
14 donations. The only restriction that were imposed was to
15 support illegal activities.

16 **MR. HATIM KHEIR:** Right. But yesterday, Mr.
17 Ossowski and today Mr. Sabia both said that the activities were
18 made illegal by the emergency measures, so up until that point,
19 people were donating to support a ---

20 **ADM ISABELLE JACQUES:** Yes.

21 **MR. HATIM KHEIR:** --- protest?

22 **DM MICHAEL SABIA:** Yes, and the measures were
23 never -- the application of the *Emergencies Act* was always from
24 the date prospectively, not retrospectively.

25 **MR. HATIM KHEIR:** Right. But the collective ---

26 **DM MICHAEL SABIA:** So that this only captures a
27 donation that is going to then a declared illegal activity.

28 **MR. HATIM KHEIR:** Sure. But the collective --

1 would you agree that the collective function of those two
2 regulations, I mean, the regulations and the order, was to take
3 a protest, declare it illegal, and then prevent funds from
4 coming in to support the protest?

5 **DM MICHAEL SABIA:** I think the objective was to
6 try to bring, as I said before, to a peaceable end a set of
7 activities that were -- had then been declared illegal, and the
8 objective was to try to bring that disruption, for all the
9 reasons we discussed earlier this morning that I won't repeat --
10 to bring that to a peaceable and timely end. That was the
11 objective.

12 **MR. HATIM KHEIR:** I see I'm out of time, so I
13 will just wrap up with this one point, Ms. Jacques.

14 At the end of the day, that first goal, that
15 first goal of preventing funds from coming in to the protesters,
16 it wasn't even needed, was it, because the TD Bank had already
17 put a hold on the funds that were held with them, correct?

18 **ADM ISABELLE JACQUES:** Well, at the time, you
19 know, we didn't know what was happening with TD Bank for sure,
20 but it doesn't mean that because there's let's say actions taken
21 one place that money will not be funnelled through other ways.
22 I mean, money is fungible.

23 **MR. HATIM KHEIR:** Right. But you are aware that
24 the -- and it's identified in your organization's institutional
25 report -- that the Ontario Attorney General had obtained a
26 restraint order against any funds that were held by Ms. Lich,
27 Mr. Garrah, or Mr. Dichter.

28 **DM MICHAEL SABIA:** But that only applied in

1 Ontario, and that's the whole point. Because money's fungible,
2 as Isabelle says, it can flow anywhere in the country, so one
3 provincial government taking action doesn't resolve the issue.
4 The issue for the national government was trying to do this on a
5 broad-based approach because that's the way you contain a
6 situation where money can flow anywhere, which it does all the
7 time.

8 MR. HATIM KHEIR: Where are you getting the basis
9 that the restraint order only applied in Ontario? It was made
10 by the Superior Court, was it not?

11 DM MICHAEL SABIA: I think it was just in the
12 Province of Ontario, was my understanding. I may be -- I'm not
13 a lawyer. I may be wrong about that, but I thought it was just
14 -- with just application in Ontario.

15 MR. HATIM KHEIR: Okay. I am over time so those
16 are all my questions. Thank you.

17 COMMISSIONER ROULEAU: Okay, thank you.

18 Next, call on the Government of Alberta, please.

19 --- CROSS-EXAMINATION BY MS. STEPHANIE BOWES:

20 MS. STEPHANIE BOWES: Good afternoon. For the
21 record, my name is Stephanie Bowes for the Province of Alberta.

22 Just one area I'd like a little bit of clarity
23 on.

24 Do the assessments of economic impact of the
25 Coutts border blockade take into consideration commercial
26 traffic that would have normally travelled through that port of
27 entry, but was re-routed to other ports of entry?

28 ADM RHYS MENDES: So we tried to implicitly take

1 account of that, but it's not explicitly modelled, but it is --
2 we assume, basically, a similar amount of re-routing is what we
3 were seeing at Ambassador.

4 **MS. STEPHANIE BOWES:** Okay. So all those
5 estimates were based on what you were seeing at Ambassador
6 Bridge as opposed to specific data from Alberta?

7 **ADM RHYS MENDES:** Yeah. So we took what we were
8 seeing at Ambassador Bridge and scaled it by the amount of trade
9 crossing at Coutts, again, a rough estimate, but -- so it
10 doesn't specifically explicitly model the re-routing at Coutts.

11 **MS. STEPHANIE BOWES:** All right. Thank you.
12 That's my only question today.

13 **COMMISSIONER ROULEAU:** Thank you. Next, the
14 Ottawa Coalition.

15 **--- CROSS-EXAMINATION BY MS. CHRISTINE JOHNSON:**

16 **MS. CHRISTINE JOHNSON:** Good afternoon,
17 Commissioner.

18 Good afternoon, Panel. My name is Christine
19 Johnson. I'm counsel for the Ottawa Coalition of Residents and
20 Businesses, and I just have a few hopefully short questions for
21 you today.

22 To begin, I would ask the clerk to please pull up
23 a document. It's Document SSM.CAN.00001319_REL.0001.

24 And while we're waiting for that to be pulled up
25 -- oh, here it comes -- so I was hoping that -- and this is a
26 question for anyone on the Panel who might be able to give
27 assistance -- I'm wondering if any of you might be able to
28 assist me understanding this document?

1 So this would be at the top. It's an email sent
2 February 14th. We see the from and to information's redacted as
3 personal information at the top, but if you scroll to the bottom
4 of page 2, we see that this email originated from someone in the
5 Office of the Deputy Prime Minister and Minister of Finance.

6 And we can go back up to the top, please, Clerk.

7 So my understanding that this email is that it is
8 an email communicating information about the names of 201
9 trucking companies whose trucks were identified as participating
10 in the convoy demonstration within Ottawa. The email then
11 shares which of these 201 companies accessed the CEWS, which I
12 understand refers to the Canada Emergency Wage Subsidy.

13 So -- and the email goes on to note that 45 of
14 these 201 trucking companies were identified as active in that
15 subsidy.

16 So my question for the Panel is just whether any
17 of you were aware that this information was being compiled
18 within the department and then for what use, is my question?

19 **DM MICHAEL SABIA:** I am not aware of that, and
20 that is the first time that I have seen this document. And it
21 seems like if you want to pursue that, it's best to pursue that
22 with the Office of the Minister.

23 **MS. CHRISTINE JOHNSON:** Thank you. That's fair.

24 And for the record, I'll just note that the
25 document attached to this document is SSM.CAN.00001320, but of
26 course, we don't need to pull it up in light of the Panel's
27 answer.

28 So I'll just move to another brief area which I'm

1 sure you can provide me some assistance.

2 This is with regards to clarifying some of the
3 evidence that you provided regarding the aggregate data that the
4 department received about the frozen accounts pursuant to the
5 order.

6 Mr. Sabia, you told us that approximately 280
7 accounts were ultimately frozen, and for your assistance, I I
8 believe that that's the number that's also contained within your
9 institutional report. Is that -- that's correct?

10 **DM MICHAEL SABIA:** Yes.

11 **MS. CHRISTINE JOHNSON:** And that was -- those
12 were accounts frozen between February 15th and February 24th,
13 correct?

14 **DM MICHAEL SABIA:** Well, I think it's a shorter
15 time period than that, because I think on February the 21st --
16 I'd have to check the date -- 21st or 22nd, the RCMP had
17 indicated to the banks given the progress on ending the
18 disruptions that all those accounts should be unfrozen. So it
19 was really in a period from the coming into force of the
20 *Emergency Act* on the 15th and say the 20th or 21st of February.

21 **MS. CHRISTINE JOHNSON:** Right. Fair. And we
22 heard you also give evidence that to the Department's knowledge
23 no donors had their account frozen. So those 280 accounts were
24 not donor accounts but they were more people who were leaders of
25 or instrumental in some way in the protests?

26 **DM MICHAEL SABIA:** Well, that's our
27 understanding. I mean, we were not involved and don't
28 individual level information here, but that is our

1 understanding.

2 MS. CHRISTINE JOHNSON: And financial service
3 providers told the Department that those accounts, again those
4 280 accounts, represented different financial products. For
5 example, savings accounts, chequing accounts, credit cards or
6 lines of credit; correct?

7 DM MICHAEL SABIA: Yes.

8 MS. CHRISTINE JOHNSON: So to be clear, the total
9 number of individuals or entities who had accounts frozen under
10 the Order was in all likelihood far less than 280 because those
11 280 accounts may have been multiple accounts held by individuals
12 or entities; correct?

13 DM MICHAEL SABIA: Yes, that's correct. It would
14 be much smaller we believe.

15 MS. CHRISTINE JOHNSON: Yes. And to process this
16 with that, Clerk, I would ask you to pull up document
17 SSM.CAN.00000209_REL.0001.

18 And I believe my friend from the CCLA already
19 took you to this document today. And Ms. Jacques, I'll point
20 out that at the -- if you scroll to the bottom of page 1, we see
21 an email from you, Ms. Jacques, to Alex, and again, I believe
22 this is Alex Lawrence, and you say on February 22nd:

23 "...the RCMP has confirmed that they
24 provided the banks with a list of 57
25 individuals/entities representing a
26 total of 240 financial accounts that
27 are no longer involved in the
28 blockades."

1 And you go on to note that the banks have
2 confirmed that there will be an unfreezing of these accounts.

3 So is this -- these numbers, so we see 57
4 individuals or entities corresponding to 240 financial accounts.
5 So is this the type of ratio that we're looking at when we're
6 looking at the overall 280 accounts that were frozen, it was
7 likely of this nature, this kind of ratio?

8 **ADM ISABELLE JACQUES:** That's accurate.

9 **MS. CHRISTINE JOHNSON:** Thank you. Those are all
10 my questions.

11 **COMMISSIONER ROULEAU:** Okay.

12 Next, I'd like to call on the Windsor Police
13 Service.

14 **MR. TOM McRAE:** Thank you, Mr. Commissioner.

15 **--- CROSS-EXAMINATION BY MR. TOM McRAE:**

16 **MR. TOM McRAE:** My name is Tom McRae. I act for
17 the Windsor Police Service.

18 Mr. Sabia, my notes of your evidence say that
19 your evidence was that the Ministry -- this was a serious issue
20 and the Ministry of Finance was working towards a peaceful end
21 to difficult circumstances. Is that a fair summary of your
22 earlier evidence?

23 **DM MICHAEL SABIA:** Yes.

24 **MR. TOM McRAE:** Thank you. I also have notes
25 that you said that a peaceful end is better than a non-peaceful
26 end. And in that context, you acknowledge the right to protest.
27 Is that fair?

28 **DM MICHAEL SABIA:** Yes.

1 MR. TOM McRAE: Did anyone at anytime in the
2 Ministry of Finance to your knowledge model the cost of a
3 non-peaceful end to this process?

4 DM MICHAEL SABIA: No.

5 MR. TOM McRAE: Okay. Thank you, those are my
6 questions.

7 COMMISSIONER ROULEAU: Thank you.

8 Next, I'll call on the Government of Canada.

9 --- CROSS-EXAMINATION BY MR. STEPHEN AYLWARD:

10 MR. STEPHEN AYLWARD: Good afternoon. It's
11 Stephen Aylward. I'm one of the lawyers for the Government of
12 Canada.

13 Mr. Sabia, earlier this morning, you mentioned a
14 concern around the electric vehicle credits in the context of
15 discussions with or issues with the United States. I just
16 wonder for those who may be unfamiliar with that issue if you
17 could just explain a bit more about why it was and why it was a
18 concern for you.

19 DM MICHAEL SABIA: Sure. In the U.S.
20 legislation, since passed, they provide -- there had always been
21 a certain level of subsidy for electric vehicles, and that level
22 of subsidy one way or another was matched because they were
23 quite small on the U.S. side and on the Canadian side. The
24 proposal was a dramatic increase in the level of government
25 subsidy for electric vehicles that were assembled only in the
26 United States. That was -- it is a dramatic increase.

27 So the issue for us was that if that remained the
28 case, and that electric vehicle assembly was done on an American

1 basis not a North American basis, then a Canadian industry would
2 be at a very, very substantial disadvantage, and that in effect,
3 we would either, as a much smaller country, have to match the
4 magnitude of those subsidies or have, in effect, over time the
5 automotive industry migrate into the United States. The
6 automotive industry, you know, is an extremely important part of
7 the Canadian economy, and an essential part of the central
8 Canadian economy.

9 So finding a -- working toward a North American
10 approach to the assembly of electric vehicles was something that
11 was very important to us and to those companies, and especially
12 to autoworkers. So that's why the concern that was being
13 expressed in the United States that Canada's no longer reliable
14 raised such a serious issue for us because if that was the
15 political perception, then our chances of being able to convince
16 Washington to adopt a North American approach to this, which of
17 course required a level of confidence that auto parts and cars
18 could move across the border pretty seamlessly, if we were not
19 successful in doing that then as I say there would be a very
20 severe economic consequence for -- I mean, there are 500,000
21 workers in Canada directly and indirectly whose jobs depend on -
22 - I mean, it's a very, very important sector.

23 **MR. STEPHEN AYLWARD:** Was that issue around the
24 proposal to have the electric vehicle credits subsidies apply
25 only in the United States, was that a live issue in the United
26 States ---

27 **DM MICHAEL SABIA:** Yes.

28 **MR. STEPHEN AYLWARD:** --- at the time?

1 DM MICHAEL SABIA: Yes.

2 MR. STEPHEN AYLWARD: Mr. Mendes, you mentioned
3 that there had been issues with semi-conductor supplies in the
4 supply chains in the auto sector that had arisen prior to the
5 blockades. Did those -- did the impact of the semi-conductor
6 shortages apply equally in Canada and the United States on the
7 auto manufacturing sectors?

8 ADM RHYS MENDES: Actually, yeah. There was
9 evidence at the time that given that the semi-conductors had
10 become scarce, there was a need to make choices about where and
11 to which auto plants semi-conductors were being allocated. And
12 my recollection is that they were disproportionately being
13 allocated towards plants in the U.S., so it was affecting
14 Canadian plants to a greater degree.

15 MR. STEPHEN AYLWARD: So as we know, the
16 Ambassador Bridge was -- the blockade was cleared by the time
17 the *Emergencies Act* was invoked, but we've also heard evidence
18 that there were plans from protesters to try and re-establish a
19 blockade on the bridge. I'm just wondering for your perspective
20 in terms of impacts, economic impacts or impacts with the U.S.
21 trading relationship and what would've been the impact of a
22 blockade re-emerging at the bridge?

23 DM MICHAEL SABIA: Well, I think, because our
24 concern at the time was not only with respect to the Ambassador
25 Bridge, our concern at the time was that while a disruption may
26 have ended in one place there was certainly the very live
27 possibility that disruptions could emerge elsewhere, or in fact,
28 at that same bridge. We had no level -- no reason to believe

1 that those disruptions had come to an end, period, at the time,
2 prior to the time of the Government's decision with respect to
3 utilising the *Emergencies Act*. And indeed, it was -- that was
4 one of the significant factors that there was no way of judging
5 whether we could find ourselves in a situation of kind of
6 rolling disruptions across various border points of entry.

7 Had that occurred and had we been unable to
8 manage that situation, I think the reaction in the United
9 States, in the politically important State of Michigan and in
10 the Federal Government, would have been to very seriously
11 question Canada's ability to continue to act as a reliable
12 trading partner.

13 **ADM RHYS MENDES:** Can I just add that, you know,
14 in a situation where the Ambassador Bridge became blocked again
15 you'll note that the estimates that Transport Canada did were
16 for peak impacts in the first week of a disruption. Given that
17 inventories had been drawn down during the period of disruption,
18 the return to a disruption at the bridge would have put us more
19 into, like, a second week situation where, based on our own past
20 experience and discussions with Transport Canada, you know, that
21 could reasonably be up to, like, three-and-a-half times the size
22 of the impacts that we were discussing for the first week.

23 **MR. STEPHEN AYLWARD:** In week two compared to
24 week one.

25 **ADM RHYS MENDES:** Yeah.

26 **DM MICHAEL SABIA:** Yeah. I'd just like to add
27 something here. You know, we talk about 0.1, 0.2 and the impact
28 on growth rates and this and that, and we talk about it in very

1 antiseptic terms. But what we're really talking about here is,
2 you know, and we were already experiencing it, but we're really
3 talking about what does it mean 0.1, 0.2. It's not just a
4 number. It means layoffs. It means lower incomes for workers.
5 It means communities less able to count on certain companies. I
6 mean, there are real human consequences to these numbers,
7 whether it's an auto worker, or whether it's someone in the food
8 sector in western Canada and their ability to pay mortgages, et
9 cetera. I mean, we had a lot of good conversation today about
10 those who were involved in the disruptions themselves, but
11 there's also a dimension of this about, well, what are the
12 rights of the people who suffered the economic consequences of
13 this kind of disruption, because they are real and they are
14 meaningful.

15 **MR. STEPHEN AYLWARD:** Can I ask -- you testified
16 earlier that this was an urgent situation, we had to act quickly
17 because there was -- the longer it went on, the worse the
18 economic impacts could have been. But just when you say
19 quickly, what's the timescale that you had in mind? Was this an
20 issue of days, or weeks, or what was the timeframe?

21 **DM MICHAEL SABIA:** Well, I think in an ideal
22 world, these disruptions had already gone on. They varied, the
23 length by where they were in the country, but these disruptions
24 had already gone on for a reasonable period of time, so --
25 reasonably lengthy period of time. So our objective here was we
26 were thinking about this in a, you know, a period of several
27 days or a week, perhaps a bit more than a week. But what we
28 very much wanted to avoid was what Rhys just said, particularly

1 with the automotive sector, where once inventories were down,
2 then the cost of this thing on a week-by-week basis would really
3 escalate, and that's what we wanted to avoid. As it happened,
4 we were able to avoid it, and therefore, the economic effects
5 and the long-term scarring of all of this was, you know, was
6 quite limited. But that's because it was ended quickly.

7 **MR. STEPHEN AYLWARD:** Changing gears here
8 slightly. Ms. Jacques, you mentioned to my friend from the
9 Government of Saskatchewan that the Department of Finance hadn't
10 consulted with RCMP on the EMO until after the measures were
11 adopted. Did the Department of Finance consult with Public
12 Safety on those measures before they were adopted?

13 **ADM ISABELLE JACQUES:** Yeah, we had this -- we
14 had discussion with Public Safety before the measures were
15 enacted, yes.

16 **MR. STEPHEN AYLWARD:** Now my friend for
17 Commission Counsel put it to you that the Department of Finance
18 took no responsibility for whose accounts were frozen, and the
19 exercise of identifying whose accounts were to be frozen. Does
20 the Department of Finance have any information about the
21 individuals who were involved in the blockades, or did it have
22 such information at the time?

23 **ADM ISABELLE JACQUES:** No, we did not.

24 **MR. STEPHEN AYLWARD:** Did it have any way of
25 obtaining that information?

26 **DM MICHAEL SABIA:** No, and it would have been
27 inappropriate for us to.

28 **MR. STEPHEN AYLWARD:** Why do you say that?

1 DM MICHAEL SABIA: Because we should not have --
2 in the interests of protecting people's privacy, we should not
3 have access to that information.

4 MR. STEPHEN AYLWARD: And so who would be the
5 appropriate body through which such information ---

6 DM MICHAEL SABIA: It would be law enforcement.

7 MR. STEPHEN AYLWARD: Pardon me?

8 DM MICHAEL SABIA: Law enforcement.

9 MR. STEPHEN AYLWARD: And, in fact, Commission
10 Counsel showed you the evidence of Officer Beaudoin, the
11 disclosures that were -- the form of disclosure that was made to
12 financial institutions. If a financial institution was
13 uncertain upon reviewing the disclosure it received from the
14 RCMP about whether the person who was the subject of the
15 disclosure was in fact involved in illegal activity, was there
16 anything that would have prevented the financial institution
17 from requesting that the RCMP provide further information?

18 ADM ISABELLE JACQUES: No. Actually, we're
19 provided the -- we have measures so that -- to ensure that
20 information could be exchanged between the RCMP and financial
21 institutions.

22 MR. STEPHEN AYLWARD: That's Section 6 of the ---

23 ADM ISABELLE JACQUES: That's -- yes.

24 MR. STEPHEN AYLWARD: And in terms of the -- oh,
25 are you aware of any instances in which there was a case of
26 mistaken identity in which a person had their bank account
27 frozen despite not being someone who's involved in the protests?

28 ADM ISABELLE JACQUES: No.

1 MR. STEPHEN AYLWARD: In terms of the decision to
2 use a -- what my friend called a hybrid approach, not providing
3 financial institutions with a list of designated persons, but
4 also depending on their own systems, Ms. Jacques, you testified
5 earlier that that was in part to take advantage of the internal
6 systems and algorithms that those institutions have in place
7 themselves. What sort of data would financial institutions have
8 access to, that the RCMP or law enforcement wouldn't, that would
9 allow them to make determinations about whether someone was
10 engaged in illegal activities under the Emergency Measures
11 Regulations?

12 ADM ISABELLE JACQUES: Well, I think banks and
13 financial institutions on a regular basis use their algorithm
14 to, you know, detect fraud, you know, for example, fraudulent
15 activity in credit cards, or bank accounts even, you know,
16 important withdrawals. So on a regular basis, they have tools
17 to detect these activities and to freeze either the bank account
18 or the card pending resolution of the inordinate activities on
19 the account.

20 MR. STEPHEN AYLWARD: They'd be looking at the
21 transaction data that was ---

22 ADM ISABELLE JACQUES: That's correct.

23 MR. STEPHEN AYLWARD: --- available to them?

24 ADM ISABELLE JACQUES: That's right.

25 MR. STEPHEN AYLWARD: And so if a person donated
26 a million dollars to support an illegal blockade at a border or
27 in Ottawa, that's information that a financial institution might
28 have that law enforcement would have no way of knowing.

1 ADM ISABELLE JACQUES: I presume that that would
2 be possible, yes, especially such a large amount.

3 DM MICHAEL SABIA: Which is, of course, why, just
4 to complete the thought, a combination of these two things,
5 information from law enforcement and utilizing the pretty
6 sophisticated technological abilities of financial institutions
7 is the way to maximize the accuracy of these actions, and
8 accuracy matters here for obvious reasons. So we think,
9 actually, that you described it as a hybrid approach. That kind
10 of hybrid approach actually delivered a good result.

11 MR. STEPHEN AYLWARD: And so if the list approach
12 had been used and financial institutions were required to freeze
13 the accounts of anyone who was on a list provided by the RCMP,
14 is it fair to say that the financial institutions wouldn't have
15 been able to unfreeze those accounts until they were delisted by
16 the RCMP?

17 ADM ISABELLE JACQUES: That's correct.

18 MR. STEPHEN AYLWARD: And so under these measures
19 that you had in place using the hybrid approach and the duty to
20 determine on a continuous basis that you referenced earlier,
21 financial institutions were actually able to unfreeze accounts
22 without waiting for such a delisting; is that right?

23 ADM ISABELLE JACQUES: Absolutely, and that was
24 an important part of the policy work we did. We wanted to
25 ensure that financial institution had an ongoing obligation to
26 review the information that they had, specifically for that, so
27 to ensure that they can, you know, freeze or unfreeze account
28 based on the information that they have.

1 MR. STEPHEN AYLWARD: In terms of the national
2 scope of the Emergency Economic Measures Order, it applied
3 across the country to financial institutions and designated
4 persons not just in provinces where border blockades or other
5 unlawful protests were occurring. Why was it important that the
6 measure apply across the country?

7 ADM ISABELLE JACQUES: Well, it was very
8 important because, you know, we didn't know who was donated in
9 which province to where. Also, I mean, we had heard that funds
10 were coming from outside of Canada. So if funds are coming in,
11 we don't know where they -- where it's going to come in Canada
12 and where it's going to go, so it was very important that as
13 money flows that we could have a consistent approach across the
14 country and ensure that the funds that were used to support
15 those illegal activities were frozen.

16 MR. STEPHEN AYLWARD: In terms of notice of the
17 pending freezing measures, Mr. Sabia, you mentioned earlier that
18 the Deputy Prime Minister had been very clear that the
19 individuals could have their accounts frozen if they continued
20 to participate in unlawful activity.

21 How was that message communicated?

22 DM MICHAEL SABIA: I think the Minister made that
23 comment early -- relatively early in the day on the 14th,
24 although I don't remember the time, in the context of a broader
25 news conference, I think in the company of the Prime Minister
26 announcing the government's intention to put in place the
27 *Emergencies Act*. It was also very, very extensively picked up
28 and reported in the public media through the course of that day

1 and evening.

2 MR. STEPHEN AYLWARD: And Ms. Jacques, you
3 mentioned notice that had been given to protesters. Are you
4 aware of efforts taken by police officers to give notice to
5 protesters of these potential consequences?

6 ADM ISABELLE JACQUES: Yes, we had been informed
7 that the RCMP had been, you know, informing people, certainly on
8 the Hill, I don't know elsewhere, that the freezing of bank
9 accounts were a possibility if they weren't leaving the location
10 where they were at.

11 DM MICHAEL SABIA: And there's lots of anecdotal
12 material that we heard subsequently of RCMP officers or other
13 officers speaking to truckers or other people who were
14 protesting saying -- giving protesters the opportunity to say,
15 "Look, I am leaving. I'm leaving, you know, tomorrow," et
16 cetera. As I understand it, in those cases law enforcement
17 authorities were quite flexible; as long as they had an
18 undertaking that the person was leaving, they did not take the
19 further step of then freezing that bank account. So I think
20 there was quite a lot of good common sense I how this was
21 applied, and gave people the opportunity to, you know, just go
22 home.

23 MR. STEPHEN AYLWARD: Ms. Jacques, when the
24 measures were conceived, how -- what was the idea for how
25 someone would have their account unfrozen?

26 ADM ISABELLE JACQUES: Well, we had -- it was,
27 again, twofold. I mean, it could have been just based on a
28 person -- say, a person leave and cease his illegal activity

1 could, you know, contact the bank and tell them that they were
2 no longer involved and that they were no longer on location
3 and/or, you know, via a person could have gone maybe to the
4 RCMP, get in touch with law enforcement to ensure that the
5 information was conveyed to the financial sector.

6 **MR. STEPHEN AYLWARD:** The definition of a
7 designated person under the EMO is a person who is engaged in
8 activity contrary to sections 2 to 5 of the EMR. Am I right
9 that a person would cease to be a designated person as soon as
10 they ceased participating in such activities?

11 **ADM ISABELLE JACQUES:** Yes, that is accurate. As
12 soon as a person ceases the activity, the account could be
13 unfrozen. So as quickly as we could freeze -- the account could
14 be frozen, it was easily unfrozen.

15 **MR. STEPHEN AYLWARD:** My friend for the CCF
16 suggested to you that the intention here wasn't to freeze
17 people's grocery money. Was there any way that the Department
18 of Finance, in conceiving these measures, would have been able
19 to distinguish between money that was being used to buy
20 groceries and money that was being used to fund illegal
21 activity?

22 **ADM ISABELLE JACQUES:** No.

23 **MR. STEPHEN AYLWARD:** And why is that?

24 **ADM ISABELLE JACQUES:** Well, we don't have that
25 detail of information. It's impossible, and it was difficult
26 for us to draft a measure in such a way.

27 **MR. STEPHEN AYLWARD:** Mr. Commissioner, I'm just
28 about out of time. If I might have another few minutes?

1 COMMISSIONER ROULEAU: Sure, go ahead.

2 MR. STEPHEN AYLWARD: Thank you.

3 In terms of the alternative measures, or the
4 alternatives to these measures, it was suggested to you earlier
5 that some of the crowdfunding campaigns were already subject to
6 a Court Order from Ontario at the time that the EMO came into
7 effect, and Mr. Sabia, you noticed -- noted a concern around the
8 -- whether that Order would fly outside of Ontario. I'm
9 wondering, Ms. Jacques, from your perspective, were you aware of
10 any other reason why it was needed to take these steps -- why
11 the Ontario Order was insufficient?

12 ADM ISABELLE JACQUES: Well, I mean, the Ontario
13 Order was one circumstances but it was -- for us, you know,
14 there was always a risk that funds could be given to another
15 crowdfunding platform using other payment service providers,
16 money, you know, as we said, can be flown from different ways,
17 could have ended up in wallets. I mean, we did not know at the
18 time. So the fact that it was one Court Order doesn't solve the
19 situation. So it was important that we take the measures we
20 took.

21 MR. STEPHEN AYLWARD: You refer to wallets;
22 you're referring to cryptocurrency?

23 ADM ISABELLE JACQUES: Yes.

24 MR. STEPHEN AYLWARD: --- fundraising?

25 ADM ISABELLE JACQUES: That's right.

26 MR. STEPHEN AYLWARD: Can you say more about
27 that?

28 ADM ISABELLE JACQUES: Well, I mean, we were

1 aware that some money were being flown to cryptocurrency
2 wallets, and so we wanted to ensure that that was captured as
3 well.

4 **MR. STEPHEN AYLWARD:** I'm just about out of time.

5 You're aware that there were -- that there was
6 significant media reporting around the GoFundMe decision to
7 cease its crowdfunding campaign on that platform?

8 **ADM ISABELLE JACQUES:** Yes, I heard about that.

9 **MR. STEPHEN AYLWARD:** Okay. And I don't have
10 time to play it but I'll just, for the record, one example of
11 such a media report would be PB.CAN.00001797_REL.0001, beginning
12 at five minutes and five seconds.

13 Thank you, Mr. Commissioner, for the indulgence.
14 Those are my questions.

15 **COMMISSIONER ROULEAU:** Okay, thank you.

16 Any re-examination?

17 **MR. GORDON CAMERON:** Thank you. Just very
18 briefly, Mr. Commissioner.

19 **--- RE-EXAMINATION BY MR. GORDON CAMERON:**

20 **MR. GORDON CAMERON:** Presumably primarily for
21 you, Mr. Sabia, and you, Ms. Jacques.

22 As you might know, the Commissioner has a mandate
23 to look into the future and make recommendations about the
24 lessons that have been learned, and if you can contemplate for a
25 minute the lessons that the Department of Finance has learned;
26 and, in particular, from the steps that were taken with the
27 financial institutions. Now, we heard evidence from both of
28 you, Ms. Jacques, that there was a very short period of time

1 within which you had to draft these regulations, and from you,
2 Mr. Sabia, the very short period within which you had to consult
3 with all sorts of other outside institutions to see if you could
4 make these work. And we'd heard earlier from the RCMP about how
5 quickly they had to move as well.

6 And so looking to the future, I'm wondering if
7 the Department of Finance would consider it useful to have a
8 sort of protocol in place in case this type of situation arises
9 in the future about the factors that you would take into
10 consideration if you had to move very quickly again in the
11 future to take similar steps.

12 **ADM ISABELLE JACQUES:** I mean, certainly as we
13 mentioned before, I mean, if we would have -- we'd had more time
14 to draft and craft the policy at the time, maybe to provide some
15 specific exceptions to -- for some sum of money for the freezing
16 of the bank accounts, maybe that is something that we would have
17 done.

18 Certainly with respect to the list of designated
19 person as we -- as it was mentioned, I mean, I know that
20 although there was no provision for listing, effectively the
21 RCMP provided a list of person to financial institutions. I
22 mean, that's something that we can think about, but we also do
23 not want to lose the capacity of financial institution to do
24 their own verification. I think that is still key. So maybe
25 it's something that we could think about as to how we create
26 this procedure to share a list, but we'd have to think about
27 that further.

28 **DM MICHAEL SABIA:** So for my part; look, you

1 always learn from experiences. And this was a highly unusual
2 experience. And as an organization, speaking on behalf on the
3 Department of Finance, as an organization, I mean, we would be
4 misguided not to try to learn from it. I think we did what we
5 needed to do in very compressed periods of time, and I think
6 just history, I think the record shows that we were able to --
7 in taking the actions that we took, we were able to minimize the
8 damage to the national economy. And that means, I want to
9 emphasize this point again, that means minimizing the damage to
10 people. It's not antiseptic stuff, and it's not just about
11 companies. It's about people. It's about workers. It's about
12 paychecks. And we ought not to lose sight of that when people
13 like us talk about, you know, point one and point two. It's
14 about people.

15 So given that, yeah, can we do things, like think
16 through protocols of activity if these very unusual
17 circumstances were ever, and I hope they never do, arise again,
18 and would we be better positioned if we had thought through in
19 advance protocols of exactly what to do, and when to do it, and
20 with whom to consult? Now circumstances vary, so who you're
21 going to consult with varies, but could we make that better?
22 Sure. Because you can always learn. And we're open minded
23 about that, and we will.

24 But again, and I won't say more on this, I'll
25 just say, in the circumstances, and I think the record shows
26 this, we were able to avoid some potentially very, very serious
27 consequences for, in effect, millions of people who could have
28 been affected by this.

1 MR. GORDON CAMERON: Thank you.

2 And thank you, Mr. Commissioner. That's my only
3 re-examination.

4 COMMISSIONER ROULEAU: Okay. I'm going to maybe
5 wade in a bit further on the last question about reforms and
6 looking forward and ask you to go up a bit to the *Emergency Act*
7 itself, in the sense that there may be debate, let's put it this
8 way, as to whether or not the concerns you've expressed today
9 are encompassed by public order emergency, i.e. the financial
10 impact that you've described.

11 So my question is, do you have any
12 recommendations or suggestions on the Act itself, whether
13 clarity on that issue, assuming you believe it ought to be
14 considered, is useful, and how that might be done, or whether
15 your financial concerns of that type are another kind of
16 emergency other than a public order emergency?

17 I don't know if you understand what I'm getting
18 at, because it's encompassed in one right now and there are some
19 readings that would not encompass the financial impact such as
20 you've described.

21 DM MICHAEL SABIA: Well, Commissioner, you're
22 going to get a biased answer, ---

23 COMMISSIONER ROULEAU: No, and that's fine.

24 DM MICHAEL SABIA: --- because my biased answer
25 is, for all the reasons I just said, economics is not about
26 economics. It's about people and it's about the welfare of
27 people. So one way or the other, and you're in a much better
28 position than we are to decide whether or not it's in public

1 order or some other category, et cetera. I won't venture into
2 that world. You're much more experienced and I would be
3 impertinent to venture a view on that.

4 But do I think threats to Canada's national
5 economy warrant being taken very seriously and integrated
6 somehow? In this kind of -- in these kinds of legal structures?
7 My answer to that is unambiguously yes, just because they are of
8 the importance that they are to people.

9 So my answer is yes. And if there's ambiguity
10 around those issues, then clarifying, I think, that ambiguity
11 would be a very useful thing. If there is ambiguity.

12 **COMMISSIONER ROULEAU:** No, and I'm not saying
13 there is. I'm just trying to get clarity in your position,
14 which, biased as it is, I think it has value. And I appreciate
15 that.

16 And so I think that's all I'm going to ask you.
17 So thank you very much for your testimony, and for coming, and
18 for taking the time to give us the finance Ministry's view.

19 **DM MICHAEL SABIA:** Thank you.

20 **ADM ISABELLE JACQUES:** Thank you.

21 **ADM RHYS MENDES:** Thank you.

22 **COMMISSIONER ROULEAU:** Okay. So maybe we'll take
23 a short break while we set up for the next -- it's not a panel,
24 I guess, but the next witness.

25 So we'll just take five minutes and come back
26 once they're organized.

27 **THE REGISTRAR:** The Commission is in recess for
28 five minutes. La Commission est levée pour cinq minutes.

1 --- Upon recessing at 3:18 p.m.

2 --- Upon resuming at 3:25 p.m.

3 **THE REGISTRAR:** Order. À l'ordre.

4 The Commission is reconvened. La Commission
5 reprend.

6 **COMMISSIONER ROULEAU:** Okay. Go ahead.

7 **MS. SHANTONA CHAUDHURY:** For the record, Shantona
8 Chaudhury for the Commission. Our next witness is Ms. Jody
9 Thomas, the National Security Advisor to the Prime Minister. I
10 would ask the witness be sworn or affirmed.

11 **THE REGISTRAR:** Ms. Thomas, will you swear on a
12 religious document or do you wish to affirm?

13 **MS. JODY THOMAS:** On a religious document,
14 please.

15 **THE REGISTRAR:** We have the Bible, the Quran, or
16 the Torah available.

17 **MS. JODY THOMAS:** The Bible, please.

18 **THE REGISTRAR:** For the record, please state your
19 full name and spell it out.

20 **MS. JODY THOMAS:** Jody Hazel Thomas. T-H-O-M-A-
21 S.

22 **--- MS. JODY THOMAS, Sworn:**

23 **THE REGISTRAR:** Thank you.

24 **COMMISSIONER ROULEAU:** Please go ahead.

25 **--- EXAMINATION-IN-CHIEF BY MS. SHANTONA CHAUDHURY:**

26 **MS. SHANTONA CHAUDHURY:** Good afternoon, Ms.
27 Thomas. Thank you for being here.

28 We'll just start with a couple of housekeeping

1 matters.

2 First of all, you'll recall participating in an
3 interview with Commission Counsel on August 30th of this year?

4 **MS. JODY THOMAS:** I do.

5 **MS. SHANTONA CHAUDHURY:** And you'll recall that
6 some of your colleagues who are not here today, namely Assistant
7 Secretary Michael MacDonald and Assistant Secretary Martin Green
8 also participated in that interview?

9 **MS. JODY THOMAS:** That's correct.

10 **MS. SHANTONA CHAUDHURY:** Okay. And after that
11 interview, Commission Counsel prepared a summary of the
12 interview. For the record, -- I don't think we need to pull it
13 up, Mr. Clerk, but for the record, it's WTS0000071.

14 So Ms. Thomas, I'll just ask you to confirm that
15 you reviewed that interview summary, and that it's accurate to
16 the best of your knowledge and belief, and that insofar as it
17 contains the information of your colleagues, they have also
18 reviewed it and confirmed it was accurate?

19 **MS. JODY THOMAS:** That's correct.

20 **MS. SHANTONA CHAUDHURY:** Okay. Now the second
21 little housekeeping matter is the institutional report of the
22 Privy Council Office, affectionately known as the PCO. So
23 you're aware that the PCO filed an institutional report with the
24 Commission?

25 **MS. JODY THOMAS:** I am.

26 **MS. SHANTONA CHAUDHURY:** And you've reviewed it?

27 **MS. JODY THOMAS:** I have.

28 **MS. SHANTONA CHAUDHURY:** And it's accurate to the

1 best of your knowledge and belief?

2 **MS. JODY THOMAS:** Yes.

3 **MS. SHANTONA CHAUDHURY:** Okay. For the record,
4 that's DOJ IR 00000013.

5 Ms. Thomas, I'll ask you to just start by telling
6 the Commission what is the role of the National Security Advisor
7 to the Prime Minister?

8 **MS. SHANTONA CHAUDHURY:** So the National Security
9 and Intelligence Advisor to the Prime Minister is a position
10 that was created after 9/11 in order to coordinate and bring
11 sort of structure to the national security community, which is a
12 group of very independent departments with independent Deputy
13 heads, although they all work together in a horizontal manner.
14 And what was learned after 9/11 was that coordination amongst
15 these departments and agencies is useful in understanding
16 intelligence, national security informed policy issues. And so
17 in my job, what I do is I do coordinate the national security
18 community. I have a convening function, which means I can call
19 them to meetings, I can raise questions, challenge them on
20 certain issues. So I have a challenge function, like all Deputy
21 Secretaries at the Privy Council Office. And I also provide
22 advise and information and brief the Prime Minister of Canada.

23 **MS. SHANTONA CHAUDHURY:** Okay. And when you
24 speak of the National Security community and the various
25 departments and agencies, who were you speaking of specifically?

26 **MS. JODY THOMAS:** The Department of National
27 Defence, Global Affairs Canada, Public Safety and its agencies,
28 CBSA, CSIS, RCMP, and the Canadian Security Establishment -- the

1 Communication Security Establishment known as CSE. Those are
2 the primary players.

3 **MS. SHANTONA CHAUDHURY:** Okay. And within the
4 Secretariate -- well, I believe there's four separate
5 Secretariates, so three or four Secretariates that -- within the
6 National Security and Intelligence Advisory. Can you tell us
7 about those?

8 **MS. JODY THOMAS:** That's correct. There are four
9 Secretariates. So the newest is the Emergency Management
10 Secretariate and it was created in November 2021. And then the
11 Foreign Policy and Defence Advisor to the Prime Minister reports
12 through me. The Assistant Secretary for Intelligence
13 Assessment, which is Martin Green, and then the Security and
14 Intelligence Secretariate, which is the job done by -- led by
15 Martin -- or, sorry, Mike MacDonald.

16 **MS. SHANTONA CHAUDHURY:** Okay. So they all
17 report to you and you in turn report to who?

18 **MS. JODY THOMAS:** The Prime Minister and the
19 Clerk.

20 **MS. SHANTONA CHAUDHURY:** And the Clerk of the
21 Privy Council. Okay.

22 Can you tell us a little bit about the
23 communication channels there? So you report directly to the
24 Prime Minister. What's the briefing method, what's the
25 reporting relationship there?

26 **MS. JODY THOMAS:** So any written brief or advice
27 that goes to the Prime Minister goes through the Clerk. I sign
28 it off as the National Security Advisor, but she also reviews it

1 and signs it before it heads -- it goes to the Prime Minister.
2 Verbal briefs, Cabinet briefs, discussions with the Prime
3 Minister, the Clerk is in the room normally, and she's certainly
4 aware of what I'm discussing with the Prime Minister. I don't
5 call him directly. I haven't had to in the environment that we
6 have been existing in. Generally, the conversation -- anything
7 I need to get to him I go through PMO or through the Clerk.

8 **MS. SHANTONA CHAUDHURY:** Okay. And I understand
9 that you assume the role of National Security and Intelligence
10 Advisor. I'm going to say NSIA. We all hate acronyms, but
11 that's a mouthful. Shortly before the events of the Freedom
12 Convoy; is that right?

13 **MS. JODY THOMAS:** I became the NSIA on January
14 11th, 2022.

15 **MS. SHANTONA CHAUDHURY:** And where were you
16 before then?

17 **MS. JODY THOMAS:** I was the Deputy Minister of
18 National Defence.

19 **MS. SHANTONA CHAUDHURY:** How long had you been in
20 that role?

21 **MS. JODY THOMAS:** Since November 2017.

22 **MS. SHANTONA CHAUDHURY:** Okay. And what was your
23 background before that?

24 **MS. JODY THOMAS:** I was the Commissioner of the
25 Canadian Coast Guard, then the Deputy Commissioner of the Coast
26 Guard, so I've had 35 years of experience in the federal
27 government.

28 **MS. SHANTONA CHAUDHURY:** So you mentioned that

1 you have a convening role between all of these various agencies,
2 the National Security community, as you call them. We heard
3 earlier this week from your colleagues at Public Safety, and
4 they described their role as being a consumer of intelligence as
5 opposed to a collector of intelligence. I understand the same
6 is true of PCO?

7 **MS. JODY THOMAS:** Yes, that's correct.

8 **MS. SHANTONA CHAUDHURY:** Can you elaborate on
9 that a little bit, where the sources of your intelligence come
10 from?

11 **MS. JODY THOMAS:** The sources of intelligence,
12 covert and overt, so open source, but also what's collected by
13 the agencies, comes from CSIS, RCMP, CSE, Global Affairs Canada
14 and the Foreign Intelligence Secretariate and Canadian Forces
15 Intelligence Command as the primary domestic agencies. We also
16 hear from our Five Eyes colleagues, so we hear from the -- we
17 get intelligence that we read and consume and analyse, assess
18 from Australia, the UK, New Zealand and the U.S. We also
19 receive open source and review open source information from
20 academics, look at social media, to some extent, not as much as
21 we should. We do about certain incidents, but we don't do
22 social media scraping, as an example, and that will later become
23 an issue that we talk about. So primarily, the information, the
24 intelligence we receive, we receive domestically but we have
25 links around the world.

26 **MS. SHANTONA CHAUDHURY:** Okay. And if I can ask
27 it colloquially, when you get it, what do you do with it?

28 **MS. JODY THOMAS:** So raw -- I read raw

1 intelligence, but the Intelligence Assessment Secretariate
2 assesses it. It looks at trends. It looks at implications for
3 Canada, if intelligence is actionable, meaning we receive a
4 piece of intelligence that says something could happen, what do
5 we do with that? They do that kind of assessment, reaching out
6 back to those departments to ensure that there is a global view
7 of what this intelligence means for Canada and for our allies.

8 **MS. SHANTONA CHAUDHURY:** And do they produce,
9 like, assessments, certain products of intelligence, and if so,
10 how are those disseminated, dispersed, what's done with them?

11 **MS. JODY THOMAS:** They do. They do multiple
12 kinds of products. They do longer term vision products about we
13 see a trend coming. They do a daily foreign intelligence brief,
14 which is a document that is sent to a reading list of people
15 around various departments and within PCO. They do an update
16 once a week to the Prime Minister, the Prime Minister's Foreign
17 Intelligence Update. They will do bespoke products on specific
18 situations. We had, for example, this week, an incident in
19 Ukraine where there was missile shot down in Poland, so they did
20 a bespoke piece on that to analyze it very quickly in
21 conjunction with the rest of the security agencies, primarily
22 D&D in this case.

23 **MS. SHANTONA CHAUDHURY:** Okay. With that basic
24 background out of the way, we'll move now to the events of
25 January and February 2022.

26 So the first thing I want to ask you about is the
27 early monitoring of the convoy. And I'll ask, Mr. Clerk, if you
28 can pull up SSM.NSC.CAN.00003209.

1 So this is an email from Mike MacDonald, who we
2 understand to be Assistant Secretary of Security Intelligence to
3 you, Jackie Bogden -- Jacqueline Bogden, who is Deputy Secretary
4 Emergency Preparedness and a variety of people.

5 So to situate you in time, this was Tuesday,
6 January 22nd, so ahead of the arrival of the convoy. There's a -
7 - so I'm going to take you through a couple of points in this
8 email. If we can just scroll down a little bit, Mr. Clerk?
9 Okay. Just a little bit more. Here we go. Thank you. So at
10 this point,

11 "In monitoring the convoy thus far, the RCMP and other [Law
12 Enforcement] report that it is peaceful [participate to] being
13 lawful and disciplined as they have an objective of arriving in
14 Ottawa on-time/as planned.

15 While the current convoy is peaceful, concern lies around
16 whether any individuals might join the convoy [...] who are not
17 aligned with peaceful protest..."

18 And then there's some media reporting, YouTube
19 videos and some comparison to some people who might like to see
20 a January 6th Capitol Hill type event.

21 Just scroll to the next page, please? And we see
22 there's some talk of social media, content targeting some
23 Ministers around the bottom of the page there. And then --
24 sorry, keep scrolling a little bit, Mr. Clerk, here we go. Then
25 there's,

26 "CSIS has received media queries lately about the convoy and
27 CSIS' role in any monitoring activities."

28 And there's a bullet here where Mr. MacDonald

1 says,

2 "This is a sensitive area for CSIS as
3 the *CSIS Act* defines that CSIS cannot
4 interpret lawful advocacy, protest or
5 dissent as to the security of Canada
6 unless it is in conjunction with
7 defined threat activity to the security
8 of Canada as defined in section 2 of
9 the *CSIS Act*, for example, espionage,
10 sabotage, FI ---"

11 -- I think it's foreign interference --

12 "--- serious violence, destruction or
13 overthrow by violence of a
14 constitutionally-established system of
15 government."

16 Can you explain what Mr. MacDonald was referring
17 to when he said, "This is a sensitive area for CSIS"?

18 **MS. JODY THOMAS:** So what he is referring to is
19 that with the media reporting that there were probably some
20 people who had other than peaceful intentions, what was CSIS
21 going to do about that? And CSIS cannot surveil a lawful
22 protest.

23 Now, if there are individuals who are subjects of
24 theirs, investigations in that, they can monitor the activities
25 of those individuals, but they cannot scan, surveil, watch a
26 protest anticipating violence, looking for subject to follow.
27 Peaceful protests are not part of their mandate.

28 **MS. SHANTONA CHAUDHURY:** Okay. And I think we'll

1 probably hear more from CSIS themselves when they testify on
2 Monday, but would it be fair to say that meant there was limited
3 information on the convoy coming in to you from CSIS?

4 **MS. JODY THOMAS:** Absolutely.

5 **MS. SHANTONA CHAUDHURY:** Then the next thing Mr.
6 MacDonald talks about -- Mr. Clerk, if you just pull that up,
7 just -- sorry, back a little bit -- outstanding questions.

8 So these are some questions that were flagged as
9 issues that you might have to deal with over the period of the
10 convoy, whatever that was then going to be.

11 Who has authority to pay attention to the online
12 space and Chatter? That's to Parliamentarians, our other
13 ministers, opposition leaders, or Parliamentarians under similar
14 threats? What would engagement look like? Should MPs meet with
15 the convoy while in Ottawa? Is this safe, and do we have advice
16 for them? What will be the specific advice to ministers on this
17 issue?

18 And I assume that's talking about meeting with
19 members of the convoy.

20 And then if we scroll down a little bit more,
21 there's the talk of potential, the CAF -- CAF is Canadian Armed
22 Forces?

23 **MS. JODY THOMAS:** M'hm.

24 **MS. SHANTONA CHAUDHURY:** Or JTF2. What does JTF2
25 stand for?

26 **MS. JODY THOMAS:** Joint Task Force 2, so special
27 forces.

28 **MS. SHANTONA CHAUDHURY:** Special forces have a

1 possible role, okay.

2 So it's fair to say that those were issues
3 flagged by Mr. MacDonald as things the PCO would -- and the
4 government would have to think about?

5 **MS. JODY THOMAS:** Flagged within the ADM NS OPS
6 working group, I would suggest, rather than just Mr. MacDonald.

7 **MS. SHANTONA CHAUDHURY:** Fair enough. Fair
8 enough. Okay.

9 And I think we'll probably come back to some of
10 those issues as we go through the chronology a little bit.

11 Okay. Mr. Clerk, if you can now pull up
12 SSM.NSC.CAN00000250?

13 This will be another email sent on January 25th,
14 and I understand you're not actually a recipient of this email
15 personally. It was to Mr. MacDonald, but I'm hoping you can
16 help us with some of the issues in there, specifically -- Mr.
17 Clerk, if you can scroll down to page 3 to a point where you see
18 "there is a gap when it -- where it comes to reporting". There
19 we go.

20 So this is our Deputy Minister, so this is Deryck
21 Trehearne from Public Safety writing -- or I'm sorry -- it's not
22 Deryck Trehearne writing, but in any event, it's to Deryck
23 Trehearne.

24 "Our Deputy Minister, Rob, debriefed on
25 the NSIA call on this topic today and
26 mentioned that there is a gap where it
27 comes to reporting on this issue as we
28 head towards the demonstration this

1 weekend."

2 Do you what reporting gap Mr. Stewart was talking
3 about there?

4 **MS. JODY THOMAS:** I would think that he is
5 talking about information from law enforcement on what their
6 planned actions are going to be. I mean, we don't expect to be
7 pre-briefed on what they're going to do. We don't get into
8 tactical plans, but the reporting out of the activity on the
9 Hill, how was that going to happen or in the protest?

10 **MS. SHANTONA CHAUDHURY:** Okay. So this is a law
11 enforcement reporting gap?

12 **MS. JODY THOMAS:** That's what I think, reading
13 this.

14 **MS. SHANTONA CHAUDHURY:** Okay. So that is
15 actually an issue that we discussed a little bit in your
16 interview. Can you tell us -- can you explain to the Commission
17 what that gap is? It's something that's been identified here by
18 Mr. Stewart and it was also identified in his testimony. As I
19 said, it was discussed also in your interview, so can you
20 elaborate on what that law enforcement reporting gap was from
21 your point of view?

22 **MS. JODY THOMAS:** So there is a general gap in
23 terms of open source information and who can collect it, who can
24 analyze, and what we do with it.

25 RCMP collects information for law enforcement
26 purposes and as do other police agencies. We've all heard of Op
27 Hendon now. I don't receive Op Hendon reports, as an example.

28 And so the police forces, collectively, have a

1 lot of information that they can't necessarily share, and so
2 those of us in jobs like mine and Deputy Minister Stewart's who
3 need some overview of what's coming, who these people are, what
4 their intentions are, have a difficulty in receiving that kind
5 of open source information.

6 **MS. SHANTONA CHAUDHURY:** And did you identify
7 that as an issue that reoccurred throughout the (audio skip) the
8 convoy?

9 **MS. JODY THOMAS:** Absolutely, it was an issue.
10 The online space is where planning now occurs, and so it's not
11 tapping phones any longer the way things were done in the Cold
12 War. Online space, non-warranted space, and how do you receive,
13 assess, and then use that information in a legal manner?

14 **MS. SHANTONA CHAUDHURY:** So with that having been
15 said, what was your expectation of what the convoy was going to
16 look like when it arrived in Ottawa?

17 **MS. JODY THOMAS:** My -- so Ottawa is the city of
18 protests. That's been said. It's known. The OPS is
19 experienced in collaborating with all the various other agencies
20 involved in terms of managing protests.

21 The early reporting was that this would be a
22 normal protest, arrive, disrupt, spend some time here in Ottawa,
23 and then leave.

24 We were seeing just on Twitter feeds, you know,
25 your own Twitter feed indications that perhaps this was going to
26 be something more, but the information we had at that point in
27 time from the accountable agencies was that they had it managed
28 and it was going to be big, it was going to be complex, but they

1 would be able to handle in the way they have handled so many
2 other protests.

3 **MS. SHANTONA CHAUDHURY:** So were any specific
4 steps taken by PCO or by you ahead of the convoy's arrival to
5 prepare for it?

6 **MS. JODY THOMAS:** Well, Op INTERSECT, which is
7 the grouping that you've heard about of all the police agencies
8 in Ottawa certainly stood up and was operating. Employees were
9 told to stay home over the weekend. Don't come to the office if
10 you can avoid coming downtown. We set up reporting mechanisms
11 and we arranged to brief ministers on what we knew and what was
12 going on over the course of the weekend.

13 **MS. SHANTONA CHAUDHURY:** And then as we know, the
14 convoy arrived and didn't leave when it was expected to do so.
15 What was the response from your perspective then?

16 **MS. JODY THOMAS:** So the original response, every
17 day the question was, when is this going to end? What are we
18 doing to end it? There is absolutely no doubt that having it
19 end was the priority.

20 In the immediate, there seemed to be quite a bit
21 of activity between OPS and RCMP to understand the magnitude of
22 this. At the same time, after the first weekend, we saw
23 behaviour on the streets that indicated they were settling in
24 for quite some time, you know, wheels were removed from rigs so
25 that they couldn't be towed, supply lines were being set up.
26 And so something quite different was happening and unfolding in
27 front of our eyes.

28 **MS. SHANTONA CHAUDHURY:** And within the federal

1 government, the response -- you mentioned earlier the ADM NS OPS
2 which is the Assistant Deputy Minister, National Security
3 Operations Committee -- and that's co-chaired by Mike MacDonald?

4 **MS. JODY THOMAS:** Mike MacDonald and Dom Rochon
5 at the time.

6 **MS. SHANTONA CHAUDHURY:** And so we've heard
7 already that that committee was meeting daily as an information
8 sharing mechanism?

9 **MS. JODY THOMAS:** That's right. And DMOC was
10 meeting. DMOC, you've heard a lot about it. It was meeting
11 informally. We made it a standing meeting every day at the same
12 time, but we were checking in to see what we knew and what could
13 be done to end this protest every day and we were briefing
14 ministers.

15 **MS. SHANTONA CHAUDHURY:** And DMOC was chaired by
16 you?

17 **MS. JODY THOMAS:** Yes.

18 **MS. SHANTONA CHAUDHURY:** Is DMOC always chaired
19 by you or is that -- was that specific to this circumstance, as
20 if it was a security thing?

21 **MS. JODY THOMAS:** As long as it has existed, it's
22 been chaired by the National Security Advisor.

23 **MS. SHANTONA CHAUDHURY:** What other kind of
24 meetings were you participating in?

25 **MS. JODY THOMAS:** That's the majority of it. So
26 with deputy ministers, hearing what the ADMs were doing, and
27 then the law enforcement meetings were going on in parallel, and
28 certainly Op INTERSECT was meeting in parallel.

1 **MS. SHANTONA CHAUDHURY:** And what about
2 externally to the federal government; were you participating in
3 meetings that involved other authorities, municipal, provincial?

4 **MS. JODY THOMAS:** Not in the first weekend, not
5 until the first meeting with the City.

6 **MS. SHANTONA CHAUDHURY:** And when was that, in
7 your recollection?

8 **MS. JODY THOMAS:** I don't have the date in front
9 of me but we don't have the information available. So it was
10 the first meeting that Rob Stewart called. I had asked -- I'm
11 new in the job. We're meeting every day to understand what we
12 can do, what action can be taken, who has what authority, and I
13 asked if I can call the City; what is my role vis-à-vis the City
14 being a federal authority? Discussed it with Deputy Minister
15 Stewart; because he has the federal policing responsibility and
16 that secretariat works for him, it was decided he would do the
17 reach out to the City, and that's how we had our first meeting
18 with the City Manager and Chief Sloly.

19 **MS. SHANTONA CHAUDHURY:** Okay. Mr. Clerk, can
20 you pull up ONT00000159? So this is a summary of a call that
21 was held with the City, the federal government, and the
22 provincial government of February 6th. This may be the first
23 meeting that you were talking about. It may be the second.

24 **MS. JODY THOMAS:** Second, I would say.

25 **MS. SHANTONA CHAUDHURY:** Pardon me?

26 **MS. JODY THOMAS:** Second.

27 **MS. SHANTONA CHAUDHURY:** It's the second, okay.
28 So I want to ask you about something specific in this meeting

1 which, if we scroll down to page 9 of the PDF, I believe -- so,
2 in evidence that we've heard before before the Commission, we've
3 been through most of this already. There's on specific point
4 have to do with you. It notes at the end here that you'd:

5 "Noted it was a positive meeting and
6 regrets to end on this following point.
7 Would the province be looking to the
8 federal government if this protest was
9 happening outside the City of Ottawa,
10 for example, happening in other places
11 like Kingston."

12 So Mr. Mario Di Tomasso, Deputy Solicitor
13 General, testified here a couple of days ago -- a couple of
14 weeks ago, sorry, and his impression of that comment was that
15 this was the federal government trying to wash its hands of this
16 entire thing. So now that we have you before us, I wanted to
17 ask you, is that what you intended by that comment?

18 **MS. JODY THOMAS:** Absolutely not. From where we
19 sat, all three levels of government needed to be involved. And
20 the federal government was very involved. The RCMP was meeting
21 constantly with the Ottawa Police Service. We were working to
22 understand and that elements of the people on the streets of
23 Ottawa were and what they intended to do. So that was the
24 intelligence side of things. We were looking at what federal
25 Acts and authorities could be used to have the rigs moved and
26 the truckers leave downtown Ottawa, and we want to know what
27 provincial laws could be used and would be enforced to ensure we
28 could clear the streets.

1 Mr. Di Tomasso, his answer was, "Well, it's a
2 federal jurisdiction." Ottawa is a city in Ontario and the
3 provincial accountability is the same for Ottawa except for a
4 very small precinct on Parliament Hill. But where the majority
5 of the protests were, is a municipality. And so I found that
6 Mr. Di Tomasso, while friendly and cooperative, was very hands
7 off, and I didn't understand why, and I wanted to make the point
8 that we're not Washington, DC. Ottawa is a municipality of
9 Ontario.

10 And so very simple things like the Ontario *Police*
11 *Services Act*, which requires Ottawa Police Service to go to the
12 OPP for additional resources is -- were additional resources
13 going to be provided to Ottawa to assist?

14 **MS. SHANTONA CHAUDHURY:** Thank you for that. So
15 now I'm going to skip ahead a little bit and talk about your
16 role in briefing Cabinet committees and Cabinet itself in all of
17 this. So the first thing is -- and this is in reference to
18 something that you said in your interview, and it's something
19 that's also said in the Institutional Report, and I want to
20 clarify what it means for the Commission.

21 In the interview, you'd explained that your role
22 at the IRG meetings, and any time you were briefing Cabinet, was
23 to provide a full and frank factual threat picture to Cabinet or
24 to the IRG. And again, then, in the Institutional Report, it
25 said -- I don't think we need to turn it up but the briefings
26 that you gave did not include advice or recommendations. So can
27 you flesh that out a little bit and explain what you were and
28 what you weren't doing, and maybe why?

1 **MS. JODY THOMAS:** So without betraying what was
2 said at the meetings, my role was to give an overview of the
3 situation nation-to-nation, like coast-to-coast, the entire
4 nation. As we were moving into having blockades at border
5 crossings, pop-up convoys across the country, as well as the
6 situation in Ottawa, I gave a consolidated view of what was
7 happening across the country, what we were seeing in terms of
8 manifestation; intelligence that said there were going to be new
9 convoys or maybe there weren't; what we saw from CSIS on the
10 IME, the ideologically-motivated-extremist front; any arrests,
11 those kinds of high-level details that gave a -- framed the
12 discussion that the prime minister was going to have with other
13 officials in his cabinet, ministers.

14 And so, did I give advice? No, I gave overview
15 in the discussion. If required, I would make suggestions, as
16 all officials do at those meetings, at IRGs. But my overview in
17 my opening remarks were not advice.

18 **MS. SHANTONA CHAUDHURY:** Okay. And at some
19 point, it says that you would sometimes be asked to give -- or
20 provide your assessment of a situation. So can you explain the
21 distinction, then, between, an assessment of a situation and
22 advice?

23 **MS. JODY THOMAS:** Advice is -- so assessment is,
24 "Prime Minister, we think that they are going to stay in Ottawa
25 for another weekend. Looking at all the indicators, the
26 assessment is..." Now, that's a very simplistic example, but --
27 advice is, "The RCMP should move in right now and take it over
28 and clean up the streets of Ottawa." That would be advice.

1 Again, I'm giving you a very extreme example of something that
2 was not said.

3 **MS. SHANTONA CHAUDHURY:** That's helpful. Simple
4 is good. Simple is always good. Okay, so I'd like to turn now
5 to the -- some examples of the actual briefings that you were
6 giving at these various meetings. So, Mr. Clerk, if you could
7 pull up SSM.NSC.CAN00000292. Well, you're pulling that up, I'll
8 just explain. This is the SSE Meeting of February 3rd. And can
9 you just give the Commission a brief reminder of what SSE is?

10 **MS. JODY THOMAS:** So SSE is the Standing
11 Committee of Cabinet chaired by Minister Blair, and it's the
12 Safety, Security, and Emergency Management Committee.

13 **MS. SHANTONA CHAUDHURY:** Okay. If we can just go
14 to paragraph 4, please, Mr. Clerk. Hm, there doesn't seem to be
15 a paragraph 4 -- page -- oh, there we go, yeah, thank you.
16 Paragraph 4 of a different thing, sorry about that.

17 "The National Security and Intelligence
18 Advisor, NSIA, indicated that protest
19 organizers have indicated an interest
20 in negotiation. However, the
21 protesters confirmed that
22 representatives from the city,
23 province, or federal government have
24 not reached out."

25 So this is February 3rd at this point and you're
26 indicating that the protest organizers have indicated an
27 interest in negotiation. Where did that information come from?
28 What were you talking about there?

1 **MS. JODY THOMAS:** Open source. They were saying
2 it themselves. They had news conferences and they were putting
3 out their own media indicating that they would sit with
4 representatives.

5 **MS. SHANTONA CHAUDHURY:** Okay. And then you said
6 various --

7 "The protesters confirmed that
8 representatives from the city,
9 province, or federal government have
10 not reached out."

11 Was this also just from open-source media?

12 **MS. JODY THOMAS:** Yes.

13 **MS. SHANTONA CHAUDHURY:** So this wasn't from any
14 particular information you had ---

15 **MS. JODY THOMAS:** No.

16 **MS. SHANTONA CHAUDHURY:** --- just collating open-
17 source information. Okay. Mr. Clerk, the next one is
18 SSM.NSC.CAN00000246. Okay, these aren't minutes of a meeting,
19 they're talking points. So do I understand that these would be
20 the materials prepared for you by your staff in preparation for
21 one these meetings?

22 **MS. JODY THOMAS:** That's correct.

23 **MS. SHANTONA CHAUDHURY:** Okay.

24 If we go to page 3, please? Senior, there; there
25 we go. The bullet that says, "Senior Officials," so:

26 "Senior official ([Deputy Ministers]
27 Stewart, Keenan and myself) continue to
28 engage [the] City of Ottawa to

1 encourage dialogue with demonstrators,
2 consultations with provincial
3 regulatory authorities, sharing of
4 operational plans and a coherent
5 communications approach."

6 And I see "Encourage dialogue" is bolded and
7 underlined there. So what was that about; what were you talking
8 about there, dialoguing with the protesters?

9 **MS. JODY THOMAS:** Some of it was the work that
10 was already being done by the PLTs, and so it was to introduce
11 that discussion and that line of work that was being done by OPS
12 with the demonstrators, and we were hearing that engagement
13 would be welcomed. It wasn't yet defined, we didn't have a plan
14 for it; we didn't even know what it would look like, but we're
15 just reporting what we're being told. And we're hearing that
16 from the City of Ottawa, primarily.

17 **MS. SHANTONA CHAUDHURY:** Okay. But what it says
18 there is that Deputy Minister Stewart, Deputy Minister Keenan
19 and you are engaging the City of Ottawa to encourage dialogue.
20 So at that point were you actively encouraging ---

21 **MS. JODY THOMAS:** For the City to talk to them,
22 yes, because this was happening in the City of Ottawa.

23 **MS. SHANTONA CHAUDHURY:** Okay. In the hope,
24 then, that dialoguing with the demonstrators would produce a
25 positive outcome?

26 **MS. JODY THOMAS:** Exactly. Reduce the noise, the
27 number of rigs, hopefully break up the protest.

28 **MS. SHANTONA CHAUDHURY:** The next document,

1 please, SSM.NSC.CAN00000209.

2 (SHORT PAUSE)

3 **MS. SHANTONA CHAUDHURY:** So this is the February
4 10th IRG, and we're going to get into this in more depth with
5 your PCO colleagues tomorrow, but again, just a brief
6 description of what the Incident Response Group is, please.

7 **MS. JODY THOMAS:** The Incident Response Group is
8 a Cabinet Committee chaired by the Prime Minister that is used
9 to make quick, rapid decisions about incidents of national
10 importance for a crisis, including national security incidents.
11 It's been used multiple times: It was used over COVID; it was
12 used for the Hurricane Fiona; it was used for the downing of
13 Ukraine Flight 752. So it's an effective tool that the Prime
14 Minister invokes in order to have discussions with both
15 Ministers and officials at the table so that he hears from
16 subject matter experts, the Chief of the Defence staff as an
17 example, Deputy Ministers with particular expertise, as well as
18 Ministers.

19 **MS. SHANTONA CHAUDHURY:** Okay, thank you.

20 If we can just scroll down, then, to page 5,
21 please.

22 So February 10th, I believe, was the first IRG
23 meeting?

24 **MS. JODY THOMAS:** Yes, it was.

25 **MS. SHANTONA CHAUDHURY:** Just going to find the
26 actual page. Okay, here we go.

27 So, the National Security advisor, you're giving
28 a rather lengthy report here, Ottawa situation remains largely

1 unchanged.

2 "Threats on social media persist...it
3 continues to be used as a planning
4 tool,...possibility of driving by
5 ...and...local schools..."

6 And that you say:

7 "[There's] indications that some
8 protesters would like to leave but are
9 unable to do so given physical
10 barriers. An integrating planning
11 cells is developing a plan of
12 action...the preference remains to
13 continue moving forward with
14 [negotiation], with enforcement actions
15 to start early next week if
16 negotiations remain unsuccessful."

17 And then:

18 "A surge and contain strategy will be
19 employed for the upcoming weekend."

20 So is it fair to say at that point that the
21 notion of negotiating with the protesters is still very much on
22 the table?

23 **MS. JODY THOMAS:** It was still being explored,
24 absolutely.

25 **MS. SHANTONA CHAUDHURY:** Okay. And you go on to
26 talk about Coutts, and there's a line here:

27 "The number of protesters had dropped
28 from [200] to 40; however, those

1 remaining are firmly entrenched in
2 their views, and there are weapons on
3 site."

4 So that's information that had been provided to
5 you by the RCMP?

6 **MS. JODY THOMAS:** Yes.

7 **MS. SHANTONA CHAUDHURY:** Okay, that weapons were
8 on site at Coutts.

9 **MS. JODY THOMAS:** Right. At that point, only the
10 RCMP knew the extent of the weapons.

11 **MS. SHANTONA CHAUDHURY:** And sorry; the -- only
12 the RCMP knew the extent?

13 **MS. JODY THOMAS:** Yes, yeah.

14 **MS. SHANTONA CHAUDHURY:** So you knew that they
15 were present, but you had no idea about the extent.

16 **MS. JODY THOMAS:** That's correct.

17 **MS. SHANTONA CHAUDHURY:** If we can just keep
18 scrolling down a bit, please, Mr. Clerk?

19 CSIS reports tracking several individuals, and
20 then there's some threat assessment by CESC and CSIS.

21 Scroll down a little bit more please, Mr. Clerk.
22 Okay, I think that's probably it.

23 So on that topic of negotiation, or engagement, I
24 just want to take you sort of a bit of an aside for a moment but
25 related. SSMCAN00006131.

26 While that's being pulled up, I'll situate this.
27 So this is the engagement proposal about which the Commission
28 has heard quite a bit.

1 **MS. JODY THOMAS:** M'hm.

2 **MS. SHANTONA CHAUDHURY:** Oh, I think just scroll
3 down a little bit more. There we go, from Ms. Thomas.

4 So this is a February 11th email at 2:30 p.m.,
5 that you sent to the -- Jan Charette, who's the Clerk, Nathalie
6 Drouin, who's the Deputy Clerk, and what you say is, you're
7 forwarding the engagement proposal and you say:

8 "Rob has continued his engagement. I
9 suggest that we need to decide if this
10 has a green light. I expect he will
11 get more specifics...."

12 And then it just says, "we indicate a positive
13 response." I think there's probably an "if" missing there; "if
14 we indicate a positive response."

15 So can you situate what this email was about,
16 what you were saying to the Clerk and the Deputy Clerk when you
17 sent it?

18 **MS. JODY THOMAS:** So an engagement proposal
19 needed to be discussed by Ministers, and certainly no Deputy
20 Minister, or I, had the authority to move forward with
21 engagement without it being discussed at a Cabinet level. And
22 the green light was to get it on the agenda to be discussed
23 formally.

24 **MS. SHANTONA CHAUDHURY:** Okay. And did you have
25 a view at that point on the engagement proposal; whether it was
26 a good idea, a bad idea, a likelihood of success?

27 **MS. JODY THOMAS:** I -- my view at that time was
28 that we should take nothing off the table, we had to continue to

1 explore all options. We were going into the third weekend on
2 February 11th. I didn't understand yet what the negotiating
3 mandate would be. So you go with something, and you expect to
4 get something back, and we had no clarity on that. Further, we
5 had no clarity because of the disparate group of people who were
6 blockading Ottawa, and this was about Ottawa, specifically.
7 Who would be the leader who would be able to coalesce the -- you
8 know, the mass of humanity who were on the streets of Ottawa to
9 then adhere to whatever was negotiated.

10 **MS. SHANTONA CHAUDHURY:** So beyond having a view
11 that it shouldn't be taken on [sic] the table, did you ever
12 form, or were you ever asked for your view on whether it should
13 or should not go ahead?

14 **MS. JODY THOMAS:** Not at this point. During the
15 discussion -- during the discussion at Cabinet, views were
16 sought.

17 **MS. SHANTONA CHAUDHURY:** Okay. So this is
18 February 11th, and I believe it was brought to the IRG on
19 February 12th.

20 **MS. JODY THOMAS:** Correct.

21 **MS. SHANTONA CHAUDHURY:** Okay. And at that point
22 views were sought.

23 **MS. JODY THOMAS:** Correct.

24 **MS. SHANTONA CHAUDHURY:** And you provided a view?

25 **MS. JODY THOMAS:** I did.

26 **MS. SHANTONA CHAUDHURY:** And your view was?

27 **MS. SHANTONA CHAUDHURY:** It's protected.

28 **MS. SHANTONA CHAUDHURY:** Okay.

1 Can we then go to the February 12th IRG,
2 SSM.NSC.CAN00000214? We can scroll down, then, to page 5. "In
3 terms of specifics..." -- just scroll down a little bit more:

4 "...the [NSIA] reported that the
5 situation in Windsor remains very fluid
6 with Law enforcement having begun to
7 take action. In Ottawa [we're] seeing
8 a significant escalation in the
9 boldness of protesters."

10 So just stopping there, what does that mean; what
11 was that observation?

12 **MS. JODY THOMAS:** Yeah, we were hearing this from
13 the OPS and INTERSECT, and certainly, again, social media, and
14 media, they were with -- bouncy castles had happened. The view
15 that we were -- they were here to stay; that they had zero
16 regard for the citizens of Ottawa, that social media was talking
17 more and more about aggressive action to stay, holding the line,
18 dig in. It was just a change in tone that was noted. And
19 sometimes changes are subtle, but you have to pay attention to
20 them.

21 We saw more people on the street that weekend
22 than we had anticipated, and fewer people were leaving at the
23 end of the day, and the, well, raucous atmosphere was extending
24 later into the evening. We saw things like the wrecking ball on
25 Wellington Street by then. And so there was just a change in
26 the forcefulness of the tone.

27 **MS. SHANTONA CHAUDHURY:** And did that have an
28 effect on your assessment of the situation?

1 **MS. JODY THOMAS:** We were also hearing the
2 increased low level of violence, the fears of the citizens of
3 Ottawa, the honking continued despite the injunction. What
4 became apparent to us as we were assessing the situation is that
5 this wasn't breaking up.

6 **MS. SHANTONA CHAUDHURY:** Okay.

7 And then if we can just scroll down again,
8 Mr. Clerk, to page 15.

9 So this is part of what became known as the IRG
10 tracker. Can you just explain, Ms. Thomas, what the IRG tracker
11 was very briefly?

12 **MS. JODY THOMAS:** So the issues that were
13 discussed at IRG and the action plan out of it was this tracker.
14 I think the Prime Minister was, I'm paraphrasing here, and I
15 don't want to put words in his mouth, of course, the Prime
16 Minister and the Clerk were concerned that the people would
17 discuss, leave the table, and then what would be the outcomes of
18 the direction that was given. And so this was to track all the
19 activity to understand what could be done and the progress, the
20 status on achieving certain goals. So the action plan for tow
21 trucks ---

22 **MS. SHANTONA CHAUDHURY:** For instance.

23 **MS. JODY THOMAS:** --- as in for instance. So
24 what was done, where did it stand, and we would update it every
25 single day.

26 **MS. SHANTONA CHAUDHURY:** Okay. And the one that
27 pertains specifically to your area is Item Number 4 here, which
28 is:

1 Identify immediate measures to close
2 the intelligence gap (i.e., open
3 source, non-criminal, non-terrorist)."

4 Okay. Can you elaborate on that? Is that the
5 intelligence gap you've referred to earlier, the social media?

6 **MS. JODY THOMAS:** It is. So the RCMP, OPP, OPS
7 all collect open source information for law enforcement
8 purposes, we saw that in Op Hendon. CSIS collects some open
9 source information in very specific circumstances for subjects
10 or investigations of their own. We knew that social media was
11 being used to mobilise, to plan actions, to talk about what was
12 going to happen next, to talk to other protests across the
13 country.

14 You can't do that as an -- so you can't track
15 individuals. PCO cannot track individual social media. We
16 didn't have the tools in place to do scraping of social media
17 and understand the trends. As an example, one morning they
18 talked about slow rolling convoys through school zones. It was
19 being reported on the radio that this is all over Twitter, why
20 aren't the police doing anything about it?

21 Not that the police can respond to everything
22 they see on Twitter, and that's not what I'm implying at all,
23 but if we had the correct tools and the legal mandate to collect
24 this kind of information we would have some understanding of the
25 trends and where this was potentially going. We didn't have the
26 tools or the mandate.

27 **MS. SHANTONA CHAUDHURY:** Okay. On that point,
28 Mr. Clerk, I'll just ask you to turn up the witness summary,

1 please, so that's WTS0000071, at page 6. It's under the Social
2 Media Intelligence Gap.

3 So Ms. Thomas, I'll just ask you to elaborate
4 with reference to this little bit on some of the points you were
5 making. For instance, the tools. What tools -- when you say
6 "we didn't have the tools", what tools are needed to do that?

7 **MS. JODY THOMAS:** Well, there are social -- there
8 are IA based tools that can be purchased to look for keywords,
9 to look for algorithms, and we don't have those. You can't put
10 a person in front of the screen and just have them Google
11 "convoy" and get enough information quickly enough to do
12 anything with it. So you actually need computer based tools to
13 do computer based analysis.

14 **MS. SHANTONA CHAUDHURY:** Okay.

15 And then just scrolling down the page again of
16 it, please until -- thank you. So just the point where it says
17 "NSIA Thomas" there.

18 One of the issues that was identified there was
19 distinguishing between credible threats and non-credible threats
20 on social media. Can you tell us a little bit about that and
21 the difficulties, if any, you faced with that?

22 **MS. JODY THOMAS:** That is one of the primary
23 problems that we're facing right now. The level of violent
24 threats against the Prime Minister and other elected officials,
25 and some public figures. Dr. Tam, as an example, received
26 enormous hate online and some of it was threatening and
27 indicated a threat against her. Distinguishing a credible
28 threat, an identifiable person with an identifiable threat that

1 looks like they have the capability to execute that threat, so
2 not only intent but capability, is sort of the formula used to
3 understand if a threat is credible or not.

4 The problem is online people are difficult, in
5 some cases, close to impossible to identify. Throw burner
6 accounts, et cetera, it is easy to hide an identity online. And
7 the RCMP do a very -- and other police services do a very good
8 job of those kinds of investigations, but in the moment, in the
9 middle of this crises, with the number of threats going up
10 against elected officials, it was an enormous problem and an
11 enormous concern.

12 **MS. SHANTONA CHAUDHURY:** Okay. Now, we'll move
13 on to the February 13th, please.

14 So Mr. Clerk, that's SSM.NSC.CAN00000216. Scroll
15 down to page 8, please.

16 So this is the Cabinet meeting on February 13th,
17 and this is the report that you're giving at this -- it was
18 definitely a key moment in the events, and in the eventual
19 decision to invoke. And you're reporting on what you've heard
20 from various agencies, including CSIS and including the RCMP.

21 I don't know if you had a chance to see the
22 RCMP's testimony the other day, but Commissioner Lucki testified
23 that she was never asked to speak, either at the IRG meeting on
24 February 13th or at the Cabinet meeting on February 13th. And
25 there's a key bit of, well I call it evidence, but it's
26 information at the time, where Commissioner Lucki had expressed
27 the view to Mike Jones, who was the Minister of Public Safety's
28 Chief of Staff, that law enforcement had not yet exhausted all

1 available tools to it.

2 Is that a message that you, who were asked to
3 speak at these meetings, conveyed to the IRG or to Cabinet in
4 either of those meetings?

5 **MS. JODY THOMAS:** No, I was not. And we build my
6 speaking points from the information from the agencies and
7 departments.

8 I will say that an IRG, Deputy Ministers and
9 Deputy Heads, individuals who are at that meeting, are expected
10 to provide information that is of use to decision-makers, being
11 the Prime Minister and his Cabinet. And so if there is useful
12 information or critical information it needs to be provided,
13 whether you're on the speaking list or not.

14 **MS. SHANTONA CHAUDHURY:** Was that information
15 provided by Commissioner Lucki to you?

16 **MS. JODY THOMAS:** In the DMOC meeting that
17 morning, she said that there was possibly a plan with the OPS
18 and OPP. She had said that several times previously.

19 **MS. SHANTONA CHAUDHURY:** Okay. So that's about
20 whether or not there was a plan in Ottawa.

21 **MS. JODY THOMAS:** Yes.

22 **MS. SHANTONA CHAUDHURY:** Was -- did she say
23 anything specific, or did you know that her view was law
24 enforcement had not yet exhausted all its tools?

25 **MS. JODY THOMAS:** No.

26 **MS. SHANTONA CHAUDHURY:** Okay.

27 The next document is SSM.NSC.CAN.00000298.

28 So these are your talking points for this

1 meeting. Chronologically a little out of order, but that's
2 okay.

3 Okay. So here again we see:

4 "The mood of the organizers in Ottawa
5 appears emboldened."

6 So that's essentially a repeat of a point that's
7 been made on a previous day. No change there.

8 And then there's talk of:

9 "City of Ottawa announced agreement with
10 protest leader (Tamara Lich) that could
11 lead to approx. 70 percent of trucks and
12 cars [leaving] the residential areas in
13 the downtown core over the next 24 hours..."

14 And then they explain in a little bit more detail
15 about that.

16 "Given the anti-government sentiment of
17 Ottawa group, along with the decentralized
18 nature of its leadership, it is unclear at
19 this time the concurrence of other leaders
20 in the group to the Agreement."

21 So is that your assessment of the situation
22 there?

23 **MS. JODY THOMAS:** It was our collective
24 assessment, yes. We were already seeing signs that the
25 agreement was falling apart, that other leaders, other parts of
26 the blockade were saying, "No, we're not leaving."

27 **MS. SHANTONA CHAUDHURY:** Okay.

28 **MS. JODY THOMAS:** That, "There is no deal."

1 **MS. SHANTONA CHAUDHURY:** Would it be fair to say
2 that at this point, your confidence in negotiation with
3 dialoguing with protestors was no longer what it had previously
4 been?

5 **MS. JODY THOMAS:** At this point it was very clear
6 that there was no one person or group to dialogue with, where
7 you could get achievable outcomes, which meant the group
8 breaking up in downtown Ottawa.

9 **MS. SHANTONA CHAUDHURY:** We're going to move now
10 to the February 14th DMOCC. So that's SSM.NSC.CAN00000217.
11 Bottom of page 1. Keep scrolling a bit.

12 "OPS has approved a joint operational plan
13 for Ottawa developed with support from
14 RCMP and OPP [...] will be put into action
15 in coming days."

16 So this is -- now we're on February 14th. In your
17 recollection, when was Cabinet made aware that a plan was
18 coalescing to carry out an operation in downtown Ottawa?

19 **MS. JODY THOMAS:** I don't recall Cabinet being
20 informed of that. But on February -- I will go back to on
21 February 13th, this had also been said, and there was an IRG, and
22 at this point, -- so it wasn't said at the IRG. At this point,
23 we had no evidence of that. And so while it was said, and these
24 are the minutes, there is no evidence that there was a plan.
25 And as I'd noted, we had been told there was a plan multiple
26 times.

27 **MS. SHANTONA CHAUDHURY:** When you say no
28 evidence, what kind of evidence would you have expected to see?

1 **MS. JODY THOMAS:** We would expect some level of
2 assurance from the RCMP that the people were in place, it was
3 executable. We don't expect to see details. That's policing.
4 But we needed a level of assurance that yes, finally, the
5 officers needed, the equipment needed, the executable,
6 strategic, and tactical plan was there. The same thing that had
7 been asked for several days.

8 We didn't have any evidence or assurance that
9 that was in fact the -- where we were.

10 **MS. SHANTONA CHAUDHURY:** Do you think that that
11 falls into the law enforcement reporting gap that you discussed
12 earlier? The sort of information between law enforcement and
13 your level?

14 **MS. JODY THOMAS:** I think that's part of it, yes.
15 I also think that the plans were just not quite as firm as we
16 would have hoped.

17 **MS. SHANTONA CHAUDHURY:** Okay. Also on February
18 14th then, PB.NSC.CAN00008485, please. Scroll down, please.
19 Scroll down again. I think it will probably be the bottom of
20 the second page we want to start with. There we go.

21 So this is a series of emails that you sent the
22 morning of February 14th around 11:45/noon.

23 The first one is:

24 "I need an assessment for Janice about the
25 threat of these blockades. The characters
26 involved. The weapons. The motivation.
27 Clearly this isn't just COVID and is a
28 threat to democracy and rule of law

1 Could I get an assessment please. David
2 [-- I assume that's David Vigneault, CSIS
3 Director --] is this you? It's a very
4 short fuse

5 Please call if you have questions"

6 Can you explain what that email was about? Who
7 is it to? What was it about? What were you looking for? And
8 why?

9 **MS. JODY THOMAS:** So I don't remember all the
10 people in the to, but probably Mike MacDonald, David Vigneault,
11 RCMP. It was part of a complete package of information that was
12 being put together. There had been multiple threat assessments,
13 but this was to be a formal document and we had just discussed
14 it in a conversation. And so we had talked about the need for a
15 last formal document, should Cabinet decide to proceed with the
16 *Emergencies Act*, as opposed to the daily updates we were giving.
17 So laying out the entire spectrum of threat. And so I needed it
18 very quickly. We were going to collate it. We just needed the
19 information from the agencies.

20 **MS. SHANTONA CHAUDHURY:** Okay. So the intention
21 was to get that assessment for Ms. Charette, the Clerk, and she
22 would then provide it to?

23 **MS. JODY THOMAS:** The Prime Minister.

24 **MS. SHANTONA CHAUDHURY:** The Prime Minister.

25 Okay.

26 And if we just scroll up a bit?

27 So the next email, so this one is to Mike
28 MacDonald, Rob Stewart, something blacked out, Inez Neville, and

1 Martin Green.

2 Inez Neville. Who is that?

3 **MS. JODY THOMAS:** She's my Chief of Staff.

4 **MS. SHANTONA CHAUDHURY:** Okay. Perfect.

5 "This is about a national threat to
6 national interest and institutions. By
7 people who do not care about or understand
8 democracy

9 Who are preparing to be violent.

10 Who are motivated by anti government
11 sentiment"

12 What are you saying there? Are you setting out
13 what the assessment should say or ---

14 **MS. JODY THOMAS:** I was being asked questions
15 about how specific it should be. And so that was my response.

16 **MS. SHANTONA CHAUDHURY:** how specific it should
17 be in terms of?

18 **MS. JODY THOMAS:** Of what the threat was and sort
19 of the range of issues that were of concern. So national
20 interest and institutions, lack of confidence in police as
21 police were being stretched across the country, the desire to
22 have government policy changed by force, mandates. There were
23 people preparing to be violent. We saw it on social media. We
24 certainly knew that both CSIS and RCMP had concern about some
25 people and the potential for violence. And there was certainly
26 an anti-government sentiment throughout.

27 **MS. SHANTONA CHAUDHURY:** So does what is
28 reflected in this email reflect your assessment of the situation

1 at the time?

2 **MS. JODY THOMAS:** Not everybody on the ground.
3 Absolutely. This wasn't a monolithic group of people. But yes,
4 those elements were there.

5 **MS. SHANTONA CHAUDHURY:** Was that assessment ever
6 produced to you?

7 **MS. JODY THOMAS:** I don't think it was.

8 **MS. SHANTONA CHAUDHURY:** And would that be -- why
9 would that not happen?

10 **MS. JODY THOMAS:** I think it fell through the
11 cracks and we were overtaken by events.

12 **MS. SHANTONA CHAUDHURY:** Okay. The next topic I
13 want to address, or the next document, let's start with the
14 document, SSM.CAN.00000297.

15 Before I go there, actually, if that document had
16 been produced, that threat assessment, it would have been CSIS
17 who did it? It would have been the RCMP who would have ---

18 **MS. JODY THOMAS:** PCO probably would have written
19 it, based on information received from all the agencies.

20 **MS. SHANTONA CHAUDHURY:** Okay. So it was a call
21 for input so that PCO itself could produce the ---

22 **MS. JODY THOMAS:** Correct.

23 **MS. SHANTONA CHAUDHURY:** So the topic I want to
24 address with you now is something that has come up, will come
25 up, and will forever be part of the Commission's Inquiry, which
26 is this idea of what is a threat to national security.

27 This email, scroll down a bit, is -- sorry, just
28 want to see.

1 So this is an email from you to Jacqueline
2 Bogden, Phillipe Lafortune.

3 Can you tell us who that is?

4 **MS. JODY THOMAS:** Phillipe Lafortune worked for
5 Mike MacDonald, I believe it was Mike, in the Security and
6 Intelligence Group.

7 **MS. SHANTONA CHAUDHURY:** Okay.

8 "So Philippe did some research which is
9 handy to keep in our 'back pocket'.

10 FYI, at this stage, Mike."

11 And the date of this is February 9, so before the
12 IRG started, this research was done.

13 "Mike, as requested, we did some
14 digging on the Canadian definition of
15 national security. As you know, one of
16 the challenges on this issue is that
17 the GOC, Government of Canada, never
18 ended up formally defining it.

19 However, we looked at transition
20 material, various Acts to provide you
21 with the best answer, and its potential
22 applicability to the current situation.

23 Below, you will find a policy
24 definition of national security but
25 also NSICO's --- "

26 Please explain what NSICO is. If not, it'll make
27 me feel better about my lack of acronym knowledge.

28 **MS. JODY THOMAS:** I do not offhand.

1 **MS. SHANTONA CHAUDHURY:**

2 " --- take on it, and what the CSIS
3 Act, SCIDA -- S-C-I-D-A."

4 **MS. JODY THOMAS:** That's the information sharing.

5 **MS. SHANTONA CHAUDHURY:** Information sharing,
6 okay.

7 "And the *Emergency Act* stipulate on the
8 issue. Here are the various pieces."

9 We'll just, I think, probably read through most
10 of this email because it's quite relevant. But first of all,
11 before we get into the specifics of it, can you explain the
12 context of why that information would be sought?

13 **MS. JODY THOMAS:** No. I don't think I asked for
14 it. I don't recall, unless there's an email that says I did ask
15 for it. But it is an ongoing question. Who defines national
16 security? What is the definition? And even in the National
17 Security Policy in 2003, I think it was written, it wasn't
18 really defined.

19 **MS. SHANTONA CHAUDHURY:** Okay. So that's what
20 Mr. Lafortune is talking about when he says "the problem is,
21 it's never been formally defined"?

22 **MS. JODY THOMAS:** Correct.

23 **MS. SHANTONA CHAUDHURY:** And how would that be
24 formally defined if it were to be?

25 **MS. JODY THOMAS:** In a public policy.

26 **MS. SHANTONA CHAUDHURY:** In a policy? So not in
27 legislation, but in a policy?

28 **MS. JODY THOMAS:** Yes, correct.

1 **MS. SHANTONA CHAUDHURY:** A Government of Canada
2 policy of some sort?

3 **MS. JODY THOMAS:** Right. National Security
4 Policy, as an example.

5 **MS. SHANTONA CHAUDHURY:** And that would be
6 something prepared by -- if it were to exist -- PCO?

7 **MS. JODY THOMAS:** No, probably Public Safety ---

8 **MS. SHANTONA CHAUDHURY:** Public Safety?

9 **MS. JODY THOMAS:** --- has the policy lead on
10 national security issues.

11 **MS. SHANTONA CHAUDHURY:** Okay. So here we have
12 the first:

13 "National security pertains to the
14 safety and security of Canada's
15 territory, government, economy, and
16 people, as well as the promotion and
17 protection of Canadian national
18 interests. National interests refers
19 to Canada's sovereignty, democratic
20 processes and institutions, security,
21 territorial integrity, economic
22 prosperity, social cohesion,
23 environmental protection, and healthy
24 and resilient communities."

25 That's the NSICOP -- so NSICOP, I believe, is the
26 National Security and Intelligence Committee of Parliamentarians
27 ---

28 **MS. JODY THOMAS:** Correct.

1 **MS. SHANTONA CHAUDHURY:** --- annual report.

2 So that's about as broad a definition of national
3 security as one could possibly imagine.

4 **MS. JODY THOMAS:** That's correct.

5 **MS. SHANTONA CHAUDHURY:** Then there's the
6 legislative perspective reported by Mr. Lafortune. What he says
7 is:

8 "There is no true legislative
9 definition of 'national security'. The
10 *CSIS Act* and *SCIDA* provide examples of
11 threats to security and activities that
12 undermine security; however, do not
13 exclusively define what is included in
14 the term 'security' as their lists are
15 not exhaustive and do not specifically
16 reference 'national security'."

17 And then there's the definition of the *CSIS Act*
18 which we're all familiar with now.

19 **MS. JODY THOMAS:** M'hm.

20 **MS. SHANTONA CHAUDHURY:** Scroll down a little
21 bit, Mr. Clerk. *SCIDA* has its own definition here.

22 Scroll down a little bit more.

23 Then there's a quote from a Supreme Court ruling.
24 I think the case is actually called *Suresh*, not *Sunresh*, but --
25 and so what the Supreme Court says in *Suresh* is they talk about
26 danger:

27 "A fair, large, and liberal
28 interpretation in accordance with

1 international norms must be accorded to
2 danger to the security of Canada."

3 They're talking about deportation here.

4 Then they say the danger to the security of
5 Canada is difficult to define, and then they go on and talk
6 about a broad and flexible approach, et. cetera, et. cetera.

7 They then -- I think this is now Mr. Lafortune,
8 not part of *Suresh* -- the *Emergency Act*, and he talks about how
9 the *Emergency Act* does define national emergencies of the
10 following, and then he gives a definition which again is similar
11 to us here on the Commission.

12 So you received this email, this sort of memo, if
13 I can call it, on national security. Did that have anything
14 impact on your thinking, your assessment of the situation about
15 what's happening at the time?

16 **MS. JODY THOMAS:** No. Laid out the complexity of
17 understanding how to define the problem set, absolutely, but not
18 particularly. We received a lot of information in those days.

19 **MS. SHANTONA CHAUDHURY:** And would this memo be
20 something that was kept internally to PCO or would it have been
21 disseminated, shared, would it have been briefed up to Cabinet?

22 **MS. JODY THOMAS:** It wouldn't have -- I don't
23 believe it was ever discussed at Cabinet, but certainly it was
24 shared with other deputy ministers.

25 **MS. SHANTONA CHAUDHURY:** And you're aware, of
26 course, that CSIS assessed the protest as not constituting a
27 threat to the security of Canada as defined in section 2 of the
28 *CSIS Act*?

1 **MS. JODY THOMAS:** They said it did not meet the
2 threshold as defined in their very narrow interpretation of what
3 they can do under their Act.

4 **MS. SHANTONA CHAUDHURY:** And obviously, we'll
5 hear directly from them on that on Monday, I believe.

6 **MS. JODY THOMAS:** Yes.

7 **MS. SHANTONA CHAUDHURY:** But were you personally
8 ever asked to advise on whether that definition had been met?

9 **MS. JODY THOMAS:** No.

10 **MS. SHANTONA CHAUDHURY:** Were you ever asked
11 whether you thought that the invocation of the *Emergencies Act*
12 was necessary?

13 **MS. JODY THOMAS:** Yes.

14 **MS. SHANTONA CHAUDHURY:** And when was that?

15 **MS. JODY THOMAS:** February 13th.

16 **MS. SHANTONA CHAUDHURY:** And what was your
17 answer?

18 **MS. JODY THOMAS:** It was discussed in a Cabinet
19 meeting.

20 **MS. SHANTONA CHAUDHURY:** See how we're doing for
21 time here. Oh, we have time.

22 Okay. The next thing -- oh, yes?

23 **COMMISSIONER ROULEAU:** For the afternoon break
24 time.

25 **MS. SHANTONA CHAUDHURY:** Morning, afternoon,
26 evening, whatever it is, yes please.

27 **COMMISSIONER ROULEAU:** We can take a break now,
28 take 15 minutes, and we'll come back and continue. Thank you.

1 **THE REGISTRAR:** The Commission is in recess for
2 15 minutes. La Commission est levée pour 15 minutes.

3 --- Upon recessing at 4:34 p.m.

4 --- Upon resuming at 4:50 p.m.

5 **THE REGISTRAR:** Order. A l'ordre. The
6 Commission has reconvened. La Commission reprend.

7 **COMMISSIONER ROULEAU:** It's okay. I'll just step
8 out for a few minutes. You can go ahead.

9 --- MS. JODY THOMAS, Resumed:

10 --- EXAMINATION IN-CHIEF BY MS. SHANTONA CHAUDHURY (cont'd):

11 **MS. SHANTONA CHAUDHURY:** Ms. Thomas, I understand
12 that you had some discussions at break with your counsel, which
13 actually obviated the need for me to have a discussion with your
14 counsel about whether or not you could answer some questions
15 about the inputs that you -- and views you expressed to cabinet
16 on a couple of issues, so I'm just going to ask you those
17 questions again. The first is with respect the
18 engagement proposal; what view did you express to cabinet on the
19 engagement proposal?

20 **MS. JODY THOMAS:** After the discussion was
21 concluded, my view was that it was not a workable plan.

22 **MS. SHANTONA CHAUDHURY:** And this would be on
23 February 12th?

24 **MS. JODY THOMAS:** Yes.

25 **MS. SHANTONA CHAUDHURY:** And why did you form
26 that view?

27 **MS. JODY THOMAS:** That I did not see who we would
28 negotiate and engage with, what the outcomes could possible be,

1 that there was not one group who had enough influence over the
2 entire group to affect an outcome that would be positive, and I
3 did not know who we would put in front of them. Esteemed an
4 capable as my colleague Deputy Minister Stewart was, that wasn't
5 going to be a name that was going to mean anything to the
6 protesters. And so who it would be, what they would do, and who
7 it would be with were unanswerable questions. We had also seen
8 negotiations attempted and fail in Windsor and we actually, as
9 has been testified here, knew that in Coutts the engagement
10 strategy and the lessening and the path to reducing and removing
11 mandates in Alberta actually caused the protesters there to dig
12 in because they thought that would then allow for a complete
13 removal immediately, so the unintended consequences were greater
14 than the consequences.

15 **MS. SHANTONA CHAUDHURY:** And the second question
16 that fell into that category of whether or not you could answer
17 is whether you were ever asked whether the *Emergencies Act* was
18 necessary.

19 **MS. JODY THOMAS:** Yes, and I apologize. Yes.
20 And my answer was yes.

21 **MS. SHANTONA CHAUDHURY:** Okay. And that was on
22 February 13th?

23 **MS. JODY THOMAS:** Yes.

24 **MS. SHANTONA CHAUDHURY:** The other area I'd like
25 to take you back to briefly just to elaborate on a little bit is
26 this idea of the law enforcement gap in reporting. So for that,
27 can we pull up the witness summary again, please? So it's WTS,
28 a bunch of zeros, 71, and to the bottom of page 7, please.

1 Okay, so we've discussed here two different sort of intelligence
2 gaps that you've identified. One is the social media gap that
3 you've spoken about, and we may speak about again; the other is
4 the law enforcement intelligence gap.

5 So what you've expressed here is a slightly more
6 elaborate than you'd expressed earlier today, but you didn't
7 receive -- and this you and Assistant Secretary Mike MacDonald,
8 Security and Intelligence -- did not receive direct reports from
9 law enforcement partners such as OPP, OPS, WPS -- so that's
10 outside the "federal family". You can tell I'm learning the
11 lingo. That constituted another significant intelligence
12 sharing gap.

13 Assistant Secretary MacDonald recalled a
14 significant delay in receiving updates from the RCMP given the
15 RCMP's policy obligation to consult with each relevant agency
16 prior to sharing investigative and operation information.

17 And you clarify that neither you nor your staff
18 received SITREPs, so situational reports, projects reports, or
19 other forms of information directly. And, as you mentioned
20 today, you hadn't heard of Project Hendon, specifically.

21 And if we just scroll down a little bit, it also
22 says there that you learned of the Coutts arrests through the
23 media, not directly from the RCMP.

24 And just scrolling down a little bit again:

25 "Sharing among all three levels of
26 government information and intelligence
27 in relation to the convoy could have
28 been better."

1 So I'll just ask you to elaborate a little bit on
2 where you think the deficiencies are and what and what maybe can
3 be or should be done about them because, as you know, the
4 Commission has sort of a forward-looking mandate as well as a
5 backward-looking one?

6 **MS. JODY THOMAS:** I think when we are looking at
7 primary open-source information as opposed to investigation-
8 specific information -- so let's draw a line draw there -- the
9 RCMP's investigating person acts for having done something
10 criminal. As the NSIA, should I receive that? No. I receive
11 information when the RCMP are making an arrest of a federal
12 crime that would be of interest to the NSIA, so -- but after
13 they've done it, or is about to make the arrest or make the
14 announcement.

15 General tactical operational information on a
16 day-to-day basis, I don't have any need for from the RCMP but
17 when we're in a situation like this -- it's a crisis; I'm
18 coordinating the town; the RCMP is aware I'm coordinating the
19 town -- I'm asking for information about what's happening,
20 what's coming, what they expect, what -- not, again, operational
21 planning but what is going to happen, what law enforcement is
22 talking about, what their concerns are, because there are ways I
23 can help, potentially. It would be useful to have that
24 information. And we didn't receive the flow of information from
25 the RCMP, even their intelligence unit that I think we possibly
26 might have.

27 **MS. SHANTONA CHAUDHURY:** When you say there are
28 ways you can help, what are you referring to?

1 **MS. JODY THOMAS:** We would do X, Y, or Z, and
2 we'd think this is necessary, we're short 100 people. Or we
3 need cabinet permission. Or we need -- it could be any number
4 of things and the hypotheticals are long. But in this
5 particular situation, I think that we could help reduce the
6 pressure on the RCMP to answer questions constantly if we had
7 some indication of the intelligence they were seeing, primarily,
8 again, open-source, and what they were going to do with it. We
9 could answer questions. We could reduce the anxiety about what
10 was going on.

11 **MS. SHANTONA CHAUDHURY:** So from your
12 perspective, keeping in mind the need for police independence,
13 which ---

14 **MS. JODY THOMAS:** Absolutely. This isn't
15 interference or telling them what to do, and it's not getting
16 the way of an operation. It's just information flow.

17 **MS. SHANTONA CHAUDHURY:** So there's some work to
18 be done in the area ---

19 **MS. JODY THOMAS:** Correct.

20 **MS. SHANTONA CHAUDHURY:** --- from your
21 perspective, of information flows between law enforcement and
22 government?

23 **MS. JODY THOMAS:** Absolutely.

24 **MS. SHANTONA CHAUDHURY:** Switching gears a little
25 bit, the next topic I want to address with you is sort of an
26 existential one, but the line between lawful and unlawful
27 protest. And I'm going to do this with reference to a few
28 documents in which this was brought up and came up repeatedly

1 over the course of the events of the convoy. The first one, Mr.
2 Clerk is SSM.NSC.CAN0003211, and scroll down to page 2, please.
3 So this is a readout or a report from ADM NS Ops on January 26th.
4 There we go, under "Posture". So first they're talking about
5 the RCMP monitoring, and then:

6 "ADMs committed to return to the
7 Committee with specifics on what will
8 trigger the event from peaceful event
9 to one requiring law enforcement
10 action."

11 So I realize this in ADM NS Ops, not specifically
12 at your level, but is it fair to say that that was something on
13 the radar, when does an event go from lawful to unlawful?

14 **MS. JODY THOMAS:** Absolutely. It was a question
15 that we discussed constantly. And I don't know if -- there may
16 be a policing definition but there certainly isn't a public
17 policy definition.

18 **MS. SHANTONA CHAUDHURY:** Okay. And you see it
19 says here:

20 "ADMs committed to return to the
21 Committee with specifics..."

22 To your knowledge -- and I know this isn't your
23 committee but, to your knowledge, did that happen?

24 **MS. JODY THOMAS:** I didn't see it. If it did, I
25 did not see it.

26 **MS. SHANTONA CHAUDHURY:** Okay. It may be that
27 the next document is the answer but I'm not sure.

28 **MS. JODY THOMAS:** Okay.

1 **MS. SHANTONA CHAUDHURY:** SSM.NSC.CAN00000294 at
2 page 6, please, under "Peaceful Event". Okay, there we go,
3 perfect.

4 "Peaceful Event -- Key question remain:
5 How does this end and who is left,
6 e.g., numbers may be lower but what is
7 the threat nature of remaining
8 individuals."

9 And then:

10 "There is no finite timeline for when a
11 lawful protest must end. As long as it
12 remains lawful, it may continue.
13 Violence will require a public order
14 response. OPS has brought in additional
15 support teams."

16 Okay, so that is something ---

17 **MS. JODY THOMAS:** M'hm.

18 **MS. SHANTONA CHAUDHURY:** --- being said about the
19 line between lawful and unlawful. I don't know if it's -- maybe
20 you don't know either, because it wasn't your committee, whether
21 that was the specific sort of deliverable return on that point
22 but, if so, it's not a particularly detailed answer.

23 **MS. JODY THOMAS:** Yeah, I think they're distinct
24 issues. When a lawful protest ends versus when it trips into
25 something else, I think those are two different issues. And one
26 is very much a city issue, how long the city gives permits for
27 protests, those kinds of things, I think that's more in the
28 city's domain. When it moves from lawful to unlawful and

1 becomes a public order issue, again, mostly belonging to a
2 municipality but we're in a unique circumstance here in Windsor,
3 in Coutts, across the country, when do protests, blockades
4 become unlawful. Because it -- this is talking about the OPS,
5 but the question we were asking ourselves was much broader.

6 **MS. SHANTONA CHAUDHURY:** Okay. That's a helpful
7 distinction, actually, and it'll come up in the following
8 discussions.

9 So the next document is SSM.CAN.0000016.

10 So this is a read-out of the February 14th DMOC.

11 And if we can scroll down a bit to page 2,
12 please. There we go.

13 "The NSIA and Director of CSIS", so this is the
14 DMOC that's being held on February 14th.

15 Do you remember what time that DMOC was?

16 **MS. JODY THOMAS:** I think there were two on
17 February 14th, or there might have been two on the 13th, but we
18 were generally meeting in the morning before we briefed the
19 Ministers.

20 **MS. SHANTONA CHAUDHURY:** Okay. So:

21 "The NSIA and the Director of CSIS
22 highlighted the need to better
23 understand where and how the convoys
24 metastasized into something else - we
25 have seen a fundamental shift - protest
26 that effects people's ability to live
27 and exist is no longer peaceful. Need
28 to understand long-term trends."

1 So can you tell the Commission a little bit what
2 your thinking was there in saying that the protests have
3 metastasized, the convoys, rather, metastasized into something
4 else?

5 **MS. JODY THOMAS:** It was a very -- my
6 recollection is that it was a very interesting conversation, one
7 that we needed to spend more time on, but in the height of a
8 crises you move on to operational things very quickly. There is
9 -- it was a discussion about lawful and unlawful, violent and
10 peaceful, and can you be unlawful and still, for all intents and
11 purposes, peaceful, meaning you're not January 6th? And is that
12 line of violence only measured when you are at the January 6th
13 stage and status, series of events? Or is the violence that
14 people were -- of Ottawa were experiencing on the streets, the
15 inability of people in Windsor to conduct their lives in the
16 neighbourhood where the blockade, the inability of the Town of
17 Coutts to function, is that a line? And so where is that? And
18 I don't have an answer for it, but it is something that we have
19 to consider as situations like this perhaps become more of the
20 norm.

21 And the -- what we were discussing is that the
22 only measure can't be violence of a nature of January 6th. That
23 can't be well this is something different or January 6th is
24 about to happen; therefore, it is now not illegal but a national
25 security threat. There is a spectrum of activity and behaviour
26 and threat in there that we need to understand, and so that was
27 the nature of the conversation.

28 And it's one that's continued. I can't tell you

1 that I have a paper on it yet. We don't have a policy -- a
2 paper going forward to the Clerk, but it is a conversation that
3 is continuing because it's critical. We have seen these kind of
4 uprisings in democracies around the world. What does it mean?
5 What can we do? What should we do? Questions to be asked that
6 have to be thoughtfully considered before we're in the situation
7 potentially again.

8 **MS. SHANTONA CHAUDHURY:** In a sense, I think
9 you've pre-empted my next question, which is is this an area
10 that is being worked on within the Federal Government in case
11 anything like this ever happens again, where that line is? And
12 when you talk about the line between lawful/unlawful, in some
13 senses that's the line where intervention would happen.

14 **MS. JODY THOMAS:** Correct. And yes, the work is
15 ongoing.

16 **MS. SHANTONA CHAUDHURY:** The next document,
17 please, Mr. Clerk, SSM.NSC.CAN.00000405.

18 So this a related point, Ms. Thomas, to situate
19 you a little bit, on the need to protect lawful protest. There
20 is unlawful at some point, we don't know precisely where that
21 line is you've said, but the need to protect lawful protest in
22 all circumstances where possible.

23 Was there any thought given, and I'll wait for
24 the reference to turn up here, but in your recollection, was
25 there any thought given in the discussions around how to
26 intervene once it became clear that there was going to be
27 intervention, in what was happening in Ottawa, specifically, I
28 suppose it would apply across Canada, but specifically in Ottawa

1 to protecting lawful protest, so a subset of that protest? Was
2 there any thought given to, okay, well, you can't do it on
3 Wellington Street, but maybe you can go somewhere else?

4 And I'll just situate you a little bit here.

5 Can we turn down to page, I believe it's page 2,
6 but it could be a bit later. Sorry, keep scrolling, I'll find
7 it. Keep scrolling, please. No, I guess no. Page 5, sorry.
8 Yeah, okay, there we go.

9 So this is a description, and I realise it's not
10 your description it's the RCMP I believe, but...

11 Keep scrolling a bit down, please, Mr. Clerk.
12 I'll tell you when you got it. Okay. Yeah:

13 "The focus of the operation today has
14 been on clearing protesters south of
15 Wellington and reinforcing barriers.
16 Protesters remain at Bank and
17 Sparks...have been advised that they
18 will be arrested if they do not leave.
19 Public order units continue to wear
20 tactical gear but police tactics remain
21 focused on de-escalation."

22 This is February 20th:

23 "Police are also monitoring a gathering
24 that has formed at the War Museum of
25 approximately 100 people and a smaller
26 gathering of 30-50 at Confederation
27 Park....information suggests some
28 indication some protesters are staying

1 in the secure zone..."

2 And I think that's about it. So:

3 "...including at hotels in this area
4 RCMP is looking into."

5 So these other areas, the War Museum, and at this
6 point it's Confederation Park, were these lawful protest zones
7 to your knowledge at this point?

8 **MS. JODY THOMAS:** I'm speculating in terms of the
9 particular situation. The *Emergency Act* was still in place. I
10 don't know if these locations, because I don't have the map in
11 front of me, are still in the exclusion zone or not. And so if
12 in the exclusion zone, by virtue of the Act, if inside the
13 exclusion zone, they would have been illegal.

14 In regards to your question about protecting
15 lawful protest, that's a fundamental. People who wish to
16 protest lawfully, peacefully, respecting the rights of, in this
17 case, the citizens of Ottawa, that's a given in this city. The
18 right to do that is a given in the Constitution, it's just a
19 fundamental right Canadians have. That discussion again about
20 when it metastasizes into something else is what we are
21 pursuing.

22 **MS. SHANTONA CHAUDHURY:** So I think this will be
23 the last area that we can cover today, but I want to ask you
24 about a couple of intelligence assessments, secretariat
25 assessments that were produced to the Commission.

26 The first one is SSM.NSC.CAN.0000218.

27 It's called Context for Civil Unrest Following
28 Pandemic. So first of all, this is a document dated

1 February 16th. Can you tell us the genesis of how did this
2 document come into being?

3 **MS. JODY THOMAS:** So when we spoke about the
4 Intelligence Assessment Secretariat, I said that they will do
5 longer thought pieces as well as immediate operational
6 assessments. So the immediate, the missile strike in Poland,
7 this is an example of the kind of thought they do, piece they do
8 to look at trends to understand the context in which the foreign
9 policy, security, and intelligence issues are nested.

10 This is a companion piece to something that they
11 had written. Well, long before I came to PCO, I was given it to
12 read, just as I arrived at PCO, about what happens in societies,
13 historically, after pandemics. And so very interesting piece,
14 and this was a companion to it.

15 **MS. SHANTONA CHAUDHURY:** So you already had a
16 piece on what happens after pandemics?

17 **MS. JODY THOMAS:** Yes.

18 **MS. SHANTONA CHAUDHURY:** So we'll take you
19 through a little bit of this, and you can tell me if this is
20 something that would have been known before February 16th and
21 formed part of the context you were thinking about or whether it
22 was an *ex post facto*.

23 So the first -- just introduction:

24 "Historically, civil unrest and
25 degradation of social cohesion have been
26 common in the immediate aftermath of
27 pandemics or epidemics. The health
28 impacts and restrictions involved [...]

1 provide fertile grounds for social unrest
2 and mobilization as pandemics progress or
3 end. This is particularly true when there
4 are existing underlying inequalities
5 and/or social fault-lines within the
6 population [...]. The ongoing trucker
7 protests have several markers
8 demonstrating consistency with this
9 trend."

10 So is this something that was part of your
11 thinking when the convoys rolled in or was this something that
12 was only thought about after the fact?

13 **MS. JODY THOMAS:** I didn't know about the
14 previous piece when the convoys rolled in, because again, I
15 wasn't at PCO, and in my job at Defence, I hadn't seen it. The
16 Clerk brought it to my attention as something she had read and
17 found very interesting. And so I pulled it up and read it and
18 this was done as an addition to that.

19 **MS. SHANTONA CHAUDHURY:** So if I understand
20 correctly, it wasn't part of your personal thinking, but it may
21 have been part of the thinking at PCO?

22 **MS. JODY THOMAS:** I think it was part of --
23 thinking implies -- I think it was more a -- it was just
24 informative.

25 **MS. SHANTONA CHAUDHURY:** And if we just scroll
26 down a little bit more:

27 "For a Canadian historical context, the
28 1885 vaccine requirements intended to

1 curtail the spread of Smallpox [...]
2 resulted in public violence throughout the
3 city. Per the Washington Post, more than
4 2,000 violent rioters marched through the
5 streets of Montreal screaming, "kill the
6 vaccinators" in response to [...] vaccine
7 mandates."

8 So again, this would be part of the context that
9 PCO was aware of at the time and was thinking about, but not
10 your specific thinking?

11 **MS. JODY THOMAS:** Some people were aware. Was it
12 of the documents we talk about on a daily basis at PCO, was it
13 one of them? No.

14 **MS. SHANTONA CHAUDHURY:** Okay.

15 **MS. JODY THOMAS:** IAS, the Intelligence
16 Assessment Group, puts out a lot of these. People read them not
17 as an immediate to do their job. They read them as thought
18 pieces when they have time on the weekend.

19 And so who has read it in PCO, I couldn't tell
20 you.

21 **MS. SHANTONA CHAUDHURY:** And what would be the
22 purpose of having an assessment like this done?

23 **MS. JODY THOMAS:** Again, the assessment group
24 takes global trends, takes events, and tries to help predict
25 what will happen. And they use, in this case, a lot of academic
26 and historical research to build their assessment.

27 **MS. SHANTONA CHAUDHURY:** Okay. The next
28 assessment is SSM.NSC.CAN0000231.

1 So the first paragraph here, it talks about --
2 the date of this one is the 21st of February. So this is right
3 actually as the *Emergencies Act* was being lifted, and to a
4 certain extent, events were coming to an end.

5 And it says here:

6 "The 'Freedom Convoy' [...] is not an
7 unprecedented event."

8 Again talking about societal alienation, civil
9 unrest, and social polarization. Then it says:

10 "...the convergence of several elements make
11 this protest [...] somewhat more
12 sophisticated and unique: the use of
13 social media for organizing and
14 communicating both internally and
15 externally, the use of misinformation and
16 disinformation to promote certain
17 narratives, the use of crowdfunding [...]
18 cryptocurrenc[y], blockade tactics and
19 logistics, the virulence of discourse
20 towards government and elected officials,
21 appropriation of national symbols, ..."

22 And it goes on. It mentions then:

23 "The overwhelming majority of protesters
24 [...] have denounced violence and are not
25 directly aligned..."

26 Then it talks about the wide range of
27 participants.

28 And if we just scroll down a little bit, the

1 movement -- talks about the IMVE aspect.

2 "It is unlikely that premeditated violence
3 will take place, however, [the threat of]
4 'lone actors'..."

5 Scroll down again.

6 "...significant international financial
7 support and publicity."

8 So it's sort of collating the information that
9 was available then.

10 And then it says:

11 "The "Freedom Convoy" itself or new
12 entities that emerge from it are likely to
13 continue for several weeks and will seek
14 new opportunities to protest, occupy and
15 disrupt. It may also embolden other
16 groups and individual movements across the
17 ideological spectrum. There are also
18 risks that the protests may serve to
19 deepen and harden new and existing
20 cleavages within Canadian society. As the
21 protests persist, these feelings may
22 become more entrenched and form the basis
23 for longer-term societal schisms."

24 So this is a -- can you speak to this a little
25 bit and just situate the context in which all of this was being
26 dealt with at the time by you?

27 **MS. JODY THOMAS:** So as I said, I didn't have a
28 Domestic Intelligence Assessment Unit at PCO and all of the

1 intelligence assessment or collectors in the community have very
2 narrow mandates. ITAC does terrorist threat assessment. CSIS
3 does assessments in line with their Act. RCMP does criminal
4 assessments and collects open source for law enforcement
5 purposes.

6 I have a Foreign Intelligence Assessment Group
7 that takes open source and covert information and can give me a
8 picture of what's going on. And not just me. Decision makers,
9 the Prime Minister.

10 I didn't have an equal entity in PCO for open
11 source domestic. And I asked the -- Martin Green, the Assistant
12 Secretary of the Intelligence Assessment Group, to start trying
13 to think about what this could look like.

14 I was hoping -- this was a really interesting
15 piece. It wasn't exactly what I wanted in the minute, I wanted
16 more, "Here's what we're seeing tomorrow." But a very useful
17 piece where he tried to be very thoughtful about what this could
18 mean based on known aspects of protests, what we were seeing in
19 other countries, conversations with colleagues in other
20 countries about similar phenomena, and try to build an idea of
21 what this could mean from an intelligence perspective, but what
22 it would mean for government institutions, democracy, rule of
23 law, the things that we need to consider as senior public
24 servants and advising government.

25 **MS. SHANTONA CHAUDHURY:** Those are my questions
26 for you today, Ms. Thomas, but before I sit down, is there
27 anything that we haven't covered today that you'd like to raise?

28 **MS. JODY THOMAS:** No, I don't think so.

1 Certainly there's been a lot of focus on Ottawa
2 because it was significant and it was on -- you know, at the
3 footsteps of where our democracy is housed.

4 This was a national situation and our concern
5 about Windsor, as you've heard from other people, Coutts, the
6 pop-up convoys across the country, the intelligence that we were
7 getting about potentials in New Brunswick, Cornwall, the Peace
8 Bridge, VIA Rail protests, that all came together to form our
9 view of what was going on and raise our level of concern.

10 So while, yes, Ottawa was a significant event,
11 this was a national crisis.

12 **COMMISSIONER ROULEAU:** Okay. If I could call on
13 the convoy organizers, please?

14 **--- CROSS-EXAMINATION BY MR. BRENDAN MILLER:**

15 **MR. BRENDAN MILLER:** My name is Brendan Miller
16 and I'm counsel for Freedom Corp, which is the entity that
17 represents the protestors that were in Ottawa in January and
18 February of 2022. I have a few questions for you, and hopefully
19 we'll be able to get through them.

20 Ma'am, you had just mentioned, and I'm glad you
21 did, the rule of law. What's your understanding of the rule of
22 law?

23 **MS. JODY THOMAS:** That laws are obeyed in the
24 Country of Canada, provincial, federal and municipal laws.

25 **MR. BRENDAN MILLER:** Right. And you agree with
26 me that the rule of law applies to you and it applies to the
27 executive and the elected executive of the Government of Canada?

28 **MS. JODY THOMAS:** Yes.

1 **MR. BRENDAN MILLER:** All right. Would you agree
2 with this that the rule of law conveys a sense of orderliness
3 and executive accountability, the legal authority and vouches
4 safe a stable predictable and ordered society in which citizens
5 and residents may conduct their affairs. It requires that
6 government power or any authority delegated by Parliament must
7 be exercised pursuant to valid laws, either directly or
8 indirectly permitted by an Act of Parliament.

9 Do you agree with that?

10 **MS. JODY THOMAS:** I do.

11 **MR. BRENDAN MILLER:** All right. Now, you can
12 agree with me that your position, your office -- and I'll call
13 it your office -- the National Intelligence and Security
14 Advisor, it's not been created by an Act of Parliament, has it?

15 **MS. JODY THOMAS:** No.

16 **MR. BRENDAN MILLER:** No.

17 **MS. JODY THOMAS:** It has not; it's an advisor.

18 **MR. BRENDAN MILLER:** Right. And you have no
19 statutory mandate.

20 **MS. JODY THOMAS:** I do not.

21 **MR. BRENDAN MILLER:** And you've also got no legal
22 powers yourself.

23 **MS. JODY THOMAS:** I do not, which I explained
24 when I talked about what my role is.

25 **MR. BRENDAN MILLER:** Right. And I take it you've
26 never been an Intelligence Officer with CSIS or within the
27 Intelligence community; is that correct?

28 **MS. JODY THOMAS:** I have not.

1 **MR. BRENDAN MILLER:** And you've never been an
2 Intelligence analyst with CSIS or in the Intelligence community;
3 is that correct?

4 **MS. JODY THOMAS:** That is correct.

5 **MR. BRENDAN MILLER:** All right. So you said in
6 your evidence that you didn't feel that you were getting the
7 proper intelligence or updated intelligence from law enforcement
8 or from CSIS, or weren't getting enough of it; is that fair?

9 **MS. JODY THOMAS:** I didn't say that about CSIS.

10 **MR. BRENDAN MILLER:** All right. So you were
11 satisfied with the intelligence you received from CSIS?

12 **MS. JODY THOMAS:** I was.

13 **MR. BRENDAN MILLER:** And CSIS specifically told
14 you and Cabinet that there was no Section 2 *CSIS Act* threat
15 posed by the protest or posed by any of the actions going on
16 throughout Canada at the time; did they not?

17 **MS. JODY THOMAS:** You're misinterpreting what
18 CSIS said.

19 **MR. BRENDAN MILLER:** Can you tell me how?
20 Because I can put up the statement and the reports because
21 that's what it says.

22 **MS. JODY THOMAS:** Right. But there isn't -- what
23 they said and the interpretation of what they said are two
24 entirely different things. Their mandate is very narrow. And
25 so section 2 of the *CSIS Act* is about the work that CSIS does
26 and the intelligence they collect. And they said they are not
27 the only arbiters of what is a national security threat in this
28 country.

1 **MR. BRENDAN MILLER:** Okay.

2 **MS. JODY THOMAS:** And so very true that they said
3 that vis-a-vis their particular Act.

4 **MR. BRENDAN MILLER:** Right. And the thing is is
5 you agree with me that the *CSIS Act*, the meaning of security
6 threat to Canada is incorporated directly into the *Emergencies*
7 *Act*, correct?

8 **MS. JODY THOMAS:** You're going to receive legal
9 briefs on the *Emergencies Act* and the legal interpretation and
10 I'm not a lawyer. My understanding is that the *Emergencies Act*
11 is assigned a meaning as defined in the *CSIS Act* but is not
12 limited by the *CSIS Act*.

13 **MR. BRENDAN MILLER:** Well, I don't know how that
14 could be but we can agree to disagree.

15 But you agree that the *Emergencies Act* on its own
16 reading -- and I put this to the Deputy Minister. You
17 understand that it requires reasonable grounds that a Section 2
18 *CSIS Act* threat exists.

19 **MS. JODY THOMAS:** I don't agree.

20 **MR. BRENDAN MILLER:** That's what it says.

21 **MS. JODY THOMAS:** No. it says it assigns meaning
22 as the language is defined in the *CSIS Act*, but again you'll get
23 legal arguments.

24 **MR. BRENDAN MILLER:** Right. I understand. So
25 you're saying that the *CSIS Act* and section 2 of the *CSIS Act*
26 which is incorporated into the *Emergencies Act* means something
27 different when you're looking at it.

28 **MS. JODY THOMAS:** No, that's not what I've said.

1 **MR. BRENDAN MILLER:** So what do you mean?

2 **MS. JODY THOMAS:** I mean that in terms of the
3 *Emergencies Act*, the Governor-in-Council can consider more
4 broadly than the intelligence collected by CSIS in determining a
5 national security threat or situation or a public order
6 emergency.

7 **MR. BRENDAN MILLER:** I understand that. But you
8 do agree that the four grounds of types of threats in section 2
9 of the *CSIS Act*. are what is in fact required to have been
10 found.

11 **MS. JODY THOMAS:** No, I don't agree.

12 **MR. BRENDAN MILLER:** So it can go beyond what the
13 Act says which is a threat to the security of Canada.

14 **MS. JODY THOMAS:** There are other definitions of
15 threats to the security of Canada as we saw earlier.

16 **MR. BRENDAN MILLER:** Right. But not in the
17 legislation.

18 **MS. JODY THOMAS:** The *Emergency Act* allows for
19 the Governor-in-Council to make a broad decision about public
20 order emergencies.

21 **MR. BRENDAN MILLER:** That's not what it says.
22 But you can agree with me that ---

23 **MS. JODY THOMAS:** I think that this is an
24 argument to have with lawyers.

25 **MR. BRENDAN MILLER:** Well, I understand that. So
26 let's go through then just what section 2 of the *CSIS Act* says
27 and I'll just ask you a couple of questions about the grounds.

28 And we've already heard from every law

1 enforcement official as well as we have the statements from CSIS
2 in evidence that they didn't have reasonable suspicion that any
3 of this was taking place. So I take it that you can agree with
4 me that you didn't have any evidence with you before Cabinet or
5 even considered of any espionage or sabotage against Canada that
6 is detrimental to the interests of Canada or activities directed
7 towards or in support of such espionage or sabotage; right?

8 **MS. JODY THOMAS:** That's been discussed, yes.

9 **MR. BRENDAN MILLER:** Right. And so that -- there
10 was no evidence of that that you considered ---

11 **MS. JODY THOMAS:** No.

12 **MR. BRENDAN MILLER:** --- in your assessment. And
13 you could agree with me that there's no evidence of foreign
14 influenced activities within or related to Canada that are
15 detrimental to the interests of Canada or clandestine or
16 deceptive, or involve a threat to any person; correct?

17 **MS. JODY THOMAS:** There were threats to people.

18 **MR. BRENDAN MILLER:** Right. By email and
19 Twitter, right?

20 **MS. JODY THOMAS:** I would submit that in the
21 social media era you cannot ignore threats against officials and
22 public office holders just because they are on social media.
23 That would be inexcusably negligent.

24 **MR. BRENDAN MILLER:** Right. But that's up to the
25 police to deal with or is that a national emergency?

26 **MS. JODY THOMAS:** It depends on the situation and
27 the context in which those threats arrive.

28 **MR. BRENDAN MILLER:** Okay. Can we please bring

1 up Document TS.NSC.CAN.00100000206_REL0001?

2 Apologies, just a second. Wrong one. I'll just
3 say the end numbers. Same forward -- 159_REL0001. Okay.

4 So I take it that you're familiar with the CSIS
5 assessment that they provided on the Freedom Convoy in downtown
6 Ottawa, right?

7 **MS. JODY THOMAS:** That's one of the assessments.

8 **MR. BRENDAN MILLER:** Right, okay. And their
9 assessment was this and at the beginning you see:

10 "Downtown Ottawa [...] was actually quite
11 festive -- not threatening to a
12 passerby. Some criminal acts did occur
13 -- law enforcement."

14 And again you've said you're not an Intelligence
15 Officer, you don't have any training as an Intelligence analyst,
16 so I take it you rely on CSIS for intelligence.

17 **MS. JODY THOMAS:** CSIS provides one input on
18 intelligence, yes.

19 **MR. BRENDAN MILLER:** Yeah. And then the RCMP?

20 **MS. JODY THOMAS:** Another input.

21 **MR. BRENDAN MILLER:** Right. And then the
22 Canadian Border Services Agency?

23 **MS. JODY THOMAS:** Another input.

24 **MR. BRENDAN MILLER:** Right. And then you also
25 have the Canadian security establishment?

26 **MS. JODY THOMAS:** Yes.

27 **MR. BRENDAN MILLER:** Right, okay. None of those
28 people provided you intelligence that there was a section 2 CSIS

1 Act threat.

2 **MS. JODY THOMAS:** Again, we've been through this.
3 There are other measures other than section 2 of the *CSIS Act*.

4 **MR. BRENDAN MILLER:** So let's scroll down if we
5 can. And you'll see in there with respect to the flags -- now,
6 I take it there was concern with these flags that there was a
7 couple of flags that were seen that were inappropriate and that
8 was one of the reasons why there was a consideration of
9 ideological motivated violent extremism.

10 You can see there that I understand that their
11 report is:

12 "A very small number of more
13 inflammatory flags, Confederate, Nazi,
14 swastika, III%, Punisher (based on the
15 1974 [...] comic book hero) and Quebec
16 Patriote flag..."

17 And then they say that:

18 "A random flag is just a flag until the
19 reason the person holding it explains
20 why. Flags can have multiple meanings
21 and are routinely co-opted by various
22 groups/ individuals. No way of
23 connecting those views holding flags
24 with any online content. The presence
25 of the III% flags, for example, does
26 not necessarily mean that members of
27 the III% are in attendance."

28 And that was the intelligence you were given.

1 **MS. JODY THOMAS:** That's part of the intelligence
2 we were given. That's intelligence that can be released.

3 **MR. BRENDAN MILLER:** Okay. So what you mean,
4 "intelligence that can be released"? So ---

5 **MS. JODY THOMAS:** Well, there's section 38.

6 **MR. BRENDAN MILLER:** Right. I understand that.
7 But why don't we scroll down. Now, this is important. And you
8 know that CSIS does in fact -- because there's no reason -- you
9 don't need a law to look at what's online or open source
10 intelligence, that it's open source intelligence. Anybody can
11 look at it without a law authorising it. Can you agree with
12 that?

13 **MS. JODY THOMAS:** No, the reality is that open
14 source intelligence has to be anonymized so that we are not
15 targeting specific people who are not under investigation. So
16 it's not quite as simple as you're depicting it.

17 **MR. BRENDAN MILLER:** Well, ma'am, again, this --
18 there is no privacy interest for Canadians on things they post
19 online. They can -- anybody can go on and read it; right? You
20 know that.

21 **MS. JODY THOMAS:** Yes, but the Privacy
22 Commissioner and the privacy laws of this country are such that
23 they cannot then be -- their information cannot be scraped and
24 be part of an assessment writ large, there has to be boundaries
25 around that.

26 **MR. BRENDAN MILLER:** Around its distribution.

27 **MS. JODY THOMAS:** No, around its analysis and
28 collection.

1 **MR. BRENDAN MILLER:** Right. And that's why ---

2 **MS. JODY THOMAS:** And storage.

3 **MR. BRENDAN MILLER:** And that's why we have units
4 in the RCMP that do that.

5 **MS. JODY THOMAS:** Some of it, yes.

6 **MR. BRENDAN MILLER:** Right. So you have the, I
7 believe it's called the IMCT -- IMCIT Unit. They -- that's all
8 they look at, is they look at online violent rhetoric and assess
9 it.

10 **MS. JODY THOMAS:** For criminal purposes, yes.

11 **MR. BRENDAN MILLER:** Right. And so what -- for
12 violent rhetoric. What are your other purposes other than
13 criminal purposes?

14 **MS. JODY THOMAS:** Well -- so I would like to be a
15 little more expansive in this answer if I may be. An analyst
16 looks at a piece of information for very specific issues. When
17 we, as people advising, and it's my Deputy Minister colleagues
18 and I, to advise the Cabinet and decision-makers on the threat,
19 the confidence in government institutions, the rhetoric, we have
20 to look more broadly than its specific elements as described
21 here.

22 "Someone should kill the PM"; "Wouldn't it be
23 great if someone killed the PM?" That says something, and it's
24 not just random. Because they can't identify it to an
25 individual and it doesn't say the day, it doesn't mean it
26 doesn't matter.

27 **MR. BRENDAN MILLER:** So what are you looking for?
28 Are you looking that the government without warrants is allowed

1 just to go in and look into metadata?

2 **MS. JODY THOMAS:** No, that's what I just said to
3 you.

4 **MR. BRENDAN MILLER:** Yeah. So ---

5 **MS. JODY THOMAS:** I just said to you that we ---

6 **MR. BRENDAN MILLER:** --- here's the thing ---

7 **MS. JODY THOMAS:** --- that we should not be doing
8 that, and so we have to find a legal framework for it. We are
9 actually violently agreeing.

10 **MR. BRENDAN MILLER:** Okay. Well, that's good.
11 So -- and we agree that we should follow legal frameworks.

12 **MS. JODY THOMAS:** We should, and I believe there
13 is a gap in the legal framework.

14 **MR. BRENDAN MILLER:** Yeah. And you agree we
15 should follow the legal framework in the *Emergencies Act*; right?

16 **MS. JODY THOMAS:** And we have.

17 **MR. BRENDAN MILLER:** Okay. And then, can I just
18 show you that part up there? You -- CSIS assessed this, and ---

19 **MS. DONNAREE NYGARD:** Excuse me. Could -- we've
20 never established the date of this document. Can we see what
21 it's dated, please?

22 **MR. BRENDAN MILLER:** Freedom Convoy 2022. It's
23 an assessment of CSIS. I believe it's been referred to in the
24 statement. It's from your production. I assume that it's
25 relevant material.

26 **MS. DONNAREE NYGARD:** I am not arguing that. I'm
27 just asking to establish ---

28 **MR. BRENDAN MILLER:** Yeah.

1 **MS. DONNAREE NYGARD:** --- if there's a date on
2 the document.

3 **MR. BRENDAN MILLER:** Okay.

4 **MS. DONNAREE NYGARD:** Perhaps at the last page.

5 **MR. BRENDAN MILLER:** No. But I understand that,
6 and the witness has accepted that this is one of the assessments
7 that was before Cabinet.

8 So ---

9 **MS. JODY THOMAS:** Well, no, I didn't say it was
10 before Cabinet, I said it was produced.

11 **MR. BRENDAN MILLER:** Okay. And ---

12 **MS. JODY THOMAS:** And I believe it was before the
13 convoy arrived.

14 **MR. BRENDAN MILLER:** I understand. So the --
15 CSIS had assessed:

16 "The anonymity of the online space
17 allows individuals to post commentary
18 that they would not normally say in
19 public.

20 Many of the posts in this space are
21 best articulated as 'shitposting'.
22 Confirmation bias - strategic analysis
23 must be driven by direct evidence
24 collection and assessments as opposed
25 to a reliance on social media posting
26 [lacks] context and where the poster
27 bias may not be considered."

28 So that had been given to you by CSIS, and do you

1 not agree with that?

2 **MS. JODY THOMAS:** I believe that it is an
3 analysis done by an analyst, and that as the National Security
4 Intelligence Advisor to the Prime Minister, when I see social
5 media posts growing in number and aggressiveness of language
6 that says somebody should kill the PM or somebody should kill
7 the DPM, I have reason to be concerned beyond what the analyst
8 is concerned about.

9 **MR. BRENDAN MILLER:** Okay. So I'm just going to
10 run over very briefly what I understand your position is, and
11 your position as National Security Advisor. I've managed to
12 find the policy with respect to your position.

13 So if you can agree with the following, this is
14 what you are to do:

15 "The National Security Advisor to the
16 Prime Minister and Associate Secretary
17 to Cabinet assists the Clerk and
18 provides information, advice, and
19 recommendations to the Prime Minister
20 as follows:

21 As Associate Secretary to Cabinet, he
22 or she can act on the Clerk's behalf on
23 any of the policy and operational
24 issues that come before the Privy
25 Council. As National Security Advisor
26 to the Prime Minister, he or she
27 ensures the effectiveness, or the
28 effective coordination of Canada's

1 security and intelligence community,
2 and together, with the Deputy
3 Minister's of National Defence, is
4 responsible for the communication
5 security establishment. The National
6 Security Advisor also oversees the
7 provisions of intelligence assessments
8 to the Prime Minister, other Ministers
9 and senior government officials. The
10 National Security Advisor to the Prime
11 Minister is supported by two
12 secretariats via the foreign and
13 defence policy advisors to the Prime
14 Minister, Security and intelligence and
15 international assessment staff." (As
16 read)

17 That's what your job is.

18 **MS. JODY THOMAS:** That's a old version of the job
19 description, and there's been some changes to it since then, but
20 sure.

21 **MR. BRENDAN MILLER:** Right. But you are not in
22 the business, or your department is not supposed to be in the
23 business of actually collecting intelligence yourself.

24 **MS. JODY THOMAS:** We don't collect intelligence
25 ourselves.

26 **MR. BRENDAN MILLER:** But I thought you had said
27 that it was looked at you were setting up your own bureau, or
28 what have you, to look at online rhetoric and do your own open

1 source intelligence.

2 **MS. JODY THOMAS:** What I said is that there is no
3 one doing that in a broad sense. I saw it as a gap. I need to
4 do something about it. I don't have the legal mandate right now
5 to do it. The OSINT document you saw previously was all
6 obtained through legal means as an analysis. What we need is a
7 more -- we need a unit in PCO or Public Safety that is more akin
8 to the Foreign Intelligence Assessment Unit that does -- takes
9 covert and overt information and makes assessments. We don't
10 have that domestically.

11 It is a gap. I don't have a solution for it yet,
12 and I won't be the sole person who decides whether it happens or
13 not, but it is something that we need to look at and I'm
14 exploring. That's my job.

15 **MR. BRENDAN MILLER:** But why would you need that
16 outside of the Civil Service, who are governed by legislation,
17 that collect intelligence?

18 **MS. JODY THOMAS:** It would be part of the Civil
19 Service, just like the Foreign Intelligence Assessment Unit is
20 part of the Civil Service.

21 **MR. BRENDAN MILLER:** Right. And -- but the
22 Foreign intelligence Service, like the International Assessment
23 Staff and Foreign Intelligence Service, you had the information
24 from them, I take it, when you made -- when Cabinet made this
25 decision, did you not?

26 **MS. JODY THOMAS:** They were assessing foreign
27 intelligence ---

28 **MR. BRENDAN MILLER:** Okay.

1 **MS. JODY THOMAS:** --- not domestic intelligence.

2 **MR. BRENDAN MILLER:** And domestic intelligence
3 was being assessed by the RCMP.

4 **MS. JODY THOMAS:** Who assess also foreign
5 intelligence.

6 **MR. BRENDAN MILLER:** Right. CSIS.

7 **MS. JODY THOMAS:** Who also assess foreign
8 intelligence.

9 **MR. BRENDAN MILLER:** The Canadian Security
10 Intelligence ---

11 **MS. JODY THOMAS:** Who also assess foreign
12 intelligence.

13 **MR. BRENDAN MILLER:** And they also look at
14 domestic intelligence.

15 **MS. JODY THOMAS:** Some of them do, CSC does not.
16 So just as those units all have mandates to collect and do some
17 assessment, they -- we see that raw intelligence and we make
18 assessments of it on the foreign side. I would like an
19 equivalent on the domestic side. I don't have that now, I
20 believe it is a gap.

21 **MR. BRENDAN MILLER:** So how is -- why is what the
22 RCMP does, already doing that with their reports, they have two
23 sets, they have the IMVE assessments online, they have the ONSET
24 assessments online, why is that not good enough for you?

25 **MS. JODY THOMAS:** Because I would like to look
26 at, just as we do with foreign intelligence, all the various
27 pieces in totality rather than institution by institution. It's
28 part of our job to get a holistic picture.

1 **MR. BRENDAN MILLER:** Yeah. And it's your job,
2 according to this description, to effectively coordinate all of
3 that anyway.

4 **MS. JODY THOMAS:** Right. But I need to have
5 people with the mandate to do that assessment, which is -- I
6 coordinate the function and the issues, the issues management of
7 what's going on in the national security community, but not
8 necessarily their intelligence assessment.

9 **MR. BRENDAN MILLER:** How about this: What if
10 they just got rid of your position and left it to the Director
11 of CSIS to do what you do?

12 **MS. JODY THOMAS:** So the Director of CSIS is not
13 the only person who is responsible for security in this country.
14 That's number one. You can certainly make that recommendation
15 to the Governor in Council if it's useful to you, but there are
16 more people than him involved in assessing national security in
17 this country.

18 **MR. BRENDAN MILLER:** But it's nothing passed by
19 Parliament. Right? Parliament decides ---

20 **MS. JODY THOMAS:** The Privy Council Office is an
21 established office that is the, essentially the Prime Minister's
22 department. We coordinate information, we challenge, we provide
23 policy advice to the Prime Minister, and I am part of that
24 mechanism.

25 **MR. BRENDAN MILLER:** I understand that. But you
26 can agree that Parliament has given you no mandate to do that
27 with respect to intelligence.

28 **MS. JODY THOMAS:** I don't agree with how you've

1 framed it.

2 **MR. BRENDAN MILLER:** Parliament? So ---

3 **MS. JODY THOMAS:** I don't agree with the basic
4 premise of your challenge.

5 **MR. BRENDAN MILLER:** Well, I -- here you go, yes
6 or no: Does -- has parliament via a statute, giving you, the
7 National Security Advisor and the Privy Council, authority to
8 collect and then analyze intelligence?

9 **MS. JODY THOMAS:** The Foreign Intelligence and
10 Assessment Group is a longstanding that -- no, parliament hasn't
11 given it authority ---

12 **MR. BRENDAN MILLER:** Thank you.

13 **MS. JODY THOMAS:** --- but it exists, and it
14 continues.

15 **COMMISSIONER ROULEAU:** Okay, next is the City of
16 Ottawa, please.

17 **--- CROSS-EXAMINATION BY MS. ANNE TARDIF:**

18 **MS. ANNE TARDIF:** Good afternoon, Ms. Thomas. My
19 name is Anne Tardif. I'm one of the lawyers representing the
20 City of Ottawa. You discussed the IRG, or Incident Response
21 Group, this afternoon ---

22 **MS. JODY THOMAS:** Yes.

23 **MS. ANNE TARDIF:** --- right?

24 **MS. JODY THOMAS:** Yes.

25 **MS. ANNE TARDIF:** And I heard that that's a
26 committee of cabinet that also includes officials who are
27 subject-matter experts; is that correct?

28 **MS. JODY THOMAS:** Yes.

1 **MS. ANNE TARDIF:** And it's chaired by the prime
2 minister?

3 **MS. JODY THOMAS:** It is.

4 **MS. ANNE TARDIF:** And it's purpose, if I
5 understood you correctly, is to make quick, rapid decisions --
6 well, let's just go with "rapid" -- rapid decisions about issues
7 of national importance or crisis ---

8 **MS. JODY THOMAS:** Yes.

9 **MS. ANNE TARDIF:** --- including Covid?

10 **MS. JODY THOMAS:** Yes.

11 **MS. ANNE TARDIF:** And you gave a number of other
12 examples; right?

13 **MS. JODY THOMAS:** I did.

14 **MS. ANNE TARDIF:** And it's the committee that is
15 the most effective in dealing with crises?

16 **MS. JODY THOMAS:** Yes.

17 **MS. ANNE TARDIF:** And my understanding is it met
18 first on February 10th?

19 **MS. JODY THOMAS:** It did.

20 **MS. ANNE TARDIF:** And that was, of course, day 13
21 of the convoy here in Ottawa; is that correct?

22 **MS. JODY THOMAS:** That's correct.

23 **MS. ANNE TARDIF:** And I think, as you mentioned
24 earlier, we were in fact going into our third weekend in Ottawa;
25 fair?

26 **MS. JODY THOMAS:** Yes.

27 **MS. ANNE TARDIF:** And the Commission has heard
28 some evidence that in fact weekends were more volatile; is that

1 right?

2 **MS. JODY THOMAS:** Correct.

3 **MS. ANNE TARDIF:** At least in Ottawa? I'm just
4 talking about Ottawa.

5 **MS. JODY THOMAS:** Yes.

6 **MS. ANNE TARDIF:** Okay. And Commission counsel
7 took you to the minutes of that IRG meeting. I won't turn them
8 up but I'll give the reference for the record. It's
9 SSM.NSC.CAN.00000209. And you had reported -- if you need me to
10 turn it up, I will, but you had reported that in Ottawa, the
11 situation at the time remained largely unchanged; do you recall
12 that?

13 **MS. JODY THOMAS:** I do.

14 **MS. ANNE TARDIF:** So the reason, then, that the
15 IRG was convened at that point was not because something new or
16 something had changed in Ottawa; fair?

17 **MS. JODY THOMAS:** Fair.

18 **MS. ANNE TARDIF:** You know, I'm -- you're perhaps
19 seeing where I'm going here. I'm assuming it had something to
20 do with the blockade in Windsor and perhaps concerns about other
21 protest activity outside of Ottawa in addition to what was going
22 on in Ottawa.

23 **MS. JODY THOMAS:** That's a fair comment. The
24 Clerk of the Privy Council, Jan Charette, decided that briefing
25 a group of ministers who were largely the ministers in the
26 responsible departments for the national picture and the Cabinet
27 Committee, SSE, which was meeting quite regularly -- while they
28 had been effective, it was now time for an IRG and the prime

1 minister to direct in a different way.

2 **MS. ANNE TARDIF:** Right. And just to sort of
3 close a loop on this, the SSE Committee had met I think it's
4 three times prior to February 10th; correct?

5 **MS. JODY THOMAS:** Yes, correct.

6 **MS. ANNE TARDIF:** And the decision to invoke --
7 or convene, pardon me, the IRG represents and escalation of the
8 federal government's response; is that fair?

9 **MS. JODY THOMAS:** I would say that's fair but
10 it's best raised with the Clerk of the Privy Council.

11 **MS. ANNE TARDIF:** Understood, and we'll do that,
12 then, thank you. The other document I want to take you -- or I
13 guess the only document I'll take you to is -- these are the --
14 I can put it up if I need to but, in the interest of time, I can
15 maybe just put it to you. I was going to take you to the
16 minutes of the cabinet meeting of February 13th and your mention
17 of a breakthrough. Do you want me to put it up?

18 **MS. JODY THOMAS:** No.

19 **MS. ANNE TARDIF:** I'm happy to. No, okay. Can
20 you just tell us what you were referring to?

21 **MS. JODY THOMAS:** I was referring to the reports
22 of a negotiation between the mayor and convoy organizers.

23 **MS. ANNE TARDIF:** Okay. And can we, then, turn
24 up PB.NSC.CAN.00003245? And bear with me, Ms. Thomas, this is
25 the last document I'll take you to, the only and the last. So
26 these are talking points that Commissioner Lucki sent you to you
27 and Minister Mendicino on February 14th; correct?

28 **MS. JODY THOMAS:** Correct.

1 **MS. ANNE TARDIF:** And if we scroll down to page
2 3, Mr. Clerk, thank you. Yeah, "Moving back to Ottawa", if we
3 scroll down a little further. There we go. This is the
4 agreement, I take it, that was being reported and that you're
5 referring to in the last two bullets? Now we're at the 14th. I
6 appreciate we're the day after cabinet but this is the same
7 agreement, right?

8 **MS. JODY THOMAS:** Yes.

9 **MS. ANNE TARDIF:** And if we -- I won't read it
10 but that's what's described there in those bullets ---

11 **MS. JODY THOMAS:** Yes.

12 **MS. ANNE TARDIF:** --- the last two bullets on
13 page 3. And scrolling down to page 4, Mr. Clerk, there's the
14 rest of the description, just in fairness to you, Ms. Thomas.
15 That's the agreement, right?

16 **MS. JODY THOMAS:** Yes.

17 **MS. ANNE TARDIF:** Okay. And you'll see there the
18 final bullet on the page -- well, the third bullet from the top:

19 "While this is a step..."

20 "This" being the agreement.

21 "...in the right directions in terms of
22 reducing the truckers' footprint and
23 impact on Ottawa, it is not a win."

24 That's what Commissioner Lucki was reporting to
25 you, right?

26 **MS. JODY THOMAS:** Yes.

27 **MS. ANNE TARDIF:** And do I understand that to
28 mean it's a step in the right direction but it -- by "it's not a

1 win", it's not going to bring the whole convoy to an end? Is
2 that what you understood?

3 MS. JODY THOMAS: Yes.

4 MS. NATALIA RODRIGUEZ: Excuse me for
5 interrupting. I just want to be clear. If you go back to the
6 top of page 1, we have an issue again with the date stamp. You
7 said February 14th ---

8 MS. ANNE TARDIF: Oh.

9 MS. NATALIA RODRIGUEZ: --- but if we subtract
10 the five hours, it's the ---

11 MS. ANNE TARDIF: Thank you.

12 MS. NATALIA RODRIGUEZ: --- evening of the 13th.

13 MS. ANNE TARDIF: I -- thank you very much. And
14 I apologize. I confess, I've never quite gotten that Greenwich
15 time down. So Ms. Thomas, you understood what your counsel
16 said?

17 MS. JODY THOMAS: Yes.

18 MS. ANNE TARDIF: So I apologize if I misled you.
19 I'm not great with the time change.

20 Thank you, counsel.

21 And the last point I want to take you to is that
22 final bullet. Commissioner Lucki reports:

23 "This agreement compliments the plan to
24 reduce the footprint through the work
25 of the public liaison team. Integrated
26 Command planners..."

27 And that's a reference to the Integrated Command
28 planners in Ottawa; correct?

1 MS. JODY THOMAS: Correct.

2 MS. ANNE TARDIF:

3 "...need to now incorporate this
4 development into their resource and
5 enforcement plan."

6 And that's -- that's the information you had and
7 the breakthrough -- potential breakthrough, to the extent you
8 were aware of it; is that correct?

9 MS. JODY THOMAS: That is correct.

10 MS. ANNE TARDIF: Thank you very much, Ms.
11 Thomas. Those are my questions.

12 COMMISSIONER ROULEAU: Okay, next is the OPS,
13 please.

14 --- CROSS-EXAMINATION BY MR. DAVID MIGCOVSKY:

15 MR. DAVID MIGCOVSKY: Good afternoon, Ms. Thomas.
16 My name is David Migicovsky and I'm counsel to the Ottawa Police
17 Service. I understand that as the -- I'll use the acronyms
18 because it's shorter -- as the NSIA, it's your job to assess
19 information, and to advise the prime minister, and to coordinate
20 the flow of intelligence and information from federal agencies
21 to the prime minister and to Privy Council; is that right?

22 MS. JODY THOMAS: Yes.

23 MR. DAVID MIGICOVSKY: And in looking through the
24 documents -- and I'm happy to call it up if it's necessary, but
25 I don't think it's contentious -- there's a message from Zita
26 Astravas to Bill Blair, I believe. Are you familiar with Zita
27 Astravas?

28 MS. JODY THOMAS: I am.

1 **MR. DAVID MIGICOVSKY:** And is that his chief of
2 staff?

3 **MS. JODY THOMAS:** Yes, she is.

4 **MR. DAVID MIGICOVSKY:** And so I think what she
5 indicates -- and this is on January 25th -- is that the ADMs are
6 meeting on the trucker convoy, and then she says that the NSIA
7 is proactively engaged in Hill security and that INTERSECT will
8 be holding a call on January 27th; do you agree with that?

9 **MS. JODY THOMAS:** I do.

10 **MR. DAVID MIGICOVSKY:** And then, if we could call
11 up, Mr. Clerk, PB.NAC.CAN.00000577, there is a report on Jan 27th
12 in which you asked for an update; is that right?

13 **MS. JODY THOMAS:** I believe so, yes.

14 **MR. DAVID MIGICOVSKY:** And in that report, if we
15 just look at the first paragraph -- or the second paragraph, it
16 indicated that all key stakeholders -- so that includes the
17 RCMP, the OPP, OPS, PPS, various other entities -- are actively
18 planning and collaborating to ensure public safety; you'd agree
19 with that?

20 **MS. JODY THOMAS:** I would.

21 **MR. DAVID MIGICOVSKY:** And then the second
22 paragraph, we see that it is also -- it's planned to be a
23 peaceful demonstration; is that correct?

24 **MS. JODY THOMAS:** That's correct.

25 **MR. DAVID MIGICOVSKY:** And -- you can take that
26 down, thank you very much. And I understand there was an ITAC
27 Report on January 26th. And again, I won't turn it up unless you
28 need to see it, but it ES. NSC.CAN00000156. That ITAC report

1 notes that the majority of the trucks are exercising -- the
2 truckers are exercising their right to peaceful protest; is that
3 right?

4 **MS. JODY THOMAS:** That's correct.

5 **MR. DAVID MIGICOVSKY:** And then there is another
6 ITAC report, I believe, the following day which is
7 PB.CAN00001237, and it indicates at that point -- so this is
8 January 27th -- that a dedicated group could prolong that
9 protest until January 31st. Do you recall that?

10 **MS. JODY THOMAS:** I do recall it.

11 **MR. DAVID MIGICOVSKY:** And it's still, however,
12 expected to be peaceful although recognizing that some extreme
13 views of a vocal minority are on social media advocating,
14 correct?

15 **MS. JODY THOMAS:** Correct.

16 **MR. DAVID MIGICOVSKY:** And then there is an
17 INTERSECT meeting on January 27th, so the OPP, RCMP, PPS.
18 INTERSECT's purpose is to collaborate on emergency preparedness
19 and to provide situational awareness?

20 **MS. JODY THOMAS:** Correct.

21 **MR. DAVID MIGICOVSKY:** And so I could turn up the
22 report if you need to see it, but I see in that INTERSECT report
23 -- and maybe you can confirm -- that we do see in that report
24 that the plan is the trucks are going to be on Kent Street,
25 they're going to be on Metcalfe, they're going to be on
26 Wellington. You were aware of that from the INTERSECT report?

27 **MS. JODY THOMAS:** I was.

28 **MR. DAVID MIGICOVSKY:** In a memo you received on

1 January 28th, you again expressed -- and I guess this is on the
2 Friday -- that the organizers of the protest had at that point
3 expressed the intent for a peaceful event, correct?

4 **MS. JODY THOMAS:** I expressed that or it was sent
5 to me?

6 **MR. DAVID MIGICOVSKY:** It was expressed to you,
7 I'm sorry.

8 **MS. JODY THOMAS:** Yes, correct.

9 **MR. DAVID MIGICOVSKY:** And on January 26th, so
10 going back two days previously, Mr. MacDonald -- Mr. MacDonald
11 reports to you; is that correct?

12 **MS. JODY THOMAS:** He does.

13 **MR. DAVID MIGICOVSKY:** He indicated to you that
14 the -- in terms of public communication, that public
15 communication was taking its cues from the prime minister and
16 emphasizing the lawful nature of the protest?

17 **MS. JODY THOMAS:** Yes, I remember reading that.

18 **MR. DAVID MIGICOVSKY:** Right. And so there'd be
19 no basis at that point for law enforcement to stop the protest
20 at that stage, correct?

21 **MS. JODY THOMAS:** Not that I am aware of, no.

22 **MR. DAVID MIGICOVSKY:** And on February 1st, you
23 gave a talk to something called "Canada and the World's
24 Committee"?

25 **MS. JODY THOMAS:** Yes. So that's the partner
26 committee to the Safety, Security, and Emergency Management
27 meeting where it looks at policy and emerging issues essentially
28 about Canadian foreign and defence policy.

1 **MR. DAVID MIGICOVSKY:** Okay. And I see at that
2 talk which was on February 1st, that even though you indicate
3 there's some disturbing behaviour that you've now seen, you
4 noted that the protest had largely remained peaceful and that
5 all levels of law enforcement had worked together with federal
6 officials to ensure planning for a safe protest, and that
7 National Security would continue to work closely with law
8 enforcement; is that right?

9 **MS. JODY THOMAS:** Correct.

10 **MR. DAVID MIGICOVSKY:** I want to move on and talk
11 about negotiation and de-escalation as a method of resolving
12 protests and demonstrations. And the Commission took you to a
13 memo from Mike MacDonald to you, and in that memo the question
14 was asked -- and this was on January 25th -- as to what MPs --
15 as to whether MPs should meet with the convoy while in Ottawa
16 and whether it was safe and if there was advice for them. Do
17 you remember that memo?

18 **MS. JODY THOMAS:** I do remember that memo.

19 **MR. DAVID MIGICOVSKY:** And that question wasn't
20 answered at that time as to whether MPs should meet with them,
21 correct?

22 **MS. JODY THOMAS:** Correct, and partly because it
23 was not for ADMNSOPS to make that determination broadly.

24 **MR. DAVID MIGICOVSKY:** And you would agree with
25 me that sometimes enforcement action can have undesirable
26 results, correct?

27 **MS. JODY THOMAS:** It has, yes.

28 **MR. DAVID MIGICOVSKY:** If we could turn up

1 SSM.NSC.CAN00000292, and if we could turn to page 5? That was
2 the Cabinet, the SSE meeting?

3 **MS. JODY THOMAS:** Yes.

4 **MR. DAVID MIGICOVSKY:** And so you'll see on page
5 5, number 6 if we scroll down -- yes, thanks very much -- you'll
6 see it was brought to your attention -- this is on February 3rd
7 -- that the Ottawa Police said that they could not bring the
8 protest to a conclusion without the assistance of the federal
9 government due to public safety concerns and risks, that
10 enforcement would provoke some protesters, correct?

11 **MS. JODY THOMAS:** Yes.

12 **MR. DAVID MIGICOVSKY:** And at that meeting, on
13 page 6 then, item 4, you had indicated that the protest
14 organizations had indicated an interest in negotiations but no
15 one had reached out to them, correct?

16 **MS. JODY THOMAS:** Correct.

17 **MR. DAVID MIGICOVSKY:** And then on page 8, there
18 was a chart with a list of various options, and one of the
19 things we see in the third box on the left-hand side is
20 engagement with protesters, and the question of a dedicated
21 minister. So this is on February 3rd that's raised, correct?

22 **MS. JODY THOMAS:** A dedicated minister amongst
23 others.

24 **MR. DAVID MIGICOVSKY:** Right.

25 **MS. JODY THOMAS:** Certainly not as the only
26 option.

27 **MR. DAVID MIGICOVSKY:** Right, to engage with
28 them.

1 And then if we go then to the February 6th SSE
2 meeting -- and again, I won't turn it up in the interests of
3 time, but if you need it, do let me know -- I see at the
4 February 6th meeting there's a reference to the deputy minister
5 reiterating the views of provincial colleagues that negotiation
6 is the preferred option for resolution. Do you recall that?

7 **MS. JODY THOMAS:** I do.

8 **MR. DAVID MIGICOVSKY:** And you participated then
9 in a call with the City and the federal officials of the -- and
10 Chief Sloyly that the Commission took you to earlier this
11 afternoon, and there was a discussion about negotiation
12 resolving the situation at Confederation Park rather than going
13 tactical. Do you remember that?

14 **MS. JODY THOMAS:** I do.

15 **MR. DAVID MIGICOVSKY:** And you expressed
16 enthusiasm that a tactical takedown was avoided by negotiations,
17 correct?

18 **MS. JODY THOMAS:** Yes.

19 **MR. DAVID MIGICOVSKY:** And the Commission took
20 you to your talking points on February 8th, and one of -- I see
21 at -- in those talking points that the mayor of Ottawa had
22 requested that the prime minister of Canada appoint a mediator.
23 Do you recall that?

24 **MS. JODY THOMAS:** I do.

25 **MR. DAVID MIGICOVSKY:** And when I looked at the
26 IRG minutes of February 10th, I saw that Public Safety Canada
27 reported on a conversation with the lead OPP negotiators that
28 raised the possibility of the protesters leaving and denouncing

1 the blockades in exchange for a commitment to register their
2 message with the government. Do you recall that?

3 **MS. JODY THOMAS:** I recall it being said, yes.

4 **MR. DAVID MIGICOVSKY:** And that came up again, I
5 think I saw, at the IRG in the tracker of February 12th. In
6 fact, you're shown as the lead to engage a federal interlocutor
7 under -- at that meeting, correct?

8 **MS. JODY THOMAS:** I don't recall being the lead,
9 but certainly, Deputy Minister Stewart was leading the
10 discussions, who would be the interlocutor, names were put
11 forward. I don't think I was ever identified as the single
12 lead.

13 **MR. DAVID MIGICOVSKY:** I just need another three
14 minutes, I believe, to finish off this point?

15 **COMMISSIONER ROULEAU:** Yes, if you didn't go over
16 the same documents with each witness and focused on key, that
17 might shorten your time, but I'll let you go.

18 **MR. DAVID MIGICOVSKY:** I'm doing my best.

19 And so you indicated that there wasn't an
20 interlocutor. And one of the things that you mentioned to my
21 friends earlier this afternoon was that the negotiations in
22 Windsor had failed, correct?

23 **MS. JODY THOMAS:** Correct.

24 **MR. DAVID MIGICOVSKY:** And when I looked at the
25 document -- and I won't take you up to it, but it is
26 PB.NSC.CAN00002963, I see that Deputy Minister Stewart at that
27 time told Mr. Mendicino that it failed in Windsor because it was
28 given to them late at night and the enforcement was starting the

1 next morning, correct?

2 **MS. JODY THOMAS:** That is what Deputy Stewart
3 said..

4 **MR. DAVID MIGICOVSKY:** Right.

5 **MS. JODY THOMAS:** --- is in that memo.

6 **MR. DAVID MIGICOVSKY:** And so I just want to take
7 you to one last document. And it was a timeline that had been
8 provided by, I believe it would have been prepared by DOJ. Do
9 you recall that timeline?

10 **MS. JODY THOMAS:** I can't tell you that I recall
11 the specific one you're referring to. We had multiple
12 timelines.

13 **MR. DAVID MIGICOVSKY:** And so when I looked at
14 that timeline, there was a space on it for meetings. And I'll
15 show you the timeline, just to make it easier.

16 It's PB.NSC.CAN. -- I'm sorry, it's -- I'm sorry,
17 I'm giving you the wrong document number for the timeline. The
18 timeline had two columns on it, and it had a column that said
19 "Meetings" and then it had "Federal Decisions". Do you remember
20 that?

21 **MS. JODY THOMAS:** I don't recall the document
22 you're speaking of.

23 **MR. DAVID MIGICOVSKY:** Okay. And when I -- if
24 you -- when I looked at that document, and it started prior to
25 the convoy and it went right up until past the emergency. And
26 what I saw on the right-hand side was lots of meetings, dozens
27 of meetings with various committees. But when I looked at the
28 -- and you'd agree that that occurred?

1 **MS. JODY THOMAS:** Yes.

2 **MR. DAVID MIGICOVSKY:** And when I looked at the
3 column that said "Federal decisions", page 1 to 21, although
4 there were dozens and dozens of meetings and suggestions about a
5 federal mediator or negotiator, none of that ever happened and
6 the only federal decisions that took place from the start of the
7 convoy to February 14th, were on January 28th, government
8 buildings were locked down, the airspace over Parliament on
9 January 29th was closed, and on January 29th, a request by Ottawa
10 Police to use a parking lot at Cartier Drill Hall was approved,
11 and on February 3rd, a request for RCMP resources was approved.
12 And that's it until the *Emergencies Act*?

13 **MS. JODY THOMAS:** That doesn't reflect the
14 significant amount of engagement, consultation, work with
15 provinces, Ontario in the particular case of Ottawa, which is
16 what you're concerned about, to try and enforce provincial law,
17 the *Highway Traffic Act*, as an example.

18 And so it wasn't achieved, which is part of the
19 problem.

20 **MR. DAVID MIGICOVSKY:** Right. And so the one
21 thing that the protestors wanted was a meeting with somebody in
22 the Federal Government. They have that meeting in this process,
23 but they never got that meeting before passing the *Emergencies*
24 *Act*? Is that right?

25 **MS. JODY THOMAS:** And as was discussed earlier,
26 the reasons why were explained.

27 **MR. DAVID MIGICOVSKY:** Okay. Thank you very
28 much. Those are my questions.

1 **COMMISSIONER ROULEAU:** Okay. Next, if I could
2 call on the CCLA, please.

3 **--- CROSS-EXAMINATION BY MS. CARA ZWIBEL:**

4 **MS. CARA ZWIBEL:** Good afternoon, Ms. Thomas.
5 Can you see and hear me okay?

6 **MS. JODY THOMAS:** I can't really hear you.

7 **MS. CARA ZWIBEL:** How about now?

8 **MS. JODY THOMAS:** That's great. Thank you.

9 **MS. CARA ZWIBEL:** Okay. Great. My name is Cara
10 Zwibel. I am counsel for the Canadian Civil Liberties
11 Association.

12 If I could get the Clerk to put up just the
13 witness summary? WTS00000071 and go to page 11? I don't know
14 if I'll need to refer to this, but just so you have it in front
15 of you.

16 Your view, as articulated in your witness
17 summary, is that the reference to the CSIS definition in the
18 *Emergencies Act* should be reconsidered. Is that right?

19 **MS. JODY THOMAS:** Yes.

20 **MS. CARA ZWIBEL:** Okay. And in your witness
21 summary, there's a statement that the CSIS definition requires
22 the existence of a known actor carrying out activities in
23 support of the threat of violence against persons or property;
24 correct?

25 **MS. JODY THOMAS:** A known actor or group, yes.

26 **MS. CARA ZWIBEL:** Okay. And your colleague,
27 Assistant Secretary MacDonald, said that in order for the 2(c)
28 definition to be met, CSIS targets would have to move from using

1 rhetoric to inciting or carrying out serious violence. Do you
2 agree with that statement?

3 I'm sorry, are you there? I've lost the picture
4 of the ---

5 **COMMISSIONER ROULEAU:** Okay. You're now back.

6 **MS. CARA ZWIBEL:** Okay. Thank you. Sorry.

7 Is that a statement that you agree with?

8 **MS. JODY THOMAS:** The definition as into -- yes,
9 I think that it needs to be modernized, just as the Director of
10 CSIS has indicated that the *CSIS Act* needs to be modernized.
11 That element does as well.

12 **MS. CARA ZWIBEL:** Okay. But the statement that
13 in order for the 2(c) definition to be met, CSIS targets would
14 have to move from using rhetoric to inciting or carrying out
15 serious violence, I'm going to suggest to you is a
16 misunderstanding of the CSIS definition, because individuals
17 can't be targets of CSIS if they haven't already determined that
18 there's been -- if that 2(c) threshold -- that threshold has
19 been met. Would you agree with that?

20 **MS. JODY THOMAS:** I would.

21 **MS. CARA ZWIBEL:** Okay. And your view is that
22 the CSIS definition, you've said before, threat to the security
23 of Canada, is very narrow?

24 **MS. JODY THOMAS:** Very narrow and outdated.

25 **MS. CARA ZWIBEL:** Okay.

26 **MS. JODY THOMAS:** I'm not saying it should be
27 broadened. I'm saying it should be modernized.

28 **MS. CARA ZWIBEL:** Okay. And because you

1 understand -- sorry, not trying to interrupt you. Because you
2 understand why there should be a high threshold before the State
3 can start engaging in surveillance of its citizens?

4 **MS. JODY THOMAS:** I don't disagree with that at
5 all. I didn't say it should be broadened. I said it should be
6 modernized.

7 **MS. CARA ZWIBEL:** Right. Because unpopular --
8 expressing unpopular political views shouldn't be enough to
9 engage the surveillance apparatus of the state?

10 **MS. JODY THOMAS:** And that's not what I've said.

11 **MS. CARA ZWIBEL:** Okay. And disagreement with
12 the government should not be enough?

13 **MS. JODY THOMAS:** I agree.

14 **MS. CARA ZWIBEL:** But your view is that the
15 *Emergencies Act* should have a broader definition of what
16 constitutes a threat to the security of Canada? Is that right?

17 **MS. JODY THOMAS:** I think that both Acts were
18 written in the 1980s and they both need to be modernized to
19 reflect the reality of the nature of threats that are occurring
20 in 2022.

21 **MS. CARA ZWIBEL:** Okay. But again, you
22 understand that in the case of the *Emergencies Act*, there were
23 reasons why we would want a high threshold?

24 **MS. JODY THOMAS:** I'm not disagreeing with the
25 threshold. I'm just -- I'm speaking about an act that was
26 written 30 years ago that needs to be modernized to reflect the
27 reality of the kinds of threats that exist in the world today.

28 **MS. CARA ZWIBEL:** Okay. And we'd want a high

1 threshold because the *Emergencies Act* allows the government to
2 bypass the Parliamentary process and rule by executive order, at
3 least for a brief period of time?

4 **MS. JODY THOMAS:** Right. But does allow for all
5 the transparency of going through the Parliamentary process and
6 for processes like this one.

7 **MS. CARA ZWIBEL:** Right.

8 **MS. JODY THOMAS:** So I am not saying that the
9 government should have more expansive power or a lower
10 threshold. I'm saying that the Act should not sit through the
11 years untouched.

12 **MS. CARA ZWIBEL:** Okay. There's no disagreement
13 there. I think we probably have different characterizations of
14 what's a high threshold.

15 The -- you also understand, and maybe -- I'm not
16 sure if this is the case, I was trying to follow your answers to
17 my friend, Mr. Miller, but although you believe that the
18 definition should be reconsidered in the *Emergencies Act*, you
19 understand that currently, the definition of a Public Order
20 Emergency in the *Emergencies Act* is tied exclusively and
21 exhaustively to the definition in the *CSIS Act*?

22 **MS. JODY THOMAS:** The Federal Government legal
23 opinion is different and there will be legal arguments to that
24 end. I'm not the person to make that argument.

25 **MS. CARA ZWIBEL:** Okay. One other area I'd like
26 to cover, your office, you've mentioned, is Consumer of
27 Intelligence, and you receive intelligence from CSIS, CSEC,
28 ITAC, Global Affairs, Foreign Intelligence partners, all of

1 those?

2 **MS. JODY THOMAS:** Correct.

3 **MS. CARA ZWIBEL:** And in this case, I think there
4 was also mention in the witness summary of receiving information
5 from the CBSA, from Immigration, and Refugees, Citizenship
6 Canada, from Parliamentary Protective Services, and from the
7 Department of National Defence?

8 **MS. JODY THOMAS:** I actually don't receive
9 anything personally from Parliamentary Protective Services, but
10 the rest are true.

11 **MS. CARA ZWIBEL:** Okay. And on the IRG minutes
12 that you were taken to earlier by Commission Counsel, that
13 tracker, that was a place where you had identified this
14 intelligence gap that you characterized it as, and it said there
15 "open source, non-criminal, non-terrorist".

16 So I just want to put a proposition to you, and
17 you can tell me if you agree or disagree, and that proposition
18 is this, that the difference between a society where individuals
19 are monitored by the state, where there are no grounds to
20 believe that they are going to engage in criminal or terrorist
21 activity, and one way they are not, is the difference between a
22 surveillance state and a free society. Is that a proposition
23 that you would agree with?

24 **MS. JODY THOMAS:** Well, that's exactly what I've
25 said, that we need to understand trends but we don't need to
26 understand -- we need to animate that information so that we're
27 not tracking individuals. So I agree with you. I just think
28 that we have to have an understanding of growing threats that

1 are not yet at a threshold or a potential that they're under
2 CSIS investigation or a criminal investigation. That when there
3 is something like a convoy as we saw here in Ottawa, and there
4 is open source information that "We're going to target a school
5 and we're going to do a slow roll around the school."

6 And that information maybe is being monitored by
7 the police so they can do something. I don't actually know.
8 But there needs to be an understanding that the individual who
9 said that isn't under a criminal investigation. We're not even
10 sure that the behaviour is criminal but it says something about
11 what is happening in the middle of a crisis or an incident. I
12 don't want to know who said it. And I need a legal framework to
13 do this.

14 So it's not monitoring. It's not individuals.
15 It's understanding trends just as we do with foreign
16 intelligence. And so I would like to agree with what you're
17 saying but I don't actually agree with your framing of it.

18 **MS. CARA ZWIBEL:** Okay.

19 **MS. JODY THOMAS:** In terms of what I am proposing
20 is required.

21 **MS. CARA ZWIBEL:** Okay.

22 **COMMISSIONER ROULEAU:** You are well out of time,
23 so you're ---

24 **MS. CARA ZWIBEL:** Thank you, Commissioner.
25 That's fine. I'm done, thank you.

26 **COMMISSIONER ROULEAU:** Thank you. Next I'll call
27 on the counsel for Former Chief Sloly.

28 **MS. REBECCA JONES:** Good evening. Rebecca Jones,

1 counsel for Former Chief Sloly.

2 **--- CROSS-EXAMINATION BY MS. REBECCA JONES:**

3 **MS. REBECCA JONES:** Ms. Thomas, am I right that
4 your very impressive experience does not include experience
5 within a police department?

6 **MS. JODY THOMAS:** Like all of my predecessors?
7 That's true.

8 **MS. REBECCA JONES:** And so that means that you
9 don't have specific experience figuring out resource requests
10 for public order operations, for example?

11 **MS. JODY THOMAS:** No, I would rely on experts for
12 that information if I required it and I'm not sure I would.

13 **MS. REBECCA JONES:** Right, okay. And that's
14 exactly what I was going to say, is that you would rely on
15 experts such as the RCMP or your colleagues in public safety,
16 emergency preparedness, that sort of thing for that information?

17 **MS. JODY THOMAS:** Correct.

18 **MS. REBECCA JONES:** And you've testified about
19 the incredibly complex situation occurring in Ottawa which you
20 saw as a national security threat, right?

21 **MS. JODY THOMAS:** Yes.

22 **MS. REBECCA JONES:** And we've now hear a whole
23 parade of witnesses who, while disagreeing on a lot, have all
24 agreed on a couple of things. First, that the protest was
25 unlike anything they had ever seen, right?

26 **MS. JODY THOMAS:** Correct.

27 **MS. REBECCA JONES:** And second, that the OPS did
28 not have the resources they required to end this occupation

1 until around February 17th.

2 **MS. JODY THOMAS:** Correct.

3 **MS. REBECCA JONES:** Okay. And the Commissioner
4 of the OPP testified that ultimately over 2000 officers were
5 required to end the occupation, right?

6 **MS. JODY THOMAS:** Yes.

7 **MS. REBECCA JONES:** Okay. Now, what I want to do
8 with my time with you is to explore resource requests and
9 specifically what the federal government, through you,
10 understood about the resources that were being provided to the
11 RCMP, by the RCMP to the OPS and Chief Sloly.

12 So if we can pull up please OPS6093. And if we
13 can go to page 4, please.

14 So this is an email from Chief Sloly to the
15 Commissioner of the RCMP and if we scroll down -- on February
16 2nd, I should have said. And then if we scroll down we see a
17 request to the RCMP for 50 uniformed members, a level of
18 leadership to provide support for teams, and three public order
19 units. Right?

20 **MS. JODY THOMAS:** Yes.

21 **MS. REBECCA JONES:** And if we scroll up, we'll
22 see that Commissioner Lucki advised Chief Sloly in the first
23 paragraph there, that she had reviewed the request with her team
24 but that the RCMP was experiencing a draw on their resources and
25 were not able to provide that assistance, right?

26 **MS. JODY THOMAS:** That's what the letter says,
27 yes.

28 **MS. REBECCA JONES:** Okay. And if we scroll up

1 we'll see that by the 3rd it was still the case -- if you go all
2 the way up. Well, in any event, it says that by the 3rd those
3 resources still hadn't been provided and there had been no
4 promise to provide them.

5 **MS. JODY THOMAS:** That's what the email says.

6 **MS. REBECCA JONES:** Okay. And were you following
7 this?

8 **MS. JODY THOMAS:** Not in this level of detail at
9 all, nor have I ever seen this.

10 **MS. REBECCA JONES:** Okay.

11 **MS. JODY THOMAS:** Yes, I'm reading what's said
12 and agreement with you.

13 **MS. REBECCA JONES:** Perfect. And so that's what
14 I want to know. You would have been relying on the RCMP to be
15 dealing with these resource requests and then briefing you.

16 **MS. JODY THOMAS:** Yes.

17 **MS. REBECCA JONES:** Okay.

18 **MS. JODY THOMAS:** And the Deputy Minister of
19 Public Safety, and the Minister of Public Safety in fact more
20 than me.

21 **MS. REBECCA JONES:** Right. Everyone would be
22 relying on the RCMP with respect to these resource requests.

23 **MS. JODY THOMAS:** Yes.

24 **MS. REBECCA JONES:** Okay. I'm not going to pull
25 it up in the interests of time but on February 3rd in the evening
26 Minister Mendocino tweets that:

27 "The RCMP has approved all additional officers requested."

28 And we heard evidence -- have you watched the

1 evidence of the RCMP yesterday?

2 **MS. JODY THOMAS:** As much as I could.

3 **MS. REBECCA JONES:** Okay. And we heard from
4 Deputy Commissioner Duheme of the RCMP that there was a mix-up,
5 that those officers that were requested -- there was a statement
6 made that 250 officers had been provided by the RMP but that was
7 a mix-up? Did you hear that evidence?

8 **MS. JODY THOMAS:** I did not hear that evidence.

9 **MS. REBECCA JONES:** Okay. And we also heard
10 evidence from Commissioner Lucki that until after February 2nd
11 the number of RCMP members deployed to Ottawa did not go above
12 50 or 60 officers.

13 **MS. JODY THOMAS:** I did not hear her say that.

14 **MS. REBECCA JONES:** Okay. At the time that --
15 leading up to let's say the period of the Mayor's letter
16 requesting the 1800 resources on February 7th -- leading up to
17 that time is it fair to say that you were under the impression
18 from your colleagues at the RCMP that all of the resource
19 requests being made by the OPS were being fulfilled?

20 **MS. JODY THOMAS:** I can't say that unequivocally.
21 We knew that the RCMP was stretched. They had resources that
22 they had to re-deploy from across the country to Ottawa and they
23 also had responsibility for their protected units. So I would
24 need the numbers in front of me exactly to recreate data to be
25 able to answer that unequivocally.

26 I'm willing to say that there was confusion about
27 the number of RCMP provided.

28 **MS. REBECCA JONES:** Right. And I'm not asking

1 you to actually comment on the deployment levels but rather the
2 understanding of the government as we saw in Minister
3 Mendocino's tweet that everything that OPS was asking for from
4 the RCMP had been fulfilled.

5 **MS. JODY THOMAS:** In that I don't know the
6 conversation between Commissioner Lucki and Minister Mendocino,
7 I prefer not to comment.

8 **MS. REBECCA JONES:** Okay. So why don't we move
9 forward then to the Mayor's letter. We don't need to pull it
10 up; you're familiar with the letter requesting the 1800
11 officers, right?

12 **MS. JODY THOMAS:** Right.

13 **MS. REBECCA JONES:** And the following day you
14 briefed Cabinet, and if we can pull up SSM.NSC.CAN.246, please.

15 So this is the day after the resource request.
16 And if we look at the fourth bullet, this is your briefing. You
17 say:

18 "The Chief continues to communicate
19 publicly his view that OPS lacks
20 resources to effectively manage the
21 situation. This may be somewhat true
22 but may also be a strategic tactic."

23 So I want to just break that down.

24 "This may be somewhat true"; we can now agree
25 that it was true, that the Chief required those resources,
26 correct?

27 **MS. JODY THOMAS:** Correct. At the time this was
28 written I would not necessarily have seen that letter because it

1 didn't come to me.

2 **MS. REBECCA JONES:** The letter about the
3 resources ---

4 **MS. JODY THOMAS:** Right.

5 **MS. REBECCA JONES:** --- that were from the mayor.

6 **MS. JODY THOMAS:** Yes.

7 **MS. REBECCA JONES:** Okay. So when you're
8 commenting on the OPS lacking resources and you're saying it may
9 be somewhat true, what I'm asking you now is you'll acknowledge
10 now that you know it was entirely true that the OPS lacked those
11 resources.

12 **MS. JODY THOMAS:** I know in retrospect for the
13 size the convoy grew to and the way it became entrenched into
14 the city, Chief Sloly did not have the resources to manage it.

15 **MS. REBECCA JONES:** Perfect. And then you say,
16 "It may also be a strategic tactic." And I take it that that
17 wasn't something that you arrived at yourself; it was something
18 that you were being briefed on?

19 **MS. JODY THOMAS:** Yes, that's correct.

20 **MS. REBECCA JONES:** And who briefed you on that?

21 **MS. JODY THOMAS:** The Commissioner of the RCMP.

22 **MS. REBECCA JONES:** Okay. So she told you that
23 the request for resources may be a strategic tactic?

24 **MS. JODY THOMAS:** Correct.

25 **MS. REBECCA JONES:** Okay. Can we agree that this
26 kind of communication to Cabinet would lead Cabinet and Federal
27 Government officials to question what the OPS was asking for in
28 terms of resource requests?

1 **MS. JODY THOMAS:** Without betraying what was
2 discussed in Cabinet, I think that Ministers were very open to
3 understand what OPS's needs were.

4 **MS. REBECCA JONES:** Right. But we'll see that
5 what they're being briefed on is that this request might be
6 somewhat true but might be a tactic?

7 **MS. JODY THOMAS:** And that was the thought at the
8 time.

9 **MS. REBECCA JONES:** Right. And we now know that
10 was incorrect.

11 **MS. JODY THOMAS:** Correct.

12 **MS. REBECCA JONES:** Okay. And then, you
13 testified a moment ago that you weren't really sure what the
14 RCMP was saying in terms of whether they had fulfilled all
15 resource requests. We now know that there was the request for
16 1,800 on February 7th, and what I'm curious about is that there
17 are multiple times after that date where the RCMP was still
18 indicating that it had provided all resources that the OPS had
19 requested. Do you remember that?

20 **MS. JODY THOMAS:** I actually can't say that
21 unequivocally.

22 **MS. REBECCA JONES:** Okay. So why don't we
23 quickly pull up SSM.NSC.CAN.209.

24 So we've looked at this a couple of times today.
25 This is the February 10th Incident Response Group Meeting?

26 **MS. JODY THOMAS:** M'hm.

27 **MS. REBECCA JONES:** And if we go to page 5, if
28 you look at the first big paragraph right in the middle, you see

1 the sentence:

2 "The RCMP has provided all resources
3 requested by the OPS."

4 That's what I would have been briefed.

5 **MS. REBECCA JONES:** Right. And that's all I'm
6 asking, is does that refresh your recollection that you were
7 still being briefed after the Mayor's letter that the RCMP had
8 provided all of the resources that the OPS had requested?

9 **MS. JODY THOMAS:** I can agree with that. What I
10 can't say is that I knew about the Mayor's letter or saw it at
11 the time.

12 **MS. REBECCA JONES:** That's a different issue.

13 **MS. JODY THOMAS:** Okay.

14 **MS. REBECCA JONES:** A different issue.

15 **MS. JODY THOMAS:** But -- so I couldn't see them -
16 - I -- yes.

17 **MS. REBECCA JONES:** Okay.

18 **MS. JODY THOMAS:** Okay. We're agreeing.

19 **MS. REBECCA JONES:** We are agreeing. You were
20 not doing your own assessment ---

21 **MS. JODY THOMAS:** Correct.

22 **MS. REBECCA JONES:** --- about whether or not OPS
23 had all the resources they asked for, you were relying on the
24 RCMP?

25 **MS. JODY THOMAS:** Correct.

26 **MS. REBECCA JONES:** And the RCMP is still telling
27 you on the 10th that they are providing all of the resources
28 that the OPS requested?

1 MS. JODY THOMAS: Correct.

2 MS. REBECCA JONES: Okay. And ---

3 MS. JODY THOMAS: My one question would be did
4 the OPS request 1,700 or 1,800 resources of the RCMP or of
5 police support writ large? And I don't know the answer to that.

6 MS. REBECCA JONES: And the answer -- and I can
7 tell you the answer to that was from both federal policing ---

8 MS. JODY THOMAS: Okay.

9 MS. REBECCA JONES: --- and provincial and
10 municipal policing.

11 MS. JODY THOMAS: Okay.

12 MS. REBECCA JONES: Okay. Thank you, those are
13 my questions.

14 MS. JODY THOMAS: Thank you.

15 COMMISSIONER ROULEAU: Okay.

16 Next, is the Democracy Fund, JCCF.

17 --- CROSS-EXAMINATION BY MR. ROB KITTREDGE:

18 MR. ROB KITTREDGE: Hi, Ms. Thomas. I'm Rob
19 Kittredge, counsel for the Justice Centre for Constitutional
20 Freedoms.

21 I only have 10 minutes with you today, and I'm
22 going to try and cover a fair amount of territory. So to the
23 extent possible if you can give me a yes or no questions or yes
24 or no answers that would be very helpful. Obviously, answer
25 where you have to, but if we can plow through this that would be
26 great.

27 I imagine your job comes with a pretty high level
28 of security clearance. Would you -- would it be fair to say

1 that there is no intelligence information that Cabinet or the PM
2 is cleared to see that you can't see?

3 **MS. JODY THOMAS:** That's true.

4 **MR. ROB KITTREDGE:** You attended the Incident
5 Response Group meetings where the invocation of the *Emergencies*
6 *Act* was considered and regularly briefed the PM on national
7 security issues during the period leading up to the invocation
8 of the *Act*; right?

9 **MS. JODY THOMAS:** Yes.

10 **MR. ROB KITTREDGE:** You would know about any
11 protests, associated acts or threats of serious violence that
12 Cabinet, the IRG, and the Prime Minister knew about when they
13 were considering whether to invoke the *Emergencies Act*; right?

14 **MS. JODY THOMAS:** As I have said earlier, not
15 necessarily.

16 **MR. ROB KITTREDGE:** Not necessarily.

17 **MS. JODY THOMAS:** Right.

18 **MR. ROB KITTREDGE:** All right.

19 **MS. JODY THOMAS:** So I am cleared to see
20 everything ---

21 **MR. ROB KITTREDGE:** Right.

22 **MS. JODY THOMAS:** --- that's different than
23 seeing everything.

24 **MR. ROB KITTREDGE:** Okay. Cabinet, the IRG, and
25 the Prime Minister were aware that CSIS had determined that the
26 protests didn't pose a threat to the security of Canada, as that
27 term is defined in the *CSIS Act*.

28 **MS. JODY THOMAS:** In the very narrow confines of

1 CSIS Act.

2 MR. ROB KITTREDGE: Right. Cabinet, the IRG, and
3 the Prime Minister were aware that CSIS was concerned that
4 invoking the *Emergencies Act* risked further inflaming IMVE
5 rhetoric and could give rise to a risk of serious rhetoric. Is
6 that true?

7 MS. JODY THOMAS: Yeah, there was a responsible
8 act to do that analysis by CSIS.

9 MR. ROB KITTREDGE: Right. You're not aware of
10 any acts of serious violence associated with the protests in
11 Ottawa or at border crossings, are you?

12 MS. JODY THOMAS: It depends on the definition of
13 "serious violence". There was continual violence in the streets
14 of Ottawa, but there wasn't anything that you could point to
15 like January 6th.

16 MR. ROB KITTREDGE: And -- I mean, when you say
17 "continual violence", what kind of level of violence are you
18 talking about?

19 MS. JODY THOMAS: As has been reported by the OPS
20 and by the City and by the residents who have testified,
21 harassment, people being followed, people being intimidated, the
22 noise, the pollution ---

23 MR. ROB KITTREDGE: Okay.

24 MS. JODY THOMAS: --- the mess.

25 MR. ROB KITTREDGE: Right, but not serious
26 violence?

27 MS. JODY THOMAS: There was some incidents that
28 were early reported, but I don't know if they -- you know, the

1 outcome was directly related to the convoy participants or just
2 the general atmosphere in downtown at that point in time.

3 **MR. ROB KITTREDGE:** Okay. But you can't point me
4 to an example of an incident of serious violence.

5 **MS. JODY THOMAS:** No, not serious violence.

6 **MR. ROB KITTREDGE:** All right. There wasn't any
7 espionage associated with the protests or blockades was there?

8 **MS. JODY THOMAS:** That's already been
9 established, no.

10 **MR. ROB KITTREDGE:** Right. And there wasn't any
11 sabotage?

12 **MS. JODY THOMAS:** Not as it's defined in the *CSIS*
13 *Act*.

14 **MR. ROB KITTREDGE:** Right. and CSIS found no
15 indication of foreign state interference at the protests, and
16 you don't have any reason to disagree with their assessment do
17 you?

18 **MS. JODY THOMAS:** No.

19 **MR. ROB KITTREDGE:** Okay. Your interview summary
20 says:

21 "The [National Security and
22 Intelligence Advisor] assesses
23 intelligence, [and] advises the Prime
24 Minister on national and international
25 threats to the security of Canada..."

26 When you use the term "threats to the security of
27 Canada" there, that's used in a general sense and not in the
28 restrictive sense set out in section 2 of the *CSIS Act*; right?

1 **MS. JODY THOMAS:** It's in a broad sense.

2 **MR. ROB KITTREDGE:** Right. In other words, in
3 your role as National Security and Intelligence Advisor, you're
4 not governed by the *CSIS Act*.

5 **MS. JODY THOMAS:** The information I receive from
6 CSIS is.

7 **MR. ROB KITTREDGE:** Sure. But your assessment of
8 what a threat to the security ---

9 **MS. JODY THOMAS:** Right.

10 **MR. ROB KITTREDGE:** --- of Canada isn't governed
11 by the *CSIS Act*.

12 You advise the Prime Minister on anything you
13 consider to be a threat to the security of Canada, whether those
14 threats meet the definition set out in section 2 of the *CSIS Act*
15 or not; right?

16 **MS. JODY THOMAS:** No. That is -- you're
17 misrepresenting. I would not brief on a threat where I did not
18 have intelligence from one of the intelligence agencies that I
19 had thoroughly discussed with the intelligence agencies.

20 **MR. ROB KITTREDGE:** Right. But what you consider
21 a threat that's worth bringing to the attention of the Prime
22 Minister might be something that doesn't strictly fall into the
23 limited definition of section 2 of the *CSIS Act*; right?

24 **MS. JODY THOMAS:** Yes, but it would be very much
25 consulted with the heads of those agencies.

26 **MR. ROB KITTREDGE:** Sure. But you're not as
27 restricted in scope as ---

28 **MS. JODY THOMAS:** I am not.

1 **MR. ROB KITTREDGE:** --- CSIS is? Okay.

2 In the time leading up to the invocation of the
3 *Emergencies Act*, you felt that the protests in Ottawa and at
4 border crossings constituted a threat to the security of Canada;
5 right?

6 **MS. JODY THOMAS:** I did.

7 **MR. ROB KITTREDGE:** But not in the sense
8 contemplated in section 2 of the *CSIS Act*?

9 **MS. JODY THOMAS:** Correct.

10 **MR. ROB KITTREDGE:** All right. In your interview
11 summary, you say that:

12 "CSIS's legal mandate obliges it to
13 assess threats to national security
14 through a very narrow lens." (As read)

15 Do you remember saying that?

16 **MS. JODY THOMAS:** I do.

17 **MR. ROB KITTREDGE:** And that narrow lens,
18 basically boils down to the definition of threat to the security
19 of Canada, as set out in section 2; right?

20 **MS. JODY THOMAS:** No. CSIS is restricted in
21 terms of the threshold they have to meet in order to open an
22 investigation, to get a warrant, and pursue collecting
23 intelligence. There are threats to Canada that are broader than
24 that. Foreign interference is a threat to Canada, as an
25 example.

26 **MR. ROB KITTREDGE:** Right.

27 **MS. JODY THOMAS:** That doesn't fall under that
28 definition of the *CSIS Act*.

1 **MR. ROB KITTREDGE:** Okay. I -- if I'm
2 understanding your testimony earlier, it's you -- your -- it's
3 your opinion that the *Emergencies Act* doesn't require a
4 section 2 threat to the national security of Canada.

5 **MS. JODY THOMAS:** That's not what I said. I said
6 that the Public Order Emergency is assigned meaning by the *CSIS Act*
7 but is not restricted by the *CSIS Act*.

8 **MR. ROB KITTREDGE:** Right.

9 **MS. JODY THOMAS:** And so a Public Order Emergency
10 is broader than as defined by the *CSIS Act*.

11 **MR. ROB KITTREDGE:** So does a section 2 *CSIS Act*
12 threat to the security of Canada have to exist in order for a
13 Public Order Emergency to exist under the *Emergencies Act*?

14 **MS. JODY THOMAS:** Well, as we've seen, the answer
15 to that, in my opinion, is no.

16 **MR. ROB KITTREDGE:** Okay. Well, I guess I'd like
17 to walk you through the *Emergencies Act* and maybe see if I can
18 persuade you that the answer is not no.

19 **MS. JODY THOMAS:** Well, as I said, you're going
20 to receive legal arguments and I'm not going to respond to you -
21 --

22 **MR. ROB KITTREDGE:** Fair enough.

23 **MS. JODY THOMAS:** --- in terms of the legal view.
24 You're a lawyer; I am not. And our lawyers will be making
25 arguments.

26 **MR. ROB KITTREDGE:** Fair enough. But I just want
27 to show you the section of ---

28 **MS. JODY THOMAS:** I've read the section.

1 **MR. ROB KITTREDGE:** --- the Act and we'll see
2 where we get.

3 **MS. JODY THOMAS:** No, I've read the section.

4 **MR. ROB KITTREDGE:** Okay. But you don't mind my
5 showing it to ---

6 **MS. JODY THOMAS:** Sure.

7 **MR. ROB KITTREDGE:** --- I imagine?

8 All right. Mr. Clerk, can we pull up the
9 *Emergencies Act*? It's CCF00007.

10 When did you first read the *Emergencies Act*?

11 **MS. JODY THOMAS:** The *Emergencies Act*, when I
12 arrived in PCO.

13 **MR. ROB KITTREDGE:** Which would be when?

14 **MS. JODY THOMAS:** In January.

15 **MR. ROB KITTREDGE:** Okay. And when did you first
16 read the *CSIS Act*?

17 **MS. JODY THOMAS:** I haven't -- 5, 10 years ago.

18 **MR. ROB KITTREDGE:** Yeah. Okay.

19 Can you take us to the section of the *Emergencies*
20 *Act* that defines a Public Order Emergency?

21 **COMMISSIONER ROULEAU:** I think it's better down.

22 **UNKNOWN SPEAKER:** Section 16.

23 **MR. ROB KITTREDGE:** There we go. So if we look
24 at the definition of Public Order Emergency, can you read that
25 to us, that paragraph that starts with "Public Order Emergency"
26 in bold?

27 **MS. JODY THOMAS:** And you'd like me to read it?

28 **MR. ROB KITTREDGE:** Yes, please.

1 **MS. JODY THOMAS:**

2 "Public Order Emergency means an
3 emergency that arises from threats to
4 the security of Canada and that is so
5 serious as to be a national emergency."

6 **MR. ROB KITTREDGE:** And the next paragraph.

7 **MS. JODY THOMAS:**

8 "As the meaning assigned by section 2
9 of the *Canadian Security Intelligence*
10 *Service Act.*"

11 **MR. ROB KITTREDGE:** Right. So on a plain
12 reading, not a legal interpretation, but on a plain reading,
13 doesn't that say to you that the circumstances that constitute
14 the emergency have to arise from a section 2 ---

15 **MS. DONNAREE NYGARD:** Excuse me.

16 **MR. ROB KITTREDGE:** --- Security of Canada?

17 **MS. DONNAREE NYGARD:** The witness has already
18 said she's not going to interpret the Act. She's not a lawyer.

19 **MR. ROB KITTREDGE:** I mean, it's a fairly plain
20 English reading, but I suppose ---

21 **COMMISSIONER ROULEAU:** (Audio fail) lawyer, if
22 that's all it required, you'd normally be out of business. So -
23 --

24 **MR. ROB KITTREDGE:** Fair enough, fair enough.
25 All right.

26 **COMMISSIONER ROULEAU:** You have one minute left
27 and so I'm just warning you that time's running out, so ---

28 **MR. ROB KITTREDGE:** Okay. Fair enough.

1 I guess what, beyond that definition, would you
2 say is a threat to the security of Canada?

3 **MS. JODY THOMAS:** There's a range of threats that
4 need to be considered when you're talking about this country,
5 economic security; the threat of IMVE; the rhetoric of threats
6 against public figures; the inability to conduct a livelihood in
7 the City of Ottawa -- as an example, the Coutts border blockade
8 if we're going to speak about the specific example; the threat
9 to public institutions and the undermining of the confidence in
10 public institutions. Those things all constitute a threat.

11 **MR. ROB KITTREDGE:** Right, but those aren't
12 mentioned in section 2 of the ---

13 **MS. JODY THOMAS:** You asked.

14 **MR. ROB KITTREDGE:** --- CSIS Act.

15 **MS. JODY THOMAS:** You asked me what did, and I
16 answered your question.

17 **MR. ROB KITTREDGE:** Right.

18 **MS. JODY THOMAS:** And the lawyers will talk about
19 the CSIS Act.

20 **MR. ROB KITTREDGE:** Okay. But those aren't
21 mentioned in section 2 of the CSIS Act? All right. Fair
22 enough.

23 Okay. Well, thank you very much. Those are my
24 questions.

25 **COMMISSIONER ROULEAU:** Okay. Next, the Windsor
26 Police Service.

27 **--- CROSS-EXAMINATION BY MR. THOMAS McRAE:**

28 **MR. THOMAS McRAE:** Thank you, Mr. Commissioner.

1 My name is Tom McRae and I appear for the Windsor
2 Police Service.

3 Mr. Clerk, could you please turn up the witness'
4 witness statement, 00000071, WTS?

5 Sorry, if you could go down to the top of page 8,
6 please.

7 Now, Ms. Thomas, is it correct -- and I'm just,
8 while the clerk does that -- that you have been in the federal
9 public service for the last 20 years, at least?

10 **MS. JODY THOMAS:** At least.

11 **MR. THOMAS McRAE:** Thank you. At the top of this
12 paragraph, it says, "NSIA Thomas reflected," and then it goes
13 on, "it could have been better, the sharing of information to --
14 for instance."

15 Then:

16 "ASC MacDonald added that the
17 implicated law enforcement agencies,
18 OPS, SQ, OPP, WPS, and RCMP maintained
19 distinct intelligence silos."

20 Is that a view that you hold, Ms. Thomas?

21 **MS. JODY THOMAS:** It is. It's improved since
22 this convoy, but at the time, yes.

23 **MR. THOMAS McRAE:** Your earlier evidence today,
24 as I noted it, was that you were aware of Operation Hendon;
25 isn't that correct?

26 **MS. JODY THOMAS:** I was made aware of Operation
27 Hendon after the convoy. I found out that ---

28 **MR. THOMAS McRAE:** Oh.

1 **MS. JODY THOMAS:** --- we were -- that ITAC and
2 other elements of the federal national security community did
3 see some of their reports, but I didn't, not directly.

4 **MR. THOMAS McRAE:** Are you aware that in fact,
5 the Hendon Reports to Project Hendon was a sharing of
6 information, at least amongst OPS, WPS, and the OPP?

7 **MS. JODY THOMAS:** I am now, yes.

8 **MR. THOMAS McRAE:** Okay. So they are not truly
9 distinct intelligence silos; isn't that correct?

10 **MS. JODY THOMAS:** It depends on where they're
11 shared and how they're used.

12 **MR. THOMAS McRAE:** Okay. Thank you. Mr.
13 Commissioner, that's all of my questions. I would like to throw
14 the balance of my time, if possible, to the City of Windsor
15 please.

16 **COMMISSIONER ROULEAU:** That's a new arrangement.
17 So I'll take it under advisement.

18 City of Windsor.

19 **--- CROSS-EXAMINATION BY MS. JENNIFER KING:**

20 **MS. JENNIFER KING:** Thank you, Mr. Commissioner.
21 Hopefully, we can have those extra two or three
22 minutes.

23 Good evening. My name is Jennifer King. I am
24 legal counsel to the City of Windsor.

25 I would like to start with the issue of the line
26 between a lawful and unlawful protest.

27 And if Mr. Clerk could please bring up

28 WIN00000511?

1 This is the February 11th injunction order
2 granted in Windsor. You were aware of this order at the time?

3 **MS. JODY THOMAS:** I was.

4 **MS. JENNIFER KING:** Okay. If you could please
5 scroll to the bottom of page 2, paragraph 4?

6 And here, the court ordered that:

7 "The Defendants and any persons having
8 notice of this order are hereby
9 restrained and enjoined from impeding
10 or blocking access to the Ambassador
11 Bridge and indirect or direct-
12 approaching roadways and access points
13 for 10 days from the date of this
14 order."

15 So you'll agree with me that -- sorry, this order
16 was made effective February 11th, 7:00 p.m., Ms. Thomas.

17 So when the order became effective, any person
18 having notice of this order who continued to impede or block
19 access to the bridge would contravene the order, right?

20 **MS. JODY THOMAS:** Yes.

21 **MS. JENNIFER KING:** And disobeying a court order,
22 you're aware that that is contrary to the Criminal Code, section
23 127?

24 **MS. JODY THOMAS:** I wasn't aware of the section,
25 but yes.

26 **MS. JENNIFER KING:** Okay. And you're aware that
27 protesters continued to impede and block access to the bridge
28 after 7:00 p.m. on February 11th?

1 **MS. JODY THOMAS:** Yes.

2 **MS. JENNIFER KING:** Does this inform your
3 assessment of whether the Ambassador Bridge blockade was lawful
4 protest, at least after this order became effective?

5 **MS. JODY THOMAS:** Well, it would have been an
6 unlawful protest.

7 **MS. JENNIFER KING:** Okay. Mr. Clerk, could you
8 please bring up PB.CAN00001661?

9 I understand from your witness summary that you
10 spoke with the U.S. Homeland Security Advisor on February 9th
11 and 10th?

12 **MS. JODY THOMAS:** I did.

13 **MS. JENNIFER KING:** Is that right? Okay.

14 **MS. JODY THOMAS:** Yes.

15 **MS. JENNIFER KING:** So this is an email from
16 Martin Loken. Who's Martin Loken?

17 **MS. JODY THOMAS:** Martin Loken at that time was
18 the -- a deputy to the ambassador in Washington ---

19 **MS. JENNIFER KING:** So it appears ---

20 **MS. JODY THOMAS:** --- to our ambassador.

21 **MS. JENNIFER KING:** Thank you. So it appears
22 that Mr. Loken sent this email to you before one of these calls
23 with the U.S. Homeland Security Advisor. Do you recall this
24 email?

25 **MS. JODY THOMAS:** I do now. I don't recall it
26 from the time.

27 **MS. JENNIFER KING:** Okay.

28 **MS. JODY THOMAS:** I've seen it.

1 **MS. JENNIFER KING:** And you'll see partway
2 through the page there's -- he suggests some additional
3 messaging. And I'll just take you to the third bullet.

4 And he says:

5 "Critical that CBSA and CPB work
6 together with the relevant police of
7 jurisdiction to ensure traffic keeps
8 moving."

9 Do you agree with that message and convey that
10 message to the U.S. Homeland Security Advisor at the time?

11 **MS. JODY THOMAS:** Yes.

12 **MS. JENNIFER KING:** Okay. And then continuing on
13 that bullet:

14 "Recognize that international crossings
15 are national security issue."

16 Do you understand what Mr. Loken meant here?

17 **MS. JODY THOMAS:** Yes, I do, that the economic
18 viability of the country is a national security issue and it's
19 considered that on both sides of the border.

20 **MS. JENNIFER KING:** And you agree with that
21 assessment?

22 **MS. JODY THOMAS:** I do.

23 **MS. JENNIFER KING:** Is that something you
24 conveyed to the U.S. Homeland Security Advisor at the time?

25 **MS. JODY THOMAS:** It wasn't -- I did not need to
26 convey it. He raised it.

27 **MS. JENNIFER KING:** And you both agreed that it
28 was a national security issue?

1 MS. JODY THOMAS: Yes.

2 MS. JENNIFER KING: Thank you. I'm showing you a
3 lot of documents, and hopefully I'll get through it quickly.

4 So if you could please pull up SSM.CAN -- I'm not
5 sure if I've got this right -- it's 00002694, Mr. Clerk.

6 What I want to show you is that the next day on
7 February 11th, you participated in an opposition leaders'
8 briefing. Do you recall that?

9 MS. JODY THOMAS: I do.

10 MS. JENNIFER KING: So that's not it. Oh no,
11 there it is. Yes, it is. Thank you, Mr. Clerk. So if you
12 could just go to page 2 in the middle of the page?

13 You gave an update on the Ambassador Bridge
14 blockade. Do you recall that?

15 MS. JODY THOMAS: Yes.

16 MS. JENNIFER KING: A little bit further down,
17 Mr. Clerk. You'll see it says "ON" there. Okay.

18 So you state there:

19 "All 3 levels working together on this..."

20 Are you referring to three levels of government
21 there?

22 MS. JODY THOMAS: Yes.

23 MS. JENNIFER KING: Okay.

24 MS. JODY THOMAS: This is somebody's notes of
25 what I said, rather than verbatim transcript. But yes.

26 MS. JENNIFER KING: But that's what you said?
27 That all three levels of government were working together on the
28 issue of the Ambassador Bridge?

1 MS. JODY THOMAS: Yes.

2 MS. JENNIFER KING: Okay. And if you continue on
3 in that paragraph:

4 "Working with US federal, state,
5 municipal, communication is good.

6 So it's your understanding that the Federal
7 Government was getting the information that it required from
8 Windsor?

9 MS. JODY THOMAS: We were getting some
10 information from Windsor; we were getting some information from
11 the United States.

12 MS. JENNIFER KING: Okay.

13 MS. JODY THOMAS: And then the policing
14 information, you would have to speak to Commissioner Lucki
15 about.

16 But in terms of working collectively with the two
17 border agencies on both sides of the border, along with Homeland
18 Security in the White House, people were working well, they had
19 the same goal, and it was opening that bridge as quickly as
20 possible.

21 MS. JENNIFER KING: Okay. And Mr. Clerk, if you
22 could scroll down to just under the redactions on that page? So
23 at the bottom of the page.

24 So you're referring to questions about
25 jurisdiction being constant here, but this was not a question,
26 or concern, or an issue at the operational level, at least in
27 Windsor.

28 Are you aware -- would you agree that any

1 questions about jurisdictional issues did not impact the
2 operational response of the police and local authorities on the
3 ground in Windsor?

4 **MS. JODY THOMAS:** I agree with that.

5 **MS. JENNIFER KING:** Okay.

6 **MS. JODY THOMAS:** But there were issues,
7 jurisdictional issues that CBSA was bringing to our attention.

8 **MS. JENNIFER KING:** Okay.

9 **MS. JODY THOMAS:** The City versus who is
10 accountable for the port of entry. And I think that Mr.
11 Ossowski spoke about that yesterday, as did Mr. Keenan.

12 **MS. JENNIFER KING:** As far as you're aware, there
13 was no delay or operational issues with the response due to
14 these questions that arose?

15 **MS. JODY THOMAS:** I can't say that unequivocally,
16 no.

17 **MS. JENNIFER KING:** Okay. I think this will
18 probably be my final question. So in your witness summary, you
19 state that:

20 "The primary goal of the decision to
21 invoke the Act was to provide local and
22 provincial police forces with additional
23 policing authorities that would allow them
24 to manage copy cat protests and blockades
25 in their jurisdictions." (As read)

26 Are you aware of any consultation with the local
27 police forces and municipalities with respect to the authorities
28 required to manage the protests and blockades in their

1 jurisdictions?

2 **MS. JODY THOMAS:** I'm not aware, but I was not a
3 part of the consultation outside of the Federal Government.

4 **MS. JENNIFER KING:** Well would you agree with me
5 that it would have been useful to consult with the police,
6 including police of jurisdiction and local authorities, to get
7 information about what would be useful on the ground?

8 **MS. JODY THOMAS:** Yes, I would agree.

9 **MS. JENNIFER KING:** Thank you. Those are my
10 questions.

11 And thank you for the indulgence, Commissioner.

12 **COMMISSIONER ROULEAU:** Okay. Thank you.

13 Next is the National Police Federation.

14 **MS. LORNE PEIRCE:** Hello, Lorne Peirce for the
15 National Police Federation. Our questions have been canvassed
16 by the previous parties. We have no further questions. Thank
17 you.

18 **COMMISSIONER ROULEAU:** Thank you.

19 The Government of Saskatchewan.

20 **--- CROSS-EXAMINATION BY MR. MICHAEL MORRIS:**

21 **MR. MICHAEL MORRIS:** Thank you.

22 Good evening, Ms. Thomas. My name is Mike Morris
23 and I'm counsel for the Government of Saskatchewan.

24 Ms. Thomas, I understand that you were only about
25 two weeks into your role as NSIA when the Freedom Convoy rolled
26 into Ottawa. Is that correct?

27 **MS. JODY THOMAS:** That is correct.

28 **MR. MICHAEL MORRIS:** That meant you were

1 effectively having to learn your role while in the thick of it.
2 Is that fair?

3 **MS. JODY THOMAS:** That's fair.

4 **MR. MICHAEL MORRIS:** And I think you've stated
5 that as NSIA, you were essentially a consumer of intelligence
6 provided to you by other agencies, such as the RCMP and CSIS;
7 correct?

8 **MS. JODY THOMAS:** Amongst others, yes.

9 **MR. MICHAEL MORRIS:** Right. What I want to touch
10 upon is your request for a threat assessment from the RCMP on
11 February 14th.

12 Commission Counsel raised this with you and drew
13 your attention to an email which was titled "Urgent" from Mike
14 MacDonald to the RCMP indicating you needed a threat assessment
15 for the Clerk of the Privy Council. Do you recall that?

16 **MS. JODY THOMAS:** I do.

17 **MR. MICHAEL MORRIS:** So I'm just going to ask the
18 Registrar to pull up PB.NSC.CAN.00003462.

19 And the reason I'm pulling this up, ma'am, is
20 because I think you actually did get a response to that threat
21 assessment, and I just want to give you the opportunity to see
22 that.

23 **MS. JODY THOMAS:** Yeah, I remember the document.
24 It was incomplete and certainly not -- it was going to be
25 incorporated into a broader document that was attached to the
26 invocation material. And so this is a part of a response.

27 **MR. MICHAEL MORRIS:** Okay. Because if we just
28 scroll down, we can see there's information provided from

1 Adriana Poloz from the RCMP to Mike MacDonald at 2:25 p.m.;
2 correct?

3 **MS. JODY THOMAS:** Yes.

4 **MR. MICHAEL MORRIS:** And she says:

5 "Mike
6 As requested, pls let me know if this
7 suits your requirements."

8 And below that, of course, is obviously what --
9 is the RCMP assessment on the convoy.

10 I'd just like us to scroll up then again back to
11 the top, because it appears that you had some questions about
12 this material, this assessment, and you had asked Mr. MacDonald
13 to convey them to the RCMP, particularly it looks like he's
14 quoted from something you typed, which begins:

15 "I guess my question is 'how do we know',
16 in particular how do we know that the
17 majority are peaceful?"

18 And of course there's some other stuff typed
19 after that as well; correct?

20 **MS. JODY THOMAS:** Correct.

21 **MR. MICHAEL MORRIS:** Okay. So that was a
22 question that you wanted answered. And Mr. MacDonald seems to
23 be indicating that NSAI would like the question answered within
24 the next 20 minutes. And if we just scroll up again so we can
25 see the time of this email, it's 19:52. So if we subtract five
26 hours, I think that puts us at 2:52 p.m. on February 14th. Is
27 that fair?

28 **MS. JODY THOMAS:** That's fair.

1 **MR. MICHAEL MORRIS:** Okay. Do you know what time
2 the First Ministers meeting was held on that day? I think it
3 was 10:15 a.m.

4 **MS. JODY THOMAS:** I'll agree with you on that. I
5 don't know off hand.

6 **MR. MICHAEL MORRIS:** And did it go for around an
7 hour or a little over an hour? Do you know?

8 **MS. JODY THOMAS:** I don't recall.

9 **MR. MICHAEL MORRIS:** Okay. And I gather you do
10 know that the Prime Minister had a press conference scheduled
11 for February 14th for 4:30 p.m. Do you recall that?

12 **MS. JODY THOMAS:** I do.

13 **MR. MICHAEL MORRIS:** And that at that press
14 conference, of course, the Prime Minister announced that the
15 *Emergencies Act* was being invoked; correct?

16 **MS. JODY THOMAS:** Correct.

17 **MR. MICHAEL MORRIS:** Okay. I'm just trying to
18 get a timeline.

19 **MS. JODY THOMAS:** Right.

20 **MR. MICHAEL MORRIS:** So basically you were
21 looking for some more information at approximately 2:52 p.m.,
22 you wanted it within the next 20 minutes, and there was a press
23 conference scheduled that day for 4:30 p.m.; correct?

24 **MS. JODY THOMAS:** Correct.

25 **MR. MICHAEL MORRIS:** Okay.

26 **MS. JODY THOMAS:** I was asking questions to be
27 more expansive, to ensure that we answered a broad range of
28 questions.

1 **MR. MICHAEL MORRIS:** And this was required for
2 the Clerk of the Privy Council; correct?

3 **MS. JODY THOMAS:** Correct.

4 **MR. MICHAEL MORRIS:** Okay. You wouldn't have
5 asked if you didn't think the Clerk should have it, I assume;
6 correct?

7 **MS. JODY THOMAS:** No, but as you would know, in
8 government, we do a lot of preparatory staff work to answer
9 eventualities.

10 **MR. MICHAEL MORRIS:** Okay.

11 **MS. JODY THOMAS:** So I did not know at this point
12 what the outcome was going to be of the Prime Minister's
13 decisions. We were preparing for every eventuality.

14 **MR. MICHAEL MORRIS:** Okay. You hadn't spoken
15 with the Prime Minister between the First Ministers meeting and
16 the announcement then at 4:30 p.m.?

17 Or sorry, I shouldn't go to the announcement. I
18 should go to the time this email was sent.

19 **MS. JODY THOMAS:** I had not. There were other
20 parts of PCO who were more engaged at that point, because there
21 was different work that needed to be done. The
22 Intergovernmental Affairs Group, as an example, rather than me.

23 **MR. MICHAEL MORRIS:** Okay.

24 **MS. JODY THOMAS:** I'm not the Prime Minister's
25 sole advisor.

26 **MR. MICHAEL MORRIS:** I understand that. I just
27 have one last question.

28 There was reference to an email drafted by a

1 person named Phillipe Lafortune in the Privy Council Office. Do
2 you recall that?

3 **MS. JODY THOMAS:** I do.

4 **MR. MICHAEL MORRIS:** Is that person a lawyer, do
5 you know?

6 **MS. JODY THOMAS:** He is not.

7 **MR. MICHAEL MORRIS:** Okay.

8 **MS. JODY THOMAS:** Not that I'm aware of.

9 **MR. MICHAEL MORRIS:** Okay. He was just
10 essentially doing some legal research type work then? Is that
11 fair?

12 **MS. JODY THOMAS:** Yeah, he was doing research. I
13 wouldn't call it legal.

14 **MR. MICHAEL MORRIS:** Okay. Thank you, ma'am.
15 Those are my questions for you.

16 Have a good evening.

17 **MS. JODY THOMAS:** Thank you.

18 **COMMISSIONER ROULEAU:** Okay, thank you. Next is
19 the Ontario Provincial Police.

20 **--- CROSS-EXAMINATION BY MS. JINAN KUBURSI:**

21 **MS. JINAN KUBURSI:** Hello, Ms. Thomas. My name
22 is Jinan Kubursi and I'm one of the lawyers representing the
23 Ontario Provincial Police in this hearing. I'd like to start by
24 talking to you a bit about your role and the role of your
25 office, and then some of the relationships and interactions that
26 you have with the "security and intelligence partners", as
27 you've called them. So as stated, I believe, in your witness
28 summary -- and it's also in the Institutional Report for the

1 Privy Council Office -- you'd agree that you worked with closely
2 with your security and intelligence partners, and that includes
3 CSIS, the RCMP, the PPS, as well as CBSA and Transport Canada;
4 that's sort of a foundational part of the work that you do?

5 **MS. JODY THOMAS:** I would say the PPS is not in
6 that -- the PPS is not in that core group.

7 **MS. JINAN KUBURSI:** Okay, fair enough. It's
8 listed in the report but not ---

9 **MS. JODY THOMAS:** Mike MacDonald deals with them
10 more than I do.

11 **MS. JINAN KUBURSI:** Right. Right, okay. And you
12 also, in your exchange with counsel for the CCF, you talked
13 about always consulting with the lead intelligence agencies that
14 you work with whenever you're in the process of advising the
15 prime minister about a threat; do you recall saying that just a
16 short while ago?

17 **MS. JODY THOMAS:** I do.

18 **MS. JINAN KUBURSI:** You know, obviously
19 reflecting your respect for the expertise and the work that
20 those agencies do, which is in their area of specialization.

21 **MS. JODY THOMAS:** Well, it's more than expertise
22 and respect, it's their legal authorities ---

23 **MS. JINAN KUBURSI:** Right, right.

24 **MS. JODY THOMAS:** --- and mandates.

25 **MS. JINAN KUBURSI:** Yeah. It's, of course, a
26 very important part of the consideration. And so I expect that
27 in your role as a consumer of intelligence but not a producer of
28 intelligence or investigations, as we've heard earlier today,

1 that there's a, you know, regular communication that you're
2 doing with these entities and agencies that have to provide the
3 information that then becomes part of that information flow
4 through your office through to the cabinet and the prime
5 minister, and perhaps others as well?

6 **MS. JODY THOMAS:** Correct.

7 **MS. JINAN KUBURSI:** Right. And I expect that in
8 that working relationship that you have with these partner
9 entities and agencies, that there's always an opportunity for
10 some conversation about what you need as the NSIA, what they can
11 provide to you; is that ---

12 **MS. JODY THOMAS:** That's fair.

13 **MS. JINAN KUBURSI:** --- a fair expectation?
14 Yeah.

15 **MS. JODY THOMAS:** Yes.

16 **MS. JINAN KUBURSI:** So considering some of what's
17 been discussed earlier in terms of the scope of what your office
18 is able to do given -- as was raised in the questioning with
19 counsel for Freedom Corp, that you don't have any legislative
20 framework for your work, I'd like to talk about, you know, the
21 current situation and how you deal with addressing the needs of
22 your role through the entities that exist. So a first example,
23 you've spoken about a concern that, it seemed to me, perhaps
24 gave rise to this interest doing more in the way of social media
25 intelligence work, you know. And I take it that, to some
26 extent, the concern is related to potential threats to public
27 figures, the prime minister, others in the cabinet, for example.
28 That's one area of concern, I take it; is that fair to say?

1 **MS. JODY THOMAS:** That's fair, yes.

2 **MS. JINAN KUBURSI:** Yes. And so my understanding
3 is that currently if there's a concern in that regard, that the
4 RCMP has a National Security Criminal Investigations office that
5 would have responsibility for conducting threat assessments, or
6 perhaps doing and investigation if you had a concern that you
7 wanted to have a police agency look at; is that ---

8 **MS. JODY THOMAS:** Yes.

9 **MS. JINAN KUBURSI:** Am I correct?

10 **MS. JODY THOMAS:** Yes.

11 **MS. JINAN KUBURSI:** Okay. And in order to
12 provide that day-to-day security for the prime minister, there's
13 the prime minister's protective detail, and for others, there is
14 the RCMP Protective Services currently fulfilling that function;
15 correct?

16 **MS. JODY THOMAS:** Correct.

17 **MS. JINAN KUBURSI:** Correct. And so in doing
18 that job, it's a intrinsic part of their job to continually
19 evaluate risks or threats to the figures that they're
20 protecting?

21 **MS. JODY THOMAS:** Yes, on case-by-case events.
22 And so what my concern is is broader than that. The RCMP may
23 tell you -- and I'm giving you a number. It's not necessarily
24 the correct number -- that there were five actionable threats
25 against the prime minister last year, and they investigated all
26 of them. We have a concern in the intelligence -- in the
27 security community at the deputy minister level, and certainly
28 within PCO, about the rhetoric that is online. So five

1 actionable threats that they investigate -- and they may arrest
2 somebody, or they may warn somebody, or do any of the things
3 that police agencies do -- but in fact there's 1000, maybe 1500
4 threats of various nature that are going affect other things
5 that the prime minister does. That says something about the
6 discourse and the concern out there.

7 And so it is a nuanced thing to try to explain
8 but we have a responsibility to understand -- we have a
9 responsibility to understand the country, and not on a case-by-
10 case basis, on the mood, the tone. And some of that's
11 intelligence and some of it is other parts of -- various arms of
12 government, but I think that we are a little blind on what is
13 going on in society and we are -- in terms of the prime
14 minister's protection, as an example, we are seeing a change in
15 the environment that he is in. We are seeing an increased level
16 of anger and we're -- it's more than just him; it's other public
17 officials as well. And we have a responsibility to understand
18 that.

19 **MS. JINAN KUBURSI:** Right, I appreciate that.
20 And one option that is available now, at this point, to
21 investigate that concern. To take whatever steps might be
22 necessary to address that concern would be to refer that to the
23 RCMP; is that fair?

24 **MS. JODY THOMAS:** The RCMP will look at
25 actionable intelligence. This is a different notion. It's a
26 different need. And the RCMP -- we can't send everything to the
27 RCMP. They have their core functions to execute.

28 **MS. JINAN KUBURSI:** So I think I'm going to want

1 -- I think what you're talking about -- oh, okay. It just froze
2 for a moment. I don't know if I froze for a moment, perhaps,
3 but can you hear me now, Mr. Thomas?

4 **COMMISSIONER ROULEAU:** For a moment, but go
5 ahead. Go ahead.

6 **MS. JINAN KUBURSI:** Okay. Yeah, sorry about
7 that.

8 **COMMISSIONER ROULEAU:** You have two minutes left.

9 **MS. JINAN KUBURSI:** Okay. Okay, I'm going to
10 move through this more quickly, then, and then get back to the
11 point that you were making, Ms. Thomas, about, really, the big
12 picture, and your concern about the big picture, you know, in
13 light of the current authorities that exist for offices. So we
14 heard earlier my friend, counsel for the Windsor Police Service,
15 he asked you whether you're aware of the Project Hendon that was
16 initiated by the OPP, and we know that through these proceedings
17 you've become aware of that project.

18 **MS. JODY THOMAS:** M'hm.

19 **MS. JINAN KUBURSI:** And, you know, as you can
20 appreciate -- and you spoke to this earlier -- you know, it
21 seems clear to me that you understand that there's certain
22 information that is held by law enforcement entities with their
23 authorities and protections for information that you understand
24 you're not able to get directly because you were essentially a
25 civilian office of government, right? Do we agree on that?

26 **MS. JODY THOMAS:** Absolutely, yeah.

27 **MS. JINAN KUBURSI:** So then would you also agree
28 with me then -- and perhaps we -- just to be direct, we're

1 considering the role of the RCMP in this information chain. If
2 there's an issue with the kind of information that you're
3 getting from what is an existing project that the OPP's
4 initiated that then that's something you could perhaps have a
5 conversation with the RCMP about.

6 **MS. JODY THOMAS:** Absolutely. And so that's the
7 range of optionality that we are looking at in terms of
8 understanding what the gap is and how we're going to fill it.
9 We don't have a solution yet. We know there's a gap. What is
10 the best, most effective most efficient way of filling it where
11 we can have a broad view rather than a narrow view.

12 **MS. JINAN KUBURSI:** Right. And counsel for the
13 Ottawa Police Service -- he took you through some of -- or with
14 reference to some of the documents regarding the information
15 that was available to government in those days leading up to the
16 convoy. So you recall reviewing that with him just a short
17 while ago?

18 **MS. JODY THOMAS:** Yes.

19 **MS. JINAN KUBURSI:** So you know, I do have a
20 question for you. Were you made aware ---

21 **COMMISSIONER ROULEAU:** You're going to have to
22 make it your last because you're over time. So go ahead.

23 **MS. JINAN KUBURSI:** Okay.

24 **COMMISSIONER ROULEAU:** This is your last
25 question.

26 **MS. JINAN KUBURSI:** Okay, we'll make it the last
27 question.

28 Just on this matter of strategic review, have you

1 had an opportunity -- I'm going to refer to a document, OPP1600,
2 if we could pull it up very quickly, Mr. Clerk, just so that Ms.
3 Thomas can take a look at it. And I don't expect you have see
4 this before, because it is a Project Hendon Report that was
5 produced on January 13th.

6 You can see it's entitled "Strategic Intelligence
7 Overview." So you know, I'll put it to you, Ms. Thomas, that
8 this overview is an example of the kind of big picture strategic
9 review of intelligence, without reference to individuals,
10 talking about societal movements and how they manifest
11 themselves. So would you agree, seeing this on its face you can
12 perhaps take a look at it on another occasion. But this is the
13 kind of work that you were looking for to assist you in what you
14 were hoping to do in your office.

15 **MS. JODY THOMAS:** This would be the kind of
16 information we would receive along with other information and do
17 a broad assessment of.

18 **MS. JINAN KUBURSI:** Okay. Given that I'm out of
19 time, we'll have to end our exchange here. Thank you very much
20 for your time. And have a good evening.

21 And thank you, Commissioner, for allowing me a
22 few extra moments.

23 **COMMISSIONER ROULEAU:** Okay. Thank you.

24 Next is the Government of Canada, please.

25 **--- CROSS-EXAMINATION BY MS. DONNAREE NYGARD:**

26 **MS. DONNAREE NYGARD:** Good evening, Ms. Thomas.

27 **MS. JODY THOMAS:** Good evening.

28 **MS. DONNAREE NYGARD:** Donnaree Nygard for the

1 Government of Canada.

2 I want to start out by asking you about something
3 that one of my friends asked. The counsel for OPS put to you
4 that the convoy participants in Ottawa wanted just one thing to
5 be heard. What was your understanding of what the convoy
6 participants wanted?

7 **MS. JODY THOMAS:** They wanted all mandates
8 removed. And they were going to stay in Ottawa until they were
9 removed. And there was an element of the convoy that wanted the
10 Prime Minister removed and a proxy government formed.

11 **MS. DONNAREE NYGARD:** Thank you.

12 We haven't spent any time today -- and I'd like
13 to spend a little bit of time -- discussing your role
14 coordinating the response of the federal government to the
15 events that were occurring in Ottawa and across the country. So
16 can you describe to the Commissioner what role you played there
17 and what the federal government was doing in that regard.

18 **MS. JODY THOMAS:** Thank you. So as it has been
19 said in my interview summary and in our institutional report PCO
20 has that central coordinating function for the Government of
21 Canada on a number of issues on just about every issue that goes
22 through to Cabinet.

23 We play a coordination function. We have a
24 challenge function. And when there is a crisis -- and this has
25 been for as long as the position has existed -- the NSIA on this
26 kind of a crisis plays a lead role. Much of the organization of
27 meetings and documentation and briefing to ministers was
28 organized by Jackie Bogden who is the new Deputy Secretary for

1 Emergency Management at PCO.

2 But what we did was bring colleagues together
3 with their experts to discuss and try to understand how the
4 federal government could assist in the resolution of not only
5 the blockade here in Ottawa but the various convoys that were
6 occurring across the country. Because we've talked a lot about
7 Ottawa today but we haven't talked as much about the Ambassador
8 Bridge, and we certainly haven't talked about Coutts. And then
9 the continual popup convoys that were happening over this period
10 in time.

11 We used the forum of DMOC which you have heard
12 that acronym to bring together the lead agencies. And we added
13 additional departments. For example, the Deputy Minister of
14 Justice joined us for many of our discussions. And because PCO
15 was so very involved at every level in terms of the management
16 of the national crisis, I invited other deputy secretaries to
17 come to DMOC and certainly the clerk and the deputy clerk had a
18 standing invitation.

19 We wanted to have as broad a view as we could of
20 what was going on and why it was happening and how the federal
21 government could use existing authorities and resources to
22 respond.

23 You've heard the discussion of the tow truck
24 strategy. Well, that came out of discussions at DMOC.

25 The work that Deputy Minister Stewart was leading
26 on engagement, that came to DMOC for original discussion before
27 it went to Cabinet. But that was where we brainstormed, aired
28 ideas, and assigned tasks to various people and departments, and

1 PCO, to follow up. Most of the work was tasked from DMOC down
2 into ADM and SOPs and they went off and engaged because ADMs are
3 that engine that do that level of work.

4 We briefed ministers almost daily, the core group
5 of ministers. We did have formal Cabinet meetings as you've
6 seen. The Safety, Security, and Emergency Management Committee,
7 Canada and the World -- we used Canada and the World because
8 there was already a scheduled meeting to discuss Ukraine. The
9 right group of ministers were there so we briefed this as well.

10 We had briefings to the Prime Minister and then
11 the IRG was invoked. And the full Cabinet meetings leading up
12 in between SSE, Canada and the World, and the IRG, were also the
13 vehicle to get information to the Prime Minister.

14 We tried to be very methodical in how we tracked
15 what was on the table to review, to pursue, to engage with
16 provincial and municipal colleagues on and that was the trackers
17 that you've seen in the evidence, developed out of there.

18 So I did not tell any deputy minister what they
19 should do nor what they should not do. We would agree on
20 courses of action, what ministers were going to be briefed, how
21 we were going to engage ministers, and the plans to try and use
22 federal authorities and work with provincial authorities to
23 resolve individual situations. But it is a coordination group
24 where we talk -- we discuss operational issues and each
25 department goes back and does their own thing and reports back
26 in. And it's a relatively effective use of time and energy.
27 And it became every day going through department by department.

28 Yesterday you said this; what's changed? What

1 are you doing tomorrow? Where are we?

2 **MS. DONNAREE NYGARD:** And what were you telling
3 the deputy minister community in those meetings about what their
4 approach should be to looking at this issue?

5 **MS. JODY THOMAS:** Well, I would like to take
6 credit but it's the Clerk of the Privy Council who actually told
7 the community that when you're in the security environment, you
8 get used to crises and you get used to protests and you get used
9 to reading online threats, those kinds of things.

10 She wanted us to think differently and think more
11 broadly. And to understand this situation although it was
12 acknowledged by the security deputy ministers, was unique in
13 terms of its expanse across the country, that there was a thread
14 across all of the incidents that said something and that we
15 needed to look at it from that perspective as well as the
16 individual resolution of problems.

17 Yes, the tow truck strategy is an example that
18 was very very important. But there was a bigger broader role
19 for the federal government and we needed to look at that.

20 **MS. DONNAREE NYGARD:** And this was happening in
21 DMOC and at the same time there were the SSEs at the beginning
22 of the process that were continuing. What's the relationship
23 between those two?

24 **MS. JODY THOMAS:** There isn't a relationship
25 other than most of the Deputy Ministers at DMOC they're
26 ministers or members of the SSE Committee. And so there was a
27 one-to-one briefing from the Deputies to their Ministers, the
28 Ministers would go and prepare to SSE.

1 **MS. DONNAREE NYGARD:** So the work that was being
2 done by the Deputy Minister community through DMOC to try and
3 find solutions to this problem, when did that stop?

4 **MS. JODY THOMAS:** DMOC? It didn't stop.

5 **MS. DONNAREE NYGARD:** And did -- so -- I guess
6 the point I'm getting at, on the 10th of February, when it moved
7 from SSE to the IRG and the Track 1, and the ---

8 **MS. JODY THOMAS:** Right.

9 **MS. DONNAREE NYGARD:** --- Track 2 was put in
10 place, what were the -- what was the Deputy Minister community
11 working on at that point?

12 **MS. JODY THOMAS:** So it just -- moving to the IRG
13 brought a focus from the Prime Minister, and it was very
14 directive of "What are you doing Transport Canada?
15 Minister Alghabra, work with your provincial colleagues to
16 achieve X, Y, and Z", and that became the tracker. So Track 1
17 was anything we could do under existing legislation and with
18 existing tools, and Track 2 became what new could you use to
19 help resolve this?

20 **MS. DONNAREE NYGARD:** So when you moved to the
21 Track 1 and Track 2, the Deputy Minister community was still
22 working on the issues in Track 1, what could you do to resolve
23 with the existing authorities? Is that fair?

24 **MS. JODY THOMAS:** Absolutely.

25 **MS. DONNAREE NYGARD:** And that continued on from
26 February 10th until?

27 **MS. JODY THOMAS:** Until revocation.

28 **MS. DONNAREE NYGARD:** And you spoke to my friend

1 for the City of Windsor about your discussion with Homeland
2 Security in the United States. Can you tell us a little bit
3 more about that?

4 **MS. JODY THOMAS:** The Deputy Homeland Security --
5 Deputy NSA for Homeland Security is Liz Sherwood-Randall. She
6 reached out to me to say, "we have a concern about the
7 Ambassador Bridge." You've heard that concern from others. She
8 said nothing different than what has already been heard. The
9 President had been hearing from auto companies, he'd been
10 hearing from governors. What was the situation? What could I
11 tell her, and how did they -- how could they help?

12 **MS. DONNAREE NYGARD:** So fair to say that they
13 were expressing considerable concern about the situation?

14 **MS. JODY THOMAS:** Absolutely concerned, but no
15 pressure. They'd experienced their own protests. They knew
16 they were complex. Could we learn from their experiences and
17 could we keep them informed and as we were working this, and if
18 they could help in any way they would.

19 **MS. DONNAREE NYGARD:** So when we get to the
20 period of February 13th and 14th, and you've talked about your
21 role in coordinating the information that's coming from various
22 intelligence communities within the Federal Government, and
23 pulling that all together to provide advice to the Prime
24 Minister. In the period February 13th and 14th, what was your
25 assessment of the situation that was going on across Canada at
26 that point?

27 **MS. JODY THOMAS:** My assessment was that this was
28 an entrenched movement; that the convoys were feeding off of

1 each other; that they were causing significant economic
2 instability; that the violent rhetoric was increasing rapidly
3 and exponentially; that the number of threats against public
4 figures were increasing; that we were seeing, I don't know if
5 I've said this, seeing increased IMVE rhetoric that was
6 concerning.

7 Our concern on that front is not that any of the
8 organisers of these various groups were going to take action
9 themselves, but they were going to inspire a lone wolf. And our
10 experience in Canada is that of the injuries and deaths that
11 have been caused by ideologically motivated individuals, none of
12 them have been known, they've all been inspired by online
13 movements and rhetoric to do something and to act. And we have
14 profound concern about that.

15 Coutts was a point in time of huge concern
16 because we'd been told there were weapons found in Coutts. I
17 can't say that anybody was surprised there were weapons. We
18 expected weapons to show up in various locations, or anticipated
19 that they could, but that it was of the magnitude that it was
20 was a significant concern.

21 And the same language was being used in Ottawa.
22 OPS said there were weapons in some of those rigs. Well, what
23 did that mean? One person had a gun or that there was another
24 group similar to Coutts?

25 What we didn't know was as significant as what we
26 did know. And we were at the point where we were going into the
27 fourth weekend because we were through the third weekend without
28 resolution, and in fact, it was growing.

1 Ambassador Bridge, yes, moving towards being
2 resolved, but intel every single day that new convoys were being
3 formed to take back the bridge or they were going to take the
4 Peace Bridge or they were going to do both.

5 There were convoys coming from across the country
6 to reinforce Ottawa. If that had become violent, and of course
7 we're working on inabsolute information and nothing is -- there
8 is no intelligence that says tomorrow there is going to be an
9 attack. But if it had become violent, knowing what we know now,
10 there was not the police on the ground to manage it. And so you
11 have to work in a world where you don't have absolutes and you
12 have to use your best judgement on what to do, and what had to
13 happen was it had to end.

14 **MS. DONNAREE NYGARD:** And you've made clear, I
15 think in your earlier testimony, that your view that the
16 section 2 *CSIS Act* definition, as applied by CSIS in the context
17 of their particular mandate to investigate and collect
18 information on individuals or groups, is very narrow. My
19 understanding ---

20 **MS. JODY THOMAS:** Yes.

21 **MS. DONNAREE NYGARD:** --- that's your position?

22 And am I understanding what you said correctly in
23 answer to my friend from JCCF's question about this in relation
24 to these events that your view is that it didn't meet the
25 section 2 *CSIS Act* definition as CSIS would apply it in their
26 context?

27 **MS. JODY THOMAS:** That's correct.

28 **MS. DONNAREE NYGARD:** You were asked by the

1 Commission Counsel about whether your views were asked at the
2 February 13th IRG regarding whether the *Emergency Act* should be
3 invoked, and you said that you had indicated yes at this time.
4 Can you tell us why?

5 **MS. JODY THOMAS:** For the reasons I described
6 earlier. That we -- if the powers existed in legislation they
7 were not being used or couldn't be used, and that we needed to
8 take swift and decisive action to bring this national crises to
9 an end. We needed to compel tow trucks. We needed to have an
10 exclusion zone so that people could no longer join the convoy.

11 And the funding and the logistics chain that
12 supported, particularly in Ottawa, but in other locations as
13 well, the funding was significant, and so we needed to
14 understand the money. And I know that Deputy Minister Sabia
15 explained that earlier today.

16 The combination of the tools that were put into
17 the *Emergency Act*, time limited, as restrictive as possible, and
18 as transparent as possible, was determined to be by the Governor
19 in Council the most appropriate action to take at that moment in
20 time to end what was going on across the country.

21 **MS. DONNAREE NYGARD:** And finally, can you tell
22 us a little bit about how mis- and dis-information in the
23 context of the convoy impacted on your decision-making and your
24 advice and your assessments?

25 **MS. JODY THOMAS:** So mis- and dis-information is
26 a very hot topic, and everybody presumes that the mis- and
27 dis-information has to come from foreign sources and be foreign
28 interference. And so there was a question that was discussed at

1 one point about whether, you know, Russia was fomenting the
2 dis-information.

3 The mis- and dis-information, mis- and
4 dis-information it could be said is at the root of some of this
5 problem of the convoy and the anger about vaccines and mandates
6 and masks. The problem with it is that it occurs in the social
7 media space and threads pick up on each other and they generate
8 more. And so if you believe mis-information that's all you're
9 going to see because you search for it and the algorithms feed
10 it to you.

11 We're actually working with social media
12 companies to understand how the algorithms feed mis- and
13 dis-information, and more significant, terrorist information
14 that's come out of what happened in Christchurch. And it's
15 quite well-known that Christchurch call. And misinformation
16 means that people -- and disinformation -- have one source of
17 information and it continuously feeds upon each other. We heard
18 misinformation during this hearing when somebody mentioned that
19 they were not going to put DNA-altering medication in them.
20 There is no DNA-altering medication, but it's believed. And so
21 it made it very difficult to try and build a fact base for
22 health officials, for police officials.

23 There was misinformation during the convoy, for
24 example, that the prime minister had signed a letter. He had
25 not, but it circulated through the convoy here in Ottawa like
26 wildfire. Absolutely incorrect but it became fact for people,
27 and it becomes fact very easily, and that sowed some of the
28 seeds of discontent that we have seen.

1 **MS. DONNAREE NYGARD:** Thank you. Those are all
2 of my questions.

3 **COMMISSIONER ROULEAU:** Thank you. Any reply?
4 No? Okay. For the record, there is none.

5 Okay, well, that's -- we want to thank you for
6 coming and giving your evidence. You're free to go and enjoy
7 what's left of the evening.

8 **MS. JODY THOMAS:** Thank you, sir.

9 **COMMISSIONER ROULEAU:** And thank you for your
10 evidence.

11 So we're going to adjourn until tomorrow morning
12 at 9:30. I expect it will be another long day, but it's Friday
13 so we can look forward to a weekend, some of us.

14 **THE REGISTRAR:** The Commission is adjourned. La
15 Commission est ajournée.

16 --- Upon adjourning at 7:23 p.m.

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C E R T I F I C A T I O N

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3 I, Wendy Clements, a certified court reporter, hereby certify
4 the foregoing pages to be an accurate transcription of my
5 notes/records to the best of my skill and ability, and I so
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8 Je, Wendy Clements, une sténographe officielle, certifie que les
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