Public Hearing

Audience publique

Commissioner / Commissaire
The Honourable / L’honorable
Paul S. Rouleau

VOLUME 25

Held at:
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Bambrick Room
395 Wellington Street
Ottawa, Ontario
K1A 0N4

Thursday, November 17, 2022

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

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

COMMISSIONER ROULEAU: Good morning. Bonjour. Nice wintery day.

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

MR. ERIC BROUSSEAU: That's correct, Commissioner. Eric Brousseau, Commission Counsel. This is just to formally enter 286 documents by way of bulk entry, which is actually the sort of combination of a couple of weeks of lists. We are playing catch-up. Objections were moved, they are being dealt with.

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

COMMISSIONER ROULEAU: Okay, thank you. And now, I understand we have a panel. Judging by the arrangement, I gather there are three? Okay. And Commission Counsel?

MR. GORDON CAMERON: Good morning, Mr. Commissioner. Gordon Cameron on behalf of
Commission Counsel. And you have before you this morning a panel of witnesses representing the Department of Finance of the Government of Canada.

Could I ask that the witnesses be sworn or affirmed?

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

ADM ISABELLE JACQUES: I swear.

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

ADM ISABELLE JACQUES: The Bible.

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


--- ADM ISABELLE JACQUES, Sworn:

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

DM MICHAEL SABIA: Bible's good.

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


--- DM MICHAEL SABIA, Sworn:

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

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

THE REGISTRAR: For the record, please state your

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full name and spell it out.

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

--- ADM RHYS MENDES, Sworn:
--- EXAMINATION IN-CHIEF BY MR. GORDON CAMERON:

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

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

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

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

DM MICHAEL SABIA: Yes, I can.

MR. GORDON CAMERON: Thank you. And you were interviewed as part of a panel, and a interview summary was generated as a result of that interview. And for each of you, I'd like to confirm that you reviewed that summary of your
interview for accuracy, that you do believe it is accurate, and that you adopt it as part of your evidence before the Commission today. Can I ask each of you to confirm that?

DM MICHAEL SABIA: In my case, yes.
ADM RHYS MENDES: Yes.
ADM ISABELLE JACQUES: Yes.

MR. GORDON CAMERON: Thank you. Now, I'll ask you the easiest questions, I think, for today, which is to introduce yourselves to the Commissioner, with a description of who you are and what your role is in the Department of Finance. And so let me begin with you, Mr. Sabia. If you could tell us your title, your role, and how that fits with the Department of Finance.

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

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

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

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

That has several dimensions in our work. So
we're responsible for tax and fiscal policy on behalf of the
Government of Canada. For -- we're responsible for the
financial and fiscal dimension of federal/provincial relations.
We're responsible for international economic policy, especially
related to trade and some other things. We're responsible for
the spending side of economic development and social policy of,
again, across the government.

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

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

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

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

Two of them were involved in the work that we did
for the Economic Order. The first one was the Financial Crime
and Security Division. The second one was the Financial
Institution Division. So we are involved in a number of policy
work. And in this case, we worked on both the Proceeds of Crime (Money Laundering and Terrorist Financing Act and also did work with respect to potential amendments to the Bank Act that made their way into the Emergency Order.

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

ADM ISABELLE JACQUES: That is accurate.

MR. GORDON CAMERON: Thank you.

Mr. Mendes, could you describe your role?

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

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

MR. GORDON CAMERON: Thank you very much. And I think we'll probably find that most of Ms. Shuhaibar's questions
will be directed to you, but if you have something to contribute to the questions I ask, please feel free to do so.

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

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

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

And then second, because it was late January and February in the usual budget cycle, we were fully engaged in the preparation of what became the April '22 budget of the Government of Canada. And as you know, budget making is a lot
about understanding what the next period of time looked like for the Canadian economy. And this is, I think, important in understanding the origins of our concerns.

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

So supply chain was an issue, inflation was an issue, and then third, so was the level of business investment, which is a chronic issue for Canada. So all of these things, and business investment, as you know, Commissioner, they -- business investment is very much something influenced by business confidence. So you take together all of these factors,
and then these disruptions come along, and they obviously contribute to the extent of the concern that we have because the Canadian economy, in our view at the time, was at a very, very fragile moment. So that was one set of concerns and very significant concerns on our part and on the part of the government.

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

So as a result of that, and we were doing work with the Americans at the time, for instance, with respect to the treatment of electric vehicles, something that was critical to the future of the automotive industry in Canada, there was a tendency in the United States to want to treat that as an America only issue. And then again, these disruptions come along and raise issues in the eyes of the United States and in the eyes of the U.S. administration, raise issues around the reliability of Canada as a trading partner. Significant issues. To the point where issues -- you know, I'm sure we'll end up
discussing this -- where issues that rose to the level of
President Biden and our Prime Minister in bilateral
conversations. So these were very meaningful -- very meaningful
issues that arose in the Canada/U.S. relationship.

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

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

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

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

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

DM MICHAEL SABIA: No, I think for now that's
probably all right. I mean, I think that sets the scene of why
this was an issue for us. It had meaningful macroeconomic
consequences for us in the near term, particularly given this
point I’ve made about just the sensitivity, the specific moment
we were at, from an economic point of view. I mean, this was a
very, very delicate time, coming out of COVID. And I think, in
retrospect, we’ve seen all that now; we’ve seen how it was easy
to shut down an economy but very difficult to open it up again.
And we were in the process of opening up the economy, as every
other country in the world was, at this -- for pretty well, at
the same time.

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

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

I mean, this was -- you know, this was not -- how
can I put this? This was not a second-tier issue in the Canada-
US relationship; this was a first-tier issue. And, you know, we
were subsequently able to negotiate an arrangement with the
Americans on electric vehicles, but there was no doubt that this
-- these disruptions coming when they did in that process
brought with them the risk that we would not be able to get the
North American treatment that we were eventually able to negotiate with the Americans with respect to electric vehicles. And as I said, electric vehicles are the future of the automotive industry. So if we had not succeeded in doing that, then the particular consequences of that for the central Canadian-based automotive industry would’ve been, you know, very, very serious.

So I think probably I’ll leave it there.

MR. GORDON CAMERON: Okay. Thank you.

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

(SHORT PAUSE)

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

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

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

MS. DAHLIA SHUHAIBAR: Well, here we are.

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

MS. DAHLIA SHUHAIBAR: So I will be asking some questions about Finance’s work on assessing the economic impact of the blockade. And I think you’ve set the stage very well with sort of the less quantifiable impacts, and now we’re going to be looking at more of the quantifiable ones. And I’ll be directing these primarily to you, Mr. Mendes, but I, of course,
welcome other panel member’s views.

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

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

MS. DAHLIA SHUHAIBAR: Okay.

ADM RHYS MENDES: --- but yes.

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

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

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

DM MICHAEL SABIA: Yes.

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

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

MS. DONNAREE NYGARD: Yeah, it’s fine. Inputs into Cabinet are fine; discussions with Cabinet ---

DM MICHAEL SABIA: Yes, she did.

MS. DONNAREE NYGARD: --- are not.

DM MICHAEL SABIA: Yes, she did.

MS. DAHLIA SHUHAIBAR: Thank you.

So I’ll be getting to these analyses momentarily, but first can you describe the kind of information that Finance was receiving from Transport Canada and other departments?
ADM RHYS MENDES: Yeah, so I would say the principal source of information that we were receiving was from Transport Canada. There was information on the amount and type of trade that was disrupted, or potentially disrupted. And there was also Transport Canada’s analysis on the impacts of the trade disruptions on economic activity.

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

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

ADM RHYS MENDES: It was, yes.

MS. DAHLIA SHUHAIBAR: Yes.

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

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

MS. DAHLIA SHUHAIBAR: Okay.

ADM RHYS MENDES: The first scenario really focuses on a shutdown in the automotive sector, that -- a shutdown in the automotive sector that is -- the logic of that, I believe, is really the just-in-time nature of inventory management in the automotive sector. So in the automotive sector, you know, a short disruption to transportation -- because it’s so integrated across the Canada-US border, a short
disruption to transportation, even if there’s rerouting possible, can cause disruptions, because oftentimes trucks are making multiple trips back and forth between plants. And so just an added couple of hours can disrupt the timelines, cause drivers to time out, in terms of the amount of time they can safely and legally drive.

So that’s why I think they focused on the ---

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

ADM RHYS MENDES: Yeah.

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

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

MS. DAHLIA SHUHAIBAR: Okay. Thank you.

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

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

MS. DAHLIA SHUHAIBAR: And I think that’s where
Scenarios 2 and 3 come in?

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

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

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

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

**MS. DAHLIA SHUHAIBAR:** Right.

**ADM RHYS MENDES:** --- at that point that allowed them to have that view of Scenarios 2 and 3.
MS. DAHLIA SHUHAIBAR: Okay. And what about Scenario 1; did you think that was a likely scenario, or...?

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

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

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

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

MS. DAHLIA SHUHAIBAR: Yeah.

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

I believe we also highlighted -- if you can scroll down. Can we scroll down a bit further, please?
Yeah, so at the end of that last paragraph, we also highlight the reputational risk that several U.S. lawmakers had pointed the situation to argue for “Buy America” policies and other protectionist policies, which would mean less reliance on buying goods from Canada and obviously would have an adverse impact on Canada, even over the longer term.

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

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

MS. DAHLIA SHUHAIBAR: And why is that?

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

MS. DAHLIA SHUHAIBAR: Okay. So I’d like to go to page 2.

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

MS. DAHLIA SHUHAIBAR: Oh, of course.

ADM RHYS MENDES: In thinking about the quantitative impact, so we actually, as part of what we do on a
regular basis, we monitor economic activity in the Canadian economy. So that means we try to come up with a view of what economic activity is in the current quarter, so before Statistics Canada puts out the official statistics and it will be in the next quarter. And we rely on various high frequency data to do that, but we’re also look at significant events that may have an impact.

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

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

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

So about half way into the paragraph, it says:

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

So can you expand on how the possibility of rerouting and inventory management sort of factored into your analysis?
ADM RHYS MENDES: Yeah, so the Ambassador Bridge was completely shut down at this point, but there were other bridges nearby through which traffic was being rerouted. I mean, you can see that in the statistics in terms of the increases in traffic at other bridges, which I believe is later in this document.

MS. DAHLIA SHUHAIBAR: M’hm.

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

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

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

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

DM MICHAEL SABIA: Can I ---

MS. DAHLIA SHUHAIBAR: Oh, of course.

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


DM MICHAEL SABIA: So just to build on what Rhys just said, just to elaborate a little bit on Rhys’ last sentence, given how time sensitive the supply chains are in the automotive industry and how integrative production is, I mean, I
think it’s -- parts -- a car being assembled, actually the parts
cross the border between Canada and the United States six
different times in the process of producing a car. So there’s a
high degree of integration here. And you add to that the just
in time delivery of Rhys’ point that Rhys made.

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

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

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

MS. DAHLIA SHUHAIBAR: That’s helpful. Thank
you.

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

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

So:

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

So ---

**COMMISSIONER ROULEAU:** Can you just ---

**MS. DAHLIA SHUHAIBAR:** Yeah.

**COMMISSIONER ROULEAU:** --- slow down for the interpreters, ---

**MS. DAHLIA SHUHAIBAR:** Yeah.

**COMMISSIONER ROULEAU:** --- please? Thanks.

**MS. DAHLIA SHUHAIBAR:** Absolutely. Sorry.

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

**ADM RHYS MENDES:** In terms of the economic impacts, we believe the border blockades posed the greater risk.
MS. DAHLIA SHUHAIBAR: I guess they would affect the whole economy, whereas cities were more localized?

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

MS. DAHLIA SHUHAIBAR: Okay. So the next bullet, “Implications for Monitoring”, it’s a big one, but we’ll just start it.

So:

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

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

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

MS. DAHLIA SHUHAIBAR: M’hm.

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

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

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

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

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

MS. DAHLIA SHUHAIBAR: Okay.

DM MICHAEL SABIA: Can I just...?

MS. DAHLIA SHUHAIBAR: Of course.

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

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

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

MS. DAHLIA SHUHAIBAR: That’s very helpful and I think my colleague will be exploring a bit more about what measures you took and why. That’s very good context, so...
We’re going to be getting into some technical points now, and so I think it would be helpful to clarify some concepts for those of us who are not economists, including myself.

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

ADM RHYS MENDES: Yes.

MS. DAHLIA SHUHAIBAR: Yes. And it’s often considered in different quarters of the year?

ADM RHYS MENDES: Yes.

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

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

MS. DAHLIA SHUHAIBAR: Okay, thank you. I’d like to pull up SSMCAN00003771.

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

MS. DAHLIA SHUHAIBAR: Okay, thank you. And we’ll see that this is an email from February 10th from Julie Turcotte, who I believe is the Director General of Economic Analysis and Forecasting.
And so at the top here, she says:

“FYI. Bloomberg is suggesting a 0.1 [pp]...”

Which is, “percentage points,” I think:

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

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

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

MS. DAHLIA SHUHAIBAR: And maybe that’s a contrast to the 0.2 to 0.3 in indirect effects?

ADM RHYS MENDES: Yeah. And so, again, I don’t know what that means. That language often -- indirect is often used to refer to the impact of a disruption in one sector as it...
spreads through the economy onto other sectors.

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

**ADM RHYS MENDES:** I don’t recall having a specific view at the time on the Bloomberg estimates. I’ll say part of what you’re seeing here is just in the normal course of, you know, assessing all of the incoming information, we do try to play a bit of a challenge function, and I think, you know, and trying to take a sceptical view of things in order to assess the validity of a given number. And over time, you know, as more information comes in, that can change. I think the .1, you know, that ended up being, you know, in the same vicinity as the sorts of numbers we came up with. If you add up the .1 plus the .2 to .3 and get .3 to .4, that ends up being a larger number than what we came up with. But of course that -- we hadn’t done that analysis at this point. So at this point they were just trying to sort of have a discussion around what they thought of these numbers.

**MS. DAHLIA SHUHAIBAR:** Fair enough. So I’d like to pull up SSMCAN00000095. And these are minutes from the February 13th meeting of the Incident Response Group, which I believe, Mr. Sabia, you were attending, is that right?

If we can go page 6, once you have it up? I think this is the only unredacted sentence, so:

“The Minister highlighted ongoing economic losses of 0.1 percent to 0.2
percent of GDP for every week the blockades continue.” (As read)

So this is Minister Freeland?

DM MICHAEL SABIA: Yes.

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

DM MICHAEL SABIA: Right. That’s correct.

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

DM MICHAEL SABIA: Yes.

MS. DAHLIA SHUHAIBAR: And when she speaks about, “Ongoing losses of GDP every week,” is it fair to say it’s not clear whether she’s talking about level or growth?

ADM RHYS MENDES: Well, if it’s from the Bloomberg article they were referring to growth.

MS. DAHLIA SHUHAIBAR: Okay.

ADM RHYS MENDES: From the minutes, it’s -- you’re right, it’s not ---

MS. DAHLIA SHUHAIBAR: Yeah.

ADM RHYS MENDES: It’s ambiguous.

MS. DAHLIA SHUHAIBAR: And could that ---

DM MICHAEL SABIA: And that’s something -- Rhys may want to elaborate on this but the way the Bloomberg piece got done, it established a set of numbers, and it conveyed that if it went on for X-number of weeks, you would just add up that number; it was, like, .1 or .2 for each week. And I think
that’s what the Minister, given that this is based on Bloomberg,
that that’s what the Minister is commenting on here.

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

MS. DAHLIA SHUHAIBAR: Right.

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

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

MS. DAHLIA SHUHAIBAR: Right.

ADM RHYS MENDES: Other manufacturing sectors
would have been hit subsequently as they started to draw down
their inventories. You know, sectors like food and beverage
that rely on perishable inputs that cross the border would have
started to be more affected also. So I think that the -- the
economic impact would spread the longer it lasted, and so the
number wouldn’t be the same for each week, it would grow.

MS. DAHLIA SHUHAIBAR: Okay, that’s helpful.
Can we pull up SSMCAN00001980?

(SHORT PAUSE)

MS. DAHLIA SHUHAIBAR: And so this is an email
that you sent, Mr. Mendes, to Mr. Sabia on February 22nd.
And so if you scroll down a little bit. Yeah:

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

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

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

MS. DAHLIA SHUHAIBAR: Okay. And on the part
about annualized growth, can you just explain that one, the reduction in 0.1 to 0.2 percentage points?

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

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

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

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

MS. DAHLIA SHUHAIBAR: And so if the level could possibly be recouped, does that also mean that the effects on annual growth could be offset or do they not operate that way?
ADM RHYS MENDES: It may not completely offset.
There's -- you mean in terms of annual growth quarter to quarter? So basically what this means is that you'd see growth in the second quarter being a bit stronger than it otherwise would have as you see the catch-up in production.

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

DM MICHAEL SABIA: If I could?

MS. DAHLIA SHUHAIBAR: Yeah.

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

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

MS. DAHLIA SHUHAIBAR: Right. So it could have
been way worse, but thankfully it wasn't, basically?

DM MICHAEL SABIA: (Inaudible response)

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

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

And:

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

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

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

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

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

MS. DAHLIA SHUHAIBAR: I'd like to pull up
And this is the second analysis from February 22nd. And I don't propose to walk through it in the same way because I think we've covered a lot of it. And -- would you agree that a lot of it expands on your email that we just saw?

**ADM RHYS MENDES:** Yes.

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

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

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

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

**DM MICHAEL SABIA:** Well, look, I think that's just another way of -- Rhys may want to elaborate on the point because there's an analytical point here. But I mean, that's consistent with the point I made earlier about the strength of
the reaction that was being reported in the public media from U.S. lawmakers at a time when they were attempting to pass legislation that could have a pretty significant impact on the re-engineering of their supply chains to repatriate.

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

But do you want to...

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

**MS. DAHLIA SHUHAIBAR:** Right.

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

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

MS. DAHLIA SHUHAIBAR: Okay.

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

And so the first column says:

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

And the second column says:

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

Can you explain the two columns and how they interact?

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

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

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

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

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

MS. DAHLIA SHUHAIBAR: Okay. If we go to page 6,
please? The second full paragraph says,
"The economic impact to date is
estimated at approximately 0.1 per cent
of Canada's GDP per week; however, the impact on important trade corridors and the risk to the reputation of Canada as a stable, predictable and reliable location for investment may be jeopardized if disruptions continue."

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

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

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

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

MS. DAHLIA SHUHAIBAR: M'hm.

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

MS. DAHLIA SHUHAIBAR: M'hm.

ADM RHYS MENDES: I did not think that the -- as Michael discussed earlier, the per week characterization I thought missed the point that the GDP impact would rise with each subsequent week, it wouldn't be the same every week, the longer that the effects went on. And I think most importantly, the real issues here were the risk of a more prolonged or more widespread disruption to cross-border trade that would have led to a much larger GDP impact and the reputational risk that
affected our reputation as a reliable trading partner and as a 
good destination for investment.

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

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

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

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

**ADM RHYS MENDES:** So I think this -- the last
estimate we did of this was the .1 to .2 percent impact on the
first quarter, quarter over quarter growth. And so we haven't
revisited that. That said, I think that the -- it's fair to say
that the economic impact was limited, but it was limited because
the duration of the blockades was limited. So I think, again, it comes back to the fact that because the duration was limited, there was some ability to ramp up production after the blockades had ended and trade had resumed. Because the blockades weren't more widespread, as in affecting bridges that were being used to reroute some of the traffic that would have gone over the Ambassador Bridge in particular, that helped to limit the impact. But had the blockades been more widespread or longer lasting, the impact would have been much bigger.

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

**MS. DAHLIA SHUHAIBAR:** Right.

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

**MS. DAHLIA SHUHAIBAR:** Okay. Just as my last question, I understand that Finance didn't do sort of an after-
the-fact assessment, and can you explain why, of the impact of the GDP?

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

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

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

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

ADM RHYS MENDES: Precisely.

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

ADM RHYS MENDES: Thank you.

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

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

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

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

DM MICHAEL SABIA: Sure. Let me start, and then Isabelle, you may want to add.
So look, as the disruptions, on the one hand, continued to materialize, and in some cases intensify, and the disruptions in Ottawa continued on, there was a general sense across the government and, you know, an interest that was expressed to have every department trying to think about are there ways in which we can develop ideas that would help bring to an end, in a good way, this very difficult situation.

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

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

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

The other one was we are also, given our responsibilities for the financial sector, we also take seriously our responsibility to ensure the integrity of Canada’s
financial system. And Canada’s financial system being used for these kinds of purposes is not consistent, in our view, with maintaining the integrity of the financial system. So it was both our response to a general request for ideas, but within the department, it was what can we do to shorten the duration of these disruptions, given their economic consequences, and then finally, this concern that we take very seriously about the integrity of Canada’s financial system and that we safeguard that integrity all of the time.

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

ADM RHYS MENDES: PCMLTF.

ADM ISABELLE JACQUES: Yes.

DM MICHAEL SABIA: Yeah.

ADM RHYS MENDES: The acronym is too long.

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

DM MICHAEL SABIA: That’s -- that’s -- she’s got it.

Those two pieces of legislation.

So we started thinking about, “Well, is there something constructive that could be done through FINTRAC?” Which is the agency responsible for Proceeds of Crime (Money Laundering) and Terrorist Financing -- or terrorist activity.
Could we do something there? And could we do something using the Minister’s authority for the Bank Act?

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

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

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

So because we couldn’t do anything outside of federal jurisdiction, that really made pretty academic whether we could or could not do anything in federal jurisdiction, because money is fungible and it can just move from institution to another. So if we couldn’t do something that was more comprehensive, that was a pretty significant limitation on what could be accomplished.
There was also a fairness issue there. I’ll give you an example. In Quebec, Banque Nationale, that’s a federally regulated institution, but Desjardins is not. And Desjardins, anyone who lives in Quebec knows that Desjardins and Banque Nationale compete pretty intensively between the two organizations. So to treat one one way and the other another way, that seemed to us to be -- you know, that’s just one example, but that seemed to us to be a pretty big problem. So that was one piece.

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

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

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

MR. GORDON CAMERON: Okay. But we are going to - - for the reasons you just mentioned, we’ll leapfrog your initial interest in seeing if there was something you could do under either the Proceeds of Crime legislation or the Bank Act.
But the memo that you did for your Minister on that point happens to capture some thoughts that I want to use as we move ahead into the legislation that was actually used.

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

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

MR. GORDON CAMERON: Right.

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

MR. GORDON CAMERON: And this...

If the clerk could just scroll down.

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

Keep scrolling, please.

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

And by the way, Ms. Jacques, please feel free to
chime in if this is your territory. But in terms of what we'll call "freezing accounts", but I think there's a more cumbersome way of describing it, refusing to have dealings with or transactions with the customer, et cetera, et cetera, but if you'll -- I think you'll understand what I mean when I talk about freezing accounts.

ADM ISABELLE JACQUES: Yes.

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

ADM ISABELLE JACQUES: That is correct.

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

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

MR. GORDON CAMERON: Right.

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

MR. GORDON CAMERON: Right. And so as Deputy Minister Sabia said, the option that had more attraction to you because it was much faster, you didn't need legislation, and
because it was national and could cover both categories of institutions.

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

ADM ISABELLE JACQUES: Correct.

DM MICHAEL SABIA: Yes.

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

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

DM MICHAEL SABIA: Yeah, that -- that started, I don't recall the exact dates, but sometime in the week of this memo, I think a little bit earlier. I had some -- I mean, as the principal regulator, OSFI and ourselves, in terms of financial -- higher-level financial policy, we have a lot of
contact with the Canadian banks, Canadian financial institutions in general. So I am, as is Isabelle and her team, we are in regular contact with Canadian financial institutions pretty much of all kinds, A, because of our role in that sector; and B, because they're a very good way of listening and understanding more about what's going on in the Canadian economy than any one point.

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

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

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

**MR. GORDON CAMERON:** Now, can you describe the feedback you got from those institutions, in particular, their reaction to how they would administer a regime in which they were being asked to freeze accounts?
DM MICHAEL SABIA: Yeah. Well, we need to be careful here. Prior to the possibility or likelihood that the government would invoke the Emergencies Act, that was a very important dividing line here. So prior to that, in the week that we're talking about here, my conversations there would have been much more general and much more general -- much more focussed on, you know, what are they hearing from companies, what are they hearing from investors, how do they gauge the situation? It was much more our trying to understand by talking to other people whether or not our perception of the situation was aligned with how other people were perceiving it.

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

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

Now, as the possibility or likelihood of the Emergencies Act being invoked, then that changed the nature of those conversations. And through I think that weekend, I forget -- the dates would have been sort of the 12th, 13th, or
something of -- you have to check -- you'll have to doublecheck the dates, but you know, 11, 12, 13, somewhere in there, we then began to have conversations about in the event that the government were to decide to move down this path, because it hadn't been decided yet, how could this be done.

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

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

MR. GORDON CAMERON: And in A, B and C, we'll just talk about A and B, and the first is, you're saying to the
banks, "We can either give you a list of people whose bank accounts need to be frozen and then you freeze them, that's option one, or you, the manager of the bank, can watch the news and read the paper and look at your customers and try to figure out which ones of them are engaged in illegal activities and what you should do about their accounts." The way I've described it, Mr. Sabia, I think you're probably going to foresee what the reaction was of the financial industry as to which of those two options they would have found easier to administer.

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

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

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

MR. GORDON CAMERON: Right.

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

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

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

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

MR. GORDON CAMERON: Now that -- I want to chase
down exactly those last words you used including the word "vet". So they would -- the idea is -- of the Regulation as you
conceived it and as ultimately it was enacted, was that the
banks would receive some information from police authorities.
As you say it turned out to be the RCMP. And then they would
vet that information and exercise some discretion as to whether
or not they should take measures under the Order to, as we're
saying, compactly freeze the accounts; is that right?

ADM ISABELLE JACQUES: Yes, I would say so. I
mean, if you received information from the RCMP, the financial
institution, financial payments service providers would have to
review the information they receive and ensure that the people
that are named are actually the people that are -- have accounts
with that financial institution, so that's number one.

Certainly, they had to, you know, ensure they had the right
people, but also, on their own, as I mentioned before, they
could review the information they have, use the systems they
have, their algorithm to detect suspicious transaction, which
they did. And on their own, they did freeze bank accounts
without information received from the RCMP.

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

ADM ISABELLE JACQUES: What I mean by vetting is
being -- they -- if you read the language of the legislation,
the financial service providers are responsible for taking the
action, ultimately. It's their responsibility under the Act.

So, certainly, they received information from the RCMP with
They looked at the information. They had to certainly confirm. I don't know what their internal process were, but I certainly know that they -- you know, from -- they reviewed the information to ensure that the people that, you know, with whom they had business dealings with people that were signalled or identified by the RCMP. But I'm sure that the financial service providers could tell you exactly how they went about that.

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

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

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

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

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

**MR. GORDON CAMERON:** Sorry?

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

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

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

He says,

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

Do you see that?

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

MR. GORDON CAMERON: Thank you.

Now do you recall that in your own institutional report, and, Mr. -- I wish we could keep two things up at once, Mr. Clerk. I might ask you to go back and forth, but in any event, if you could call up DOJ.IR 0000000030? And go to page
11 of that document. And then a little -- scroll down just a bit further. Thank you. That's perfect. The paragraph that begins "The Department of Finance did not have any information..." That's not surprising. If you look at the second sentence,

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

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

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

MR. GORDON CAMERON: Yes. Thank you.

ADM ISABELLE JACQUES: We did not take part in drafting the Regulations.
MR. GORDON CAMERON: Fair enough. Did the
Regulation or the -- sorry, did the Emergency Economic Measures
Order in effect get drafted by you and your department?

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

MR. GORDON CAMERON: Fair enough. Okay.

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

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

And number two, we were thinking that -- knowing
that on their own they could also detect fraudulent activity or
suspicious activity, that they could do that as well. But as
far as sharing the information, the Department of Finance does
not receive information from the RCMP. That was solely between
the RCMP and the financial service providers. And it was up to
the financial service providers to make the determination as to
whether or not to freeze bank accounts, based on the information
they had. So it could be their own information, or a mixture of
information received using their own, you know, risk based
analysis to make a determination as to whether they would
freeze.

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

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

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

Now you might have heard or seen in the CBA's
institutional report in this proceeding that as far as they were
concerned, and I think they gave this feedback directly to the
Department of Finance as well, when they got that list from the
RCMP, they considered it to be effectively binding on them to
seize the account. That they did not, in fact, have any
discretion. Do you remember hearing that from them?

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

MR. GORDON CAMERON: So ---

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

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

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

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

ADM ISABELLE JACQUES: I do not know. You would
have to talk to the financial service providers to see what
procedure they put in place. Once they receive -- you know, we
were not party to that. So I know that the RCMP did provide
information. I do not know the nature and the extent of the
information. And how did the bank go about freezing the
accounts after that, what analysis did they do and how they went
ahead, I'm not privy to the details of that operational -- those
are operational steps.

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

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

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

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

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

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

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

And look at the paragraph that begins, “The information.” The information which -- I’ll ask you to go along with me; it’s the information that I just scrolled you down to about the information on the person who might be the bank’s customer:

“The information being disclosed is relevant to individuals or entities that are engaged, directly or indirectly in an activity prohibited by sections 2 to 5 of the above noted Emergency Measures Regulations.”

And the paragraph above that, the second sentence:

“I am engaged in the collection and disclosure of information to entities...”

That’s the banks; right, Ms. Jacques?

“...to entities that have a duty to determine as defined in Section 3 of the Emergency Economic Measures Order.”

S, can you follow the thrust of this document, that this is what the RCMP gave to the bank to do what has been called, both by your description and your information -- sorry;
your Institutional Report, and by the RCMP and Supt. Beaudin’s affidavit, the exercise of their discretion whether or not to freeze this bank account. They are being told that they are being given information about a person who is a designated person under your Emergency Measures Order, right?

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

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

“...the entities must determine on a continuing basis whether they are in possession or control of property that is owned, held or controlled by, or on behalf, of a designated person.”

So if the RCMP comes to them to say this is the information about a designated person, financial institution is reviewing, in an ongoing basis, their relationship, they would, and this is a client of theirs, I would think that, you know, they will do -- as I said, they will do their vetting; “Is this one of my client? I’m informed by the RCMP, yeah, this form
that the person is engaged in these illegal activities.” I
would rely on that, personally. So if the financial institution
did, I wouldn’t be surprised.

MR. GORDON CAMERON: I ---

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

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

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

ADM ISABELLE JACQUES: We’re seeing ---

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

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

“The information being disclosed is
relevant to individuals or entities
that are engaged directly or
indirectly, in...activity...”

And Ms. Jacques, you know that what that is, is
the definition of a designated person under the Order, right?
ADM ISABELLE JACQUES: Yes, I know that.

MR. GORDON CAMERON: Thank you.

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

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

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

MR. GORDON CAMERON: Thank you.

So you say we were not a party to this part of the process, we had D/Comm. Duhe me say, “I didn’t write this law; we just implemented it this way, and it was up to the banks to decide.” And so the question is, if the Government is saying that these measures were the right thing to do, right, and the Department of Finance says, “We had no part in the enforcement of this,” and the people who had enforcement in this stage, “We didn’t write this law,” who takes responsibility for the fact that these accounts were frozen; that people couldn’t pay their rent, that people couldn’t buy their groceries; who takes responsibility for that?

ADM ISABELLE JACQUES: We certainly designed the measures and the -- with respect to the implementation, we once, you know, had discussions with various departments as we -- you have to understand that this moved very, very quickly. We went from a situation where we’re looking at potential policy options under the Bank Act, to very rapidly looking at the possibility
of implementing the Emergencies -- you know, the Emergencies Act, and developing these Orders.

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

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

We also told people ahead of time that if they continue to fund illegal activities, or be involved in those
illegal activities, that the bank accounts could be frozen. People had notice ahead of time, and if a decision was made to stay on the premises, to continue to stay involved in those activities, these people knew what could happen.

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

ADM ISABELLE JACQUES: Yes, I do.

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

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

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

One of the prime objectives of dealing with the convoy problems in a way that the Emergency Economic Measures Order was fashioned, was to find a way to bring a peaceful end to the demonstration, because if you could do it with freezing bank accounts, or whatever other measures were necessary, that was a awful lot better than having to go in with police and clubs, right?
DM MICHAEL SABIA: I think it’s a -- again, a statement of the obvious; ---

MR. GORDON CAMERON: Yes.

DM MICHAEL SABIA: --- a peaceful end to almost anything ---

MR. GORDON CAMERON: So ---

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

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

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

And if I can, I’d just like to go back to your
previous set of questions?

MR. GORDON CAMERON: By all means.

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

So in my mind, this is actually pretty straightforward. Now, you know, I didn’t go to law school, so maybe I’m missing something.

MR. GORDON CAMERON: That’s an advantage.

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

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

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

So that seemed, to me, to be a pretty good outcome, in that the people who had the microscopic information
or the micro information of who was doing what was feeding that
into financial institutions and financial institutions were
using that as a positive input into the decision making that
they were going to have to do.

And then empirically, I mean, I think of the 280
accounts that ended up being frozen. You might want to check my
numbers, but something like 256 or 257 of them came from the
RCMP. So obviously there’s a pretty high correlation there.

Doesn’t mean that the banks didn’t do some additional things,
because obviously there’s a difference between 257 and 280.

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

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

MR. GORDON CAMERON: It’s a logical sequence.

What I’m trying to find is who says, “We were the ones who
seized the bank accounts or froze the bank accounts”? You know,
the banks say, “We were told to do it.” The RCMP says, “We
didn’t tell anybody to do it.” You say, “We weren’t involved in
this.”

DM MICHAEL SABIA: We set ---

ADM ISABELLE JACQUES: No.

DM MICHAEL SABIA: --- a policy.

ADM ISABELLE JACQUES: Yeah, we set ---

DM MICHAEL SABIA: We set a policy. And we are
accountable for that policy.
MR. GORDON CAMERON: And thank you. That is exactly what I wanted to make sure we got to before we finished with the panel.

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

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

MR. GORDON CAMERON: Right.

ADM ISABELLE JACQUES: --- on your second point.

Yes.

DM MICHAEL SABIA: One thing I should clarify, when I say “we”, I mean the Department of Finance, we’re not -- I mean, we as in the government.

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

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

But did you appreciate that you were moving to a different level? I mean, in the first -- when you go to the
deterrent mode, because you’re starting to affect more than the
protestor, and you know that; right? In the first scenario,
you’re saying to the protestor, “We are going to cut off the
money you’re using to buy gas for your truck,” or whatever. And
in the second mode, you’re saying, “We are going to cut off your
family’s money that they use to buy groceries and pay their
rent. So you’d better get out of this protest.” Right? You’re
noding.

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

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

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

The focus was to be able to act quickly and it
had two prongs. Like, we’re thinking, you know, we wanted to
stop the flow of funds to fund those illegal activities and we
wanted it to act as a deterrent. So for those people on the
Hill or in other border crossings involved in illegal
activities, we wanted to dissuade them from continuing their participation.

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

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

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

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

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

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

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

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

MR. GORDON CAMERON: Thank you very much.

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

COMMISSIONER ROULEAU: Okay. Thank you.

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

THE REGISTRAR: The Commission is in recess for
15 minutes. La Commission est levée pour 15 minutes.

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

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

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

--- ADM ISABELLE JACQUES, Resumed:

--- DM MICHAEL SABIA, Resumed:

--- ADM RHYS MENDES, Resumed:

COMMISSIONER ROULEAU: Okay. First, the convoy organisers, please.

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

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

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

ADM ISABELLE JACQUES: That is correct.

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

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

MR. BRENDAN MILLER: You have no information to the effect that they were terrorists; right?
ADM ISABELLE JACQUES: That is correct. I wouldn't -- that's not information that I'd be privy to.

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

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

MR. BRENDAN MILLER: Right.

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

MR. BRENDAN MILLER: Right.

ADM ISABELLE JACQUES: --- to be received.

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

DM MICHAEL SABIA: Yes.

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

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

MR. BRENDAN MILLER: I'll rephrase. Between the dates of February 10 and February 14th, 2022, at no time were you informed that there was terrorists within the protesters in Ottawa; correct?

DM MICHAEL SABIA: All I can say in reaction to
your question is that there -- the responsible agencies were
watchful on that point, and it was not an area ---

**MR. BRENDAN MILLER:** Sir?

**DM MICHAEL SABIA:** --- where ---

**MR. BRENDAN MILLER:** Sir?

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

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

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

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

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

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

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

**MR. BRENDAN MILLER:** But was it not the -- I
understand from the records that FINTRAC and the Ministry of
Finance, based on a report in the media on January 25th, with
respect to the crowdfunding, all right, that is what brought
this to their attention and FINTRAC and the Department of
Finance started to look at these individuals in Ottawa with respect to financing. Can you agree with that?

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

MR. BRENDAN MILLER: Okay. So ---

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

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

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

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

DM MICHAEL SABIA: No, it did. Maybe I'm misunderstanding your question, but it did in that -- through
that process, it confirmed that we needed to adjust the
regulatory perimeter of FINTRAC to include crowd-funding
platforms and payment processors. So we did do that on a
temporary basis under the authority of the Emergencies Act, and
we applied it only to -- in that Act, only to crowd funding and
payment processors ---

MR. BRENDAN MILLER: Okay.

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

MR. BRENDAN MILLER: Right, and I understand

that.

DM MICHAEL SABIA: --- with these elicit

activities.

MR. BRENDAN MILLER: So ---

DM MICHAEL SABIA: Then we made it longer term.

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

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

MR. BRENDAN MILLER: Right.

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

MR. BRENDAN MILLER: And but even if they were
not crowd funding, et cetera, if there was terrorist financing
and there was money laundering, then you could apply FINTRAC and
the Criminal Code to crowd funding, right, without the
Emergencies Act?
DM MICHAEL SABIA: I can't answer that question because I'm not expert enough in FINTRAC's legislation.

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

DM MICHAEL SABIA: Yes.

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

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

MR. BRENDAN MILLER: And ---

DM MICHAEL SABIA: So ---

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

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

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

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

MR. BRENDAN MILLER: Right. And can you admit that the GoFundMe and the GiveSendGo for crowd funding set up by Ms. Lich and the protesters in Ottawa were a crowd fund set up to support a political cause?
DM MICHAEL SABIA:  Well, I guess, you know, as you know well, GoFundMe ended up, in effect, refusing to continue to provide its platform for these funding activities, so ---

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

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

MR. BRENDAN MILLER:  Right.

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

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

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

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

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

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

INTERNATIONAL REPORTING INC.
But the original GoFundMe on January 14th as amended later and put into the overview report states this as the reason to donate.

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

COMMISSIONER ROULEAU: Can you read more slowly?

MR. BRENDAN MILLER: Yes, sir.

"Our current government is implementing rules and mandates that are destroying the foundation of our businesses, industries and livelihoods. Canadians have been integral to the fabric of humanity in many ways that have shaped the planet. We are a peaceful country that has helped protect nations across the globe from tyrannical governments who oppress their people. Well, now it has happened to us. We are taking our fight to the doorstep of the federal government and demanding that they cease all mandates against its people. Small businesses are being destroyed. Homes are being destroyed. And people are being mistreated and denied fundamental necessities to survive. It's our duty as Canadians to put an end to this mandate. It is imperative..."
that this happens because if we don't, our country will no longer be the country we have come to love. We are doing this for our future generations and to regain our lives back. We are asking for donations to help with the cost of fuel, food and lodging, to help ease the pressure of this arduous task, but it's a small price to pay for our freedoms. We thank you all for donations and know that you are helping to reshape this once beautiful country back the way it was." (As read)

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

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

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

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

MR. BRENDAN MILLER: M'hm.

DM MICHAEL SABIA: --- to agree with or disagree with, and I guess this group of people were out using a crowd-
funding platform as a source of raising money for it.

Obviously, it ended up being pretty problematic because crowd -- GoFundMe walked away.

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

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

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

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

**MR. BRENDAN MILLER:** And ---

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

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

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

**MR. BRENDAN MILLER:** All right. And I take it you are aware and had some discussion that donations to political causes are a form of freedom of expression as protected under Section 2(b) of the *Canadian Charter of Rights and Freedoms*. Did you -- were you aware of that?
DM MICHAEL SABIA: I'm aware that the Charter protects the right to free expression.

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

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

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

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

MR. BRENDAN MILLER: Right.

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

MR. BRENDAN MILLER: Right.

DM MICHAEL SABIA: --- is something that I can't comment on because I don't know.
MR. BRENDAN MILLER: And so when the Government interferes with what is to be done with those funds, do they not -- can you not agree that it interferes with those donor's freedom of expression? Can you agree with that?

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

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

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

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

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

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

MR. BRENDAN MILLER: No, no, no.

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

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

DM MICHAEL SABIA: I did not say that.
MR. BRENDAN MILLER: Sir, let me just finish my question. You had said it was relevant that GoFundMe on their own accord froze these accounts; right? You just said to that, they obviously saw an issue, and you said that just in your evidence while I was examining you. So I'm going to ask you a little bit about; okay?

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

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

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

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

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

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

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

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

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

Can you agree that when a municipal government or a mayor of a city or municipal police service, like the Ottawa...
Police Service, requests of a bank, or GoFundMe in this instance, to freeze funds that that is government action. Can you agree with me on that?

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

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

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

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

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

MR. BRENDAN MILLER: I ---

DM MICHAEL SABIA: --- GoFundMe ---

MR. BRENDAN MILLER: I understand, I understand.

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

MR. BRENDAN MILLER: So, sir ---

DM MICHAEL SABIA: --- government activities.
MR. BRENDAN MILLER: Sir, the mandate of this Commission is to look at the circumstances surrounding the invocation. I understand what the Government did, we're trying to find out why. Okay?

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

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

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

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

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

DM MICHAEL SABIA: Of course.

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

DM MICHAEL SABIA: Well, with respect to the -- broadly understood the operation of the economy and other things, yeah.
MR. BRENDAN MILLER: Right. And ---

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

MR. BRENDAN MILLER: So ---

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

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

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

MR. BRENDAN MILLER: Okay.

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

MR. BRENDAN MILLER: So ---

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

MR. BRENDAN MILLER: I understand that. I'm not trying to cut you off, but I'm just trying to stay under my time limit.
So here's the thing, on February 10th, the IRG minutes that we do have, that are unredacted, the Prime Minister advises we have two tracks. He went into it with two tracks. The first was to use general legislative authority, and the second track was to use the Emergencies Act. All right? And I take it -- and there was tasks. We have that evidence. Tasks were given to your Ministry, tasks were given to other ministries. I can you with respect to the options that were being put forward outside of the Emergencies Act, we don't know what those were because the Government has claimed solicitor/client privilege and section 39 Cabinet confidence, so I have no idea.

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

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

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

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

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

So I want to talk to you now about the..
legislative change versus regulations and Orders in Council really quickly.

And can you agree ---

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

MR. BRENDAN MILLER: Thank you, sir.

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

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

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

DM MICHAEL SABIA: Look, I think the Government took a decision as the duly elected Government of the country to invoke a -- the Emergencies Act, which is itself a piece of
legislation that was through Parliament, and the Government took
a decision to use that in this circumstance, and has been, I
believe, scrupulous in how it was used, kept the duration of the
Emergencies Act to an absolute minimum, I mean, it was what,
seven, eight days maximum ---

MR. BRENDAN MILLER: Okay.

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

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

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

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

The question is this. So they support the
motion. It goes to the Senate. They get indication that the
Senate is not going to vote in their favour, so they pull it.
In my submission to you, that’s the Parliamentary process;
right? Because if there was no grounds to invoke it and the
Senate was going to revoke it, that’s a good process; isn’t it?
DM MICHAEL SABIA: I’m not going to comment on that. It’s ---

MR. BRENDAN MILLER: Didn’t think you would.

Thank you.

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

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

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

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

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

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

And do you recognize this memo, sir?

DM MICHAEL SABIA: Yes, I think so.

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

And then the third option is moral suasion. And
this is not something that you discussed with Commission Counsel this morning. I just want you to take a look at that second paragraph, where I think it was the Minister’s expectations to ask bank CEOs to remain vigilant in their review of business relationships to ensure that they’re not being used to support illegal activities.

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

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

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

**DM MICHAEL SABIA:** Yes.

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

**DM MICHAEL SABIA:** The *Emergencies Act* did.

That’s my understanding.

**MS. EWA KRAJEWSKA:** Yes, it did. Thank you. and if I can move on to the scope of the measures, and many of these questions will be to you, Mr. Sabia, and to you, Ms. Jacques.
You agree that the Emergencies Measure Order prohibited any entity as defined in section 3 which covered both provincial and federal institutions from dealing with any property held by a designated person; right? That was the -- if I -- you’d agree with that characterization of ---

ADM ISABELLE JACQUES: Can you pull up section 3?

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

Sujit, can you help me with the SSM number?

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

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

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

ADM ISABELLE JACQUES: Yes.

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

ADM ISABELLE JACQUES: That is accurate.

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

ADM ISABELLE JACQUES: That’s correct.
MS. EWA KRAJEWSKA: Right. And that essentially freezes their assets? The designated person’s assets?

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

DM MICHAEL SABIA: Freezes an account, ---

ADM ISABELLE JACQUES: Right.

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

ADM ISABELLE JACQUES: An account.

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

ADM ISABELLE JACQUES: Yes.

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

ADM ISABELLE JACQUES: Bank accounts.

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

Thank you.

DM MICHAEL SABIA: Yeah. Yeah.

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

ADM ISABELLE JACQUES: That is true.

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

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

MS. EWA KRAJEWSKA: Do you remember any
representatives from banking institutions raising concerns about the scope of the orders?

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

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

ADM ISABELLE JACQUES: That’s very possible. And if they did, I would have said yes.

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

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

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

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

MS. EWA KRAJEWSKA: This is -- if I could just pull up SSM.CAN.00000002? And I think this is the Consolidated FAQ. And there were questions about -- correct, thank you. Page number 6. Scroll down to “RCMP” please. There we go. “When we say ‘accounts’, what exactly is being referred to?” So those are the types of accounts that this would apply to; correct?
ADM ISABELLE JACQUES: Yes.

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

ADM ISABELLE JACQUES: Yes.

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

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

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

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

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

ADM ISABELLE JACQUES: Yes, they were captured.

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

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

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

And as we said previously, it’s important that
you look at the context as to when we came about to draft the
order, we didn’t know how the situation would evolve. But in
the application of the order, certainly the focus was not on
those donations.

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

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

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

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

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

**ADM ISABELLE JACQUES:** Thank you.

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

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

And your response was:

"As stipulated in the Order, it is
possible that a person who indirectly
funded the illegal protest for the
benefit of a person involved in the
protest had their account frozen. This
would only occur if they made a
donation after September [sic] 15th..."

Which is, as you were saying ---

DM MICHAEL SABIA: February 15th.

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

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

ADM ISABELLE JACQUES: "And what about people"?

That one?

MS. EWA KRAJEWSKA: Yes.

ADM ISABELLE JACQUES: Yes.

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

ADM ISABELLE JACQUES: Yes.

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

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

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

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

MS. EWA KRAJEWSKA: And the Order also applied to
auto insurance; correct?

ADM ISABELLE JACQUES: Yes.

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

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

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

MS. EWA KRAJEWSKA: So Mr. Sabia, I just want to -- with respect to that answer, I think to me the Order did more -- the Order did -- would have allowed the RCMP to ask for that person's insurance to be cancelled, and what the RCMP did is that it did not exercise their discretion under the Order to do that. But the Order, on its face, and the insurance company could have proactively cancelled that truck driver's insurance and then it would not have been safe for that truck driver ---
DM MICHAEL SABIA: But it's instructive that that never happened.

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

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

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

DM MICHAEL SABIA: It did.

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

ADM ISABELLE JACQUES: Yes.

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

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

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

ADM ISABELLE JACQUES: No, no. But do you mean -- -- it's their responsibility to be compliant with the law, yes, and also, there is a clause that simply that they need to share
Ms. Ewa Krajewska: Correct. And so -- and Ms. Jacques, when you mentioned earlier an indemnity that was provided, that indemnity was only provided to financial institutions if they complied with the Order. It did not provide an indemnity to financial institutions not to comply with the Order or not to report to the RCMP. Correct?

Adm Isabelle Jacques: That is accurate.

Ms. Ewa Krajewska: Right. So the financial institutions, if as you say they decided to exercise their discretion for humanitarian or other purposes, they were taking the legal risk for doing so.

Adm Isabelle Jacques: It was their decision to make and do the assessment and consult internally, you know, and receive the proper advice on their decision.

Ms. Ewa Krajewska: Because they would receive a list of names or vehicles from the RCMP and then they would have to report back to the RCMP of all the lists of accounts that they froze, and so the RCMP could compare both lists later and decide whether the financial institution complied with its legal obligations.

Adm Isabelle Jacques: I don't know if there was any such exercise of -- by the RCMP to review compliance with the Order. I've never heard that in the past.

Ms. Ewa Krajewska: But the Order provided for that information-sharing.

Adm Isabelle Jacques: It was to provide for the information-sharing to help the RCMP and in pursuing some maybe
investigation, yes.

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

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

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

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

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

ADM ISABELLE JACQUES: From the CBA, yes.

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

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

This is on February 16th, which is one day after the Order is made public. Alexandre -- Alex Lawrence, who's the Director of Communication for Deputy Prime Minister Freeland, asks for tangible figures that could be made public the next
morning about how much -- about the enforcement measurements.

And if you go up...

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

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

MS. EWA KRAJEWSKA: Through Mr. Sabia?

ADM ISABELLE JACQUES: Yes.

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

So in the interests of being able to do that as promptly as possible, yes, we were tracking this fairly
carefully. And as you know, I think the -- I think as of
February, what, the 21st/22nd, pretty much all of these accounts
had been unfrozen. So it was actually quite -- it came and went
quickly, which is what our intent was at the time, because it
contributed to the peaceful end in a way that we had intended.

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

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

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

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

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

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

MS. EWA KRAJEWSKA: There were five.

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

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

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

MS. EWA KRAJEWSKA: Thank you very much.
And thank you, Commissioner, for the indulgence.

COMMISSIONER ROULEAU: Okay. Next I’ll call on
the CCF, please.
MR. SUJIT CHOUDHRY: Good morning.

DM MICHAEL SABIA: Hi.

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

So Ms. Jacques, I want to take you to the issue of the freezing the accounts. I know that we’ve talked a lot about that today. And I want to invite you to answer some questions about lessons learned from that process and experience, which I take it was fairly unprecedented in Canadian history, because part of the Commissioner’s mandate is to advise governments in the future about how to -- if and how to use these tools and how they might be adjusted. So if we could just do that for a minute?

So you’ve heard that for some individuals, and we’ve had testimony to that effect, that because their accounts were frozen, they weren’t able to meet their basic necessities. It might be child support, rent, food. In one case, we had a witness testify that he couldn’t buy heart medication for his son. And I think we can all agree that was not the intent of the order.

And so I want to put to you this question that you’ve said, “Listen, whatever the order said on its face, when we provided advice to financial institutions about how to administer it, we asked that they use discretion.”

But wouldn’t it have been better to put humanitarian exception into the terms of the order itself to
ensure there was crystal clarity, not just to those institutions, but to members of the public who could have looked at the order online, but would not have had access to that advice provided to banks and credit unions, that in fact they had that right to obtain monies that they needed to make -- to obtain monies that they required to meet their basic needs?

ADM ISABELLE JACQUES: Certainly. I mean, looking at it -- you know, one of the key points that we did look at at the outset when drafting, and you must understand we were working on this fairly quickly, looking at a de minimis amount. But you also understand that a number of people were donating small amounts to crowd funding platforms; right? And so there was always that possibility.

But looking at it, if we were to do it, I think we could craft some exceptions for the application for very specific cases. It’s not something that we did in the time that we had, but I don’t disagree with you that it’s something, you know, in hindsight that we could look at in being more specific in that regard, because the intent was not to effect -- unduly effect, you know, payments of child support or other payments.

MR. SUJIT CHOUDHRY: Thank you. And maybe a broader question on the same theme, or on a related theme, to the panel as a whole, which is about consumer credit. And so I think the panel would agree that credit histories and credit scores, although kind of privately administered, are an important form of social and economic capital that citizens have. They require those scores to get credit cards, to get mortgages, to get loans, and so forth. And there’s been
evidence that you might not have heard, but I’ll ask you to take my word for it, that some individuals who had their accounts seized, and subsequently those accounts released to them, nonetheless have had lingering effects on their credit history because of mis-payments.

And that might not be an effect -- and so to your point, Mr. Sabia, that the Act was only used for a limited time period, that might be true, but the lingering effects of a decline in someone’s credit history or credit score could take place or be experienced over many months or many years. And should there not have been some thought and some aspect of the order that would have taken into account the long-term effects on individual’s credit histories and credit scores by the temporary freezing of their accounts, even if only for a short period of time?

ADM ISABELLE JACQUES: But you’re talking about people here that were involved in unlawful activities.

MR. SUJIT CHOUDHRY: Well ma’am, that’s not true. I mean, I think you’ve just said yourself that it was donors.

DM MICHAEL SABIA: To our knowledge, no donors were affected by this -- the order.

DM MICHAEL SABIA: There were no accounts frozen -- to the best of our knowledge, based on the information that we’ve received, there were no accounts from donors that were frozen.

MR. SUJIT CHOUDHRY: And so the long-term effects on credit histories, that’s not something that concerns you at all?
DM MICHAEL SABIA: I think that’s an issue for the financial institutions and how the financial institutions administered these things. I don’t think that’s something that is the ambit of the Government of Canada. I think if -- I mean, that’s something that, as you know, in how the credit system works, that’s something that the credit system should be able to deal with on its own.

MR. SUJIT CHOUDHRY: And so, you know, Mr. Sabia, I put to you that although it’s correct that it’s a privately administered system, nonetheless, in this case, decisions of the Government of Canada had a direct effect on how that system operated, not just in the short term, but for many months, and potentially for long after.

DM MICHAEL SABIA: Well I guess I would dispute that. I think the Government of Canada made some decisions with respect to the cessation of financial services, the freezing of accounts, to individuals who were involved in illegal activities, and all that those individuals had to do was to leave. And the -- let’s put this -- let’s back up a little bit. The government announced its intention to proclaim or to invoke the Emergencies Act on the 14th. It was very clear, very clear, as of that date, and the Minister of Finance was very clear as of that date, that people involved in these disruptions ran the risk of having their accounts frozen. That was very clear. So there was a period of notice there and it was very clear that all that had to happen was for those people to leave and as -- if they did, their accounts would never have been frozen, or 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 CHOU DHRY: 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 CHOU DHRY: 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 CHOU DHRY: --- the penalties in the
19 Orders.

20       DM MICHAEL SABIA: But it wasn't any part of our
21 intent ever.

22       MR. SUJIT CHOU DHRY: 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
you these legal questions ---

DM MICHAEL SABIA: Isabelle's a lawyer.

MR. SUJIT CHOUHDHRY: Oh, Ms. Jaques? Well, it
might be that you are going to answer some of these questions,
but I put them to the whole panel.

DM MICHAEL SABIA: Probably should.

MR. SUJIT CHOUHDHRY: And so what I'd like to do,
if I may, if I could call Mr. Clerk to call up the following
witness statement -- or interview summary for this panel, and
it's WTS many Os 59, page 7.

DM MICHAEL SABIA: Some day you'll have to
explain to us, who comes up with this ---

MR. SUJIT CHOUHDHRY: You know ---

DM MICHAEL SABIA: --- classification system?

MR. SUJIT CHOUHDHRY: --- I'd -- I think Counsel
would like an explanation too, Mr. Sabia.

So if we could just scroll down a bit, there we
go. Thank you. So there are these two paragraphs here that I'd
like to put to you for the record. And so the first paragraph
is the one that begins,

"Finance also looked to options under
[what let's call it] the [...](Money
Laundering) and Terroris[m] Financ[e]
[Statute]..."

And would you agree that it says there that,

"[Deputy Minister] Sabia and [Assistant
Deputy Minister] Jacques stated that it
quickly became clear that there was a
gap in the [Money Laundering and Terrorism Finance Act]: it did not apply to crowdfunding services [it] applied only to certain payment service providers [and] this was significant [and so forth]..."

You agree -- and you agree you said that in the interview. And then if I could take you to the next paragraph again for the record, will you agree that you then added, Deputy,

"...that an overriding issue with the options considered by Finance was timing [and] Any legislative amendments would take a long time to pass, whereas action was needed quickly."

You ---

DM MICHAEL SABIA: Yes.

MR. SUJIT CHOU DHRY: --- agree you said that?

And so ---

DM MICHAEL SABIA: And I said that this morning.

MR. SUJIT CHOU DHRY: Sure. I ---

DM MICHAEL SABIA: Or this afternoon.

MR. SUJIT CHOU DHRY: You -- I think you said it both this morning and this afternoon. So is -- you didn't quite say it this way but let me just put this to you. Are you saying there that the only way that you saw, or that you were advised to get the Money Laundering and Terrorism Finance Legislation to apply to crowdfunding, absent using the Emergencies Act was a
legislative amendment, and that just was not viable at the time?

DM MICHAEL SABIA: Well, look, the gap here that crowdfunding and payment processors were not in the ambit of FINTRAC, this was something that people in Finance that had been aware of for some time. This was not a revelation. So the issue here -- so you got to separate two things. On the one hand, this gap needed to be corrected, just because with the rise in importance of crowdfunding, et cetera, this was an obvious oversight. And it was the Department's intention to recommend to the government that this be fixed, and it would have been in the traditional way that you would go about adjusting something like this. So that -- and that was in a -- let's call it a steady state world.

So in this circumstance, obviously, we were not in a steady state world. And our intention here was to move as quickly as we could to try to correct this gap. And given the decision of the government to move in the direction of the Emergencies Act, that created an opportunity to address the specific case. But please note that in what we did here, we only applied it to crowdfunding platforms and payment processors who were in somehow, in some control of assets or capital of financing that may be associated with these "illegal activities" as declared by the Emergencies Act. So it was quite limited and it was only in place for, what, a period of six or seven days.

We then, this issue having been resolved, returned to the more status quo kind of approach and we did correct this in the April budget I think ---

ADM ISABELLE JACQUES: VR Regulation.
DM MICHAEL SABIA: Yeah, yes.

MR. SUJIT CHOUDHRY: So could I just pick up on what -- something you said. So, you know, you kind of drew a distinction between let's call it government as usual, or normal, and the urgent situation that was thrust upon you in early February. And so -- and on -- in the government as normal approach, which you say here is that there would be -- need to be a legislative amendment, but that's not the moment that Canada was in at that time you say. There was no time for a legislative amendment to amend ---

DM MICHAEL SABIA: Well, legislative amendment or even a regulatory change ---

MR. SUJIT CHOUDHRY: Oh ---

DM MICHAEL SABIA: --- because they too take ---

MR. SUJIT CHOUDHRY: So you've anticipated my next question. So, look, I want to take you to the following document. It's CCF many 0s 42.

Thank you, Mr. Registrar. If we could scroll down, so -- okay. You can stop there actually. Sorry. You can see these -- this is an amendment to the Regulations in relation to the Money Laundering and Terrorism Finance Statute. It was promulgated on April 5th by the Governor in Council. And as you know, the Governor in Council just does that. There's no legislative process involved there.

And then if you could scroll down, please, to Section 2? And so here let's -- if you could go -- yes. Actually, that's right.

"The Regulations are amended by adding
the following before section 30: [it says] For the [paragraphs] of subparagraphs 5(h)(v) and (h.1)(v) of the Act, crowdfunding platform services are a prescribed service."

So I'd put to you that what this Regulation did was to extend FINTRAC's authority and the application of FINTRAC to fund crowdfunding services; would you agree?

DM MICHAEL SABIA: Yes.

MR. SUJIT CHOUDHRY: But this could have been done just as easily in early or mid February?

DM MICHAEL SABIA: Yeah, and not just as easily.

MR. SUJIT CHOUDHRY: Why is that?

DM MICHAEL SABIA: Just because the regulatory process, there are several steps to it. It is quicker, you are correct, than ---

MR. SUJIT CHOUDHRY: Yeah.

DM MICHAEL SABIA: --- in typical circumstances than the legislative process, but there are a number of steps.

MR. SUJIT CHOUDHRY: Sure. But, Minister, sorry, Deputy Minister ---

DM MICHAEL SABIA: Yeah, big difference.

MR. SUJIT CHOUDHRY: Sorry, excuse me. But I take you -- if you'd like, I can take you to the Terrorism Financing Legislation itself, but we don't have time, but I'd put to you this, that there's nothing there in Section 73(1) -- or 73.1(1) that spell out a lengthy detailed regulatory process. It might be that that is what normally is done, but as a matter
of law, that's not required. And so if that's true, then
couldn't the government, couldn't the Federal Cabinet just have
enacted this Regulation in February?

DM MICHAEL SABIA: Yeah, but I fail to see, given
how narrowly the Emergencies Act was used here in applying it
only in a very, very narrow slice of crowdfunding platforms and
payment processes, you know, I fail to see how there's really a
meaningful distinction, and importantly, that that very narrow
change was only in place for six or seven days, and we then
corrected it later, as per this process.

MR. SUJIT CHOU DHRY: So ---

DM MICHAEL SABIA: So I think we're kind of both
on the same page.

MR. SUJIT CHOU DHRY: So -- well, Deputy Minister,
let me just conclude by explaining to you what we see the
differences being and put it to you.

I take it you've read the Emergencies Act?

DM MICHAEL SABIA: (Inaudible response)

MR. SUJIT CHOU DHRY: And you've read section 3 of
the Act?

DM MICHAEL SABIA: Yes.

MR. SUJIT CHOU DHRY: And section 3 has at the end
of it a last resort clause. It says that the Emergencies Act
can only be triggered as a last resort if no other legal tools
are available and are effective. And I'd put to you that this
shows that in relation to FINTRAC there was another option
available to the Federal Government, absent or short of
declaring an emergency.
ADM ISABELLE JACQUES: I do not ---

MR. SUJIT CHOUDHRY: Ms. Jacques, I can see you

want to respond to that.

ADM ISABELLE JACQUES: Yeah, I didn't want to

reply for ---

DM MICHAEL SABIA: Oh, no, go ahead.

ADM ISABELLE JACQUES: --- Michael, but we could

have never drafted and passed those regulations in those
timelines.

MR. SUJIT CHOUDHRY: But Ms. Jacques, all that's

required here is a one paragraph amendment to the existing

regulation. These are shorter than the amendments -- than the
terms of the Economic Measures Order.

ADM ISABELLE JACQUES: It seems very simple

because, you know, you see the drafting of the amendments, it
doesn't seem to be very long, but the process to pass a

regulation it's not something that you can do in the timelines

that we had to enact and work on the Order.

MR. SUJIT CHOUDHRY: Commissioner, I think that -

- those conclude my questions. Thank you.

COMMISSIONER ROULEAU: Okay. So I think this is

the time for the lunchbreak. So we'll take a lunchbreak and
come back at two o'clock.

THE REGISTRAR: The Commission is in recess until
two o'clock. La Commission est levée jusqu'à 14 heures.

--- Upon recessing at 1:02 p.m.

--- Upon resuming at 2:02 p.m.

THE REGISTRAR: Order. À l'ordre. The
Commission is reconvened. La Commission reprend.

--- ADM ISABELLE JACQUES, Resumed:

--- DM MICHAEL SABIA, Resumed:

--- ADM RHYS MENDES, Resumed:

COMMISSIONER ROULEAU: Okay. Good afternoon.

The -- first up, I believe, is the City of Windsor.

--- CROSS-EXAMINATION BY MR. GRAHAM REEDER:

MR. GORDON CAMERON: Good afternoon. My name is Graham Reeder, counsel for the City of Windsor. I'm going to direct my questions to Mr. Sabia, but I invite input from Ms. Jacques and Mr. Mendes should they be in a better position to respond.

I have some questions about the work the Department of Finance did to assess the economic impacts that was detailed in the Department's institutional report. So your study on the economic impact of the border blockades was informed by figures from Transport Canada indicating that roughly $390 million in daily trade flows of goods were being disrupted by the blockades at the Ambassador Bridge; is that correct?

ADM RHYS MENDES: Yes.

MR. GRAHAM REEDER: And you testified this morning that the Department of Finance concluded that the Ambassador Bridge blockade was impacting Canada’s GDP as a whole, is that right?

ADM RHYS MENDES: Yes.

MR. GRAHAM REEDER: By roughly $45 million per day over the first week?
ADM RHYS MENDES: That is the estimate that Transport Canada had, yes.

MR. GRAHAM REEDER: Okay. Thank you.

And the Department of Finance concluded that the blockade jeopardized Canada’s reputation as a reliable economic partner for the US, is that right?

ADM RHYS MENDES: We believed, yes, that the blockade did jeopardize our reputation. There were -- that was based on a number of public statements by officials in the US.

MR. GRAHAM REEDER: Thank you. And the economic policy branch concluded that the impacts would have compounded over time as the blockade went on, is that right?

ADM RHYS MENDES: So we believed that the impacts would grow as time went on, as I explained this morning.

MR. GRAHAM REEDER: Yeah, you gave the example of the food and beverage industry and their inventory, right?

ADM RHYS MENDES: Yeah. And I mean, more generally, I think that the impacts would’ve spread over time.

MR. GRAHAM REEDER: Okay. And the department concluded that the impacts ultimately were likely transitory because the closures were relatively short-lived, is that right?

ADM RHYS MENDES: Correct.

MR. GRAHAM REEDER: And the closures at the Ambassador Bridge were short-lived, you’ll agree with me, because the Windsor Police and its policing partners cleared the blockade by February 13th?

ADM RHYS MENDES: I’m not -- I’m not able to speak to the reason that the blockades were shorter or the
manner in which they were cleared, but the date accords with my memory.

MR. GRAHAM REEDER: Okay. Would you agree with me that reopening the Ambassador Bridge was key to avoiding long-term entrenched economic damage to the automotive sector, Canada’s GDP, and Canada’s reputation as a reliable trading partner?

ADM RHYS MENDES: I think a more prolonged disruption at the Ambassador Bridge would have done greater damage to our reputation as a good place to invest, our reputation as a reliable trading partner.

MR. GRAHAM REEDER: And so clearing the Ambassador Bridge helped avoid that?

ADM RHYS MENDES: Yes.

MR. GRAHAM REEDER: And are you aware that after the bridge was reopened on February 13th, police maintained a strong presence in the area; they erected concrete barriers along the length of the municipal road, the Huron Church Road, between the Ambassador Bridge and Highway 401?

ADM RHYS MENDES: I have some passing awareness of that.

MR. GRAHAM REEDER: Okay. Thank you.

The -- this temporary hardening of the access road to the bridge was implemented to prevent another blockade to the bridge; does that accord with your understanding?

ADM RHYS MENDES: I believe that accords with my understanding of what I’ve read about that, but I don’t have any specific information on that.
MR. GRAHAM REEDER: Understood. And this would be to avoid -- this hardening would be to avoid compounded economic impacts, and the risk to Canada’s reputation as a reliable trading partner?

ADM RHYS MENDES: Well, as we said in one of our documents, a renewed blockade would have contributed to escalating economic impacts. I can’t speak to whether or not the measures you’re describing were necessary or not.

MR. GRAHAM REEDER: Understood.

So Mayor Dilkens in -- of -- the Mayor of Windsor testified at this Commission that these efforts to protect the bridge had a significant impact on the residents, businesses, and students living, working, and studying around Huron Church Road and the bridge. Have you completed any analysis of the impact of the blockade on local businesses and the Windsor economy?

ADM RHYS MENDES: No, we haven’t.

MR. GRAHAM REEDER: Understood. But you would expect that there would be local impacts that are distinct from the impacts on Canada’s GDP, Canada’s trading reputation, the auto industry, et cetera?

ADM RHYS MENDES: I haven’t given that a full enough consideration to give you a good answer, but I would -- I don’t disagree with the notion that there would be some impact.

MR. GRAHAM REEDER: Understood. Thank you.

It goes without saying that there are significant costs associated with police and municipal actions to clear the blockade and temporarily harden the route to the bridge to
prevent further blockades.

**DM MICHAEL SABIA:** Those things usually cost money.

**MR. GRAHAM REEDER:** Right. Thank you.

The Ontario Ministry of Transportation sourced many of the concrete barriers used in the police operations, almost $1 million worth. The Commission has head evidence that there was some confusion internally at MTO as to who would be responsible to pay for these barriers. And the question is as to whether the cost would be paid for by the MTO or others. And the preliminary thought from the OPP was that the compensation would be through federal funds available to support the Emergency Response to reopening the crossing.

MTO ultimately did not cover the costs of the barriers at the time. Windsor paid the costs to avoid any delays, and has sought reimbursement. I understand that the Department of Finance has not produced an *ex post* assessment of the economic impacts of the blockades, is that right?

**ADM RHYS MENDES:** That’s correct.

**MR. GRAHAM REEDER:** So I’m going ask the Clerk to pull up WIN00002244, and this is a letter from Windsor Mayor Dilkens to the Minister of Finance of Canada -- Ministers of Finance of both Canada and Ontario, dated March 15th.

Did any of you see the letter at the time it was sent, this letter?

**DM MICHAEL SABIA:** I saw the letter but not immediately after it was sent, sometime thereafter.

**MR. GRAHAM REEDER:** Okay. On the third line in
the last paragraph of page 1, there we go, it reads:

“Since early February, the Windsor Police Service, the City of Windsor and our partners have experienced significant costs associated with the illegal occupation, and the ongoing need to secure Huron Church Road against continued risks. These costs go well above the normal course for municipal operations and are related to the clearing of this international gateway.”

The Mayor goes on to request reimbursement of these unforeseen costs, stating:

“It would be unreasonable to expect municipal taxpayers to shoulder these costs alone.”

In his testimony at the Commission, Mayor Dilkens testified that the City had incurred a cost of $5.3 million in response to the blockade. Are any of you involved in any discussion around allocation of costs incurred to respond to the blockades in general, or with respect to Windsor’s cost specifically?

DM MICHAEL SABIA: We’re not involved in the kind of generalized process that you refer to in the first part of your question. But in the second part, any time we get a letter of this kind seeking funding -- and I’ll let you in on a secret; we get a few of those -- we have -- obviously, those letters
they come from, you know, the Mayor of a city of importance of 
Windsor, or lots of other people, we treat those letters 
seriously, and there is an internal process around this kind of 
request, and there will be discussion with the Minister of 
Finance about it. As -- that’s standard for how we treat this 
kind of thing.

**MR. GRAHAM REEDER:** Understood.
And knowing that I’m at the end of my time, I just have a few more short questions.

Would you agree with Mayor Dilkens that Windsor municipal taxpayers should not be expected to shoulder the costs of securing this key international gateway alone?

**DM MICHAEL SABIA:** I think now you’re negotiating.

**MR. GRAHAM REEDER:** Understood. Thank you.
In any event, do you agree that the issue of which level of government in response for costs of a multijurisdictional response is something that should be planned in advance?

**DM MICHAEL SABIA:** Oh, I’m not sure about planned in advance because the world is a changeable and unpredictable place, so I’m not sure that this is always possible to do, in advance. But if you’re asking me -- to pre-empt, probably, your next question -- whether, you know, trying to find some reasonable outcome here involving the City, the Province, and ourselves, whether we’re open to having some kind of discussion about that, I mean, I think the answer to that is we’re always open to having those kinds of discussions, and we’ll see where
it takes us.

MR. GRAHAM REEDER: Thank you.

DM MICHAEL SABIA: But this isn’t the place to work out a deal.

MR. GRAHAM REEDER: Of course, of course.

My last question was just asking whether or not some kind of advance planning would help avoid potential delays in allocating costs.

DM MICHAEL SABIA: It would be if we had advance notice of disruptions of this magnitude.

MR. GRAHAM REEDER: Of course.

Thank you very much.

DM MICHAEL SABIA: Which typically -- typically, we don’t get advance notice.

MR. GRAHAM REEDER: Thank you very much. Those are my questions.

COMMISSIONER ROULEAU: Okay.

Next, following, the Government of Saskatchewan.

--- CROSS-EXAMINATION BY MR. MICHAEL MORRIS:


My questions will primarily be about the Emergency Economic Measures Order, which I’ll just call the Order, and I gather you’ll understand what I’m referring to. Fair enough?

ADM ISABELLE JACQUES: Yes.

MR. MICHAEL MORRIS: Mr. Sabia, the Order came
into effect on February 15th; correct?

DM MICHAEL SABIA: Yes.

MR. MICHAEL MORRIS: And as of February 13th, the Department of Finance was consulting with the CEOs of the major banks about the types of measures that might be included in the order; correct?

DM MICHAEL SABIA: Not specifically in the way you put it. We were exploring A, their continuing reading of the economic situation and how that was unfolding, and B, what possible solutions could look like or possible actions that could be taken to try, once again, I’ll repeat myself, to bring this difficult situation to a peaceable end. And that had many forms, and there were a variety of options. The Emergencies Act was nothing more than an option at that point.

MR. MICHAEL MORRIS: Yeah, but fair enough. You were discussing potentialities that might find their way into the order; correct?

DM MICHAEL SABIA: Sure. In the same way that we discuss potentialities that might find their way into all kinds of things all the time.

MR. MICHAEL MORRIS: And clearly the Department of Finance thought that the input of the bank CEOs was valuable then?

DM MICHAEL SABIA: Yes, because for a certain category of actions that the government might or might not decide to embark on would require the cooperation of those institutions as those measures would be implemented. So conversation with them seemed to us to make sense.
MR. MICHAEL MORRIS: But you’ll agree there was no obligation to consult with them under the Emergencies Act; was there? The Act did not prescribe a requirement that the government consult with bank CEOs before invoking the Act; did it?

DM MICHAEL SABIA: No.

MR. MICHAEL MORRIS: That’s all I want you to say.

DM MICHAEL SABIA: Okay.

MR. MICHAEL MORRIS: And, sir, will you agree with me that on the 13th, Cabinet met, February 13th, to discuss the invocation of the Emergencies Act?

DM MICHAEL SABIA: Well I think that meeting was -- it was broader than just a discussion of the implementation of the Emergencies Act. There were -- no decisions had been made at that point. That was, to the best of my recollection, a much broader conversation around conditions in the country at the time. There were reports that were inputs into that, meaning from a variety of different agencies across the Government of Canada, including National Security and others.

MR. MICHAEL MORRIS: Sure. I understand that, sir.

DM MICHAEL SABIA: So there were a whole variety of things.

MR. MICHAEL MORRIS: But at that point, any input that Finance had received from the bank CEOs could have been conveyed to Cabinet if it was appropriate; correct?

DM MICHAEL SABIA: Well if you’re asking me
hypothetically could that had happened, I guess, yes, theoretically, that could have happened.

**MR. MICHAEL MORRIS:** Sure. And Cabinet didn’t meet again until February 15th, after the Emergencies Act was invoked? Is that correct?

**DM MICHAEL SABIA:** Well you need to separate things. The Incident Response Group ---

**MR. MICHAEL MORRIS:** I just want to know full Cabinet.

**DM MICHAEL SABIA:** Well full Cabinet, I have to be reminded of the dates here, but full Cabinet, I believe met on the Sunday evening, ---

**MR. MICHAEL MORRIS:** Correct.

**DM MICHAEL SABIA:** --- but I’m not -- I don’t have a perfect recall as to the timing of that. But I believe there was a full Cabinet meeting on the Sunday evening.

**MR. MICHAEL MORRIS:** Okay. I’m going to go to Ms. Jacques now.

Ms. Jacques, in terms of working up the order, did you have the content that you wanted included in it determined as of February 13th from a policy perspective?

**ADM ISABELLE JACQUES:** I mean, we had been working in the previous week on a couple of options. One, as we said, with respect to amending the Bank Act, and the other when we heard later, much later in the week, that it was possible that the Emergencies Act would be invoked, we started working on potential orders.

**MR. MICHAEL MORRIS:** Okay. What I’d like to know
is whether the Department consulted with any Provincial Governments about what it was proposing to include in the Order before the Order was enacted on February 15th?

ADM ISABELLE JACQUES: I certainly did not, nor did any member of my team, consult with Provincial Government.

MR. MICHAEL MORRIS: Okay. What about with credit unions?

ADM ISABELLE JACQUES: We did not consult.

MR. MICHAEL MORRIS: What about with insurers?

DM MICHAEL SABIA: Well it depends what you consider consultation. I had had some informal consultations, but in the previous weeks, with some of the leadership of some Canadian insurance companies.

MR. MICHAEL MORRIS: Okay. I actually want to move on, because we’re running a little slow here.

So I’m going to ask the Registrar to pull up document CCU.IR.00000001.

And this is the Institutional Report of the Canadian Credit Unit Association.

And I’d like us to go to page 3 of the report, please. There will be a bullet point entitled “Lack of Clarity Regarding Requirements.”

We’ll just -- I’ll read this for you:

“When the measures were first announced, it was [...] unclear to whom the financial sanctions applied. Eventually it became clear that the sanctions were aimed at a very small list of individuals and
entities. However, in the early days,
there was some degree...”

COMMISSIONER ROULEAU: Go a little slower,
please. Can you just go a little slower? I’m sorry.

MR. MICHAEL MORRIS: Yes, sir. I’m mindful of my
time:

“...there was some degree of panic among
some Canadians that their accounts may be
frozen due to such things as small
donations to the “freedom convoy.”

Can you agree with the statements I’ve read from
the Credit Unions Associations Institution Report?

ADM ISABELLE JACQUES: Well I became aware at one
point in time that there was some misinformation with respect to
small donations. People thought that donations that had been
made prior to the Emergencies Act being enacted would be subject
of potential freeze.

MR. MICHAEL MORRIS: Okay. I want to look to the
general and technical Q&As that the Department prepared, and to
do that, we need to pull up SSM.CAN.00000278. And I want to go
to page 5, if we could, of the PDF.

And in particular, question 13. Now, this has to
do with insurance. And I understand this document would have
been prepared by Finance for answering questions that might be
posed to it. Is that fair?

ADM ISABELLE JACQUES: I have not seen -- let me
see. I have not seen the beginning of the ---

MR. MICHAEL MORRIS: Okay. Let’s look at the
ADM ISABELLE JACQUES: --- Q and A document, but -- and at the bottom, does it say that it was prepared by Canada? Of the document. We can’t see it on the screen.

MR. MICHAEL MORRIS: It’s one of your documents produced by Canada.

ADM ISABELLE JACQUES: All right. Thank you.

Okay. Thank you.

MR. MICHAEL MORRIS: So if we go back to Question 13?

“Aren’t you exposing others to risk if you suspend protestors’ vehicle insurance?”

And I’m interested in the answer, which is the last sentence:

“We expect insurance companies to ensure that third parties can continue to benefit from an insurance payout.”

And I’m interested because I see it this way. Number 1, the Order directs insurers that they have to cancel insurance policies for vehicles, but number 2, the Government appears to be saying it still expects third parties to be paid out by the insurers. If the insurance is cancelled, how can the insurer possibly do that?

ADM ISABELLE JACQUES: No, I understand your question. I do not know when this was prepared. I don’t know if there were -- I suspect that there may have been discussions, I know there were discussions with various associations, insurance associations, so I do not know if it’s as a result of
DM MICHAEL SABIA: But look, I would say, as I read this now, I think this is poorly drafted.

MR. MICHAEL MORRIS: Agreed.

Ms. Jacques, as a lawyer, will you agree with me that insurance is a form of personal property?

ADM ISABELLE JACQUES: Well insurance is ---

UNIDENTIFIED SPEAKER: Sorry, can I just -- Ms. Jacques is here -- she happens to be a lawyer. She’s not here to provide her legal arguments.

MR. MICHAEL MORRIS: Okay, just with her own personal knowledge, you know, I agree, she’s not an expert witness, certainly, but, in law, do you understand that insurance can be characterized as personal property?

UNIDENTIFIED SPEAKER: Sorry, same objection.

MR. MICHAEL MORRIS: Okay, I’ll move on. Were the RCMP consulted about the insurance measures in the order before the order was enacted?

ADM ISABELLE JACQUES: No, they were not consulted about ---

DM MICHAEL SABIA: They were consulted afterwards.

ADM ISABELLE JACQUES: Afterwards, yes.

MR. MICHAEL MORRIS: Afterwards, okay. And, you know, my understanding is they -- there were not comfortable with the insurance provisions in the order; is that your understanding as well, Ms. Jacques?

ADM ISABELLE JACQUES: Well, what I understand is
that they made a decision not to share any information with respect to people that own vehicles that were involved in the illegal activities, and I would, you know, say that that was, in my view, the right decision. The purpose when we drafted the policy and the law -- I mean, as we have said many times, one of the intent was to encourage people to leave and stop the illegal activities in which they were engaged.

MR. MICHAEL MORRIS: Right. I just want to talk a little bit more about what the Credit Unions Associations Institutional Report states. It states that credit unions make up 44 percent of the market share in Saskatchewan; were you aware of that?

COMMISSIONER ROULEAU: Can I just interrupt for a minute?

MR. MICHAEL MORRIS: Yes.

COMMISSIONER ROULEAU: You’re going to have to make it short because you’re out of time.

MR. MICHAEL MORRIS: Okay, thank you, sir.

Were you aware of the market share of credit unions in Saskatchewan, 44 percent?

DM MICHAEL SABIA: I think we were very much aware of the fact that credit unions, for long historical reason, have a substantial presence in Saskatchewan and in some other provinces Canada.

MR. MICHAEL MORRIS: And one last question; it’s a pretty easy one. You’ll agree with me that both credit unions and insurers are provincially regulated; correct?

DM MICHAEL SABIA: Yes.
MR. MICHAEL MORRIS: Thank you. Those are my questions.

DM MICHAEL SABIA: Thank you.

COMMISSIONER ROULEAU: Next, I’ll call on the JCCF and Democracy Fund.

--- CROSS-EXAMINATION BY MR. HATIM KHEIR:

MR. HATIM KHEIR: Good afternoon.

ADM ISABELLE JACQUES: Good afternoon.

MR. HATIM KHEIR: I’m Hatim Kheir, counsel for the Justice Centre for Constitutional Freedoms and, given the subjects of my questions, my questions will be for you, Ms. Jacques. So, first of all, at the risk of stating the obvious, this was unlike anything else your office had to deal with; right?

ADM ISABELLE JACQUES: These were no ordinary events, that is accurate.

MR. HATIM KHEIR: Right. And so essentially what your office was tasked with was a way -- at first, anyways, was to look for ways to use existing legislation or regulations to respond to the situation at hand; right?

ADM ISABELLE JACQUES: Yes, we wanted to see if we had any tools in place that could be useful ---

MR. HATIM KHEIR: Right. And ---

ADM ISABELLE JACQUES: --- from a financial perspective.

MR. HATIM KHEIR: --- the need to respond arose from -- in response to the massive amount of money that was coming in to support the convoy; right?
ADM ISABELLE JACQUES: Well, certainly, that triggered our interest as -- you know, as people are starting to donate via crowdfunding platforms, we were looking at that. But, you know, it was to support what was a peaceful event.

MR. HATIM KHEIR: M’hm. Now, we heard from Ms. Lich that the amount of donations took her by surprise. I imagine that they probably took you and your office by surprise as well; right?

ADM ISABELLE JACQUES: Well, at the time when we found out, we -- well, I suppose it was maybe surprising but we were right in the middle of budget at the time and when we -- we just basically read news articles that were incoming.

MR. HATIM KHEIR: M’hm. Tell me if you agree but I’d go so far as to say that the amount of people donating to the crowdfunding sites was shocking, right, especially as it was just coming in from the news?

ADM ISABELLE JACQUES: Well, I couldn’t tell you how many people donated because you can’t tell the size of the donations, so -- but -- I mean the amount was substantial amounts, yes.

MR. HATIM KHEIR: Okay. And now, essentially, in trying to see what your office could do, you found out there was a gap in the legislation and that you didn’t have the tools that you needed; right?

ADM ISABELLE JACQUES: Well, as we said, we knew that in the past, from our work with the international association organizations that, you know, crowdfunding platforms and some -- most payment service providers were not captured by
the legislation.

MR. HATIM KHEIR: Okay. And the legislation you’re referring to is the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*?

ADM ISABELLE JACQUES: That’s right.

MR. HATIM KHEIR: Okay. And now, the problem wasn’t -- so, okay, you said that it doesn’t apply to crowdfunding sites, or it didn’t, but it does apply to banks; right?

ADM ISABELLE JACQUES: Yes, it does.

MR. HATIM KHEIR: So once any money from the crowdfunding site got paid into a bank, it then be under the purview of that legislation; right?

ADM ISABELLE JACQUES: If it was paid to the bank, yes.

MR. HATIM KHEIR: Yeah. And -- but even then, the Act still wasn’t used in response to any funds received by the banks; right?

ADM ISABELLE JACQUES: Well, I mean the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, I mean, applied at the time, so if information was being provided to FINTRAC, I wouldn’t have known about that.

MR. HATIM KHEIR: Okay, but ---

ADM ISABELLE JACQUES: So it’s possible that information was being shared. I do not know.

MR. HATIM KHEIR: But part of the reason that that Act wasn’t helpful, even for the funds being paid into the bank, was because this wasn’t terrorist financing?
ADM ISABELLE JACQUES: Again, I can’t say that. I do not know what information was shared. I don’t -- FINTRAC would know if any information at the time had been shared with them.

MR. HATIM KHEIR: Okay. Well, let’s look at it from the perspective of what your office was working. So the emergency economic measures prohibited a whole list of activity that basically amounts to providing funds to designated persons; right?

ADM ISABELLE JACQUES: That’s accurate.

MR. HATIM KHEIR: And “designated persons” were people who were engaging in an assembly that was prohibited by the Emergency Regulations?

ADM ISABELLE JACQUES: Yes, unlawful act, yes -- activities, yes.

MR. HATIM KHEIR: Well, specifically, under the Emergency Regulations, to participating in a certain kind of public assembly; right?

ADM ISABELLE JACQUES: Yes.

MR. HATIM KHEIR: Okay. So I mean this is identifying a new category of conduct that these -- that this kind of approach is now being applied to; right? This wasn’t conduct that was previously ---

ADM ISABELLE JACQUES: I -- but we were not engaged in drafting the regulations. So we were engaged in what became the Economic Measures Order but not the regulations.

MR. HATIM KHEIR: But then the economic order works based off of people who are identified in the regulations?
ADM ISABELLE JACQUES: Of -- of the -- of what is described as, as you -- I think you were just saying, “illegal activities”. Let me see. You’d have to bring me the -- you know, we didn’t work on those regulations, so which section were you referring to, sorry?

MR. HATIM KHEIR: So Section 1, I believe, of the Emergency Economic Measures identifies a designated person, right, and that’s someone who’s committing something identified in Sections 2 to 5 of the regulations?

ADM ISABELLE JACQUES: Correct, yes.

MR. HATIM KHEIR: Okay. So I mean those -- the activity that’s identified in Sections 2 to 5 is not activity that was previously captured by the Proceeds of Crime (Money Laundering) and Terrorist Financing Act?

ADM ISABELLE JACQUES: No, but I don’t see the link, I must admit.

MR. HATIM KHEIR: Sorry?

ADM ISABELLE JACQUES: I’m not sure that -- to see the link. What is your question?

MR. HATIM KHEIR: Basically, that the money-freezing provisions of the economic order ---

ADM ISABELLE JACQUES: Yes.

MR. HATIM KHEIR: --- to refer to it as that, is now being applied to a new category of people that wasn’t previously captured by the Proceeds of Crime (Money Laundering) and Terrorist Financing Act.

ADM ISABELLE JACQUES: I mean all that that did was to extend the -- so under the PCMLTFA, the only requirement
was -- nothing was changing in the Act other than to extend to
crowdfunding platform and payment service provider the
obligation to register if they were in position of property that
were own by those designated people. So it was a very narrow
application.

MR. HATIM KHEIR: Okay, but what I’m trying to
get at is that that category of designated people, there wasn’t
an equivalent under the Proceeds of Crime (Money Laundering) and
Terrorist Financing Act?

ADM ISABELLE JACQUES: Not to my knowledge, no.

MR. HATIM KHEIR: Okay. Then -- now, in terms of
what your office was doing prior to the use of the Emergencies
Act, I imagine it might have been rather frustrating, then, in
terms of the lack of tools available to respond to the
situation?

ADM ISABELLE JACQUES: Well, no, not frustrating.
I mean we’re trying to help -- you know, all departments were
trying to help to find solutions.

MR. HATIM KHEIR: Okay. And at that time, you
guys didn’t have the tools needed to stop the donations from
coming in; right?

ADM ISABELLE JACQUES: Well, under the -- well,
it’s not to stop donations. That was not the purpose, but
certainly -- I mean we didn’t have the tools to direct, you
know, financial service providers to review their relationship
with their clients or to freeze bank accounts, and certainly, we
didn’t end the Act, the PS -- the Proceeds of Crime, Money
Laundering, and Terrorist Financing Act did not apply to a
crowdfunding platform and certain payments that was provided.

DM MICHAEL SABIA: I'm sure you're aware that FINTRAC does have enforcement authorities?

MR. HATIM KHEIR: Right, but what -- my question for -- actually, so perhaps we can take a step back. I remember in the testimony in-chief it was identified that there were two goals to the Emergency Economic Order.

ADM ISABELLE JACQUES: Yes.

MR. HATIM KHEIR: It was to -- the one was to cut off the flow of support to the protest, and then the other was to put a deterrent pressure on protesters, right?

ADM ISABELLE JACQUES: Correct.

MR. HATIM KHEIR: Okay. So in terms of that first goal, essentially, the way that support was coming in was through donations to crowdfunding sources or crypto currency wallets, for example?

ADM ISABELLE JACQUES: Yes.

MR. HATIM KHEIR: And I mean, we heard from previous testimony a couple of weeks ago that it basically costs thousands of dollars in fuel to get a big truck across the country and so that was one of the things that those donations were going to, right, fuel?

ADM ISABELLE JACQUES: That’s what I heard in the news.

MR. HATIM KHEIR: Right, and food and lodgings?

ADM ISABELLE JACQUES: Again, I have no personal knowledge, but yes, I read that.

MR. HATIM KHEIR: And would you agree that
essentially, the people who are making these donations, they're doing that because that’s their way of supporting the protest?

ADM ISABELLE JACQUES: I would imagine.

MR. HATIM KHEIR: Right. So these people couldn't go to Ottawa themselves and this was their way of participating in something that they believed in?

ADM ISABELLE JACQUES: I suppose so, yes.

MR. HATIM KHEIR: So I mean, at the end of the day, really, what the goal here was a way to prevent Canadians from expressing their support in a protest against the policy they didn’t believe in?

ADM ISABELLE JACQUES: I don’t agree with that. I mean, people can make donations and could still make donations. The only restriction that were imposed was to support illegal activities.

MR. HATIM KHEIR: Right. But yesterday, Mr. Ossowski and today Mr. Sabia both said that the activities were made illegal by the emergency measures, so up until that point, people were donating to support a ---

ADM ISABELLE JACQUES: Yes.

MR. HATIM KHEIR: --- protest?

DM MICHAEL SABIA: Yes, and the measures were never -- the application of the Emergencies Act was always from the date prospectively, not retrospectively.

MR. HATIM KHEIR: Right. But the collective ---

DM MICHAEL SABIA: So that this only captures a donation that is going to then a declared illegal activity.

MR. HATIM KHEIR: Sure. But the collective ---
would you agree that the collective function of those two regulations, I mean, the regulations and the order, was to take a protest, declare it illegal, and then prevent funds from coming in to support the protest?

DM MICHAEL SABIA: I think the objective was to try to bring, as I said before, to a peaceable end a set of activities that were -- had then been declared illegal, and the objective was to try to bring that disruption, for all the reasons we discussed earlier this morning that I won't repeat -- to bring that to a peaceable and timely end. That was the objective.

MR. HATIM KHEIR: I see I'm out of time, so I will just wrap up with this one point, Ms. Jacques.

At the end of the day, that first goal, that first goal of preventing funds from coming in to the protesters, it wasn’t even needed, was it, because the TD Bank had already put a hold on the funds that were held with them, correct?

ADM ISABELLE JACQUES: Well, at the time, you know, we didn’t know what was happening with TD Bank for sure, but it doesn’t mean that because there's let's say actions taken one place that money will not be funneled through other ways. I mean, money is fungible.

MR. HATIM KHEIR: Right. But you are aware that the -- and it's identified in your organization's institutional report -- that the Ontario Attorney General had obtained a restraint order against any funds that were held by Ms. Lich, Mr. Garrah, or Mr. Dichter.

DM MICHAEL SABIA: But that only applied in
Ontario, and that’s the whole point. Because money’s fungible, as Isabelle says, it can flow anywhere in the country, so one provincial government taking action doesn’t resolve the issue. The issue for the national government was trying to do this on a broad-based approach because that’s the way you contain a situation where money can flow anywhere, which it does all the time.

**MR. HATIM KHEIR:** Where are you getting the basis that the restraint order only applied in Ontario? It was made by the Superior Court, was it not?

**DM MICHAEL SABIA:** I think it was just in the Province of Ontario, was my understanding. I may be -- I'm not a lawyer. I may be wrong about that, but I thought it was just -- with just application in Ontario.

**MR. HATIM KHEIR:** Okay. I am over time so those are all my questions. Thank you.

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

Next, call on the Government of Alberta, please.

--- CROSS-EXAMINATION BY MS. STEPHANIE BOWES:

**MS. STEPHANIE BOWES:** Good afternoon. For the record, my name is Stephanie Bowes for the Province of Alberta. Just one area I'd like a little bit of clarity on.

Do the assessments of economic impact of the Coutts border blockade take into consideration commercial traffic that would have normally travelled through that port of entry, but was re-routed to other ports of entry?

**ADM RHYS MENDES:** So we tried to implicitly take

INTERNATIONAL REPORTING INC.
account of that, but it's not explicitly modelled, but it is --
we assume, basically, a similar amount of re-routing is what we
were seeing at Ambassador.

MS. STEPHANIE BOWES: Okay. So all those
estimates were based on what you were seeing at Ambassador
Bridge as opposed to specific data from Alberta?

ADM RHYS MENDES: Yeah. So we took what we were
seeing at Ambassador Bridge and scaled it by the amount of trade
crossing at Coutts, again, a rough estimate, but -- so it
doesn't specifically explicitly model the re-routing at Coutts.

MS. STEPHANIE BOWES: All right. Thank you.

That's my only question today.

COMMISSIONER ROULEAU: Thank you. Next, the
Ottawa Coalition.

--- CROSS-EXAMINATION BY MS. CHRISTINE JOHNSON:

MS. CHRISTINE JOHNSON: Good afternoon,
Commissioner.

Good afternoon, Panel. My name is Christine
Johnson. I'm counsel for the Ottawa Coalition of Residents and
Businesses, and I just have a few hopefully short questions for
you today.

To begin, I would ask the clerk to please pull up

And while we're waiting for that to be pulled up
-- oh, here it comes -- so I was hoping that -- and this is a
question for anyone on the Panel who might be able to give
assistance -- I'm wondering if any of you might be able to
assist me understanding this document?
So this would be at the top. It's an email sent February 14th. We see the from and to information's redacted as personal information at the top, but if you scroll to the bottom of page 2, we see that this email originated from someone in the Office of the Deputy Prime Minister and Minister of Finance.

And we can go back up to the top, please, Clerk.

So my understanding that this email is that it is an email communicating information about the names of 201 trucking companies whose trucks were identified as participating in the convoy demonstration within Ottawa. The email then shares which of these 201 companies accessed the CEWS, which I understand refers to the Canada Emergency Wage Subsidy.

So -- and the email goes on to note that 45 of these 201 trucking companies were identified as active in that subsidy.

So my question for the Panel is just whether any of you were aware that this information was being compiled within the department and then for what use, is my question?

DM MICHAEL SABIA: I am not aware of that, and that is the first time that I have seen this document. And it seems like if you want to pursue that, it's best to pursue that with the Office of the Minister.

MS. CHRISTINE JOHNSON: Thank you. That’s fair.

And for the record, I'll just note that the document attached to this document is SSM.CAN.00001320, but of course, we don’t need to pull it up in light of the Panel's answer.

So I'll just move to another brief area which I'm
sure you can provide me some assistance.

This is with regards to clarifying some of the evidence that you provided regarding the aggregate data that the department received about the frozen accounts pursuant to the order.

Mr. Sabia, you told us that approximately 280 accounts were ultimately frozen, and for your assistance, I believe that that’s the number that’s also contained within your institutional report. Is that -- that’s correct?

DM MICHAEL SABIA: Yes.

MS. CHRISTINE JOHNSON: And that was -- those were accounts frozen between February 15th and February 24th, correct?

DM MICHAEL SABIA: Well, I think it's a shorter time period than that, because I think on February the 21st -- I'd have to check the date -- 21st or 22nd, the RCMP had indicated to the banks given the progress on ending the disruptions that all those accounts should be unfrozen. So it was really in a period from the coming into force of the Emergency Act on the 15th and say the 20th or 21st of February.

MS. CHRISTINE JOHNSON: Right. Fair. And we heard you also give evidence that to the Department's knowledge no donors had their account frozen. So those 280 accounts were not donor accounts but they were more people who were leaders of or instrumental in some way in the protests?

DM MICHAEL SABIA: Well, that's our understanding. I mean, we were not involved and don't individual level information here, but that is our
understanding.

**MS. CHRISTINE JOHNSON:** And financial service providers told the Department that those accounts, again those 280 accounts, represented different financial products. For example, savings accounts, chequing accounts, credit cards or lines of credit; correct?

**DM MICHAEL SABIA:** Yes.

**MS. CHRISTINE JOHNSON:** So to be clear, the total number of individuals or entities who had accounts frozen under the Order was in all likelihood far less then 280 because those 280 accounts may have been multiple accounts held by individuals or entities; correct?

**DM MICHAEL SABIA:** Yes, that's correct. It would be much smaller we believe.

**MS. CHRISTINE JOHNSON:** Yes. And to process this with that, Clerk, I would ask you to pull up document SSM.CAN.00000209_REL.0001.

And I believe my friend from the CCLA already took you to this document today. And Ms. Jacques, I'll point out that at the -- if you scroll to the bottom of page 1, we see an email from you, Ms. Jacques, to Alex, and again, I believe this is Alex Lawrence, and you say on February 22nd:

"...the RCMP has confirmed that they provided the banks with a list of 57 individuals/entities representing a total of 240 financial accounts that are no longer involved in the blockades."
And you go on to note that the banks have confirmed that there will be an unfreezing of these accounts. So is this -- these numbers, so we see 57 individuals or entities corresponding to 240 financial accounts. So is this the type of ratio that we're looking at when we're looking at the overall 280 accounts that were frozen, it was likely of this nature, this kind of ratio?

ADM ISABELLE JACQUES: That's accurate.

MS. CHRISTINE JOHNSON: Thank you. Those are all my questions.

COMMISSIONER ROULEAU: Okay.

Next, I'd like to call on the Windsor Police Service.

MR. TOM McRAE: Thank you, Mr. Commissioner.

--- CROSS-EXAMINATION BY MR. TOM McRAE:

MR. TOM McRAE: My name is Tom McRae. I act for the Windsor Police Service.

Mr. Sabia, my notes of your evidence say that your evidence was that the Ministry -- this was a serious issue and the Ministry of Finance was working towards a peaceful end to difficult circumstances. Is that a fair summary of your earlier evidence?

DM MICHAEL SABIA: Yes.

MR. TOM McRAE: Thank you. I also have notes that you said that a peaceful end is better than a non-peaceful end. And in that context, you acknowledge the right to protest. Is that fair?

DM MICHAEL SABIA: Yes.
MR. TOM McRAE: Did anyone at anytime in the Ministry of Finance to your knowledge model the cost of a non-peaceful end to this process?

DM MICHAEL SABIA: No.

MR. TOM McRAE: Okay. Thank you, those are my questions.

COMMISSIONER ROULEAU: Thank you.

Next, I'll call on the Government of Canada.

--- CROSS-EXAMINATION BY MR. STEPHEN AYLWARD:

MR. STEPHEN AYLWARD: Good afternoon. It's Stephen Aylward. I'm one of the lawyers for the Government of Canada.

Mr. Sabia, earlier this morning, you mentioned a concern around the electric vehicle credits in the context of discussions with or issues with the United States. I just wonder for those who may be unfamiliar with that issue if you could just explain a bit more about why it was and why it was a concern for you.

DM MICHAEL SABIA: Sure. In the U.S. legislation, since passed, they provide -- there had always been a certain level of subsidy for electric vehicles, and that level of subsidy one way or another was matched because they were quite small on the U.S. side and on the Canadian side. The proposal was a dramatic increase in the level of government subsidy for electric vehicles that were assembled only in the United States. That was -- it is a dramatic increase.

So the issue for us was that if that remained the case, and that electric vehicle assembly was done on an American
basis not a North American basis, then a Canadian industry would be at a very, very substantial disadvantage, and that in effect, we would either, as a much smaller country, have to match the magnitude of those subsidies or have, in effect, over time the automotive industry migrate into the United States. The automotive industry, you know, is an extremely important part of the Canadian economy, and an essential part of the central Canadian economy.

So finding a -- working toward a North American approach to the assembly of electric vehicles was something that was very important to us and to those companies, and especially to autoworkers. So that's why the concern that was being expressed in the United States that Canada's no longer reliable raised such a serious issue for us because if that was the political perception, then our chances of being able to convince Washington to adopt a North American approach to this, which of course required a level of confidence that auto parts and cars could move across the border pretty seamlessly, if we were not successful in doing that then as I say there would be a very severe economic consequence for -- I mean, there are 500,000 workers in Canada directly and indirectly whose jobs depend on - - I mean, it's a very, very important sector.

**MR. STEPHEN AYLWARD:** Was that issue around the proposal to have the electric vehicle credits subsidies apply only in the United States, was that a live issue in the United States ---

**DM MICHAEL SABIA:** Yes.

**MR. STEPHEN AYLWARD:** --- at the time?
DM MICHAEL SABIA: Yes.

MR. STEPHEN AYLWARD: Mr. Mendes, you mentioned that there had been issues with semi-conductor supplies in the supply chains in the auto sector that had arisen prior to the blockades. Did those -- did the impact of the semi-conductor shortages apply equally in Canada and the United States on the auto manufacturing sectors?

ADM RHYS MENDES: Actually, yeah. There was evidence at the time that given that the semi-conductors had become scarce, there was a need to make choices about where and to which auto plants semi-conductors were being allocated. And my recollection is that they were disproportionately being allocated towards plants in the U.S., so it was affecting Canadian plants to a greater degree.

MR. STEPHEN AYLWARD: So as we know, the Ambassador Bridge was -- the blockade was cleared by the time the Emergencies Act was invoked, but we've also heard evidence that there were plans from protesters to try and re-establish a blockade on the bridge. I'm just wondering for your perspective in terms of impacts, economic impacts or impacts with the U.S. trading relationship and what would've been the impact of a blockade re-emerging at the bridge?

DM MICHAEL SABIA: Well, I think, because our concern at the time was not only with respect to the Ambassador Bridge, our concern at the time was that while a disruption may have ended in one place there was certainly the very live possibility that disruptions could emerge elsewhere, or in fact, at that same bridge. We had no level -- no reason to believe
that those disruptions had come to an end, period, at the time, prior to the time of the Government's decision with respect to utilising the Emergencies Act. And indeed, it was -- that was one of the significant factors that there was no way of judging whether we could find ourselves in a situation of kind of rolling disruptions across various border points of entry.

Had that occurred and had we been unable to manage that situation, I think the reaction in the United States, in the politically important State of Michigan and in the Federal Government, would have been to very seriously question Canada's ability to continue to act as a reliable trading partner.

ADM RHYS MENDES: Can I just add that, you know, in a situation where the Ambassador Bridge became blocked again you'll note that the estimates that Transport Canada did were for peak impacts in the first week of a disruption. Given that inventories had been drawn down during the period of disruption, the return to a disruption at the bridge would have put us more into, like, a second week situation where, based on our own past experience and discussions with Transport Canada, you know, that could reasonably be up to, like, three-and-a-half times the size of the impacts that we were discussing for the first week.

MR. STEPHEN AYLWARD: In week two compared to week one.

ADM RHYS MENDES: Yeah.

DM MICHAEL SABIA: Yeah. I'd just like to add something here. You know, we talk about 0.1, 0.2 and the impact on growth rates and this and that, and we talk about it in very
antiseptic terms. But what we're really talking about here is, you know, and we were already experiencing it, but we're really talking about what does it mean 0.1, 0.2. It's not just a number. It means layoffs. It means lower incomes for workers. It means communities less able to count on certain companies. I mean, there are real human consequences to these numbers, whether it's an auto worker, or whether it's someone in the food sector in western Canada and their ability to pay mortgages, etcetera. I mean, we had a lot of good conversation today about those who were involved in the disruptions themselves, but there's also a dimension of this about, well, what are the rights of the people who suffered the economic consequences of this kind of disruption, because they are real and they are meaningful.

MR. STEPHEN AYLWARD: Can I ask -- you testified earlier that this was an urgent situation, we had to act quickly because there was -- the longer it went on, the worse the economic impacts could have been. But just when you say quickly, what's the timescale that you had in mind? Was this an issue of days, or weeks, or what was the timeframe?

DM MICHAEL SABIA: Well, I think in an ideal world, these disruptions had already gone on. They varied, the length by where they were in the country, but these disruptions had already gone on for a reasonable period of time, so -- reasonably lengthy period of time. So our objective here was we were thinking about this in a, you know, a period of several days or a week, perhaps a bit more than a week. But what we very much wanted to avoid was what Rhys just said, particularly
with the automotive sector, where once inventories were down, then the cost of this thing on a week-by-week basis would really escalate, and that's what we wanted to avoid. As it happened, we were able to avoid it, and therefore, the economic effects and the long-term scarring of all of this was, you know, was quite limited. But that's because it was ended quickly.

**MR. STEPHEN AYLWARD:** Changing gears slightly. Ms. Jacques, you mentioned to my friend from the Government of Saskatchewan that the Department of Finance hadn't consulted with RCMP on the EMO until after the measures were adopted. Did the Department of Finance consult with Public Safety on those measures before they were adopted?

**ADM ISABELLE JACQUES:** Yeah, we had this -- we had discussion with Public Safety before the measures were enacted, yes.

**MR. STEPHEN AYLWARD:** Now my friend for Commission Counsel put it to you that the Department of Finance took no responsibility for whose accounts were frozen, and the exercise of identifying whose accounts were to be frozen. Does the Department of Finance have any information about the individuals who were involved in the blockades, or did it have such information at the time?

**ADM ISABELLE JACQUES:** No, we did not.

**MR. STEPHEN AYLWARD:** Did it have any way of obtaining that information?

**DM MICHAEL SABIA:** No, and it would have been inappropriate for us to.

**MR. STEPHEN AYLWARD:** Why do you say that?
DM MICHAEL SABIA: Because we should not have -- in the interests of protecting people's privacy, we should not have access to that information.

MR. STEPHEN AYLWARD: And so who would be the appropriate body through which such information ---

DM MICHAEL SABIA: It would be law enforcement.

MR. STEPHEN AYLWARD: Pardon me?

DM MICHAEL SABIA: Law enforcement.

MR. STEPHEN AYLWARD: And, in fact, Commission Counsel showed you the evidence of Officer Beaudoin, the disclosures that were -- the form of disclosure that was made to financial institutions. If a financial institution was uncertain upon reviewing the disclosure it received from the RCMP about whether the person who was the subject of the disclosure was in fact involved in illegal activity, was there anything that would have prevented the financial institution from requesting that the RCMP provide further information?

ADM ISABELLE JACQUES: No. Actually, we're provided the -- we have measures so that -- to ensure that information could be exchanged between the RCMP and financial institutions.

MR. STEPHEN AYLWARD: That's Section 6 of the ---

ADM ISABELLE JACQUES: That's -- yes.

MR. STEPHEN AYLWARD: And in terms of the -- oh, are you aware of any instances in which there was a case of mistaken identity in which a person had their bank account frozen despite not being someone who's involved in the protests?

ADM ISABELLE JACQUES: No.
MR. STEPHEN AYLWARD: In terms of the decision to use a -- what my friend called a hybrid approach, not providing financial institutions with a list of designated persons, but also depending on their own systems, Ms. Jacques, you testified earlier that that was in part to take advantage of the internal systems and algorithms that those institutions have in place themselves. What sort of data would financial institutions have access to, that the RCMP or law enforcement wouldn't, that would allow them to make determinations about whether someone was engaged in illegal activities under the Emergency Measures Regulations?

ADM ISABELLE JACQUES: Well, I think banks and financial institutions on a regular basis use their algorithm to, you know, detect fraud, you know, for example, fraudulent activity in credit cards, or bank accounts even, you know, important withdrawals. So on a regular basis, they have tools to detect these activities and to freeze either the bank account or the card pending resolution of the inordinate activities on the account.

MR. STEPHEN AYLWARD: They'd be looking at the transaction data that was ---

ADM ISABELLE JACQUES: That's correct.

MR. STEPHEN AYLWARD: --- available to them?

ADM ISABELLE JACQUES: That's right.

MR. STEPHEN AYLWARD: And so if a person donated a million dollars to support an illegal blockade at a border or in Ottawa, that's information that a financial institution might have that law enforcement would have no way of knowing.
ADM ISABELLE JACQUES: I presume that that would be possible, yes, especially such a large amount.

DM MICHAEL SABIA: Which is, of course, why, just to complete the thought, a combination of these two things, information from law enforcement and utilizing the pretty sophisticated technological abilities of financial institutions is the way to maximize the accuracy of these actions, and accuracy matters here for obvious reasons. So we think, actually, that you described it as a hybrid approach. That kind of hybrid approach actually delivered a good result.

MR. STEPHEN AYLWARD: And so if the list approach had been used and financial institutions were required to freeze the accounts of anyone who was on a list provided by the RCMP, is it fair to say that the financial institutions wouldn't have been able to unfreeze those accounts until they were delisted by the RCMP?

ADM ISABELLE JACQUES: That's correct.

MR. STEPHEN AYLWARD: And so under these measures that you had in place using the hybrid approach and the duty to determine on a continuous basis that you referenced earlier, financial institutions were actually able to unfreeze accounts without waiting for such a delisting; is that right?

ADM ISABELLE JACQUES: Absolutely, and that was an important part of the policy work we did. We wanted to ensure that financial institution had an ongoing obligation to review the information that they had, specifically for that, so to ensure that they can, you know, freeze or unfreeze account based on the information that they have.
MR. STEPHEN AYLWARD: In terms of the national scope of the Emergency Economic Measures Order, it applied across the country to financial institutions and designated persons not just in provinces where border blockades or other unlawful protests were occurring. Why was it important that the measure apply across the country?

ADM ISABELLE JACQUES: Well, it was very important because, you know, we didn't know who was donated in which province to where. Also, I mean, we had heard that funds were coming from outside of Canada. So if funds are coming in, we don't know where they -- where it's going to come in Canada and where it's going to go, so it was very important that as money flows that we could have a consistent approach across the country and ensure that the funds that were used to support those illegal activities were frozen.

MR. STEPHEN AYLWARD: In terms of notice of the pending freezing measures, Mr. Sabia, you mentioned earlier that the Deputy Prime Minister had been very clear that the individuals could have their accounts frozen if they continued to participate in unlawful activity.

How was that message communicated?

DM MICHAEL SABIA: I think the Minister made that comment early -- relatively early in the day on the 14th, although I don’t remember the time, in the context of a broader news conference, I think in the company of the Prime Minister announcing the government’s intention to put in place the Emergencies Act. It was also very, very extensively picked up and reported in the public media through the course of that day.
and evening.

MR. STEPHEN AYLWARD: And Ms. Jacques, you mentioned notice that had been given to protesters. Are you aware of efforts taken by police officers to give notice to protesters of these potential consequences?

ADM ISABELLE JACQUES: Yes, we had been informed that the RCMP had been, you know, informing people, certainly on the Hill, I don’t know elsewhere, that the freezing of bank accounts were a possibility if they weren’t leaving the location where they were at.

DM MICHAEL SABIA: And there’s lots of anecdotal material that we heard subsequently of RCMP officers or other officers speaking to truckers or other people who were protesting saying -- giving protesters the opportunity to say, “Look, I am leaving. I’m leaving, you know, tomorrow,” et cetera. As I understand it, in those cases law enforcement authorities were quite flexible; as long as they had an undertaking that the person was leaving, they did not take the further step of then freezing that bank account. So I think there was quite a lot of good common sense I how this was applied, and gave people the opportunity to, you know, just go home.

MR. STEPHEN AYLWARD: Ms. Jacques, when the measures were conceived, how -- what was the idea for how someone would have their account unfrozen?

ADM ISABELLE JACQUES: Well, we had -- it was, again, twofold. I mean, it could have been just based on a person -- say, a person leave and cease his illegal activity
could, you know, contact the bank and tell them that they were no longer involved and that they were no longer on location and/or, you know, via a person could have gone maybe to the RCMP, get in touch with law enforcement to ensure that the information was conveyed to the financial sector.

MR. STEPHEN AYLWARD: The definition of a designated person under the EMO is a person who is engaged in activity contrary to sections 2 to 5 of the EMR. Am I right that a person would cease to be a designated person as soon as they ceased participating in such activities?

ADM ISABELLE JACQUES: Yes, that is accurate. As soon as a person ceases the activity, the account could be unfrozen. So as quickly as we could freeze -- the account could be frozen, it was easily unfrozen.

MR. STEPHEN AYLWARD: My friend for the CCF suggested to you that the intention here wasn’t to freeze people’s grocery money. Was there any way that the Department of Finance, in conceiving these measures, would have been able to distinguish between money that was being used to buy groceries and money that was being used to fund illegal activity?

ADM ISABELLE JACQUES: No.

MR. STEPHEN AYLWARD: And why is that?

ADM ISABELLE JACQUES: Well, we don’t have that detail of information. It’s impossible, and it was difficult for us to draft a measure in such a way.

MR. STEPHEN AYLWARD: Mr. Commissioner, I’m just about out of time. If I might have another few minutes?
COMMISSIONER ROULEAU: Sure, go ahead.

MR. STEPHEN AYLWARD: Thank you.

In terms of the alternative measures, or the alternatives to these measures, it was suggested to you earlier that some of the crowdfunding campaigns were already subject to a Court Order from Ontario at the time that the EMO came into effect, and Mr. Sabia, you noticed -- noted a concern around the -- whether that Order would fly outside of Ontario. I’m wondering, Ms. Jacques, from your perspective, were you aware of any other reason why it was needed to take these steps -- why the Ontario Order was insufficient?

ADM ISABELLE JACQUES: Well, I mean, the Ontario Order was one circumstances but it was -- for us, you know, there was always a risk that funds could be given to another crowdfunding platform using other payment service providers, money, you know, as we said, can be flown from different ways, could have ended up in wallets. I mean, we did not know at the time. So the fact that it was one Court Order doesn’t solve the situation. So it was important that we take the measures we took.

MR. STEPHEN AYLWARD: You refer to wallets; you’re referring to cryptocurrency?

ADM ISABELLE JACQUES: Yes.

MR. STEPHEN AYLWARD: --- fundraising?

ADM ISABELLE JACQUES: That’s right.

MR. STEPHEN AYLWARD: Can you say more about that?

ADM ISABELLE JACQUES: Well, I mean, we were
aware that some money were being flown to cryptocurrency wallets, and so we wanted to ensure that that was captured as well.

MR. STEPHEN AYLWARD: I’m just about out of time. You’re aware that there were -- that there was significant media reporting around the GoFundMe decision to cease its crowdfunding campaign on that platform?

ADM ISABELLE JACQUES: Yes, I heard about that.

MR. STEPHEN AYLWARD: Okay. And I don’t have time to play it but I’ll just, for the record, one example of such a media report would be PB.CAN.00001797_REL.0001, beginning at five minutes and five seconds.

Thank you, Mr. Commissioner, for the indulgence. Those are my questions.

COMMISSIONER ROULEAU: Okay, thank you.

Any re-examination?

MR. GORDON CAMERON: Thank you. Just very briefly, Mr. Commissioner.

--- RE-EXAMINATION BY MR. GORDON CAMERON:

MR. GORDON CAMERON: Presumably primarily for you, Mr. Sabia, and you, Ms. Jacques.

As you might know, the Commissioner has a mandate to look into the future and make recommendations about the lessons that have been learned, and if you can contemplate for a minute the lessons that the Department of Finance has learned; and, in particular, from the steps that were taken with the financial institutions. Now, we heard evidence from both of you, Ms. Jacques, that there was a very short period of time...
within which you had to draft these regulations, and from you, Mr. Sabia, the very short period within which you had to consult with all sorts of other outside institutions to see if you could make these work. And we’d heard earlier from the RCMP about how quickly they had to move as well.

And so looking to the future, I’m wondering if the Department of Finance would consider it useful to have a sort of protocol in place in case this type of situation arises in the future about the factors that you would take into consideration if you had to move very quickly again in the future to take similar steps.

ADM ISABELLE JACQUES: I mean, certainly as we mentioned before, I mean, if we would have -- we’d had more time to draft and craft the policy at the time, maybe to provide some specific exceptions to -- for some sum of money for the freezing of the bank accounts, maybe that is something that we would have done.

Certainly with respect to the list of designated person as we -- as it was mentioned, I mean, I know that although there was no provision for listing, effectively the RCMP provided a list of person to financial institutions. I mean, that’s something that we can think about, but we also do not want to lose the capacity of financial institution to do their own verification. I think that is still key. So maybe it’s something that we could think about as to how we create this procedure to share a list, but we’d have to think about that further.

DM MICHAEL SABIA: So for my part; look, you
always learn from experiences. And this was a highly unusual experience. And as an organization, speaking on behalf on the Department of Finance, as an organization, I mean, we would be misguided not to try to learn from it. I think we did what we needed to do in very compressed periods of time, and I think just history, I think the record shows that we were able to -- in taking the actions that we took, we were able to minimize the damage to the national economy. And that means, I want to emphasize this point again, that means minimizing the damage to people. It’s not antiseptic stuff, and it’s not just about companies. It’s about people. It’s about workers. It’s about paychecks. And we ought not to lose sight of that when people like us talk about, you know, point one and point two. It’s about people.

So given that, yeah, can we do things, like think through protocols of activity if these very unusual circumstances were ever, and I hope they never do, arise again, and would we be better positioned if we had thought through in advance protocols of exactly what to do, and when to do it, and with whom to consult? Now circumstances vary, so who you’re going to consult with varies, but could we make that better? Sure. Because you can always learn. And we’re open minded about that, and we will.

But again, and I won’t say more on this, I’ll just say, in the circumstances, and I think the record shows this, we were able to avoid some potentially very, very serious consequences for, in effect, millions of people who could have been affected by this.
MR. GORDON CAMERON: Thank you.

And thank you, Mr. Commissioner. That’s my only re-examination.

COMMISSIONER ROULEAU: Okay. I’m going to maybe wade in a bit further on the last question about reforms and looking forward and ask you to go up a bit to the Emergency Act itself, in the sense that there may be debate, let’s put it this way, as to whether or not the concerns you’ve expressed today are encompassed by public order emergency, i.e. the financial impact that you’ve described.

So my question is, do you have any recommendations or suggestions on the Act itself, whether clarity on that issue, assuming you believe it ought to be considered, is useful, and how that might be done, or whether your financial concerns of that type are another kind of emergency other than a public order emergency?

I don’t know if you understand what I’m getting at, because it’s encompassed in one right now and there are some readings that would not encompass the financial impact such as you’ve described.

DM MICHAEL SABIA: Well, Commissioner, you’re going to get a biased answer, ---

COMMISSIONER ROULEAU: No, and that’s fine.

DM MICHAEL SABIA: --- because my biased answer is, for all the reasons I just said, economics is not about economics. It’s about people and it’s about the welfare of people. So one way or the other, and you’re in a much better position than we are to decide whether or not it’s in public
order or some other category, et cetera. I won’t venture into that world. You’re much more experienced and I would be impertinent to venture a view on that.

But do I think threats to Canada’s national economy warrant being taken very seriously and integrated somehow? In this kind of -- in these kinds of legal structures? My answer to that is unambiguously yes, just because they are of the importance that they are to people.

So my answer is yes. And if there’s ambiguity around those issues, then clarifying, I think, that ambiguity would be a very useful thing. If there is ambiguity.

COMMISSIONER ROULEAU: No, and I’m not saying there is. I’m just trying to get clarity in your position, which, biased as it is, I think it has value. And I appreciate that.

And so I think that’s all I’m going to ask you. So thank you very much for your testimony, and for coming, and for taking the time to give us the finance Ministry’s view.

DM MICHAEL SABIA: Thank you.

ADM ISABELLE JACQUES: Thank you.

ADM RHYS MENDES: Thank you.

COMMISSIONER ROULEAU: Okay. So maybe we’ll take a short break while we set up for the next -- it’s not a panel, I guess, but the next witness.

So we’ll just take five minutes and come back once they’re organized.

THE REGISTRAR: The Commission is in recess for five minutes. La Commission est levée pour cinq minutes.
--- Upon recessing at 3:18 p.m.
--- Upon resuming at 3:25 p.m.

THE REGISTRAR: Order. À l’ordre.
The Commission is reconvened. La Commission reprend.

COMMISSIONER ROULEAU: Okay. Go ahead.

MS. SHANTONA CHAUDHURY: For the record, Shantona Chaudhury for the Commission. Our next witness is Ms. Jody Thomas, the National Security Advisor to the Prime Minister. I would ask the witness be sworn or affirmed.

THE REGISTRAR: Ms. Thomas, will you swear on a religious document or do you wish to affirm?

MS. JODY THOMAS: On a religious document, please.

THE REGISTRAR: We have the Bible, the Quran, or the Torah available.

MS. JODY THOMAS: The Bible, please.

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


--- MS. JODY THOMAS, Sworn:

THE REGISTRAR: Thank you.

COMMISSIONER ROULEAU: Please go ahead.

--- EXAMINATION-IN-CHIEF BY MS. SHANTONA CHAUDHURY:

MS. SHANTONA CHAUDHURY: Good afternoon, Ms. Thomas. Thank you for being here.

We’ll just start with a couple of housekeeping
matters.

First of all, you’ll recall participating in an interview with Commission Counsel on August 30th of this year?

**MS. JODY THOMAS:** I do.

**MS. SHANTONA CHAUDHURY:** And you’ll recall that some of your colleagues who are not here today, namely Assistant Secretary Michael MacDonald and Assistant Secretary Martin Green also participated in that interview?

**MS. JODY THOMAS:** That’s correct.

**MS. SHANTONA CHAUDHURY:** Okay. And after that interview, Commission Counsel prepared a summary of the interview. For the record, -- I don’t think we need to pull it up, Mr. Clerk, but for the record, it’s WTS0000071.

So Ms. Thomas, I’ll just ask you to confirm that you reviewed that interview summary, and that it's accurate to the best of your knowledge and belief, and that insofar as it contains the information of your colleagues, they have also reviewed it and confirmed it was accurate?

**MS. JODY THOMAS:** That's correct.

**MS. SHANTONA CHAUDHURY:** Okay. Now the second little housekeeping matter is the institutional report of the Privy Council Office, affectionately known as the PCO. So you’re aware that the PCO filed an institutional report with the Commission?

**MS. JODY THOMAS:** I am.

**MS. SHANTONA CHAUDHURY:** And you've reviewed it?

**MS. JODY THOMAS:** I have.

**MS. SHANTONA CHAUDHURY:** And it's accurate to the
best of your knowledge and belief?

**MS. JODY THOMAS:** Yes.

**MS. SHANTONA CHAUDHURY:** Okay. For the record, that's DOJ IR 00000013.

Ms. Thomas, I'll ask you to just start by telling the Commission what is the role of the National Security Advisor to the Prime Minister?

**MS. SHANTONA CHAUDHURY:** So the National Security and Intelligence Advisor to the Prime Minister is a position that was created after 9/11 in order to coordinate and bring sort of structure to the national security community, which is a group of very independent departments with independent Deputy heads, although they all work together in a horizontal manner. And what was learned after 9/11 was that coordination amongst these departments and agencies is useful in understanding intelligence, national security informed policy issues. And so in my job, what I do is I do coordinate the national security community. I have a convening function, which means I can call them to meetings, I can raise questions, challenge them on certain issues. So I have a challenge function, like all Deputy Secretaries at the Privy Council Office. And I also provide advise and information and brief the Prime Minister of Canada.

**MS. SHANTONA CHAUDHURY:** Okay. And when you speak of the National Security community and the various departments and agencies, who were you speaking of specifically?

**MS. JODY THOMAS:** The Department of National Defence, Global Affairs Canada, Public Safety and its agencies, CBSA, CSIS, RCMP, and the Canadian Security Establishment -- the
Communication Security Establishment known as CSE. Those are the primary players.

**MS. SHANTONA CHAUDHURY:** Okay. And within the Secretariat -- well, I believe there's four separate Secretariates, so three or four Secretariates that -- within the National Security and Intelligence Advisory. Can you tell us about those?

**MS. JODY THOMAS:** That's correct. There are four Secretariates. So the newest is the Emergency Management Secretariate and it was created in November 2021. And then the Foreign Policy and Defence Advisor to the Prime Minister reports through me. The Assistant Secretary for Intelligence Assessment, which is Martin Green, and then the Security and Intelligence Secretariate, which is the job done by -- led by Martin -- or, sorry, Mike MacDonald.

**MS. SHANTONA CHAUDHURY:** Okay. So they all report to you and you in turn report to who?

**MS. JODY THOMAS:** The Prime Minister and the Clerk.

**MS. SHANTONA CHAUDHURY:** And the Clerk of the Privy Council. Okay.

Can you tell us a little bit about the communication channels there? So you report directly to the Prime Minister. What's the briefing method, what's the reporting relationship there?

**MS. JODY THOMAS:** So any written brief or advice that goes to the Prime Minister goes through the Clerk. I sign it off as the National Security Advisor, but she also reviews it...
and signs it before it heads -- it goes to the Prime Minister. Verbal briefs, Cabinet briefs, discussions with the Prime Minister, the Clerk is in the room normally, and she's certainly aware of what I'm discussing with the Prime Minister. I don't call him directly. I haven't had to in the environment that we have been existing in. Generally, the conversation -- anything I need to get to him I go through PMO or through the Clerk.

MS. SHANTONA CHAUDHURY: Okay. And I understand that you assume the role of National Security and Intelligence Advisor. I'm going to say NSIA. We all hate acronyms, but that's a mouthful. Shortly before the events of the Freedom Convoy; is that right?

MS. JODY THOMAS: I became the NSIA on January 11th, 2022.

MS. SHANTONA CHAUDHURY: And where were you before then?

MS. JODY THOMAS: I was the Deputy Minister of National Defence.

MS. SHANTONA CHAUDHURY: How long had you bee in that role?


MS. SHANTONA CHAUDHURY: Okay. And what was your background before that?

MS. JODY THOMAS: I was the Commissioner of the Canadian Coast Guard, then the Deputy Commissioner of the Coast Guard, so I've had 35 years of experience in the federal government.

MS. SHANTONA CHAUDHURY: So you mentioned that
you have a convening role between all of these various agencies, the National Security community, as you call them. We heard earlier this week from your colleagues at Public Safety, and they described their role as being a consumer of intelligence as opposed to a collector of intelligence. I understand the same is true of PCO?

**MS. JODY THOMAS:** Yes, that's correct.

**MS. SHANTONA CHAUDHURY:** Can you elaborate on that a little bit, where the sources of your intelligence come from?

**MS. JODY THOMAS:** The sources of intelligence, covert and overt, so open source, but also what's collected by the agencies, comes from CSIS, RCMP, CSE, Global Affairs Canada and the Foreign Intelligence Secretariate and Canadian Forces Intelligence Command as the primary domestic agencies. We also hear from our Five Eyes colleagues, so we hear from the -- we get intelligence that we read and consume and analyse, assess from Australia, the UK, New Zealand and the U.S. We also receive open source and review open source information from academics, look at social media, to some extent, not as much as we should. We do about certain incidents, but we don't do social media scraping, as an example, and that will later become an issue that we talk about. So primarily, the information, the intelligence we receive, we receive domestically but we have links around the world.

**MS. SHANTONA CHAUDHURY:** Okay. And if I can ask it colloquially, when you get it, what do you do with it?

**MS. JODY THOMAS:** So raw -- I read raw
intelligence, but the Intelligence Assessment Secretariat assesses it. It looks at trends. It looks at implications for Canada, if intelligence is actionable, meaning we receive a piece of intelligence that says something could happen, what do we do with that? They do that kind of assessment, reaching out back to those departments to ensure that there is a global view of what this intelligence means for Canada and for our allies.

**MS. SHANTONA CHAUDHURY:** And do they produce, like, assessments, certain products of intelligence, and if so, how are those disseminated, dispersed, what's done with them?

**MS. JODY THOMAS:** They do. They do multiple kinds of products. They do longer term vision products about we see a trend coming. They do a daily foreign intelligence brief, which is a document that is sent to a reading list of people around various departments and within PCO. They do an update once a week to the Prime Minister, the Prime Minister's Foreign Intelligence Update. They will do bespoke products on specific situations. We had, for example, this week, an incident in Ukraine where there was missile shot down in Poland, so they did a bespoke piece on that to analyze it very quickly in conjunction with the rest of the security agencies, primarily D&D in this case.

**MS. SHANTONA CHAUDHURY:** Okay. With that basic background out of the way, we'll move now to the events of January and February 2022.

So the first thing I want to ask you about is the early monitoring of the convoy. And I'll ask, Mr. Clerk, if you can pull up SSM.NSC.CAN.00003209.
So this is an email from Mike MacDonald, who we understand to be Assistant Secretary of Security Intelligence to you, Jackie Bogden — Jacqueline Bogden, who is Deputy Secretary Emergency Preparedness and a variety of people.

So to situate you in time, this was Tuesday, January 22nd, so ahead of the arrival of the convoy. There's a — so I'm going to take you through a couple of points in this email. If we can just scroll down a little bit, Mr. Clerk?

Okay. Just a little bit more. Here we go. Thank you. So at this point,

"In monitoring the convoy thus far, the RCMP and other [Law Enforcement] report that it is peaceful [participate to] being lawful and disciplined as they have an objective of arriving in Ottawa on-time/as planned.

While the current convoy is peaceful, concern lies around whether any individuals might join the convoy [...] who are not aligned with peaceful protest."

And then there's some media reporting, YouTube videos and some comparison to some people who might like to see a January 6th Capitol Hill type event.

Just scroll to the next page, please? And we see there's some talk of social media, content targeting some Ministers around the bottom of the page there. And then -- sorry, keep scrolling a little bit, Mr. Clerk, here we go. Then there's,

"CSIS has received media queries lately about the convoy and CSIS' role in any monitoring activities."

And there's a bullet here where Mr. MacDonald
"This is a sensitive area for CSIS as the CSIS Act defines that CSIS cannot interpret lawful advocacy, protest or dissent as to the security of Canada unless it is in conjunction with defined threat activity to the security of Canada as defined in section 2 of the CSIS Act, for example, espionage, sabotage, FI ---"

-- I think it's foreign interference --

"--- serious violence, destruction or overthrow by violence of a constitutionally-established system of government."

Can you explain what Mr. MacDonald was referring to when he said, "This is a sensitive area for CSIS"?

**MS. JODY THOMAS:** So what he is referring to is that with the media reporting that there were probably some people who had other than peaceful intentions, what was CSIS going to do about that? And CSIS cannot surveil a lawful protest.

Now, if there are individuals who are subjects of theirs, investigations in that, they can monitor the activities of those individuals, but they cannot scan, surveil, watch a protest anticipating violence, looking for subject to follow. Peaceful protests are not part of their mandate.

**MS. SHANTONA CHAUDHURY:** Okay. And I think we'll
probably hear more from CSIS themselves when they testify on
Monday, but would it be fair to say that meant there was limited
information on the convoy coming in to you from CSIS?

MS. JODY THOMAS: Absolutely.

MS. SHANTONA CHAUDHURY: Then the next thing Mr. MacDonald talks about -- Mr. Clerk, if you just pull that up, just -- sorry, back a little bit -- outstanding questions.

So these are some questions that were flagged as issues that you might have to deal with over the period of the convoy, whatever that was then going to be.

Who has authority to pay attention to the online space and Chatter? That’s to Parliamentarians, our other ministers, opposition leaders, or Parliamentarians under similar threats? What would engagement look like? Should MPs meet with the convoy while in Ottawa? Is this safe, and do we have advice for them? What will be the specific advice to ministers on this issue?

And I assume that’s talking about meeting with members of the convoy.

And then if we scroll down a little bit more, there's the talk of potential, the CAF -- CAF is Canadian Armed Forces?

MS. JODY THOMAS: M’hm.

MS. SHANTONA CHAUDHURY: Or JTF2. What does JTF2 stand for?

MS. JODY THOMAS: Joint Task Force 2, so special forces.

MS. SHANTONA CHAUDHURY: Special forces have a
possible role, okay.

So it's fair to say that those were issues flagged by Mr. MacDonald as things the PCO would -- and the government would have to think about?

**MS. JODY THOMAS:** Flagged within the ADM NS OPS working group, I would suggest, rather than just Mr. MacDonald.

**MS. SHANTONA CHAUDHURY:** Fair enough. Fair enough. Okay.

And I think we'll probably come back to some of those issues as we go through the chronology a little bit.

Okay. Mr. Clerk, if you can now pull up SSM.NSC.CAN00000250?

This will be another email sent on January 25th, and I understand you're not actually a recipient of this email personally. It was to Mr. MacDonald, but I'm hoping you can help us with some of the issues in there, specifically -- Mr. Clerk, if you can scroll down to page 3 to a point where you see "there is a gap when it -- where it comes to reporting". There we go.

So this is our Deputy Minister, so this is Deryck Trehearne from Public Safety writing -- or I'm sorry -- it's not Deryck Trehearne writing, but in any event, it's to Deryck Trehearne.

"Our Deputy Minister, Rob, debriefed on the NSIA call on this topic today and mentioned that there is a gap where it comes to reporting on this issue as we head towards the demonstration this
weekend."

Do you what reporting gap Mr. Stewart was talking about there?

**MS. JODY THOMAS:** I would think that he is talking about information from law enforcement on what their planned actions are going to be. I mean, we don’t expect to be pre-briefed on what they're going to do. We don’t get into tactical plans, but the reporting out of the activity on the Hill, how was that going to happen or in the protest?

**MS. SHANTONA CHAUDHURY:** Okay. So this is a law enforcement reporting gap?

**MS. JODY THOMAS:** That’s what I think, reading this.

**MS. SHANTONA CHAUDHURY:** Okay. So that is actually an issue that we discussed a little bit in your interview. Can you tell us -- can you explain to the Commission what that gap is? It's something that’s been identified here by Mr. Stewart and it was also identified in his testimony. As I said, it was discussed also in your interview, so can you elaborate on what that law enforcement reporting gap was from your point of view?

**MS. JODY THOMAS:** So there is a general gap in terms of open source information and who can collect it, who can analyze, and what we do with it.

RCMP collects information for law enforcement purposes and as do other police agencies. We've all heard of Op Hendon now. I don’t receive Op Hendon reports, as an example.

And so the police forces, collectively, have a
lot of information that they can't necessarily share, and so
those of us in jobs like mine and Deputy Minister Stewart's who
need some overview of what's coming, who these people are, what
their intentions are, have a difficulty in receiving that kind
of open source information.

MS. SHANTONA CHAUDHURY: And did you identify
that as an issue that reoccurred throughout the (audio skip) the
convoy?

MS. JODY THOMAS: Absolutely, it was an issue.
The online space is where planning now occurs, and so it's not
tapping phones any longer the way things were done in the Cold
War. Online space, non-warranted space, and how do you receive,
assess, and then use that information in a legal manner?

MS. SHANTONA CHAUDHURY: So with that having been
said, what was your expectation of what the convoy was going to
look like when it arrived in Ottawa?

MS. JODY THOMAS: My -- so Ottawa is the city of
protests. That’s been said. It's known. The OPS is
experienced in collaborating with all the various other agencies
involved in terms of managing protests.

The early reporting was that this would be a
normal protest, arrive, disrupt, spend some time here in Ottawa,
and then leave.

We were seeing just on Twitter feeds, you know,
your own Twitter feed indications that perhaps this was going to
be something more, but the information we had at that point in
time from the accountable agencies was that they had it managed
and it was going to be big, it was going to complex, but they
would be able to handle in the way they have handled so many
other protests.

**MS. SHANTONA CHAUDHURY:** So were any specific
steps taken by PCO or by you ahead of the convoy's arrival to
prepare for it?

**MS. JODY THOMAS:** Well, Op INTERSECT, which is
the grouping that you've heard about of all the police agencies
in Ottawa certainly stood up and was operating. Employees were
told to stay home over the weekend. Don’t come to the office if
you can avoid coming downtown. We set up reporting mechanisms
and we arranged to brief ministers on what we knew and what was
going on over the course of the weekend.

**MS. SHANTONA CHAUDHURY:** And then as we know, the
convoy arrived and didn’t leave when it was expected to do so.
What was the response from your perspective then?

**MS. JODY THOMAS:** So the original response, every
day the question was, when is this going to end? What are we
doing to end it? There is absolutely no doubt that having it
end was the priority.

In the immediate, there seemed to be quite a bit
of activity between OPS and RCMP to understand the magnitude of
this. At the same time, after the first weekend, we saw
behaviour on the streets that indicated they were settling in
for quite some time, you know, wheels were removed from rigs so
that they couldn't be towed, supply lines were being set up.
And so something quite different was happening and unfolding in
front of our eyes.

**MS. SHANTONA CHAUDHURY:** And within the federal
government, the response -- you mentioned earlier the ADM NS OPS which is the Assistant Deputy Minister, National Security Operations Committee -- and that’s co-chaired by Mike MacDonald?

**MS. JODY THOMAS:** Mike MacDonald and Dom Rochon at the time.

**MS. SHANTONA CHAUDHURY:** And so we've heard already that that committee was meeting daily as an information sharing mechanism?

**MS. JODY THOMAS:** That’s right. And DMOC was meeting. DMOC, you've heard a lot about it. It was meeting informally. We made it a standing meeting every day at the same time, but we were checking in to see what we knew and what could be done to end this protest every day and we were briefing ministers.

**MS. SHANTONA CHAUDHURY:** And DMOC was chaired by you?

**MS. JODY THOMAS:** Yes.

**MS. SHANTONA CHAUDHURY:** Is DMOC always chaired by you or is that -- was that specific to this circumstance, as if it was a security thing?

**MS. JODY THOMAS:** As long as it has existed, it's been chaired by the National Security Advisor.

**MS. SHANTONA CHAUDHURY:** What other kind of meetings were you participating in?

**MS. JODY THOMAS:** That’s the majority of it. So with deputy ministers, hearing what the ADMs were doing, and then the law enforcement meetings were going on in parallel, and certainly Op INTERSECT was meeting in parallel.
MS. SHANTONA CHAUDHURY: And what about externally to the federal government; were you participating in meetings that involved other authorities, municipal, provincial?

MS. JODY THOMAS: Not in the first weekend, not until the first meeting with the City.

MS. SHANTONA CHAUDHURY: And when was that, in your recollection?

MS. JODY THOMAS: I don’t have the date in front of me but we don’t have the information available. So it was the first meeting that Rob Stewart called. I had asked -- I’m new in the job. We’re meeting every day to understand what we can do, what action can be taken, who has what authority, and I asked if I can call the City; what is my role vis-à-vis the City being a federal authority? Discussed it with Deputy Minister Stewart; because he has the federal policing responsibility and that secretariat works for him, it was decided he would do the reach out to the City, and that’s how we had our first meeting with the City Manager and Chief Sloly.

MS. SHANTONA CHAUDHURY: Okay. Mr. Clerk, can you pull up ONT00000159? So this is a summary of a call that was held with the City, the federal government, and the provincial government of February 6th. This may be the first meeting that you were talking about. It may be the second.

MS. JODY THOMAS: Second, I would say.

MS. SHANTONA CHAUDHURY: Pardon me?

MS. JODY THOMAS: Second.

MS. SHANTONA CHAUDHURY: It’s the second, okay.

So I want to ask you about something specific in this meeting...
which, if we scroll down to page 9 of the PDF, I believe -- so, in evidence that we’ve heard before before the Commission, we’ve been through most of this already. There’s on specific point have to do with you. It notes at the end here that you’d:

"Noted it was a positive meeting and regrets to end on this following point. Would the province be looking to the federal government if this protest was happening outside the City of Ottawa, for example, happening in other places like Kingston."

So Mr. Mario Di Tomasso, Deputy Solicitor General, testified here a couple of days ago -- a couple of weeks ago, sorry, and his impression of that comment was that this was the federal government trying to wash its hands of this entire thing. So now that we have you before us, I wanted to ask you, is that what you intended by that comment?

**MS. JODY THOMAS:** Absolutely not. From where we sat, all three levels of government needed to be involved. And the federal government was very involved. The RCMP was meeting constantly with the Ottawa Police Service. We were working to understand and that elements of the people on the streets of Ottawa were and what they intended to do. So that was the intelligence side of things. We were looking at what federal Acts and authorities could be used to have the rigs moved and the truckers leave downtown Ottawa, and we want to know what provincial laws could be used and would be enforced to ensure we could clear the streets.
Mr. Di Tomasso, his answer was, “Well, it’s a federal jurisdiction.” Ottawa is a city in Ontario and the provincial accountability is the same for Ottawa except for a very small precinct on Parliament Hill. But where the majority of the protests were, is a municipality. And so I found that Mr. Di Tomasso, while friendly and cooperative, was very hands off, and I didn’t understand why, and I wanted to make the point that we’re not Washington, DC. Ottawa is a municipality of Ontario.

And so very simple things like the Ontario Police Services Act, which requires Ottawa Police Service to go to the OPP for additional resources is -- were additional resources going to be provided to Ottawa to assist?

**MS. SHANTONA CHAUDHURY:** Thank you for that. So now I’m going to skip ahead a little bit and talk about your role in briefing Cabinet committees and Cabinet itself in all of this. So the first thing is -- and this is in reference to something that you said in your interview, and it’s something that’s also said in the Institutional Report, and I want to clarify what it means for the Commission.

In the interview, you’d explained that your role at the IRG meetings, and any time you were briefing Cabinet, was to provide a full and frank factual threat picture to Cabinet or to the IRG. And again, then, in the Institutional Report, it said -- I don’t think we need to turn it up but the briefings that you gave did not include advice or recommendations. So can you flesh that out a little bit and explain what you were and what you weren’t doing, and maybe why?
MS. JODY THOMAS: So without betraying what was said at the meetings, my role was to give an overview of the situation nation-to-nation, like coast-to-coast, the entire nation. As we were moving into having blockades at border crossings, pop-up convoys across the country, as well as the situation in Ottawa, I gave a consolidated view of what was happening across the country, what we were seeing in terms of manifestation; intelligence that said there were going to be new convoys or maybe there weren’t; what we saw from CSIS on the IME, the ideologically-motivated-extremist front; any arrests, those kinds of high-level details that gave a -- framed the discussion that the prime minister was going to have with other officials in his cabinet, ministers.

And so, did I give advice? No, I gave overview in the discussion. If required, I would make suggestions, as all officials do at those meetings, at IRGs. But my overview in my opening remarks were not advice.

MS. SHANTONA CHAUDHURY: Okay. And at some point, it says that you would sometimes be asked to give -- or provide your assessment of a situation. So can you explain the distinction, then, between, an assessment of a situation and advice?

MS. JODY THOMAS: Advice is -- so assessment is, “Prime Minister, we think that they are going to stay in Ottawa for another weekend. Looking at all the indicators, the assessment is...” Now, that’s a very simplistic example, but -- advice is, “The RCMP should move in right now and take it over and clean up the streets of Ottawa.” That would be advice.
Again, I’m giving you a very extreme example of something that was not said.

**MS. SHANTONA CHAUDHURY:** That’s helpful. Simple is good. Simple is always good. Okay, so I’d like to turn now to the -- some examples of the actual briefings that you were giving at these various meetings. So, Mr. Clerk, if you could pull up SSM.NSC.CAN00000292. Well, you’re pulling that up, I’ll just explain. This is the SSE Meeting of February 3rd. And can you just give the Commission a brief reminder of what SSE is?

**MS. JODY THOMAS:** So SSE is the Standing Committee of Cabinet chaired by Minister Blair, and it’s the Safety, Security, and Emergency Management Committee.

**MS. SHANTONA CHAUDHURY:** Okay. If we can just go to paragraph 4, please, Mr. Clerk. Hm, there doesn’t seem to be a paragraph 4 -- page -- oh, there we go, yeah, thank you. Paragraph 4 of a different thing, sorry about that.

"The National Security and Intelligence Advisor, NSIA, indicated that protest organizers have indicated an interest in negotiation. However, the protesters confirmed that representatives from the city, province, or federal government have not reached out."

So this is February 3rd at this point and you’re indicating that the protest organizers have indicated an interest in negotiation. Where did that information come from?

What were you talking about there?
MS. JODY THOMAS: Open source. They were saying it themselves. They had news conferences and they were putting out their own media indicating that they would sit with representatives.

MS. SHANTONA CHAUDHURY: Okay. And then you said various --

"The protesters confirmed that representatives from the city, province, or federal government have not reached out."

Was this also just from open-source media?

MS. JODY THOMAS: Yes.

MS. SHANTONA CHAUDHURY: So this wasn’t from any particular information you had ---

MS. JODY THOMAS: No.

MS. SHANTONA CHAUDHURY: --- just collating open-source information. Okay. Mr. Clerk, the next one is SSM.NSC.CAN00000246. Okay, these aren’t minutes of a meeting, they’re talking points. So do I understand that these would be the materials prepared for you by your staff in preparation for one these meetings?

MS. JODY THOMAS: That’s correct.

MS. SHANTONA CHAUDHURY: Okay.

If we go to page 3, please? Senior, there; there we go. The bullet that says, “Senior Officials,” so:

“Senior official ([Deputy Ministers] Stewart, Keenan and myself) continue to engage [the] City of Ottawa to
encourage dialogue with demonstrators,
consultations with provincial
regulatory authorities, sharing of
operational plans and a coherent
communications approach.”

And I see “Encourage dialogue” is bolded and
underlined there. So what was that about; what were you talking
about there, dialoguing with the protesters?

**MS. JODY THOMAS:** Some of it was the work that
was already being done by the PLTs, and so it was to introduce
that discussion and that line of work that was being done by OPS
with the demonstrators, and we were hearing that engagement
would be welcomed. It wasn’t yet defined, we didn’t have a plan
for it; we didn’t even know what it would look like, but we’re
just reporting what we’re being told. And we’re hearing that
from the City of Ottawa, primarily.

**MS. SHANTONA CHAUDHURY:** Okay. But what it says
there is that Deputy Minister Stewart, Deputy Minister Keenan
and you are engaging the City of Ottawa to encourage dialogue.
So at that point were you actively encouraging ---

**MS. JODY THOMAS:** For the City to talk to them,
yes, because this was happening in the City of Ottawa.

**MS. SHANTONA CHAUDHURY:** Okay. In the hope,
then, that dialoguing with the demonstrators would produce a
positive outcome?

**MS. JODY THOMAS:** Exactly. Reduce the noise, the
number of rigs, hopefully break up the protest.

**MS. SHANTONA CHAUDHURY:** The next document,
MS. SHANTONA CHAUDHURY: So this is the February 10th IRG, and we’re going to get into this in more depth with your PCO colleagues tomorrow, but again, just a brief description of what the Incident Response Group is, please.

MS. JODY THOMAS: The Incident Response Group is a Cabinet Committee chaired by the Prime Minister that is used to make quick, rapid decisions about incidents of national importance for a crisis, including national security incidents. It’s been used multiple times: It was used over COVID; it was used for the Hurricane Fiona; it was used for the downing of Ukraine Flight 752. So it’s an effective tool that the Prime Minister invokes in order to have discussions with both Ministers and officials at the table so that he hears from subject matter experts, the Chief of the Defence staff as an example, Deputy Ministers with particular expertise, as well as Ministers.

MS. SHANTONA CHAUDHURY: Okay, thank you. If we can just scroll down, then, to page 5, please.

So February 10th, I believe, was the first IRG meeting?

MS. JODY THOMAS: Yes, it was.

MS. SHANTONA CHAUDHURY: Just going to find the actual page. Okay, here we go.

So, the National Security advisor, you’re giving a rather lengthy report here, Ottawa situation remains largely
unchanged.

“Threats on social media persist...it continues to be used as a planning tool,...possibility of driving by...and...local schools...”

And that you say:

“[There’s] indications that some protesters would like to leave but are unable to do so given physical barriers. An integrating planning cells is developing a plan of action...the preference remains to continue moving forward with [negotiation], with enforcement actions to start early next week if negotiations remain unsuccessful.”

And then:

“A surge and contain strategy will be employed for the upcoming weekend.”

So is it fair to say at that point that the notion of negotiating with the protesters is still very much on the table?

**MS. JODY THOMAS:** It was still being explored, absolutely.

**MS. SHANTONA CHAUDHURY:** Okay. And you go on to talk about Coutts, and there’s a line here:

“The number of protesters had dropped from [200] to 40; however, those
remaining are firmly entrenched in
their views, and there are weapons on
site.”

So that’s information that had been provided to you by the RCMP?

MS. JODY THOMAS: Yes.

MS. SHANTONA CHAUDHURY: Okay, that weapons were on site at Coutts.

MS. JODY THOMAS: Right. At that point, only the RCMP knew the extent of the weapons.

MS. SHANTONA CHAUDHURY: And sorry; the -- only the RCMP knew the extent?

MS. JODY THOMAS: Yes, yeah.

MS. SHANTONA CHAUDHURY: So you knew that they were present, but you had no idea about the extent.

MS. JODY THOMAS: That’s correct.

MS. SHANTONA CHAUDHURY: If we can just keep scrolling down a bit, please, Mr. Clerk?

CSIS reports tracking several individuals, and then there’s some threat assessment by CESC and CSIS.

Scroll down a little bit more please, Mr. Clerk.

Okay, I think that’s probably it.

So on that topic of negotiation, or engagement, I just want to take you sort of a bit of an aside for a moment but related. SSMCAN00006131.

While that’s being pulled up, I’ll situate this. So this is the engagement proposal about which the Commission has heard quite a bit.
MS. JODY THOMAS: M’hm.

MS. SHANTONA CHAUDHURY: Oh, I think just scroll down a little bit more. There we go, from Ms. Thomas.

So this is a February 11th email at 2:30 p.m., that you sent to the -- Jan Charette, who’s the Clerk, Nathalie Drouin, who’s the Deputy Clerk, and what you say is, you’re forwarding the engagement proposal and you say:

“Rob has continued his engagement. I suggest that we need to decide if this has a green light. I expect he will get more specifics....”

And then it just says, “we indicate a positive response.” I think there’s probably an “if” missing there; “if we indicate a positive response.”

So can you situate what this email was about, what you were saying to the Clerk and the Deputy Clerk when you sent it?

MS. JODY THOMAS: So an engagement proposal needed to be discussed by Ministers, and certainly no Deputy Minister, or I, had the authority to move forward with engagement without it being discussed at a Cabinet level. And the green light was to get it on the agenda to be discussed formally.

MS. SHANTONA CHAUDHURY: Okay. And did you have a view at that point on the engagement proposal; whether it was a good idea, a bad idea, a likelihood of success?

MS. JODY THOMAS: I -- my view at that time was that we should take nothing off the table, we had to continue to...
explore all options. We were going into the third weekend on February 11th. I didn’t understand yet what the negotiating mandate would be. So you go with something, and you expect to get something back, and we had no clarity on that. Further, we had no clarity because of the disparate group of people who were blockading Ottawa, and this was about Ottawa, specifically. Who would be the leader who would be able to coalesce the -- you know, the mass of humanity who were on the streets of Ottawa to then adhere to whatever was negotiated.

MS. SHANTONA CHAUDHURY: So beyond having a view that it shouldn’t be taken on [sic] the table, did you ever form, or were you ever asked for your view on whether it should or should not go ahead?

MS. JODY THOMAS: Not at this point. During the discussion -- during the discussion at Cabinet, views were sought.

MS. SHANTONA CHAUDHURY: Okay. So this is February 11th, and I believe it was brought to the IRG on February 12th.

MS. JODY THOMAS: Correct.

MS. SHANTONA CHAUDHURY: Okay. And at that point views were sought.

MS. JODY THOMAS: Correct.

MS. SHANTONA CHAUDHURY: And you provided a view?

MS. JODY THOMAS: I did.

MS. SHANTONA CHAUDHURY: And your view was?

MS. SHANTONA CHAUDHURY: It’s protected.

MS. SHANTONA CHAUDHURY: Okay.
Can we then go to the February 12th IRG, SSM.NSC.CAN00000214? We can scroll down, then, to page 5. “In terms of specifics...” -- just scroll down a little bit more:

“...the [NSIA] reported that the situation in Windsor remains very fluid with Law enforcement having begun to take action. In Ottawa [we’re] seeing a significant escalation in the boldness of protesters.”

So just stopping there, what does that mean; what was that observation?

**MS. JODY THOMAS:** Yeah, we were hearing this from the OPS and INTERSECT, and certainly, again, social media, and media, they were with -- bouncy castles had happened. The view that we were -- they were here to stay; that they had zero regard for the citizens of Ottawa, that social media was talking more and more about aggressive action to stay, holding the line, dig in. It was just a change in tone that was noted. And sometimes changes are subtle, but you have to pay attention to them.

We saw more people on the street that weekend than we had anticipated, and fewer people were leaving at the end of the day, and the, well, raucous atmosphere was extending later into the evening. We saw things like the wrecking ball on Wellington Street by then. And so there was just a change in the forcefulness of the tone.

**MS. SHANTONA CHAUDHURY:** And did that have an effect on your assessment of the situation?
MS. JODY THOMAS: We were also hearing the increased low level of violence, the fears of the citizens of Ottawa, the honking continued despite the injunction. What became apparent to us as we were assessing the situation is that this wasn't breaking up.

MS. SHANTONA CHAUDHURY: Okay.

And then if we can just scroll down again, Mr. Clerk, to page 15.

So this is part of what became known as the IRG tracker. Can you just explain, Ms. Thomas, what the IRG tracker was very briefly?

MS. JODY THOMAS: So the issues that were discussed at IRG and the action plan out of it was this tracker. I think the Prime Minister was, I'm paraphrasing here, and I don't want to put words in his mouth, of course, the Prime Minister and the Clerk were concerned that the people would discuss, leave the table, and then what would be the outcomes of the direction that was given. And so this was to track all the activity to understand what could be done and the progress, the status on achieving certain goals. So the action plan for tow trucks ---

MS. SHANTONA CHAUDHURY: For instance.

MS. JODY THOMAS: --- as in for instance. So what was done, where did it stand, and we would update it every single day.

MS. SHANTONA CHAUDHURY: Okay. And the one that pertains specifically to your area is Item Number 4 here, which is:
Identify immediate measures to close
the intelligence gap (i.e., open
source, non-criminal, non-terrorist)."

Okay. Can you elaborate on that? Is that the
intelligence gap you've referred to earlier, the social media?

**MS. JODY THOMAS:** It is. So the RCMP, OPP, OPS
all collect open source information for law enforcement
purposes, we saw that in Op Hendon. CSIS collects some open
source information in very specific circumstances for subjects
or investigations of their own. We knew that social media was
being used to mobilise, to plan actions, to talk about what was
going to happen next, to talk to other protests across the
country.

You can't do that as an -- so you can't track
individuals. PCO cannot track individual social media. We
didn't have the tools in place to do scraping of social media
and understand the trends. As an example, one morning they
talked about slow rolling convoys through school zones. It was
being reported on the radio that this is all over Twitter, why
aren't the police doing anything about it?

Not that the police can respond to everything
they see on Twitter, and that's not what I'm implying at all,
but if we had the correct tools and the legal mandate to collect
this kind of information we would have some understanding of the
trends and where this was potentially going. We didn't have the
tools or the mandate.

**MS. SHANTONA CHAUDHURY:** Okay. On that point,
Mr. Clerk, I'll just ask you to turn up the witness summary,
THOMAS
In-Ch(Chaudhury)

please, so that's WTS0000071, at page 6. It's under the Social Media Intelligence Gap.

So Ms. Thomas, I'll just ask you to elaborate with reference to this little bit on some of the points you were making. For instance, the tools. What tools -- when you say "we didn't have the tools", what tools are needed to do that?

**MS. JODY THOMAS:** Well, there are social -- there are IA based tools that can be purchased to look for keywords, to look for algorithms, and we don't have those. You can't put a person in front of the screen and just have them Google "convoy" and get enough information quickly enough to do anything with it. So you actually need computer based tools to do computer based analysis.

**MS. SHANTONA CHAUDHURY:** Okay.

And then just scrolling down the page again of it, please until -- thank you. So just the point where it says "NSIA Thomas" there.

One of the issues that was identified there was distinguishing between credible threats and non-credible threats on social media. Can you tell us a little bit about that and the difficulties, if any, you faced with that?

**MS. JODY THOMAS:** That is one of the primary problems that we're facing right now. The level of violent threats against the Prime Minister and other elected officials, and some public figures. Dr. Tam, as an example, received enormous hate online and some of it was threatening and indicated a threat against her. Distinguishing a credible threat, an identifiable person with an identifiable threat that
looks like they have the capability to execute that threat, so not only intent but capability, is sort of the formula used to understand if a threat is credible or not.

The problem is online people are difficult, in some cases, close to impossible to identify. Throw burner accounts, et cetera, it is easy to hide an identity online. And the RCMP do a very -- and other police services do a very good job of those kinds of investigations, but in the moment, in the middle of this crises, with the number of threats going up against elected officials, it was an enormous problem and an enormous concern.

**MS. SHANTONA CHAUDHURY:** Okay. Now, we'll move on to the February 13th, please.

So Mr. Clerk, that's SSM.NSC.CAN00000216. Scroll down to page 8, please.

So this is the Cabinet meeting on February 13th, and this is the report that you're giving at this -- it was definitely a key moment in the events, and in the eventual decision to invoke. And you're reporting on what you've heard from various agencies, including CSIS and including the RCMP.

I don't know if you had a chance to see the RCMP's testimony the other day, but Commissioner Lucki testified that she was never asked to speak, either at the IRG meeting on February 13th or at the Cabinet meeting on February 13th. And there's a key bit of, well I call it evidence, but it's information at the time, where Commissioner Lucki had expressed the view to Mike Jones, who was the Minister of Public Safety's Chief of Staff, that law enforcement had not yet exhausted all
available tools to it.

Is that a message that you, who were asked to speak at these meetings, conveyed to the IRG or to Cabinet in either of those meetings?

**MS. JODY THOMAS:** No, I was not. And we build my speaking points from the information from the agencies and departments.

I will say that an IRG, Deputy Ministers and Deputy Heads, individuals who are at that meeting, are expected to provide information that is of use to decision-makers, being the Prime Minister and his Cabinet. And so if there is useful information or critical information it needs to be provided, whether you're on the speaking list or not.

**MS. SHANTONA CHAUDHURY:** Was that information provided by Commissioner Lucki to you?

**MS. JODY THOMAS:** In the DMOC meeting that morning, she said that there was possibly a plan with the OPS and OPP. She had said that several times previously.

**MS. SHANTONA CHAUDHURY:** Okay. So that's about whether or not there was a plan in Ottawa.

**MS. JODY THOMAS:** Yes.

**MS. SHANTONA CHAUDHURY:** Was -- did she say anything specific, or did you know that her view was law enforcement had not yet exhausted all its tools?

**MS. JODY THOMAS:** No.

**MS. SHANTONA CHAUDHURY:** Okay.

The next document is SSM.NSC.CAN.00000298.

So these are your talking points for this
meeting. Chronologically a little out of order, but that’s okay.

Okay. So here again we see:

“The mood of the organizers in Ottawa appears emboldened.”

So that’s essentially a repeat of a point that’s been made on a previous day. No change there.

And then there’s talk of:

“City of Ottawa announced agreement with protest leader (Tamara Lich) that could lead to approx. 70 percent of trucks and cars [leaving] the residential areas in the downtown core over the next 24 hours…”

And then they explain in a little bit more detail about that.

“Given the anti-government sentiment of Ottawa group, along with the decentralized nature of its leadership, it is unclear at this time the concurrence of other leaders in the group to the Agreement.”

So is that your assessment of the situation there?

**MS. JODY THOMAS:** It was our collective assessment, yes. We were already seeing signs that the agreement was falling apart, that other leaders, other parts of the blockade were saying, “No, we’re not leaving.”

**MS. SHANTONA CHAUDHURY:** Okay.

**MS. JODY THOMAS:** That, “There is no deal.”
MS. SHANTONA CHAUDHURY: Would it be fair to say that at this point, your confidence in negotiation with dialoguing with protestors was no longer what it had previously been?

MS. JODY THOMAS: At this point it was very clear that there was no one person or group to dialogue with, where you could get achievable outcomes, which meant the group breaking up in downtown Ottawa.

MS. SHANTONA CHAUDHURY: We’re going to move now to the February 14th DMOCC. So that’s SSM.NSC.CAN00000217. Bottom of page 1. Keep scrolling a bit.

“OPS has approved a joint operational plan for Ottawa developed with support from RCMP and OPP [...] will be put into action in coming days.”

So this is -- now we’re on February 14th. In your recollection, when was Cabinet made aware that a plan was coalescing to carry out an operation in downtown Ottawa?

MS. JODY THOMAS: I don’t recall Cabinet being informed of that. But on February -- I will go back to on February 13th, this had also been said, and there was an IRG, and at this point, -- so it wasn’t said at the IRG. At this point, we had no evidence of that. And so while it was said, and these are the minutes, there is no evidence that there was a plan. And as I’d noted, we had been told there was a plan multiple times.

MS. SHANTONA CHAUDHURY: When you say no evidence, what kind of evidence would you have expected to see?
MS. JODY THOMAS: We would expect some level of assurance from the RCMP that the people were in place, it was executable. We don’t expect to see details. That’s policing. But we needed a level of assurance that yes, finally, the officers needed, the equipment needed, the executable, strategic, and tactical plan was there. The same thing that had been asked for several days.

We didn’t have any evidence or assurance that that was in fact the -- where we were.

MS. SHANTONA CHAUDHURY: Do you think that that falls into the law enforcement reporting gap that you discussed earlier? The sort of information between law enforcement and your level?

MS. JODY THOMAS: I think that’s part of it, yes. I also think that the plans were just not quite as firm as we would have hoped.

MS. SHANTONA CHAUDHURY: Okay. Also on February 14th then, PB.NSC.CAN00008485, please. Scroll down, please. Scroll down again. I think it will probably be the bottom of the second page we want to start with. There we go.

So this is a series of emails that you sent the morning of February 14th around 11:45/noon.

The first one is:

“I need an assessment for Janice about the threat of these blockades. The characters involved. The weapons. The motivation. Clearly this isn’t just COVID and is a threat to democracy and rule of law
Could I get an assessment please. David

[-- I assume that’s David Vigneault, CSIS Director --] is this you? It’s a very short fuse

Please call if you have questions”

Can you explain what that email was about? Who is it to? What was it about? What were you looking for? And why?

**MS. JODY THOMAS:** So I don’t remember all the people in the to, but probably Mike MacDonald, David Vigneault, RCMP. It was part of a complete package of information that was being put together. There had been multiple threat assessments, but this was to be a formal document and we had just discussed it in a conversation. And so we had talked about the need for a last formal document, should Cabinet decide to proceed with the *Emergencies Act*, as opposed to the daily updates we were giving. So laying out the entire spectrum of threat. And so I needed it very quickly. We were going to collate it. We just needed the information from the agencies.

**MS. SHANTONA CHAUDHURY:** Okay. So the intention was to get that assessment for Ms. Charette, the Clerk, and she would then provide it to?

**MS. JODY THOMAS:** The Prime Minister.

**MS. SHANTONA CHAUDHURY:** The Prime Minister.

Okay.

And if we just scroll up a bit?

So the next email, so this one is to Mike MacDonald, Rob Stewart, something blacked out, Inez Neville, and
Martin Green.

Inez Neville. Who is that?

**MS. JODY THOMAS:** She’s my Chief of Staff.

**MS. SHANTONA CHAUDHURY:** Okay. Perfect.

“This is about a national threat to national interest and institutions. By people who do not care about or understand democracy Who are preparing to be violent. Who are motivated by anti government sentiment”

What are you saying there? Are you setting out what the assessment should say or ---

**MS. JODY THOMAS:** I was being asked questions about how specific it should be. And so that was my response.

**MS. SHANTONA CHAUDHURY:** how specific it should be in terms of?

**MS. JODY THOMAS:** Of what the threat was and sort of the range of issues that were of concern. So national interest and institutions, lack of confidence in police as police were being stretched across the country, the desire to have government policy changed by force, mandates. There were people preparing to be violent. We saw it on social media. We certainly knew that both CSIS and RCMP had concern about some people and the potential for violence. And there was certainly an anti-government sentiment throughout.

**MS. SHANTONA CHAUDHURY:** So does what is reflected in this email reflect your assessment of the situation...
at the time?

MS. JODY THOMAS: Not everybody on the ground.

Absolutely. This wasn’t a monolithic group of people. But yes, those elements were there.

MS. SHANTONA CHAUDHURY: Was that assessment ever produced to you?

MS. JODY THOMAS: I don’t think it was.

MS. SHANTONA CHAUDHURY: And would that be -- why would that not happen?

MS. JODY THOMAS: I think it fell through the cracks and we were overtaken by events.

MS. SHANTONA CHAUDHURY: Okay. The next topic I want to address, or the next document, let’s start with the document, SSM.CAN.00000297.

Before I go there, actually, if that document had been produced, that threat assessment, it would have been CSIS who did it? It would have been the RCMP who would have ---

MS. JODY THOMAS: PCO probably would have written it, based on information received from all the agencies.

MS. SHANTONA CHAUDHURY: Okay. So it was a call for input so that PCO itself could produce the ---

MS. JODY THOMAS: Correct.

MS. SHANTONA CHAUDHURY: So the topic I want to address with you now is something that has come up, will come up, and will forever be part of the Commission’s Inquiry, which is this idea of what is a threat to national security.

This email, scroll down a bit, is -- sorry, just want to see.
So this is an email from you to Jacqueline Bogden, Phillipe Lafortune.

Can you tell us who that is?

**MS. JODY THOMAS:** Phillipe Lafortune worked for Mike MacDonald, I believe it was Mike, in the Security and Intelligence Group.

**MS. SHANTONA CHAUDHURY:** Okay.

"So Philippe did some research which is handy to keep in our 'back pocket'.

FYI, at this stage, Mike."

And the date of this is February 9, so before the IRG started, this research was done.

"Mike, as requested, we did some digging on the Canadian definition of national security. As you know, one of the challenges on this issue is that the GOC, Government of Canada, never ended up formally defining it.

However, we looked at transition material, various Acts to provide you with the best answer, and its potential applicability to the current situation. Below, you will find a policy definition of national security but also NSICO's --- "

Please explain what NSICO is. If not, it'll make me feel better about my lack of acronym knowledge.

**MS. JODY THOMAS:** I do not offhand.
MS. SHANTONA CHAUDHURY:

"--- take on it, and what the CSIS Act, SCIDA -- S-C-I-D-A."

MS. JODY THOMAS: That’s the information sharing.

MS. SHANTONA CHAUDHURY: Information sharing, okay.

"And the Emergency Act stipulate on the issue. Here are the various pieces."

We’ll just, I think, probably read through most of this email because it's quite relevant. But first of all, before we get into the specifics of it, can you explain the context of why that information would be sought?

MS. JODY THOMAS: No. I don’t think I asked for it. I don’t recall, unless there's an email that says I did ask for it. But it is an ongoing question. Who defines national security? What is the definition? And even in the National Security Policy in 2003, I think it was written, it wasn’t really defined.

MS. SHANTONA CHAUDHURY: Okay. So that’s what Mr. Lafortune is talking about when he says "the problem is, it's never been formally defined"?

MS. JODY THOMAS: Correct.

MS. SHANTONA CHAUDHURY: And how would that be formally defined if it were to be?

MS. JODY THOMAS: In a public policy.

MS. SHANTONA CHAUDHURY: In a policy? So not in legislation, but in a policy?

MS. JODY THOMAS: Yes, correct.
MS. SHANTONA CHAUDHURY: A Government of Canada policy of some sort?

MS. JODY THOMAS: Right. National Security Policy, as an example.

MS. SHANTONA CHAUDHURY: And that would be something prepared by -- if it were to exist -- PCO?

MS. JODY THOMAS: No, probably Public Safety ---

MS. SHANTONA CHAUDHURY: Public Safety?

MS. JODY THOMAS: --- has the policy lead on national security issues.

MS. SHANTONA CHAUDHURY: Okay. So here we have the first:

"National security pertains to the safety and security of Canada's territory, government, economy, and people, as well as the promotion and protection of Canadian national interests. National interests refers to Canada's sovereignty, democratic processes and institutions, security, territorial integrity, economic prosperity, social cohesion, environmental protection, and healthy and resilient communities."

That’s the NSICOP -- so NSICOP, I believe, is the National Security and Intelligence Committee of Parliamentarians ---

MS. JODY THOMAS: Correct.
MS. SHANTONA CHAUDHURY: --- annual report.

So that's about as broad a definition of national security as one could possibly imagine.

MS. JODY THOMAS: That's correct.

MS. SHANTONA CHAUDHURY: Then there's the legislative perspective reported by Mr. Lafortune. What he says is:

"There is no true legislative definition of 'national security'. The CSIS Act and SCIDA provide examples of threats to security and activities that undermine security; however, do not exclusively define what is included in the term 'security' as their lists are not exhaustive and do not specifically reference 'national security'."

And then there's the definition of the CSIS Act which we're all familiar with now.

MS. JODY THOMAS: M'mh.

MS. SHANTONA CHAUDHURY: Scroll down a little bit, Mr. Clerk. SCIDA has its own definition here.

Scroll down a little bit more.

Then there's a quote from a Supreme Court ruling. I think the case is actually called Suresh, not Sunresh, but -- and so what the Supreme Court says in Suresh is they talk about danger:

"A fair, large, and liberal interpretation in accordance with
international norms must be accorded to
danger to the security of Canada."

They're talking about deportation here.

Then they say the danger to the security of
Canada is difficult to define, and then they go on and talk
about a broad and flexible approach, et. cetera, et. cetera.

They then -- I think this is now Mr. Lafortune,
not part of Suresh -- the Emergency Act, and he talks about how
the Emergency Act does define national emergencies of the
following, and then he gives a definition which again is similar
to us here on the Commission.

So you received this email, this sort of memo, if
I can call it, on national security. Did that have anything
impact on your thinking, your assessment of the situation about
what's happening at the time?

**MS. JODY THOMAS:** No. Laid out the complexity of
understanding how to define the problem set, absolutely, but not
particularly. We received a lot of information in those days.

**MS. SHANTONA CHAUDHURY:** And would this memo be
something that was kept internally to PCO or would it have been
dissemintated, shared, would it have been briefed up to Cabinet?

**MS. JODY THOMAS:** It wouldn't have -- I don't
believe it was ever discussed at Cabinet, but certainly it was
shared with other deputy ministers.

**MS. SHANTONA CHAUDHURY:** And you're aware, of
course, that CSIS assessed the protest as not constituting a
threat to the security of Canada as defined in section 2 of the
CSIS Act?
MS. JODY THOMAS: They said it did not meet the threshold as defined in their very narrow interpretation of what they can do under their Act.

MS. SHANTONA CHAUDHURY: And obviously, we'll hear directly from them on that on Monday, I believe.

MS. JODY THOMAS: Yes.

MS. SHANTONA CHAUDHURY: But were you personally ever asked to advise on whether that definition had been met?

MS. JODY THOMAS: No.

MS. SHANTONA CHAUDHURY: Were you ever asked whether you thought that the invocation of the Emergencies Act was necessary?

MS. JODY THOMAS: Yes.

MS. SHANTONA CHAUDHURY: And when was that?

MS. JODY THOMAS: February 13th.

MS. SHANTONA CHAUDHURY: And what was your answer?

MS. JODY THOMAS: It was discussed in a Cabinet meeting.

MS. SHANTONA CHAUDHURY: See how we're doing for time here. Oh, we have time.

Okay. The next thing -- oh, yes?

COMMISSIONER ROULEAU: For the afternoon break time.

MS. SHANTONA CHAUDHURY: Morning, afternoon, evening, whatever it is, yes please.

COMMISSIONER ROULEAU: We can take a break now, take 15 minutes, and we'll come back and continue. Thank you.
THE REGISTRAR: The Commission is in recess for 15 minutes. La Commission est levée pour 15 minutes.

--- Upon recessing at 4:34 p.m.

--- Upon resuming at 4:50 p.m.

THE REGISTRAR: Order. A l’ordre. The Commission has reconvened. La Commission reprend.

COMMISSIONER ROULEAU: It's okay. I'll just step out for a few minutes. You can go ahead.

--- MS. JODY THOMAS, Resumed:

--- EXAMINATION IN-CHIEF BY MS. SHANTONA CHAUDHURY (cont'd):

MS. SHANTONA CHAUDHURY: Ms. Thomas, I understand that you had some discussions at break with your counsel, which actually obviated the need for me to have a discussion with your counsel about whether or not you could answer some questions about the inputs that you -- and views you expressed to cabinet on a couple of issues, so I’m just going to ask you those questions again. The first is with respect the engagement proposal; what view did you express to cabinet on the engagement proposal?

MS. JODY THOMAS: After the discussion was concluded, my view was that it was not a workable plan.

MS. SHANTONA CHAUDHURY: And this would be on February 12th?

MS. JODY THOMAS: Yes.

MS. SHANTONA CHAUDHURY: And why did you form that view?

MS. JODY THOMAS: That I did not see who we would negotiate and engage with, what the outcomes could possible be,
that there was not one group who had enough influence over the
entire group to affect an outcome that would be positive, and I
did not know who we would put in front of them. Esteemed an
capable as my colleague Deputy Minister Stewart was, that wasn’t
going to be a name that was going to mean anything to the
protesters. And so who it would be, what they would do, and who
it would be with were unanswerable questions. We had also seen
negotiations attempted and fail in Windsor and we actually, as
has been testified here, knew that in Coutts the engagement
strategy and the lessening and the path to reducing and removing
mandates in Alberta actually caused the protesters there to dig
in because they thought that would then allow for a complete
removal immediately, so the unintended consequences were greater
than the consequences.

MS. SHANTONA CHAUDHURY: And the second question
that fell into that category of whether or not you could answer
is whether you were ever asked whether the Emergencies Act was
necessary.

MS. JODY THOMAS: Yes, and I apologize. Yes.
And my answer was yes.

MS. SHANTONA CHAUDHURY: Okay. And that was on
February 13th?

MS. JODY THOMAS: Yes.

MS. SHANTONA CHAUDHURY: The other area I’d like
to take you back to briefly just to elaborate on a little bit is
this idea of the law enforcement gap in reporting. So for that,
can we pull up the witness summary again, please? So it’s WTS,
a bunch of zeros, 71, and to the bottom of page 7, please.
Okay, so we’ve discussed here two different sort of intelligence gaps that you’ve identified. One is the social media gap that you’ve spoken about, and we may speak about again; the other is the law enforcement intelligence gap.

So what you’ve expressed here is a slightly more elaborate than you’d expressed earlier today, but you didn’t receive -- and this you and Assistant Secretary Mike MacDonald, Security and Intelligence -- did not receive direct reports from law enforcement partners such as OPP, OPS, WPS -- so that’s outside the “federal family”. You can tell I’m learning the lingo. That constituted another significant intelligence sharing gap.

Assistant Secretary MacDonald recalled a significant delay in receiving updates from the RCMP given the RCMP’s policy obligation to consult with each relevant agency prior to sharing investigative and operation information.

And you clarify that neither you nor your staff received SITREPs, so situational reports, projects reports, or other forms of information directly. And, as you mentioned today, you hadn’t heard of Project Hendon, specifically.

And if we just scroll down a little bit, it also says there that you learned of the Coutts arrests through the media, not directly from the RCMP.

And just scrolling down a little bit again:

"Sharing among all three levels of government information and intelligence in relation to the convoy could have been better."
So I’ll just ask you to elaborate a little bit on where you think the deficiencies are and what and what maybe can be or should be done about them because, as you know, the Commission has sort of a forward-looking mandate as well as a backward-looking one?

**MS. JODY THOMAS:** I think when we are looking at primary open-source information as opposed to investigation-specific information -- so let’s draw a line draw there -- the RCMP’s investigating person acts for having done something criminal. As the NSIA, should I receive that? No. I receive information when the RCMP are making an arrest of a federal crime that would be of interest to the NSIA, so -- but after they’ve done it, or is about to make the arrest or make the announcement.

General tactical operational information on a day-to-day basis, I don’t have any need for from the RCMP but when we’re in a situation like this -- it’s a crisis; I’m coordinating the town; the RCMP is aware I’m coordinating the town -- I’m asking for information about what’s happening, what’s coming, what they expect, what -- not, again, operational planning but what is going to happen, what law enforcement is talking about, what their concerns are, because there are ways I can help, potentially. It would be useful to have that information. And we didn’t receive the flow of information from the RCMP, even their intelligence unit that I think we possibly might have.

**MS. SHANTONA CHAUDHURY:** When you say there are ways you can help, what are you referring to?
MS. JODY THOMAS: We would do X, Y, or Z, and we’d think this is necessary, we’re short 100 people. Or we need cabinet permission. Or we need -- it could be any number of things and the hypotheticals are long. But in this particular situation, I think that we could help reduce the pressure on the RCMP to answer questions constantly if we had some indication of the intelligence they were seeing, primarily, again, open-source, and what they were going to do with it. We could answer questions. We could reduce the anxiety about what was going on.

MS. SHANTONA CHAUDHURY: So from your perspective, keeping in mind the need for police independence, which ---

MS. JODY THOMAS: Absolutely. This isn’t interference or telling them what to do, and it’s not getting the way of an operation. It’s just information flow.

MS. SHANTONA CHAUDHURY: So there’s some work to be done in the area ---

MS. JODY THOMAS: Correct.

MS. SHANTONA CHAUDHURY: --- from your perspective, of information flows between law enforcement and government?

MS. JODY THOMAS: Absolutely.

MS. SHANTONA CHAUDHURY: Switching gears a little bit, the next topic I want to address with you is sort of an existential one, but the line between lawful and unlawful protest. And I’m going to do this with reference to a few documents in which this was brought up and came up repeatedly...
over the course of the events of the convoy. The first one, Mr. Clerk is SSM.NSC.CAN0003211, and scroll down to page 2, please. So this is a readout or a report from ADM NS Ops on January 26th. There we go, under “Posture”. So first they’re talking about the RCMP monitoring, and then:

"ADMs committed to return to the Committee with specifics on what will trigger the event from peaceful event to one requiring law enforcement action."

So I realize this in ADM NS Ops, not specifically at your level, but is it fair to say that that was something on the radar, when does an event go from lawful to unlawful?

MS. JODY THOMAS: Absolutely. It was a question that we discussed constantly. And I don’t know if -- there may be a policing definition but there certainly isn’t a public policy definition.

MS. SHANTONA CHAUDHURY: Okay. And you see it says here:

"ADMs committed to return to the Committee with specifics..."

To your knowledge -- and I know this isn’t your committee but, to your knowledge, did that happen?

MS. JODY THOMAS: I didn’t see it. If it did, I did not see it.

MS. SHANTONA CHAUDHURY: Okay. It may be that the next document is the answer but I’m not sure.

MS. JODY THOMAS: Okay.
MS. SHANTONA CHAUDHURY: SSM.NSC.CAN00000294 at page 6, please, under “Peaceful Event”. Okay, there we go, perfect.

"Peaceful Event -- Key question remain:
How does this end and who is left,
e.g., numbers may be lower but what is
the threat nature of remaining
individuals."

And then:

"There is no finite timeline for when a
lawful protest must end. As long as it
remains lawful, it may continue.
Violence will require a public order
response. OPS has brought in additional
support teams."

Okay, so that is something ---

MS. JODY THOMAS: M’hm.

MS. SHANTONA CHAUDHURY: --- being said about the line between lawful and unlawful. I don’t know if it’s -- maybe you don’t know either, because it wasn’t your committee, whether that was the specific sort of deliverable return on that point but, if so, it’s not a particularly detailed answer.

MS. JODY THOMAS: Yeah, I think they’re distinct issues. When a lawful protest ends versus when it trips into something else, I think those are two different issues. And one is very much a city issue, how long the city gives permits for protests, those kinds of things, I think that’s more in the city's domain. When it moves from lawful to unlawful and
THOMAS
In-Ch (Chaudhury)

becomes a public order issue, again, mostly belonging to a
municipality but we're in a unique circumstance here in Windsor,
in Coutts, across the country, when do protests, blockades
become unlawful. Because it -- this is talking about the OPS,
but the question we were asking ourselves was much broader.

MS. SHANTONA CHAUDHURY: Okay. That's a helpful
distinction, actually, and it'll come up in the following
discussions.

So the next document is SSM.CAN.0000016.
So this is a read-out of the February 14th DMOC.
And if we can scroll down a bit to page 2,
please. There we go.

"The NSIA and Director of CSIS", so this is the
DMOC that's being held on February 14th.

Do you remember what time that DMOC was?

MS. JODY THOMAS: I think there were two on
February 14th, or there might have been two on the 13th, but we
were generally meeting in the morning before we briefed the
Ministers.

MS. SHANTONA CHAUDHURY: Okay. So:

"The NSIA and the Director of CSIS
highlighted the need to better
understand where and how the convoys
metastasized into something else - we
have seen a fundamental shift - protest
that effects people's ability to live
and exist is no longer peaceful. Need
to understand long-term trends."
So can you tell the Commission a little bit what your thinking was there in saying that the protests have metastasized, the convoys, rather, metastasized into something else?

**MS. JODY THOMAS:** It was a very -- my recollection is that it was a very interesting conversation, one that we needed to spend more time on, but in the height of a crises you move on to operational things very quickly. There is -- it was a discussion about lawful and unlawful, violent and peaceful, and can you be unlawful and still, for all intents and purposes, peaceful, meaning you're not January 6th? And is that line of violence only measured when you are at the January 6th stage and status, series of events? Or is the violence that people were -- of Ottawa were experiencing on the streets, the inability of people in Windsor to conduct their lives in the neighbourhood where the blockade, the inability of the Town of Coutts to function, is that a line? And so where is that? And I don't have an answer for it, but it is something that we have to consider as situations like this perhaps become more of the norm.

And the -- what we were discussing is that the only measure can't be violence of a nature of January 6th. That can't be well this is something different or January 6th is about to happen; therefore, it is now not illegal but a national security threat. There is a spectrum of activity and behaviour and threat in there that we need to understand, and so that was the nature of the conversation.

And it's one that's continued. I can't tell you
that I have a paper on it yet. We don't have a policy -- a
paper going forward to the Clerk, but it is a conversation that
is continuing because it's critical. We have seen these kind of
uprisings in democracies around the world. What does it mean?
What can we do? What should we do? Questions to be asked that
have to be thoughtfully considered before we're in the situation
potentially again.

**MS. SHANTONA CHAUDHURY:** In a sense, I think
you've pre-empted my next question, which is is this an area
that is being worked on within the Federal Government in case
anything like this ever happens again, where that line is? And
when you talk about the line between lawful/unlawful, in some
senses that's the line where intervention would happen.

**MS. JODY THOMAS:** Correct. And yes, the work is
ongoing.

**MS. SHANTONA CHAUDHURY:** The next document,
please, Mr. Clerk, SSM.NSC.CAN.00000405.

So this a related point, Ms. Thomas, to situate
you a little bit, on the need to protect lawful protest. There
is unlawful at some point, we don't know precisely where that
line is you've said, but the need to protect lawful protest in
all circumstances where possible.

Was there any thought given, and I'll wait for
the reference to turn up here, but in your recollection, was
there any thought given in the discussions around how to
intervene once it became clear that there was going to be
intervention, in what was happening in Ottawa, specifically, I
suppose it would apply across Canada, but specifically in Ottawa
to protecting lawful protest, so a subset of that protest? Was
there any thought given to, okay, well, you can't do it on
Wellington Street, but maybe you can go somewhere else?

And I'll just situate you a little bit here.

Can we turn down to page, I believe it's page 2, but it could be a bit later. Sorry, keep scrolling, I'll find it. Keep scrolling, please. No, I guess no. Page 5, sorry.

Yeah, okay, there we go.

So this is a description, and I realise it's not your description it's the RCMP I believe, but...

Keep scrolling a bit down, please, Mr. Clerk.

I'll tell you when you got it. Okay. Yeah:

"The focus of the operation today has been on clearing protesters south of Wellington and reinforcing barriers. Protesters remain at Bank and Sparks...have been advised that they will be arrested if they do not leave. Public order units continue to wear tactical gear but police tactics remain focused on de-escalation."

This is February 20th:

"Police are also monitoring a gathering that has formed at the War Museum of approximately 100 people and a smaller gathering of 30-50 at Confederation Park....information suggests some indication some protesters are staying
in the secure zone..."

And I think that's about it. So:

"...including at hotels in this area

RCMP is looking into."

So these other areas, the War Museum, and at this point it's Confederation Park, were these lawful protest zones to your knowledge at this point?

MS. JODY THOMAS: I'm speculating in terms of the particular situation. The Emergency Act was still in place. I don't know if these locations, because I don't have the map in front of me, are still in the exclusion zone or not. And so if in the exclusion zone, by virtue of the Act, if inside the exclusion zone, they would have been illegal.

In regards to your question about protecting lawful protest, that's a fundamental. People who wish to protest lawfully, peacefully, respecting the rights of, in this case, the citizens of Ottawa, that's a given in this city. The right to do that is a given in the Constitution, it's just a fundamental right Canadians have. That discussion again about when it metastasizes into something else is what we are pursuing.

MS. SHANTONA CHAUDHURY: So I think this will be the last area that we can cover today, but I want to ask you about a couple of intelligence assessments, secretariat assessments that were produced to the Commission.

The first one is SSM.NSC.CAN.0000218.

It's called Context for Civil Unrest Following Pandemic. So first of all, this is a document dated
February 16th. Can you tell us the genesis of how did this document come into being?

MS. JODY THOMAS: So when we spoke about the Intelligence Assessment Secretariat, I said that they will do longer thought pieces as well as immediate operational assessments. So the immediate, the missile strike in Poland, this is an example of the kind of thought they do, piece they do to look at trends to understand the context in which the foreign policy, security, and intelligence issues are nested.

This is a companion piece to something that they had written. Well, long before I came to PCO, I was given it to read, just as I arrived at PCO, about what happens in societies, historically, after pandemics. And so very interesting piece, and this was a companion to it.

MS. SHANTONA CHAUDHURY: So you already had a piece on what happens after pandemics?

MS. JODY THOMAS: Yes.

MS. SHANTONA CHAUDHURY: So we’ll take you through a little bit of this, and you can tell me if this is something that would have been known before February 16th and formed part of the context you were thinking about or whether it was an ex post facto.

So the first -- just introduction:

“Historically, civil unrest and degradation of social cohesion have been common in the immediate aftermath of pandemics or epidemics. The health impacts and restrictions involved [...]
provide fertile grounds for social unrest and mobilization as pandemics progress or end. This is particularly true when there are existing underlying inequalities and/or social fault-lines within the population [...]. The ongoing trucker protests have several markers demonstrating consistency with this trend.”

So is this something that was part of your thinking when the convoys rolled in or was this something that was only thought about after the fact?

MS. JODY THOMAS: I didn’t know about the previous piece when the convoys rolled in, because again, I wasn’t at PCO, and in my job at Defence, I hadn’t seen it. The Clerk brought it to my attention as something she had read and found very interesting. And so I pulled it up and read it and this was done as an addition to that.

MS. SHANTONA CHAUDHURY: So if I understand correctly, it wasn’t part of your personal thinking, but it may have been part of the thinking at PCO?

MS. JODY THOMAS: I think it was part of -- thinking implies -- I think it was more a -- it was just informative.

MS. SHANTONA CHAUDHURY: And if we just scroll down a little bit more:

“For a Canadian historical context, the 1885 vaccine requirements intended to
curtail the spread of Smallpox [...] resulted in public violence throughout the city. Per the Washington Post, more than 2,000 violent rioters marched through the streets of Montreal screaming, “kill the vaccinators” in response to [...] vaccine mandates.”

So again, this would be part of the context that PCO was aware of at the time and was thinking about, but not your specific thinking?

MS. JODY THOMAS: Some people were aware. Was it of the documents we talk about on a daily basis at PCO, was it one of them? No.

MS. SHANTONA CHAUDHURY: Okay.

MS. JODY THOMAS: IAS, the Intelligence Assessment Group, puts out a lot of these. People read them not as an immediate to do their job. They read them as thought pieces when they have time on the weekend.

And so who has read it in PCO, I couldn’t tell you.

MS. SHANTONA CHAUDHURY: And what would be the purpose of having an assessment like this done?

MS. JODY THOMAS: Again, the assessment group takes global trends, takes events, and tries to help predict what will happen. And they use, in this case, a lot of academic and historical research to build their assessment.

MS. SHANTONA CHAUDHURY: Okay. The next assessment is SSM.NSC.CAN0000231.
So the first paragraph here, it talks about --
the date of this one is the 21st of February. So this is right
actually as the Emergencies Act was being lifted, and to a
certain extent, events were coming to an end.

And it says here:

“The ‘Freedom Convoy’ [...] is not an
unprecedented event.”

Again talking about societal alienation, civil unrest, and social polarization. Then it says:

“...the convergence of several elements make
this protest [...] somewhat more
sophisticated and unique: the use of
social media for organizing and
communicating both internally and
externally, the use of misinformation and
disinformation to promote certain
narratives, the use of crowdfunding [...]cryptocurrency, blockade tactics and
logistics, the virulence of discourse
towards government and elected officials,
appropriation of national symbols, ...”

And it goes on. It mentions then:

“The overwhelming majority of protesters
[...] have denounced violence and are not
directly aligned...”

Then it talks about the wide range of
participants.

And if we just scroll down a little bit, the
movement -- talks about the IMVE aspect.

“It is unlikely that premeditated violence
will take place, however, [the threat of]
‘lone actors’…”

Scroll down again.

“...significant international financial
support and publicity.”

So it’s sort of collating the information that
was available then.

And then it says:

“The “Freedom Convoy” itself or new
entities that emerge from it are likely to
continue for several weeks and will seek
new opportunities to protest, occupy and
disrupt. It may also embolden other
groups and individual movements across the
ideological spectrum. There are also
risks that the protests may serve to
deepen and harden new and existing
cleavages within Canadian society. As the
protests persist, these feelings may
become more entrenched and form the basis
for longer-term societal schisms.”

So this is a -- can you speak to this a little
bit and just situate the context in which all of this was being
dealt with at the time by you?

**MS. JODY THOMAS:** So as I said, I didn’t have a

Domestic Intelligence Assessment Unit at PCO and all of the

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intelligence assessment or collectors in the community have very narrow mandates. ITAC does terrorist threat assessment. CSIS does assessments in line with their Act. RCMP does criminal assessments and collects open source for law enforcement purposes.

I have a Foreign Intelligence Assessment Group that takes open source and covert information and can give me a picture of what’s going on. And not just me. Decision makers, the Prime Minister.

I didn’t have an equal entity in PCO for open source domestic. And I asked the -- Martin Green, the Assistant Secretary of the Intelligence Assessment Group, to start trying to think about what this could look like.

I was hoping -- this was a really interesting piece. It wasn’t exactly what I wanted in the minute, I wanted more, “Here’s what we’re seeing tomorrow.” But a very useful piece where he tried to be very thoughtful about what this could mean based on known aspects of protests, what we were seeing in other countries, conversations with colleagues in other countries about similar phenomena, and try to build an idea of what this could mean from an intelligence perspective, but what it would mean for government institutions, democracy, rule of law, the things that we need to consider as senior public servants and advising government.

**MS. SHANTONA CHAUDHURY:** Those are my questions for you today, Ms. Thomas, but before I sit down, is there anything that we haven’t covered today that you’d like to raise?

**MS. JODY THOMAS:** No, I don’t think so.
Certainly there’s been a lot of focus on Ottawa because it was significant and it was on -- you know, at the footsteps of where our democracy is housed.

This was a national situation and our concern about Windsor, as you’ve heard from other people, Coutts, the pop-up convoys across the country, the intelligence that we were getting about potentials in New Brunswick, Cornwall, the Peace Bridge, VIA Rail protests, that all came together to form our view of what was going on and raise our level of concern.

So while, yes, Ottawa was a significant event, this was a national crisis.

COMMISSIONER ROULEAU: Okay. If I could call on the convoy organizers, please?

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

MR. BRENDAN MILLER: My name is Brendan Miller and I’m counsel for Freedom Corp, which is the entity that represents the protestors that were in Ottawa in January and February of 2022. I have a few questions for you, and hopefully we’ll be able to get through them.

Ma’am, you had just mentioned, and I’m glad you did, the rule of law. What’s your understanding of the rule of law?

MS. JODY THOMAS: That laws are obeyed in the Country of Canada, provincial, federal and municipal laws.

MR. BRENDAN MILLER: Right. And you agree with me that the rule of law applies to you and it applies to the executive and the elected executive of the Government of Canada?

MS. JODY THOMAS: Yes.
MR. BRENDAN MILLER: All right. Would you agree with this that the rule of law conveys a sense of orderliness and executive accountability, the legal authority and vouches safe a stable predictable and ordered society in which citizens and residents may conduct their affairs. It requires that government power or any authority delegated by Parliament must be exercised pursuant to valid laws, either directly or indirectly permitted by an Act of Parliament. Do you agree with that?

MS. JODY THOMAS: I do.

MR. BRENDAN MILLER: All right. Now, you can agree with me that your position, your office — and I’ll call it your office -- the National Intelligence and Security Advisor, it’s not been created by an Act of Parliament, has it?

MS. JODY THOMAS: No.

MR. BRENDAN MILLER: No.

MS. JODY THOMAS: It has not; it’s an advisor.

MR. BRENDAN MILLER: Right. And you have no statutory mandate.

MS. JODY THOMAS: I do not.

MR. BRENDAN MILLER: And you’ve also got no legal powers yourself.

MS. JODY THOMAS: I do not, which I explained when I talked about what my role is.

MR. BRENDAN MILLER: Right. And I take it you’ve never been an Intelligence Officer with CSIS or within the Intelligence community; is that correct?

MS. JODY THOMAS: I have not.
MR. BRENDA MILLER: And you've never been an Intelligence analyst with CSIS or in the Intelligence community; is that correct?

MS. JODY THOMAS: That is correct.

MR. BRENDA MILLER: All right. So you said in your evidence that you didn’t feel that you were getting the proper intelligence or updated intelligence from law enforcement or from CSIS, or weren’t getting enough of it; is that fair?

MS. JODY THOMAS: I didn’t say that about CSIS.

MR. BRENDA MILLER: All right. So you were satisfied with the intelligence you received from CSIS?

MS. JODY THOMAS: I was.

MR. BRENDA MILLER: And CSIS specifically told you and Cabinet that there was no Section 2 CSIS Act threat posed by the protest or posed by any of the actions going on throughout Canada at the time; did they not?

MS. JODY THOMAS: You're misinterpreting what CSIS said.

MR. BRENDA MILLER: Can you tell me how? Because I can put up the statement and the reports because that’s what it says.

MS. JODY THOMAS: Right. But there isn’t -- what they said and the interpretation of what they said are two entirely different things. Their mandate is very narrow. And so section 2 of the CSIS Act is about the work that CSIS does and the intelligence they collect. And they said they are not the only arbiters of what is a national security threat in this country.
MR. BRENDAN MILLER: Okay.

MS. JODY THOMAS: And so very true that they said that vis-a-vis their particular Act.

MR. BRENDAN MILLER: Right. And the thing is is you agree with me that the CSIS Act, the meaning of security threat to Canada is incorporated directly into the Emergencies Act, correct?

MS. JODY THOMAS: You're going to receive legal briefs on the Emergencies Act and the legal interpretation and I'm not a lawyer. My understanding is that the Emergencies Act is assigned a meaning as defined in the CSIS Act but is not limited by the CSIS Act.

MR. BRENDAN MILLER: Well, I don't know how that could be but we can agree to disagree.

But you agree that the Emergencies Act on its own reading -- and I put this to the Deputy Minister. You understand that it requires reasonable grounds that a Section 2 CSIS Act threat exists.

MS. JODY THOMAS: I don't agree.

MR. BRENDAN MILLER: That's what it says.

MS. JODY THOMAS: No. it says it assigns meaning as the language is defined in the CSIS Act, but again you'll get legal arguments.

MR. BRENDAN MILLER: Right. I understand. So you're saying that the CSIS Act and section 2 of the CSIS Act which is incorporated into the Emergencies Act means something different when you're looking at it.

MS. JODY THOMAS: No, that's not what I've said.
MR. BRENDAN MILLER: So what do you mean?

MS. JODY THOMAS: I mean that in terms of the Emergencies Act, the Governor-in-Council can consider more broadly than the intelligence collected by CSIS in determining a national security threat or situation or a public order emergency.

MR. BRENDAN MILLER: I understand that. But you do agree that the four grounds of types of threats in section 2 of the CSIS Act are what is in fact required to have been found.

MS. JODY THOMAS: No, I don’t agree.

MR. BRENDAN MILLER: So it can go beyond what the Act says which is a threat to the security of Canada.

MS. JODY THOMAS: There are other definitions of threats to the security of Canada as we saw earlier.

MR. BRENDAN MILLER: Right. But not in the legislation.

MS. JODY THOMAS: The Emergency Act allows for the Governor-in-Council to make a broad decision about public order emergencies.

MR. BRENDAN MILLER: That’s not what it says. But you can agree with me that ---

MS. JODY THOMAS: I think that this is an argument to have with lawyers.

MR. BRENDAN MILLER: Well, I understand that. So let’s go through then just what section 2 of the CSIS Act says and I’ll just ask you a couple of questions about the grounds.

And we’ve already heard from every law
enforcement official as well as we have the statements from CSIS in evidence that they didn’t have reasonable suspicion that any of this was taking place. So I take it that you can agree with me that you didn’t have any evidence with you before Cabinet or even considered of any espionage or sabotage against Canada that is detrimental to the interests of Canada or activities directed towards or in support of such espionage or sabotage; right?

**MS. JODY THOMAS:** That’s been discussed, yes.

**MR. BRENDAN MILLER:** Right. And so that -- there was no evidence of that that you considered ---

**MS. JODY THOMAS:** No.

**MR. BRENDAN MILLER:** --- in your assessment. And you could agree with me that there’s no evidence of foreign influenced activities within or related to Canada that are detrimental to the interests of Canada or clandestine or deceptive, or involve a threat to any person; correct?

**MS. JODY THOMAS:** There were threats to people.

**MR. BRENDAN MILLER:** Right. By email and Twitter, right?

**MS. JODY THOMAS:** I would submit that in the social media era you cannot ignore threats against officials and public office holders just because they are on social media. That would be inexcusably negligent.

**MR. BRENDAN MILLER:** Right. But that’s up to the police to deal with or is that a national emergency?

**MS. JODY THOMAS:** It depends on the situation and the context in which those threats arrive.

**MR. BRENDAN MILLER:** Okay. Can we please bring
Apologies, just a second. Wrong one. I’ll just say the end numbers. Same forward -- 159_REL0001. Okay.

So I take it that you're familiar with the CSIS assessment that they provided on the Freedom Convoy in downtown Ottawa, right?

**MS. JODY THOMAS:** That’s one of the assessments.

**MR. BRENDAN MILLER:** Right, okay. And their assessment was this and at the beginning you see:

> “Downtown Ottawa […] was actually quite festive -- not threatening to a passerby. Some criminal acts did occur -- law enforcement.”

And again you've said you’re not an Intelligence Officer, you don’t have any training as an Intelligence analyst, so I take it you rely on CSIS for intelligence.

**MS. JODY THOMAS:** CSIS provides one input on intelligence, yes.

**MR. BRENDAN MILLER:** Yeah. And then the RCMP?

**MS. JODY THOMAS:** Another input.

**MR. BRENDAN MILLER:** Right. And then the Canadian Border Services Agency?

**MS. JODY THOMAS:** Another input.

**MR. BRENDAN MILLER:** Right. And then you also have the Canadian security establishment?

**MS. JODY THOMAS:** Yes.

**MR. BRENDAN MILLER:** Right, okay. None of those people provided you intelligence that there was a section 2 CSIS
Act threat.

**MS. JODY THOMAS:** Again, we’ve been through this. There are other measures other than section 2 of the CSIS Act.

**MR. BRENDAN MILLER:** So let’s scroll down if we can. And you’ll see in there with respect to the flags — now, I take it there was concern with these flags that there was a couple of flags that were seen that were inappropriate and that was one of the reasons why there was a consideration of ideological motivated violent extremism.

You can see there that I understand that their report is:

“A very small number of more inflammatory flags, Confederate, Nazi, swastika, III%, Punisher (based on the 1974 [...] comic book hero) and Quebec Patriote flag…”

And then they say that:

“A random flag is just a flag until the reason the person holding it explains why. Flags can have multiple meanings and are routinely co-opted by various groups/ individuals. No way of connecting those views holding flags with any online content. The presence of the III% flags, for example, does not necessarily mean that members of the III% are in attendance.”

And that was the intelligence you were given.
MS. JODY THOMAS: That’s part of the intelligence we were given. That’s intelligence that can be released.

MR. BRENDAN MILLER: Okay. So what you mean, “intelligence that can be released”? So ---

MS. JODY THOMAS: Well, there’s section 38.

MR. BRENDAN MILLER: Right. I understand that. But why don’t we scroll down. Now, this is important. And you know that CSIS does in fact -- because there’s no reason -- you don't need a law to look at what's online or open source intelligence, that it's open source intelligence. Anybody can look at it without a law authorising it. Can you agree with that?

MS. JODY THOMAS: No, the reality is that open source intelligence has to be anonymized so that we are not targeting specific people who are not under investigation. So it's not quite as simple as you're depicting it.

MR. BRENDAN MILLER: Well, ma'am, again, this -- there is no privacy interest for Canadians on things they post online. They can -- anybody can go on and read it; right? You know that.

MS. JODY THOMAS: Yes, but the Privacy Commissioner and the privacy laws of this country are such that they cannot then be -- their information cannot be scraped and be part of an assessment writ large, there has to be boundaries around that.

MR. BRENDAN MILLER: Around its distribution.

MS. JODY THOMAS: No, around its analysis and collection.
MR. BRENDAN MILLER: Right. And that's why ---

MS. JODY THOMAS: And storage.

MR. BRENDAN MILLER: And that's why we have units in the RCMP that do that.

MS. JODY THOMAS: Some of it, yes.

MR. BRENDAN MILLER: Right. So you have the, I believe it's called the IMCT -- IMCIT Unit. They -- that's all they look at, is they look at online violent rhetoric and assess it.

MS. JODY THOMAS: For criminal purposes, yes.

MR. BRENDAN MILLER: Right. And so what -- for violent rhetoric. What are your other purposes other than criminal purposes?

MS. JODY THOMAS: Well -- so I would like to be a little more expansive in this answer if I may be. An analyst looks at a piece of information for very specific issues. When we, as people advising, and it's my Deputy Minister colleagues and I, to advise the Cabinet and decision-makers on the threat, the confidence in government institutions, the rhetoric, we have to look more broadly than its specific elements as described here.

"Someone should kill the PM"; "Wouldn't it be great if someone killed the PM?" That says something, and it's not just random. Because they can't identify it to an individual and it doesn't say the day, it doesn't mean it doesn't matter.

MR. BRENDAN MILLER: So what are you looking for?

Are you looking that the government without warrants is allowed
just to go in and look into metadata?

    MS. JODY THOMAS: No, that's what I just said to you.

    MR. BRENDAN MILLER: Yeah. So ---

    MS. JODY THOMAS: I just said to you that we ---

    MR. BRENDAN MILLER: --- here's the thing ---

    MS. JODY THOMAS: --- that we should not be doing that, and so we have to find a legal framework for it. We are actually violently agreeing.

    MR. BRENDAN MILLER: Okay. Well, that's good. So -- and we agree that we should follow legal frameworks.

    MS. JODY THOMAS: We should, and I believe there is a gap in the legal framework.

    MR. BRENDAN MILLER: Yeah. And you agree we should follow the legal framework in the Emergencies Act; right?

    MS. JODY THOMAS: And we have.

    MR. BRENDAN MILLER: Okay. And then, can I just show you that part up there? You -- CSIS assessed this, and ---

    MS. DONNAREE NYGARD: Excuse me. Could -- we've never established the date of this document. Can we see what it's dated, please?

    MR. BRENDAN MILLER: Freedom Convoy 2022. It's an assessment of CSIS. I believe it's been referred to in the statement. It's from your production. I assume that it's relevant material.

    MS. DONNAREE NYGARD: I am not arguing that. I'm just asking to establish ---

    MR. BRENDAN MILLER: Yeah.
MS. DONNAREE NYGARD: --- if there's a date on
the document.

MR. BRENDAN MILLER: Okay.

MS. DONNAREE NYGARD: Perhaps at the last page.

MR. BRENDAN MILLER: No. But I understand that,
and the witness has accepted that this is one of the assessments
that was before Cabinet.

So ---

MS. JODY THOMAS: Well, no, I didn't say it was
before Cabinet, I said it was produced.

MR. BRENDAN MILLER: Okay. And ---

MS. JODY THOMAS: And I believe it was before the
convoy arrived.

MR. BRENDAN MILLER: I understand. So the --

CSIS had assessed:

"The anonymity of the online space
allows individuals to post commentary
that they would not normally say in
public.

Many of the posts in this space are
best articulated as 'shitposting'.

Confirmation bias - strategic analysis
must be driven by direct evidence
collection and assessments as opposed
to a reliance on social media posting
[lacks] context and where the poster
bias may not be considered."

So that had been given to you by CSIS, and do you
not agree with that?

**MS. JODY THOMAS:** I believe that it is an analysis done by an analyst, and that as the National Security Intelligence Advisor to the Prime Minister, when I see social media posts growing in number and aggressiveness of language that says somebody should kill the PM or somebody should kill the DPM, I have reason to be concerned beyond what the analyst is concerned about.

**MR. BRENDAN MILLER:** Okay. So I'm just going to run over very briefly what I understand your position is, and your position as National Security Advisor. I've managed to find the policy with respect to your position.

So if you can agree with the following, this is what you are to do:

"The National Security Advisor to the Prime Minister and Associate Secretary to Cabinet assists the Clerk and provides information, advice, and recommendations to the Prime Minister as follows:

As Associate Secretary to Cabinet, he or she can act on the Clerk's behalf on any of the policy and operational issues that come before the Privy Council. As National Security Advisor to the Prime Minister, he or she ensures the effectiveness, or the effective coordination of Canada's
security and intelligence community,
and together, with the Deputy
Minister's of National Defence, is
responsible for the communication
security establishment. The National
Security Advisor also oversees the
provisions of intelligence assessments
to the Prime Minister, other Ministers
and senior government officials. The
National Security Advisor to the Prime
Minister is supported by two
secretariats via the foreign and
defence policy advisors to the Prime
Minister, Security and intelligence and
international assessment staff." (As
read)

That's what your job is.

**MS. JODY THOMAS:** That's a old version of the job
description, and there's been some changes to it since then, but
sure.

**MR. BRENDAN MILLER:** Right. But you are not in
the business, or your department is not supposed to be in the
business of actually collecting intelligence yourself.

**MS. JODY THOMAS:** We don't collect intelligence
ourselves.

**MR. BRENDAN MILLER:** But I thought you had said
that it was looked at you were setting up your own bureau, or
what have you, to look at online rhetoric and do your own open
source intelligence.

MS. JODY THOMAS: What I said is that there is no one doing that in a broad sense. I saw it as a gap. I need to do something about it. I don't have the legal mandate right now to do it. The OSINT document you saw previously was all obtained through legal means as an analysis. What we need is a more -- we need a unit in PCO or Public Safety that is more akin to the Foreign Intelligence Assessment Unit that does -- takes covert and overt information and makes assessments. We don't have that domestically.

It is a gap. I don't have a solution for it yet, and I won't be the sole person who decides whether it happens or not, but it is something that we need to look at and I'm exploring. That's my job.

MR. BRENDAN MILLER: But why would you need that outside of the Civil Service, who are governed by legislation, that collect intelligence?

MS. JODY THOMAS: It would be part of the Civil Service, just like the Foreign Intelligence Assessment Unit is part of the Civil Service.

MR. BRENDAN MILLER: Right. And -- but the Foreign intelligence Service, like the International Assessment Staff and Foreign Intelligence Service, you had the information from them, I take it, when you made -- when Cabinet made this decision, did you not?

MS. JODY THOMAS: They were assessing foreign intelligence ---

MR. BRENDAN MILLER: Okay.
MS. JODY THOMAS: --- not domestic intelligence.

MR. BRENDAN MILLER: And domestic intelligence was being assessed by the RCMP.

MS. JODY THOMAS: Who assess also foreign intelligence.

MR. BRENDAN MILLER: Right. CSIS.

MS. JODY THOMAS: Who also assess foreign intelligence.

MR. BRENDAN MILLER: The Canadian Security Intelligence ---

MS. JODY THOMAS: Who also assess foreign intelligence.

MR. BRENDAN MILLER: And they also look at domestic intelligence.

MS. JODY THOMAS: Some of them do, CSC does not. So just as those units all have mandates to collect and do some assessment, they -- we see that raw intelligence and we make assessments of it on the foreign side. I would like an equivalent on the domestic side. I don't have that now, I believe it is a gap.

MR. BRENDAN MILLER: So how is -- why is what the RCMP does, already doing that with their reports, they have two sets, they have the IMVE assessments online, they have the ONSET assessments online, why is that not good enough for you?

MS. JODY THOMAS: Because I would like to look at, just as we do with foreign intelligence, all the various pieces in totality rather than institution by institution. It's part of our job to get a holistic picture.
MR. BRENDAN MILLER: Yeah. And it's your job, according to this description, to effectively coordinate all of that anyway.

MS. JODY THOMAS: Right. But I need to have people with the mandate to do that assessment, which is -- I coordinate the function and the issues, the issues management of what's going on in the national security community, but not necessarily their intelligence assessment.

MR. BRENDAN MILLER: How about this: What if they just got rid of your position and left it to the Director of CSIS to do what you do?

MS. JODY THOMAS: So the Director of CSIS is not the only person who is responsible for security in this country. That's number one. You can certainly make that recommendation to the Governor in Council if it's useful to you, but there are more people than him involved in assessing national security in this country.


MS. JODY THOMAS: The Privy Council Office is an established office that is the, essentially the Prime Minister's department. We coordinate information, we challenge, we provide policy advice to the Prime Minister, and I am part of that mechanism.

MR. BRENDAN MILLER: I understand that. But you can agree that Parliament has given you no mandate to do that with respect to intelligence.

MS. JODY THOMAS: I don't agree with how you've
framed it.

MR. BRENDAN MILLER: Parliament? So ---

MS. JODY THOMAS: I don't agree with the basic premise of your challenge.

MR. BRENDAN MILLER: Well, I -- here you go, yes or no: Does -- has parliament via a statute, giving you, the National Security Advisor and the Privy Council, authority to collect and then analyze intelligence?

MS. JODY THOMAS: The Foreign Intelligence and Assessment Group is a longstanding that -- no, parliament hasn’t given it authority ---

MR. BRENDAN MILLER: Thank you.

MS. JODY THOMAS: --- but it exists, and it continues.

COMMISSIONER ROULEAU: Okay, next is the City of Ottawa, please.

--- CROSS-EXAMINATION BY MS. ANNE TARDIF:

MS. ANNE TARDIF: Good afternoon, Ms. Thomas. My name is Anne Tardif. I’m one of the lawyers representing the City of Ottawa. You discussed the IRG, or Incident Response Group, this afternoon ---

MS. JODY THOMAS: Yes.

MS. ANNE TARDIF: --- right?

MS. JODY THOMAS: Yes.

MS. ANNE TARDIF: And I heard that that’s a committee of cabinet that also includes officials who are subject-matter experts; is that correct?

MS. JODY THOMAS: Yes.
MS. ANNE TARDIF: And it’s chaired by the prime minister?

MS. JODY THOMAS: It is.

MS. ANNE TARDIF: And it’s purpose, if I understood you correctly, is to make quick, rapid decisions -- well, let’s just go with “rapid” -- rapid decisions about issues of national importance or crisis ---

MS. JODY THOMAS: Yes.

MS. ANNE TARDIF: --- including Covid?

MS. JODY THOMAS: Yes.

MS. ANNE TARDIF: And you gave a number of other examples; right?

MS. JODY THOMAS: I did.

MS. ANNE TARDIF: And it’s the committee that is the most effective in dealing with crises?

MS. JODY THOMAS: Yes.

MS. ANNE TARDIF: And my understanding is it met first on February 10th?

MS. JODY THOMAS: It did.

MS. ANNE TARDIF: And that was, of course, day 13 of the convoy here in Ottawa; is that correct?

MS. JODY THOMAS: That’s correct.

MS. ANNE TARDIF: And I think, as you mentioned earlier, we were in fact going into our third weekend in Ottawa; fair?

MS. JODY THOMAS: Yes.

MS. ANNE TARDIF: And the Commission has heard some evidence that in fact weekends were more volatile; is that
right?

MS. JODY THOMAS: Correct.

MS. ANNE TARDIF: At least in Ottawa? I’m just talking about Ottawa.

MS. JODY THOMAS: Yes.

MS. ANNE TARDIF: Okay. And Commission counsel took you to the minutes of that IRG meeting. I won’t turn them up but I’ll give the reference for the record. It’s SSM.NSC.CAN.00000209. And you had reported -- if you need me to turn it up, I will, but you had reported that in Ottawa, the situation at the time remained largely unchanged; do you recall that?

MS. JODY THOMAS: I do.

MS. ANNE TARDIF: So the reason, then, that the IRG was convened at that point was not because something new or something had changed in Ottawa; fair?

MS. JODY THOMAS: Fair.

MS. ANNE TARDIF: You know, I’m -- you’re perhaps seeing where I’m going here. I’m assuming it had something to do with the blockade in Windsor and perhaps concerns about other protest activity outside of Ottawa in addition to what was going on in Ottawa.

MS. JODY THOMAS: That’s a fair comment. The Clerk of the Privy Council, Jan Charette, decided that briefing a group of ministers who were largely the ministers in the responsible departments for the national picture and the Cabinet Committee, SSE, which was meeting quite regularly -- while they had been effective, it was now time for an IRG and the prime
minister to direct in a different way.

MS. ANNE TARDIF: Right. And just to sort of
close a loop on this, the SSE Committee had met I think it’s
three times prior to February 10th; correct?

MS. JODY THOMAS: Yes, correct.

MS. ANNE TARDIF: And the decision to invoke --
or convene, pardon me, the IRG represents and escalation of the
federal government’s response; is that fair?

MS. JODY THOMAS: I would say that’s fair but
it’s best raised with the Clerk of the Privy Council.

MS. ANNE TARDIF: Understood, and we’ll do that,
then, thank you. The other document I want to take you -- or I
guess the only document I’ll take you to is -- these are the --
I can put it up if I need to but, in the interest of time, I can
maybe just put it to you. I was going to take you to the
minutes of the cabinet meeting of February 13th and your mention
of a breakthrough. Do you want me to put it up?

MS. JODY THOMAS: No.

MS. ANNE TARDIF: I’m happy to. No, okay. Can
you just tell us what you were referring to?

MS. JODY THOMAS: I was referring to the reports
of a negotiation between the mayor and convoy organizers.

MS. ANNE TARDIF: Okay. And can we, then, turn
up PB.NSC.CAN.00003245? And bear with me, Ms. Thomas, this is
the last document I’ll take you to, the only and the last. So
these are talking points that Commissioner Lucki sent you to you
and Minister Mendicino on February 14th; correct?

MS. JODY THOMAS: Correct.
MS. ANNE TARDIF: And if we scroll down to page 3, Mr. Clerk, thank you. Yeah, “Moving back to Ottawa”, if we scroll down a little further. There we go. This is the agreement, I take it, that was being reported and that you’re referring to in the last two bullets? Now we’re at the 14th. I appreciate we’re the day after cabinet but this is the same agreement, right?

MS. JODY THOMAS: Yes.

MS. ANNE TARDIF: And if we -- I won’t read it but that’s what’s described there in those bullets ---

MS. JODY THOMAS: Yes.

MS. ANNE TARDIF: --- the last two bullets on page 3. And scrolling down to page 4, Mr. Clerk, there’s the rest of the description, just in fairness to you, Ms. Thomas. That’s the agreement, right?

MS. JODY THOMAS: Yes.

MS. ANNE TARDIF: Okay. And you’ll see there the final bullet on the page -- well, the third bullet from the top: "While this is a step..."

“This” being the agreement.

"...in the right directions in terms of reducing the truckers’ footprint and impact on Ottawa, it is not a win."

That’s what Commissioner Lucki was reporting to you, right?

MS. JODY THOMAS: Yes.

MS. ANNE TARDIF: And do I understand that to mean it’s a step in the right direction but it -- by “it’s not a
win", it’s not going to bring the whole convoy to an end? Is
that what you understood?

MS. JODY THOMAS: Yes.

MS. NATALIA RODRIGUEZ: Excuse me for
interrupting. I just want to be clear. If you go back to the
top of page 1, we have an issue again with the date stamp. You
said February 14th ---

MS. ANNE TARDIF: Oh.

MS. NATALIA RODRIGUEZ: --- but if we subtract
the five hours, it’s the ---

MS. ANNE TARDIF: Thank you.

MS. NATALIA RODRIGUEZ: --- evening of the 13th.

MS. ANNE TARDIF: I -- thank you very much. And
I apologize. I confess, I’ve never quite gotten that Greenwich
time down. So Ms. Thomas, you understood what your counsel
said?

MS. JODY THOMAS: Yes.

MS. ANNE TARDIF: So I apologize if I misled you.

I’m not great with the time change.

Thank you, counsel.

And the last point I want to take you to is that
final bullet. Commissioner Lucki reports:

"This agreement compliments the plan to
reduce the footprint through the work
of the public liaison team. Integrated
Command planners..."

And that’s a reference to the Integrated Command
planners in Ottawa; correct?
MS. JODY THOMAS: Correct.

MS. ANNE TARDIF:

"...need to now incorporate this
development into their resource and
enforcement plan."

And that’s -- that’s the information you had and
the breakthrough -- potential breakthrough, to the extent you
were aware of it; is that correct?

MS. JODY THOMAS: That is correct.

MS. ANNE TARDIF: Thank you very much, Ms.

Thomas. Those are my questions.

COMMISSIONER ROULEAU: Okay, next is the OPS,

please.

--- CROSS-EXAMINATION BY MR. DAVID MIGCOVSKY:

MR. DAVID MIGCOVSKY: Good afternoon, Ms. Thomas.

My name is David Migicovsky and I’m counsel to the Ottawa Police
Service. I understand that as the -- I’ll use the acronyms
because it’s shorter -- as the NSIA, it’s your job to assess
information, and to advise the prime minister, and to coordinate
the flow of intelligence and information from federal agencies
to the prime minister and to Privy Council; is that right?

MS. JODY THOMAS: Yes.

MR. DAVID MIGCOVSKY: And in looking through the
documents -- and I’m happy to call it up if it’s necessary, but
I don’t think it’s contentious -- there’s a message from Zita
Astravas to Bill Blair, I believe. Are you familiar with Zita
Astravas?

MS. JODY THOMAS: I am.
MR. DAVID MIGICOVSKY: And is that his chief of staff?

MS. JODY THOMAS: Yes, she is.

MR. DAVID MIGICOVSKY: And so I think what she indicates -- and this is on January 25th -- is that the ADMs are meeting on the trucker convoy, and then she says that the NSIA is proactively engaged in Hill security and that INTERSECT will be holding a call on January 27th; do you agree with that?

MS. JODY THOMAS: I do.

MR. DAVID MIGICOVSKY: And then, if we could call up, Mr. Clerk, PB.NAC.CAN.00000577, there is a report on Jan 27th in which you asked for an update; is that right?

MS. JODY THOMAS: I believe so, yes.

MR. DAVID MIGICOVSKY: And in that report, if we just look at the first paragraph -- or the second paragraph, it indicated that all key stakeholders -- so that includes the RCMP, the OPP, OPS, PPS, various other entities -- are actively planning and collaborating to ensure public safety; you’d agree with that?

MS. JODY THOMAS: I would.

MR. DAVID MIGICOVSKY: And then the second paragraph, we see that it is also -- it’s planned to be a peaceful demonstration; is that correct?

MS. JODY THOMAS: That’s correct.

MR. DAVID MIGICOVSKY: And -- you can take that down, thank you very much. And I understand there was an ITAC Report on January 26th. And again, I won’t turn it up unless you need to see it, but it ES. NSC.CAN00000156. That ITAC report
notes that the majority of the trucks are exercising -- the truckers are exercising their right to peaceful protest; is that right?

**MS. JODY THOMAS:** That’s correct.

**MR. DAVID MIGICOVSKY:** And then there is another ITAC report, I believe, the following day which is PB.CAN00001237, and it indicates at that point -- so this is January 27th -- that a dedicated group could prolong that protest until January 31st. Do you recall that?

**MS. JODY THOMAS:** I do recall it.

**MR. DAVID MIGICOVSKY:** And it's still, however, expected to be peaceful although recognizing that some extreme views of a vocal minority are on social media advocating, correct?

**MS. JODY THOMAS:** Correct.

**MR. DAVID MIGICOVSKY:** And then there is an INTERSECT meeting on January 27th, so the OPP, RCMP, PPS. INTERSECT's purpose is to collaborate on emergency preparedness and to provide situational awareness?

**MS. JODY THOMAS:** Correct.

**MR. DAVID MIGICOVSKY:** And so I could turn up the report if you need to see it, but I see in that INTERSECT report -- and maybe you can confirm -- that we do see in that report that the plan is the trucks are going to be on Kent Street, they're going to be on Metcalfe, they're going to be on Wellington. You were aware of that from the INTERSECT report?

**MS. JODY THOMAS:** I was.

**MR. DAVID MIGICOVSKY:** In a memo you received on
January 28th, you again expressed -- and I guess this is on the Friday -- that the organizers of the protest had at that point expressed the intent for a peaceful event, correct?

MS. JODY THOMAS: I expressed that or it was sent to me?

MR. DAVID MIGICOVSKY: It was expressed to you, I'm sorry.

MS. JODY THOMAS: Yes, correct.

MR. DAVID MIGICOVSKY: And on January 26th, so going back two days previously, Mr. MacDonald -- Mr. MacDonald reports to you; is that correct?

MS. JODY THOMAS: He does.

MR. DAVID MIGICOVSKY: He indicated to you that the -- in terms of public communication, that public communication was taking its cues from the prime minister and emphasizing the lawful nature of the protest?

MS. JODY THOMAS: Yes, I remember reading that.

MR. DAVID MIGICOVSKY: Right. And so there'd be no basis at that point for law enforcement to stop the protest at that stage, correct?

MS. JODY THOMAS: Not that I am aware of, no.

MR. DAVID MIGICOVSKY: And on February 1st, you gave a talk to something called "Canada and the World's Committee"?

MS. JODY THOMAS: Yes. So that's the partner committee to the Safety, Security, and Emergency Management meeting where it looks at policy and emerging issues essentially about Canadian foreign and defence policy.
MR. DAVID MIGICOVSKY: Okay. And I see at that talk which was on February 1st, that even though you indicate there's some disturbing behaviour that you've now seen, you noted that the protest had largely remained peaceful and that all levels of law enforcement had worked together with federal officials to ensure planning for a safe protest, and that National Security would continue to work closely with law enforcement; is that right?

MS. JODY THOMAS: Correct.

MR. DAVID MIGICOVSKY: I want to move on and talk about negotiation and de-escalation as a method of resolving protests and demonstrations. And the Commission took you to a memo from Mike MacDonald to you, and in that memo the question was asked -- and this was on January 25th -- as to what MPs -- as to whether MPs should meet with the convoy while in Ottawa and whether it was safe and if there was advice for them. Do you remember that memo?

MS. JODY THOMAS: I do remember that memo.

MR. DAVID MIGICOVSKY: And that question wasn't answered at that time as to whether MPs should meet with them, correct?

MS. JODY THOMAS: Correct, and partly because it was not for ADMNSOPS to make that determination broadly.

MR. DAVID MIGICOVSKY: And you would agree with me that sometimes enforcement action can have undesirable results, correct?

MS. JODY THOMAS: It has, yes.

MR. DAVID MIGICOVSKY: If we could turn up
SSM.NSC.CAN00000292, and if we could turn to page 5? That was
the Cabinet, the SSE meeting?

**MS. JODY THOMAS:** Yes.

**MR. DAVID MIGICOVSKY:** And so you'll see on page
5, number 6 if we scroll down -- yes, thanks very much -- you'll
see it was brought to your attention -- this is on February 3rd
-- that the Ottawa Police said that they could not bring the
protest to a conclusion without the assistance of the federal
government due to public safety concerns and risks, that
enforcement would provoke some protesters, correct?

**MS. JODY THOMAS:** Yes.

**MR. DAVID MIGICOVSKY:** And at that meeting, on
page 6 then, item 4, you had indicated that the protest
organizations had indicated an interest in negotiations but no
one had reached out to them, correct?

**MS. JODY THOMAS:** Correct.

**MR. DAVID MIGICOVSKY:** And then on page 8, there
was a chart with a list of various options, and one of the
things we see in the third box on the left-hand side is
engagement with protesters, and the question of a dedicated
minister. So this is on February 3rd that’s raised, correct?

**MS. JODY THOMAS:** A dedicated minister amongst
others.

**MR. DAVID MIGICOVSKY:** Right.

**MS. JODY THOMAS:** Certainly not as the only
option.

**MR. DAVID MIGICOVSKY:** Right, to engage with
them.
And then if we go then to the February 6th SSE meeting -- and again, I won't turn it up in the interests of time, but if you need it, do let me know -- I see at the February 6th meeting there's a reference to the deputy minister reiterating the views of provincial colleagues that negotiation is the preferred option for resolution. Do you recall that?

**MS. JODY THOMAS:** I do.

**MR. DAVID MIGICOVSKY:** And you participated then in a call with the City and the federal officials of the -- and Chief Sloly that the Commission took you to earlier this afternoon, and there was a discussion about negotiation resolving the situation at Confederation Park rather than going tactical. Do you remember that?

**MS. JODY THOMAS:** I do.

**MR. DAVID MIGICOVSKY:** And you expressed enthusiasm that a tactical takedown was avoided by negotiations, correct?

**MS. JODY THOMAS:** Yes.

**MR. DAVID MIGICOVSKY:** And the Commission took you to your talking points on February 8th, and one of -- I see at -- in those talking points that the mayor of Ottawa had requested that the prime minister of Canada appoint a mediator. Do you recall that?

**MS. JODY THOMAS:** I do.

**MR. DAVID MIGICOVSKY:** And when I looked at the IRG minutes of February 10th, I saw that Public Safety Canada reported on a conversation with the lead OPP negotiators that raised the possibility of the protesters leaving and denouncing
the blockades in exchange for a commitment to register their
message with the government. Do you recall that?

MS. JODY THOMAS: I recall it being said, yes.

MR. DAVID MIGICOVSKY: And that came up again, I
think I saw, at the IRG in the tracker of February 12th. In
fact, you're shown as the lead to engage a federal interlocutor
under -- at that meeting, correct?

MS. JODY THOMAS: I don't recall being the lead,
but certainly, Deputy Minister Stewart was leading the
discussions, who would be the interlocutor, names were put
forward. I don't think I was ever identified as the single
lead.

MR. DAVID MIGICOVSKY: I just need another three
minutes, I believe, to finish off this point?

COMMISSIONER ROULEAU: Yes, if you didn't go over
the same documents with each witness and focused on key, that
might shorten your time, but I'll let you go.

MR. DAVID MIGICOVSKY: I'm doing my best.
And so you indicated that there wasn't an
interlocutor. And one of the things that you mentioned to my
friends earlier this afternoon was that the negotiations in
Windsor had failed, correct?

MS. JODY THOMAS: Correct.

MR. DAVID MIGICOVSKY: And when I looked at the
document -- and I won't take you up to it, but it is
PB.NSC.CAN00002963, I see that Deputy Minister Stewart at that
time told Mr. Mendicino that it failed in Windsor because it was
given to them late at night and the enforcement was starting the
next morning, correct?

MS. JODY THOMAS: That is what Deputy Stewart said...

MR. DAVID MIGICOVSKY: Right.

MS. JODY THOMAS: --- is in that memo.

MR. DAVID MIGICOVSKY: And so I just want to take you to one last document. And it was a timeline that had been provided by, I believe it would have been prepared by DOJ. Do you recall that timeline?

MS. JODY THOMAS: I can’t tell you that I recall the specific one you’re referring to. We had multiple timelines.

MR. DAVID MIGICOVSKY: And so when I looked at that timeline, there was a space on it for meetings. And I’ll show you the timeline, just to make it easier.

It’s PB.NSC.CAN. -- I’m sorry, it’s -- I’m sorry, I’m giving you the wrong document number for the timeline. The timeline had two columns on it, and it had a column that said “Meetings” and then it had “Federal Decisions”. Do you remember that?

MS. JODY THOMAS: I don’t recall the document you’re speaking of.

MR. DAVID MIGICOVSKY: Okay. And when I -- if you -- when I looked at that document, and it started prior to the convoy and it went right up until past the emergency. And what I saw on the right-hand side was lots of meetings, dozens of meetings with various committees. But when I looked at the -- and you’d agree that that occurred?
MS. JODY THOMAS: Yes.

MR. DAVID MIGICOVSKY: And when I looked at the column that said “Federal decisions”, page 1 to 21, although there were dozens and dozens of meetings and suggestions about a federal mediator or negotiator, none of that ever happened and the only federal decisions that took place from the start of the convoy to February 14th, were on January 28th, government buildings were locked down, the airspace over Parliament on January 29th was closed, and on January 29th, a request by Ottawa Police to use a parking lot at Cartier Drill Hall was approved, and on February 3rd, a request for RCMP resources was approved. And that’s it until the Emergencies Act?

MS. JODY THOMAS: That doesn’t reflect the significant amount of engagement, consultation, work with provinces, Ontario in the particular case of Ottawa, which is what you’re concerned about, to try and enforce provincial law, the Highway Traffic Act, as an example.

And so it wasn’t achieved, which is part of the problem.

MR. DAVID MIGICOVSKY: Right. And so the one thing that the protestors wanted was a meeting with somebody in the Federal Government. They have that meeting in this process, but they never got that meeting before passing the Emergencies Act? Is that right?

MS. JODY THOMAS: And as was discussed earlier, the reasons why were explained.

MR. DAVID MIGICOVSKY: Okay. Thank you very much. Those are my questions.
COMMISSIONER ROULEAU: Okay. Next, if I could
call on the CCLA, please.

--- CROSS-EXAMINATION BY MS. CARA ZWIBEL:

MS. CARA ZWIBEL: Good afternoon, Ms. Thomas.

Can you see and hear me okay?

MS. JODY THOMAS: I can’t really hear you.

MS. CARA ZWIBEL: How about now?

MS. JODY THOMAS: That’s great. Thank you.

MS. CARA ZWIBEL: Okay. Great. My name is Cara

Zwibel. I am counsel for the Canadian Civil Liberties

Association.

If I could get the Clerk to put up just the

witness summary? WTS00000071 and go to page 11? I don’t know

if I’ll need to refer to this, but just so you have it in front

of you.

Your view, as articulated in your witness

summary, is that the reference to the CSIS definition in the

Emergencies Act should be reconsidered. Is that right?

MS. JODY THOMAS: Yes.

MS. CARA ZWIBEL: Okay. And in your witness

summary, there’s a statement that the CSIS definition requires

the existence of a known actor carrying out activities in

support of the threat of violence against persons or property;

correct?

MS. JODY THOMAS: A known actor or group, yes.

MS. CARA ZWIBEL: Okay. And your colleague,

Assistant Secretary MacDonald, said that in order for the 2(c)

definition to be met, CSIS targets would have to move from using
rhetoric to inciting or carrying out serious violence. Do you agree with that statement?

I’m sorry, are you there? I’ve lost the picture of the ---

COMMISSIONER ROULEAU: Okay. You’re now back.

MS. CARA ZWIBEL: Okay. Thank you. Sorry.

Is that a statement that you agree with?

MS. JODY THOMAS: The definition as into -- yes, I think that it needs to be modernized, just as the Director of CSIS has indicated that the CSIS Act needs to be modernized. That element does as well.

MS. CARA ZWIBEL: Okay. But the statement that in order for the 2(c) definition to be met, CSIS targets would have to move from using rhetoric to inciting or carrying out serious violence, I’m going to suggest to you is a misunderstanding of the CSIS definition, because individuals can’t be targets of CSIS if they haven’t already determined that there’s been -- if that 2(c) threshold -- that threshold has been met. Would you agree with that?

MS. JODY THOMAS: I would.

MS. CARA ZWIBEL: Okay. And your view is that the CSIS definition, you’ve said before, threat to the security of Canada, is very narrow?

MS. JODY THOMAS: Very narrow and outdated.

MS. CARA ZWIBEL: Okay.

MS. JODY THOMAS: I’m not saying it should be broadened. I’m saying it should be modernized.

MS. CARA ZWIBEL: Okay. And because you
understand -- sorry, not trying to interrupt you. Because you understand why there should be a high threshold before the State can start engaging in surveillance of its citizens?

MS. JODY THOMAS: I don’t disagree with that at all. I didn’t say it should be broadened. I said it should be modernized.

MS. CARA ZWIBEL: Right. Because unpopular -- expressing unpopular political views shouldn’t be enough to engage the surveillance apparatus of the state?

MS. JODY THOMAS: And that’s not what I’ve said.

MS. CARA ZWIBEL: Okay. And disagreement with the government should not be enough?

MS. JODY THOMAS: I agree.

MS. CARA ZWIBEL: But your view is that the Emergencies Act should have a broader definition of what constitutes a threat to the security of Canada? Is that right?

MS. JODY THOMAS: I think that both Acts were written in the 1980s and they both need to be modernized to reflect the reality of the nature of threats that are occurring in 2022.

MS. CARA ZWIBEL: Okay. But again, you understand that in the case of the Emergencies Act, there were reasons why we would want a high threshold?

MS. JODY THOMAS: I’m not disagreeing with the threshold. I’m just -- I’m speaking about an act that was written 30 years ago that needs to be modernized to reflect the reality of the kinds of threats that exist in the world today.

MS. CARA ZWIBEL: Okay. And we’d want a high
threshold because the Emergencies Act allows the government to bypass the Parliamentary process and rule by executive order, at least for a brief period of time?

MS. JODY THOMAS: Right. But does allow for all the transparency of going through the Parliamentary process and for processes like this one.

MS. CARA ZWIBEL: Right.

MS. JODY THOMAS: So I am not saying that the government should have more expansive power or a lower threshold. I’m saying that the Act should not sit through the years untouched.

MS. CARA ZWIBEL: Okay. There’s no disagreement there. I think we probably have different characterizations of what’s a high threshold.

The -- you also understand, and maybe -- I’m not sure if this is the case, I was trying to follow your answers to my friend, Mr. Miller, but although you believe that the definition should be reconsidered in the Emergencies Act, you understand that currently, the definition of a Public Order Emergency in the Emergencies Act is tied exclusively and exhaustively to the definition in the CSIS Act?

MS. JODY THOMAS: The Federal Government legal opinion is different and there will be legal arguments to that end. I’m not the person to make that argument.

MS. CARA ZWIBEL: Okay. One other area I’d like to cover, your office, you’ve mentioned, is Consumer of Intelligence, and you receive intelligence from CSIS, CSEC, ITAC, Global Affairs, Foreign Intelligence partners, all of
those?

**MS. JODY THOMAS:** Correct.

**MS. CARA ZWIBEL:** And in this case, I think there was also mention in the witness summary of receiving information from the CBSA, from Immigration, and Refugees, Citizenship Canada, from Parliamentary Protective Services, and from the Department of National Defence?

**MS. JODY THOMAS:** I actually don’t receive anything personally from Parliamentary Protective Services, but the rest are true.

**MS. CARA ZWIBEL:** Okay. And on the IRG minutes that you were taken to earlier by Commission Counsel, that tracker, that was a place where you had identified this intelligence gap that you characterized it as, and it said there “open source, non-criminal, non-terrorist”.

So I just want to put a proposition to you, and you can tell me if you agree or disagree, and that proposition is this, that the difference between a society where individuals are monitored by the state, where there are no grounds to believe that they are going to engage in criminal or terrorist activity, and one way they are not, is the difference between a surveillance state and a free society. Is that a proposition that you would agree with?

**MS. JODY THOMAS:** Well, that’s exactly what I’ve said, that we need to understand trends but we don’t need to understand -- we need to animize that information so that we’re not tracking individuals. So I agree with you. I just think that we have to have an understanding of growing threats that
are not yet at a threshold or a potential that they’re under CSIS investigation or a criminal investigation. That when there is something like a convoy as we saw here in Ottawa, and there is open source information that “We’re going to target a school and we’re going to do a slow roll around the school.”

    And that information maybe is being monitored by the police so they can do something. I don’t actually know. But there needs to be an understanding that the individual who said that isn’t under a criminal investigation. We’re not even sure that the behaviour is criminal but it says something about what is happening in the middle of a crisis or an incident. I don’t want to know who said it. And I need a legal framework to do this.

    So it’s not monitoring. It’s not individuals. It’s understanding trends just as we do with foreign intelligence. And so I would like to agree with what you’re saying but I don’t actually agree with your framing of it.

    MS. CARA ZWIBEL: Okay.

    MS. JODY THOMAS: In terms of what I am proposing is required.

    MS. CARA ZWIBEL: Okay.

    COMMISSIONER ROULEAU: You are well out of time, so you’re ---

    MS. CARA ZWIBEL: Thank you, Commissioner.

    That’s fine. I’m done, thank you.

    COMMISSIONER ROULEAU: Thank you. Next I’ll call on the counsel for Former Chief Sloly.

    MS. REBECCA JONES: Good evening. Rebecca Jones,
counsel for Former Chief Sloly.

--- CROSS-EXAMINATION BY MS. REBECCA JONES:

MS. REBECCA JONES: Ms. Thomas, am I right that your very impressive experience does not include experience within a police department?

MS. JODY THOMAS: Like all of my predecessors?

That’s true.

MS. REBECCA JONES: And so that means that you don’t have specific experience figuring out resource requests for public order operations, for example?

MS. JODY THOMAS: No, I would rely on experts for that information if I required it and I’m not sure I would.

MS. REBECCA JONES: Right, okay. And that’s exactly what I was going to say, is that you would rely on experts such as the RCMP or your colleagues in public safety, emergency preparedness, that sort of thing for that information?

MS. JODY THOMAS: Correct.

MS. REBECCA JONES: And you’ve testified about the incredibly complex situation occurring in Ottawa which you saw as a national security threat, right?

MS. JODY THOMAS: Yes.

MS. REBECCA JONES: And we’ve now hear a whole parade of witnesses who, while disagreeing on a lot, have all agreed on a couple of things. First, that the protest was unlike anything they had ever seen, right?

MS. JODY THOMAS: Correct.

MS. REBECCA JONES: And second, that the OPS did not have the resources they required to end this occupation
until around February 17th.

MS. JODY THOMAS: Correct.

MS. REBECCA JONES: Okay. And the Commissioner of the OPP testified that ultimately over 2000 officers were required to end the occupation, right?

MS. JODY THOMAS: Yes.

MS. REBECCA JONES: Okay. Now, what I want to do with my time with you is to explore resource requests and specifically what the federal government, through you, understood about the resources that were being provided to the RCMP, by the RCMP to the OPS and Chief Sloly.

So if we can pull up please OPS6093. And if we can go to page 4, please.

So this is an email from Chief Sloly to the Commissioner of the RCMP and if we scroll down -- on February 2nd, I should have said. And then if we scroll down we see a request to the RCMP for 50 uniformed members, a level of leadership to provide support for teams, and three public order units. Right?

MS. JODY THOMAS: Yes.

MS. REBECCA JONES: And if we scroll up, we’ll see that Commissioner Lucki advised Chief Sloly in the first paragraph there, that she had reviewed the request with her team but that the RCMP was experiencing a draw on their resources and were not able to provide that assistance, right?

MS. JODY THOMAS: That’s what the letter says, yes.

MS. REBECCA JONES: Okay. And if we scroll up
we’ll see that by the 3rd it was still the case -- if you go all
the way up. Well, in any event, it says that by the 3rd those
resources still hadn’t been provided and there had been no
promise to provide them.

MS. JODY THOMAS: That’s what the email says.

MS. REBECCA JONES: Okay. And were you following
this?

MS. JODY THOMAS: Not in this level of detail at
all, nor have I ever seen this.

MS. REBECCA JONES: Okay.

MS. JODY THOMAS: Yes, I’m reading what’s said
and agreement with you.

MS. REBECCA JONES: Perfect. And so that’s what
I want to know. You would have been relying on the RCMP to be
dealing with these resource requests and then briefing you.

MS. JODY THOMAS: Yes.

MS. REBECCA JONES: Okay.

MS. JODY THOMAS: And the Deputy Minister of
Public Safety, and the Minister of Public Safety in fact more
than me.

MS. REBECCA JONES: Right. Everyone would be
relying on the RCMP with respect to these resource requests.

MS. JODY THOMAS: Yes.

MS. REBECCA JONES: Okay. I’m not going to pull
it up in the interests of time but on February 3rd in the evening
Minister Mendocino tweets that:

“The RCMP has approved all additional officers requested.”

And we heard evidence -- have you watched the
evidence of the RCMP yesterday?

**MS. JODY THOMAS:** As much as I could.

**MS. REBECCA JONES:** Okay. And we heard from Deputy Commissioner Duheme of the RCMP that there was a mix-up, that those officers that were requested -- there was a statement made that 250 officers had been provided by the RMP but that was a mix-up? Did you hear that evidence?

**MS. JODY THOMAS:** I did not hear that evidence.

**MS. REBECCA JONES:** Okay. And we also heard evidence from Commissioner Lucki that until after February 2nd the number of RCMP members deployed to Ottawa did not go above 50 or 60 officers.

**MS. JODY THOMAS:** I did not hear her say that.

**MS. REBECCA JONES:** Okay. At the time that -- leading up to let’s say the period of the Mayor’s letter requesting the 1800 resources on February 7th -- leading up to that time is it fair to say that you were under the impression from your colleagues at the RCMP that all of the resource requests being made by the OPS were being fulfilled?

**MS. JODY THOMAS:** I can’t say that unequivocally. We knew that the RCMP was stretched. They had resources that they had to re-deploy from across the country to Ottawa and they also had responsibility for their protected units. So I would need the numbers in front of me exactly to recreate data to be able to answer that unequivocally.

I’m willing to say that there was confusion about the number of RCMP provided.

**MS. REBECCA JONES:** Right. And I'm not asking
you to actually comment on the deployment levels but rather the understanding of the government as we saw in Minister Mendocino’s tweet that everything that OPS was asking for from the RCMP had been fulfilled.

**Ms. Jody Thomas:** In that I don’t know the conversation between Commissioner Lucki and Minister Mendocino, I prefer not to comment.

**Ms. Rebecca Jones:** Okay. So why don’t we move forward then to the Mayor’s letter. We don’t need to pull it up; you’re familiar with the letter requesting the 1800 officers, right?

**Ms. Jody Thomas:** Right.

**Ms. Rebecca Jones:** And the following day you briefed Cabinet, and if we can pull up SSM.NSC.CAN.246, please. So this is the day after the resource request. And if we look at the fourth bullet, this is your briefing. You say:

“The Chief continues to communicate publicly his view that OPS lacks resources to effectively manage the situation. This may be somewhat true but may also be a strategic tactic.”

So I want to just break that down.

“This may be somewhat true”; we can now agree that it was true, that the Chief required those resources, correct?

**Ms. Jody Thomas:** Correct. At the time this was written I would not necessarily have seen that letter because it
didn’t come to me.

MS. REBECCA JONES: The letter about the

resources ---

MS. JODY THOMAS: Right.

MS. REBECCA JONES: --- that were from the mayor.

MS. JODY THOMAS: Yes.

MS. REBECCA JONES: Okay. So when you’re

commenting on the OPS lacking resources and you’re saying it may

be somewhat true, what I'm asking you now is you’ll acknowledge

now that you know it was entirely true that the OPS lacked those

resources.

MS. JODY THOMAS: I know in retrospect for the

size the convoy grew to and the way it became entrenched into

the city, Chief Sloly did not have the resources to manage it.

MS. REBECCA JONES: Perfect. And then you say,

“It may also be a strategic tactic.” And I take it that that

wasn’t something that you arrived at yourself; it was something

that you were being briefed on?

MS. JODY THOMAS: Yes, that's correct.

MS. REBECCA JONES: And who briefed you on that?

MS. JODY THOMAS: The Commissioner of the RCMP.

MS. REBECCA JONES: Okay. So she told you that

the request for resources may be a strategic tactic?

MS. JODY THOMAS: Correct.

MS. REBECCA JONES: Okay. Can we agree that this

kind of communication to Cabinet would lead Cabinet and Federal

Government officials to question what the OPS was asking for in

terms of resource requests?
MS. JODY THOMAS: Without betraying what was discussed in Cabinet, I think that Ministers were very open to understand what OPS's needs were.

MS. REBECCA JONES: Right. But we'll see that what they're being briefed on is that this request might be somewhat true but might be a tactic?

MS. JODY THOMAS: And that was the thought at the time.

MS. REBECCA JONES: Right. And we now know that was incorrect.

MS. JODY THOMAS: Correct.

MS. REBECCA JONES: Okay. And then, you testified a moment ago that you weren't really sure what the RCMP was saying in terms of whether they had fulfilled all resource requests. We now know that there was the request for 1,800 on February 7th, and what I'm curious about is that there are multiple times after that date where the RCMP was still indicating that it had provided all resources that the OPS had requested. Do you remember that?

MS. JODY THOMAS: I actually can't say that unequivocally.

MS. REBECCA JONES: Okay. So why don't we quickly pull up SSM.NSC.CAN.209.

So we've looked at this a couple of times today. This is the February 10th Incident Response Group Meeting?

MS. JODY THOMAS: M'hm.

MS. REBECCA JONES: And if we go to page 5, if you look at the first big paragraph right in the middle, you see
"The RCMP has provided all resources requested by the OPS."

That's what I would have been briefed.

MS. REBECCA JONES: Right. And that's all I'm asking, is does that refresh your recollection that you were still being briefed after the Mayor's letter that the RCMP had provided all of the resources that the OPS had requested?

MS. JODY THOMAS: I can agree with that. What I can't say is that I knew about the Mayor's letter or saw it at the time.

MS. REBECCA JONES: That's a different issue.

MS. JODY THOMAS: Okay.

MS. REBECCA JONES: A different issue.

MS. JODY THOMAS: But -- so I couldn't see them -- I -- yes.

MS. REBECCA JONES: Okay.

MS. JODY THOMAS: Okay. We're agreeing.

MS. REBECCA JONES: We are agreeing. You were not doing your own assessment ---

MS. JODY THOMAS: Correct.

MS. REBECCA JONES: --- about whether or not OPS had all the resources they asked for, you were relying on the RCMP?

MS. JODY THOMAS: Correct.

MS. REBECCA JONES: And the RCMP is still telling you on the 10th that they are providing all of the resources that the OPS requested?
MS. JODY THOMAS: Correct.

MS. REBECCA JONES: Okay. And ---

MS. JODY THOMAS: My one question would be did the OPS request 1,700 or 1,800 resources of the RCMP or of police support writ large? And I don't know the answer to that.

MS. REBECCA JONES: And the answer -- and I can tell you the answer to that was from both federal policing ---

MS. JODY THOMAS: Okay.

MS. REBECCA JONES: --- and provincial and municipal policing.

MS. JODY THOMAS: Okay.

MS. REBECCA JONES: Okay. Thank you, those are my questions.

MS. JODY THOMAS: Thank you.

COMMISSIONER ROULEAU: Okay.

Next, is the Democracy Fund, JCCF.

--- CROSS-EXAMINATION BY MR. ROB KITTREDGE:

MR. ROB KITTREDGE: Hi, Ms. Thomas. I'm Rob Kittredge, counsel for the Justice Centre for Constitutional Freedoms.

I only have 10 minutes with you today, and I'm going to try and cover a fair amount of territory. So to the extent possible if you can give me a yes or no questions or yes or no answers that would be very helpful. Obviously, answer where you have to, but if we can plow through this that would be great.

I imagine your job comes with a pretty high level of security clearance. Would you -- would it be fair to say
that there is no intelligence information that Cabinet or the PM is cleared to see that you can't see?

MS. JODY THOMAS: That's true.

MR. ROB KITTREDGE: You attended the Incident Response Group meetings where the invocation of the Emergencies Act was considered and regularly briefed the PM on national security issues during the period leading up to the invocation of the Act; right?

MS. JODY THOMAS: Yes.

MR. ROB KITTREDGE: You would know about any protests, associated acts or threats of serious violence that Cabinet, the IRG, and the Prime Minister knew about when they were considering whether to invoke the Emergencies Act; right?

MS. JODY THOMAS: As I have said earlier, not necessarily.

MR. ROB KITTREDGE: Not necessarily.

MS. JODY THOMAS: Right.

MR. ROB KITTREDGE: All right.

MS. JODY THOMAS: So I am cleared to see everything ---

MR. ROB KITTREDGE: Right.

MS. JODY THOMAS: --- that's different than seeing everything.

MR. ROB KITTREDGE: Okay. Cabinet, the IRG, and the Prime Minister were aware that CSIS had determined that the protests didn't pose a threat to the security of Canada, as that term is defined in the CSIS Act.

MS. JODY THOMAS: In the very narrow confines of
MR. ROB KITTREDGE: Right. Cabinet, the IRG, and the Prime Minister were aware that CSIS was concerned that invoking the Emergencies Act risked further inflaming IMVE rhetoric and could give rise to a risk of serious rhetoric. Is that true?

MS. JODY THOMAS: Yeah, there was a responsible act to do that analysis by CSIS.

MR. ROB KITTREDGE: Right. You're not aware of any acts of serious violence associated with the protests in Ottawa or at border crossings, are you?

MS. JODY THOMAS: It depends on the definition of "serious violence". There was continual violence in the streets of Ottawa, but there wasn't anything that you could point to like January 6th.

MR. ROB KITTREDGE: And -- I mean, when you say "continual violence", what kind of level of violence are you talking about?

MS. JODY THOMAS: As has been reported by the OPS and by the City and by the residents who have testified, harassment, people being followed, people being intimidated, the noise, the pollution ---

MR. ROB KITTREDGE: Okay.

MS. JODY THOMAS: --- the mess.

MR. ROB KITTREDGE: Right, but not serious violence?

MS. JODY THOMAS: There was some incidents that were early reported, but I don't know if they -- you know, the
outcome was directly related to the convoy participants or just
the general atmosphere in downtown at that point in time.

MR. ROB KITTREDGE: Okay. But you can't point me
to an example of an incident of serious violence.

MS. JODY THOMAS: No, not serious violence.

MR. ROB KITTREDGE: All right. There wasn't any
espionage associated with the protests or blockades was there?

MS. JODY THOMAS: That's already been
established, no.

MR. ROB KITTREDGE: Right. And there wasn't any
sabotage?

MS. JODY THOMAS: Not as it's defined in the CSIS
Act.

MR. ROB KITTREDGE: Right. and CSIS found no
indication of foreign state interference at the protests, and
you don't have any reason to disagree with their assessment do
you?

MS. JODY THOMAS: No.

MR. ROB KITTREDGE: Okay. Your interview summary
says:

"The [National Security and
Intelligence Advisor] assesses
intelligence, [and] advises the Prime
Minister on national and international
threats to the security of Canada..."

When you use the term "threats to the security of
Canada" there, that's used in a general sense and not in the
restrictive sense set out in section 2 of the CSIS Act; right?
MS. JODY THOMAS: It's in a broad sense.

MR. ROB KITTREDGE: Right. In other words, in your role as National Security and Intelligence Advisor, you're not governed by the CSIS Act.

MS. JODY THOMAS: The information I receive from CSIS is.

MR. ROB KITTREDGE: Sure. But your assessment of what a threat to the security ---

MS. JODY THOMAS: Right.

MR. ROB KITTREDGE: --- of Canada isn't governed by the CSIS Act.

You advise the Prime Minister on anything you consider to be a threat to the security of Canada, whether those threats meet the definition set out in section 2 of the CSIS Act or not; right?

MS. JODY THOMAS: No. That is -- you're misrepresenting. I would not brief on a threat where I did not have intelligence from one of the intelligence agencies that I had thoroughly discussed with the intelligence agencies.

MR. ROB KITTREDGE: Right. But what you consider a threat that's worth bringing to the attention of the Prime Minister might be something that doesn't strictly fall into the limited definition of section 2 of the CSIS Act; right?

MS. JODY THOMAS: Yes, but it would be very much consulted with the heads of those agencies.

MR. ROB KITTREDGE: Sure. But you're not as restricted in scope as ---

MS. JODY THOMAS: I am not.
MR. ROB KITTREDGE: --- CSIS is? Okay.

In the time leading up to the invocation of the Emergencies Act, you felt that the protests in Ottawa and at border crossings constituted a threat to the security of Canada; right?

MS. JODY THOMAS: I did.

MR. ROB KITTREDGE: But not in the sense contemplated in section 2 of the CSIS Act?

MS. JODY THOMAS: Correct.

MR. ROB KITTREDGE: All right. In your interview summary, you say that:

"CSIS's legal mandate obliges it to assess threats to national security through a very narrow lens." (As read)

Do you remember saying that?

MS. JODY THOMAS: I do.

MR. ROB KITTREDGE: And that narrow lens, basically boils down to the definition of threat to the security of Canada, as set out in section 2; right?

MS. JODY THOMAS: No. CSIS is restricted in terms of the threshold they have to meet in order to open an investigation, to get a warrant, and pursue collecting intelligence. There are threats to Canada that are broader than that. Foreign interference is a threat to Canada, as an example.

MR. ROB KITTREDGE: Right.

MS. JODY THOMAS: That doesn't fall under that definition of the CSIS Act.
MR. ROB KITTREDGE: Okay. I -- if I'm understanding your testimony earlier, it's you -- your -- it's your opinion that the Emergencies Act doesn't require a section 2 threat to the national security of Canada.

MS. JODY THOMAS: That's not what I said. I said that the Public Order Emergency is assigned meaning by the CSIS Act but is not restricted by the CSIS Act.

MR. ROB KITTREDGE: Right.

MS. JODY THOMAS: And so a Public Order Emergency is broader than as defined by the CSIS Act.

MR. ROB KITTREDGE: So does a section 2 CSIS Act threat to the security of Canada have to exist in order for a Public Order Emergency to exist under the Emergencies Act?

MS. JODY THOMAS: Well, as we've seen, the answer to that, in my opinion, is no.

MR. ROB KITTREDGE: Okay. Well, I guess I'd like to walk you through the Emergencies Act and maybe see if I can persuade you that the answer is not no.

MS. JODY THOMAS: Well, as I said, you're going to receive legal arguments and I'm not going to respond to you --

MR. ROB KITTREDGE: Fair enough.

MS. JODY THOMAS: --- in terms of the legal view. You're a lawyer; I am not. And our lawyers will be making arguments.

MR. ROB KITTREDGE: Fair enough. But I just want to show you the section of ---

MS. JODY THOMAS: I've read the section.
MR. ROB KITTREDGE: --- the Act and we'll see where we get.

MS. JODY THOMAS: No, I've read the section.

MR. ROB KITTREDGE: Okay. But you don't mind my showing it to ---

MS. JODY THOMAS: Sure.

MR. ROB KITTREDGE: --- I imagine?

All right. Mr. Clerk, can we pull up the Emergencies Act? It's CCF00007.

When did you first read the Emergencies Act?

MS. JODY THOMAS: The Emergencies Act, when I arrived in PCO.

MR. ROB KITTREDGE: Which would be when?

MS. JODY THOMAS: In January.

MR. ROB KITTREDGE: Okay. And when did you first read the CSIS Act?

MS. JODY THOMAS: I haven't -- 5, 10 years ago.

MR. ROB KITTREDGE: Yeah. Okay.

Can you take us to the section of the Emergencies Act that defines a Public Order Emergency?

COMMISSIONER ROULEAU: I think it's better down.

UNKNOWN SPEAKER: Section 16.

MR. ROB KITTREDGE: There we go. So if we look at the definition of Public Order Emergency, can you read that to us, that paragraph that starts with "Public Order Emergency" in bold?

MS. JODY THOMAS: And you'd like me to read it?

MR. ROB KITTREDGE: Yes, please.
"Public Order Emergency means an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency."

And the next paragraph.

"As the meaning assigned by section 2 of the Canadian Security Intelligence Service Act."

Right. So on a plain reading, not a legal interpretation, but on a plain reading, doesn't that say to you that the circumstances that constitute the emergency have to arise from a section 2 ---

MS. DONNAREE NYGARD: Excuse me.

MR. ROB KITTREDGE: --- Security of Canada?

MS. DONNAREE NYGARD: The witness has already said she's not going to interpret the Act. She's not a lawyer.

MR. ROB KITTREDGE: I mean, it's a fairly plain English reading, but I suppose ---

COMMISSIONER ROULEAU: (Audio fail) lawyer, if that's all it required, you'd normally be out of business. So --

MR. ROB KITTREDGE: Fair enough, fair enough.

All right.

COMMISSIONER ROULEAU: You have one minute left and so I'm just warning you that time's running out, so ---

MR. ROB KITTREDGE: Okay. Fair enough.
I guess what, beyond that definition, would you say is a threat to the security of Canada?

**MS. JODY THOMAS:** There's a range of threats that need to be considered when you're talking about this country, economic security; the threat of IMVE; the rhetoric of threats against public figures; the inability to conduct a livelihood in the City of Ottawa -- as an example, the Coutts border blockade if we're going to speak about the specific example; the threat to public institutions and the undermining of the confidence in public institutions. Those things all constitute a threat.

**MR. ROB KITTREDGE:** Right, but those aren't mentioned in section 2 of the ---

**MS. JODY THOMAS:** You asked.

**MR. ROB KITTREDGE:** --- CSIS Act.

**MS. JODY THOMAS:** You asked me what did, and I answered your question.

**MR. ROB KITTREDGE:** Right.

**MS. JODY THOMAS:** And the lawyers will talk about the CSIS Act.

**MR. ROB KITTREDGE:** Okay. But those aren't mentioned in section 2 of the CSIS Act? All right. Fair enough.

Okay. Well, thank you very much. Those are my questions.

**COMMISSIONER ROULEAU:** Okay. Next, the Windsor Police Service.

--- CROSS-EXAMINATION BY MR. THOMAS McRAE:

**MR. THOMAS McRAE:** Thank you, Mr. Commissioner.
My name is Tom McRae and I appear for the Windsor Police Service.

Mr. Clerk, could you please turn up the witness' witness statement, 00000071, WTS?

Sorry, if you could go down to the top of page 8, please.

Now, Ms. Thomas, is it correct -- and I'm just, while the clerk does that -- that you have been in the federal public service for the last 20 years, at least?

MS. JODY THOMAS: At least.

MR. THOMAS McRAE: Thank you. At the top of this paragraph, it says, "NSIA Thomas reflected," and then it goes on, "it could have been better, the sharing of information to -- for instance."

Then:

"ASC MacDonald added that the implicated law enforcement agencies, OPS, SQ, OPP, WPS, and RCMP maintained distinct intelligence silos."

Is that a view that you hold, Ms. Thomas?

MS. JODY THOMAS: It is. It's improved since this convoy, but at the time, yes.

MR. THOMAS McRAE: Your earlier evidence today, as I noted it, was that you were aware of Operation Hendon; isn't that correct?

MS. JODY THOMAS: I was made aware of Operation Hendon after the convoy. I found out that ---

MR. THOMAS McRAE: Oh.
MS. JODY THOMAS: --- we were -- that ITAC and other elements of the federal national security community did see some of their reports, but I didn’t, not directly.

MR. THOMAS McRAE: Are you aware that in fact, the Hendon Reports to Project Hendon was a sharing of information, at least amongst OPS, WPS, and the OPP?

MS. JODY THOMAS: I am now, yes.

MR. THOMAS McRAE: Okay. So they are not truly distinct intelligence silos; isn't that correct?

MS. JODY THOMAS: It depends on where they're shared and how they're used.

MR. THOMAS McRAE: Okay. Thank you. Mr. Commissioner, that’s all of my questions. I would like to throw the balance of my time, if possible, to the City of Windsor please.

COMMISSIONER ROULEAU: That’s a new arrangement. So I'll take it under advisement.

City of Windsor.

--- CROSS-EXAMINATION BY MS. JENNIFER KING:

MS. JENNIFER KING: Thank you, Mr. Commissioner. Hopefully, we can have those extra two or three minutes.

Good evening. My name is Jennifer King. I am legal counsel to the City of Windsor.

I would like to start with the issue of the line between a lawful and unlawful protest.

And if Mr. Clerk could please bring up WIN00000511?
This is the February 11th injunction order granted in Windsor. You were aware of this order at the time?

**MS. JODY THOMAS:** I was.

**MS. JENNIFER KING:** Okay. If you could please scroll to the bottom of page 2, paragraph 4?

And here, the court ordered that:

"The Defendants and any persons having notice of this order are hereby restrained and enjoined from impeding or blocking access to the Ambassador Bridge and indirect or direct-approaching roadways and access points for 10 days from the date of this order."

So you'll agree with me that -- sorry, this order was made effective February 11th, 7:00 p.m., Ms. Thomas.

So when the order became effective, any person having notice of this order who continued to impede or block access to the bridge would contravene the order, right?

**MS. JODY THOMAS:** Yes.

**MS. JENNIFER KING:** And disobeying a court order, you're aware that that is contrary to the Criminal Code, section 127?

**MS. JODY THOMAS:** I wasn’t aware of the section, but yes.

**MS. JENNIFER KING:** Okay. And you're aware that protesters continued to impede and block access to the bridge after 7:00 p.m. on February 11th?
MS. JODY THOMAS: Yes.

MS. JENNIFER KING: Does this inform your assessment of whether the Ambassador Bridge blockade was lawful protest, at least after this order became effective?

MS. JODY THOMAS: Well, it would have been an unlawful protest.

MS. JENNIFER KING: Okay. Mr. Clerk, could you please bring up PB.CAN00001661? I understand from your witness summary that you spoke with the U.S. Homeland Security Advisor on February 9th and 10th?

MS. JODY THOMAS: I did.

MS. JENNIFER KING: Is that right? Okay.

MS. JODY THOMAS: Yes.

MS. JENNIFER KING: So this is an email from Martin Loken. Who's Martin Loken?

MS. JODY THOMAS: Martin Loken at that time was the -- a deputy to the ambassador in Washington ---

MS. JENNIFER KING: So it appears ---

MS. JODY THOMAS: --- to our ambassador.

MS. JENNIFER KING: Thank you. So it appears that Mr. Loken sent this email to you before one of these calls with the U.S. Homeland Security Advisor. Do you recall this email?

MS. JODY THOMAS: I do now. I don’t recall it from the time.

MS. JENNIFER KING: Okay.

MS. JODY THOMAS: I've seen it.
MS. JENNIFER KING: And you'll see partway through the page there's -- he suggests some additional messaging. And I'll just take you to the third bullet.

And he says:

"Critical that CBSA and CPB work together with the relevant police of jurisdiction to ensure traffic keeps moving."

Do you agree with that message and convey that message to the U.S. Homeland Security Advisor at the time?

MS. JODY THOMAS: Yes.

MS. JENNIFER KING: Okay. And then continuing on that bullet:

"Recognize that international crossings are national security issue."

Do you understand what Mr. Loken meant here?

MS. JODY THOMAS: Yes, I do, that the economic viability of the country is a national security issue and it's considered that on both sides of the border.

MS. JENNIFER KING: And you agree with that assessment?

MS. JODY THOMAS: I do.

MS. JENNIFER KING: Is that something you conveyed to the U.S. Homeland Security Advisor at the time?

MS. JODY THOMAS: It wasn't -- I did not need to convey it. He raised it.

MS. JENNIFER KING: And you both agreed that it was a national security issue?
MS. JODY THOMAS: Yes.

MS. JENNIFER KING: Thank you. I'm showing you a lot of documents, and hopefully I'll get through it quickly.

So if you could please pull up SSM.CAN -- I'm not sure if I've got this right -- it's 00002694, Mr. Clerk.

What I want to show you is that the next day on February 11th, you participated in an opposition leaders' briefing. Do you recall that?

MS. JODY THOMAS: I do.

MS. JENNIFER KING: So that's not it. Oh no, there it is. Yes, it is. Thank you, Mr. Clerk. So if you could just go to page 2 in the middle of the page?

You gave an update on the Ambassador Bridge blockade. Do you recall that?

MS. JODY THOMAS: Yes.

MS. JENNIFER KING: A little bit further down, Mr. Clerk. You’ll see it says “ON” there. Okay.

So you state there:

“All 3 levels working together on this…”

Are you referring to three levels of government there?

MS. JODY THOMAS: Yes.

MS. JENNIFER KING: Okay.

MS. JODY THOMAS: This is somebody’s notes of what I said, rather than verbatim transcript. But yes.

MS. JENNIFER KING: But that’s what you said? That all three levels of government were working together on the issue of the Ambassador Bridge?
MS. JODY THOMAS: Yes.

MS. JENNIFER KING: Okay. And if you continue on in that paragraph:

“Working with US federal, state, municipal, communication is good.
So it’s your understanding that the Federal Government was getting the information that it required from Windsor?

MS. JODY THOMAS: We were getting some information from Windsor; we were getting some information from the United States.

MS. JENNIFER KING: Okay.

MS. JODY THOMAS: And then the policing information, you would have to speak to Commissioner Lucki about.

But in terms of working collectively with the two border agencies on both sides of the border, along with Homeland Security in the White House, people were working well, they had the same goal, and it was opening that bridge as quickly as possible.

MS. JENNIFER KING: Okay. And Mr. Clerk, if you could scroll down to just under the redactions on that page? So at the bottom of the page.

So you’re referring to questions about jurisdiction being constant here, but this was not a question, or concern, or an issue at the operational level, at least in Windsor.

Are you aware -- would you agree that any
questions about jurisdictional issues did not impact the operational response of the police and local authorities on the ground in Windsor?

MS. JODY THOMAS: I agree with that.

MS. JENNIFER KING: Okay.

MS. JODY THOMAS: But there were issues, jurisdictional issues that CBSA was bringing to our attention.

MS. JENNIFER KING: Okay.

MS. JODY THOMAS: The City versus who is accountable for the port of entry. And I think that Mr. Ossowski spoke about that yesterday, as did Mr. Keenan.

MS. JENNIFER KING: As far as you’re aware, there was no delay or operational issues with the response due to these questions that arose?

MS. JODY THOMAS: I can’t say that unequivocally, no.

MS. JENNIFER KING: Okay. I think this will probably be my final question. So in your witness summary, you state that:

"The primary goal of the decision to invoke the Act was to provide local and provincial police forces with additional policing authorities that would allow them to manage copy cat protests and blockades in their jurisdictions." (As read)

Are you aware of any consultation with the local police forces and municipalities with respect to the authorities required to manage the protests and blockades in their
jurisdictions?

MS. JODY THOMAS: I’m not aware, but I was not a part of the consultation outside of the Federal Government.

MS. JENNIFER KING: Well would you agree with me that it would have been useful to consult with the police, including police of jurisdiction and local authorities, to get information about what would be useful on the ground?

MS. JODY THOMAS: Yes, I would agree.

MS. JENNIFER KING: Thank you. Those are my questions.

And thank you for the indulgence, Commissioner.

COMMISSIONER ROULEAU: Okay. Thank you.

Next is the National Police Federation.

MS. LORNE PEIRCE: Hello, Lorne Peirce for the National Police Federation. Our questions have been canvassed by the previous parties. We have no further questions. Thank you.

COMMISSIONER ROULEAU: Thank you.

The Government of Saskatchewan.

--- CROSS-EXAMINATION BY MR. MICHAEL MORRIS:

MR. MICHAEL MORRIS: Thank you.

Good evening, Ms. Thomas. My name is Mike Morris and I’m counsel for the Government of Saskatchewan.

Ms. Thomas, I understand that you were only about two weeks into your role as NSIA when the Freedom Convoy rolled into Ottawa. Is that correct?

MS. JODY THOMAS: That is correct.

MR. MICHAEL MORRIS: That meant you were
effectively having to learn your role while in the thick of it. Is that fair?

**MS. JODY THOMAS:** That’s fair.

**MR. MICHAEL MORRIS:** And I think you’ve stated that as NSIA, you were essentially a consumer of intelligence provided to you by other agencies, such as the RCMP and CSIS; correct?

**MS. JODY THOMAS:** Amongst others, yes.

**MR. MICHAEL MORRIS:** Right. What I want to touch upon is your request for a threat assessment from the RCMP on February 14th.

Commission Counsel raised this with you and drew your attention to an email which was titled “Urgent” from Mike MacDonald to the RCMP indicating you needed a threat assessment for the Clerk of the Privy Council. Do you recall that?

**MS. JODY THOMAS:** I do.

**MR. MICHAEL MORRIS:** So I’m just going to ask the Registrar to pull up PB.NSC.CAN.00003462.

And the reason I’m pulling this up, ma’am, is because I think you actually did get a response to that threat assessment, and I just want to give you the opportunity to see that.

**MS. JODY THOMAS:** Yeah, I remember the document. It was incomplete and certainly not -- it was going to be incorporated into a broader document that was attached to the invocation material. And so this is a part of a response.

**MR. MICHAEL MORRIS:** Okay. Because if we just scroll down, we can see there’s information provided from
Adriana Poloz from the RCMP to Mike MacDonald at 2:25 p.m.; correct?

**MS. JODY THOMAS:** Yes.

**MR. MICHAEL MORRIS:** And she says:

“Mike

As requested, pls let me know if this
suits your requirements.”

And below that, of course, is obviously what --
is the RCMP assessment on the convoy.

I’d just like us to scroll up then again back to
the top, because it appears that you had some questions about
this material, this assessment, and you had asked Mr. MacDonald
to convey them to the RCMP, particularly it looks like he’s
quoted from something you typed, which begins:

“I guess my question is ‘how do we know’,
in particular how do we know that the
majority are peaceful?”

And of course there’s some other stuff typed
after that as well; correct?

**MS. JODY THOMAS:** Correct.

**MR. MICHAEL MORRIS:** Okay. So that was a
question that you wanted answered. And Mr. MacDonald seems to
be indicating that NSAI would like the question answered within
the next 20 minutes. And if we just scroll up again so we can
see the time of this email, it’s 19:52. So if we subtract five
hours, I think that puts us at 2:52 p.m. on February 14th. Is
that fair?

**MS. JODY THOMAS:** That’s fair.
MR. MICHAEL MORRIS: Okay. Do you know what time
the First Ministers meeting was held on that day? I think it
was 10:15 a.m.

MS. JODY THOMAS: I'll agree with you on that. I
don't know off hand.

MR. MICHAEL MORRIS: And did it go for around an
hour or a little over an hour? Do you know?

MS. JODY THOMAS: I don't recall.

MR. MICHAEL MORRIS: Okay. And I gather you do
know that the Prime Minister had a press conference scheduled
for February 14th for 4:30 p.m. Do you recall that?

MS. JODY THOMAS: I do.

MR. MICHAEL MORRIS: And that at that press
conference, of course, the Prime Minister announced that the
Emergencies Act was being invoked; correct?

MS. JODY THOMAS: Correct.

MR. MICHAEL MORRIS: Okay. I'm just trying to
get a timeline.

MS. JODY THOMAS: Right.

MR. MICHAEL MORRIS: So basically you were
looking for some more information at approximately 2:52 p.m.,
you wanted it within the next 20 minutes, and there was a press
conference scheduled that day for 4:30 p.m.; correct?

MS. JODY THOMAS: Correct.

MR. MICHAEL MORRIS: Okay.

MS. JODY THOMAS: I was asking questions to be
more expansive, to ensure that we answered a broad range of
questions.
MR. MICHAEL MORRIS: And this was required for the Clerk of the Privy Council; correct?

MS. JODY THOMAS: Correct.

MR. MICHAEL MORRIS: Okay. You wouldn’t have asked if you didn’t think the Clerk should have it, I assume; correct?

MS. JODY THOMAS: No, but as you would know, in government, we do a lot of preparatory staff work to answer eventualities.

MR. MICHAEL MORRIS: Okay.

MS. JODY THOMAS: So I did not know at this point what the outcome was going to be of the Prime Minister’s decisions. We were preparing for every eventuality.

MR. MICHAEL MORRIS: Okay. You hadn’t spoken with the Prime Minister between the First Ministers meeting and the announcement then at 4:30 p.m.?

Or sorry, I shouldn’t go to the announcement. I should go to the time this email was sent.

MS. JODY THOMAS: I had not. There were other parts of PCO who were more engaged at that point, because there was different work that needed to be done. The Intergovernmental Affairs Group, as an example, rather than me.

MR. MICHAEL MORRIS: Okay.

MS. JODY THOMAS: I’m not the Prime Minister’s sole advisor.

MR. MICHAEL MORRIS: I understand that. I just have one last question.

There was reference to an email drafted by a
person named Phillipe Lafortune in the Privy Council Office. Do you recall that?

**MS. JODY THOMAS:** I do.

**MR. MICHAEL MORRIS:** Is that person a lawyer, do you know?

**MS. JODY THOMAS:** He is not.

**MR. MICHAEL MORRIS:** Okay.

**MS. JODY THOMAS:** Not that I’m aware of.

**MR. MICHAEL MORRIS:** Okay. He was just essentially doing some legal research type work then? Is that fair?

**MS. JODY THOMAS:** Yeah, he was doing research. I wouldn’t call it legal.

**MR. MICHAEL MORRIS:** Okay. Thank you, ma’am.

Those are my questions for you.

Have a good evening.

**MS. JODY THOMAS:** Thank you.

**COMMISSIONER ROULEAU:** Okay, thank you. Next is the Ontario Provincial Police.

--- CROSS-EXAMINATION BY MS. JINAN KUBURSI:

**MS. JINAN KUBURSI:** Hello, Ms. Thomas. My name is Jinan Kubursi and I’m one of the lawyers representing the Ontario Provincial Police in this hearing. I’d like to start by talking to you a bit about your role and the role of your office, and then some of the relationships and interactions that you have with the “security and intelligence partners”, as you’ve called them. So as stated, I believe, in your witness summary -- and it’s also in the Institutional Report for the
Privy Council Office -- you’d agree that you worked with closely
with your security and intelligence partners, and that includes
CSIS, the RCMP, the PPS, as well as CBSA and Transport Canada;
that’s sort of a foundational part of the work that you do?

**MS. JODY THOMAS:** I would say the PPS is not in
that -- the PPS is not in that core group.

**MS. JINAN KUBURSI:** Okay, fair enough. It’s
listed in the report but not ---

**MS. JODY THOMAS:** Mike MacDonald deals with them
more than I do.

**MS. JINAN KUBURSI:** Right. Right, okay. And you
also, in your exchange with counsel for the CCF, you talked
about always consulting with the lead intelligence agencies that
you work with whenever you’re in the process of advising the
prime minister about a threat; do you recall saying that just a
short while ago?

**MS. JODY THOMAS:** I do.

**MS. JINAN KUBURSI:** You know, obviously
reflecting your respect for the expertise and the work that
those agencies do, which is in their area of specialization.

**MS. JODY THOMAS:** Well, it’s more than expertise
and respect, it’s their legal authorities ---

**MS. JINAN KUBURSI:** Right, right.

**MS. JODY THOMAS:** --- and mandates.

**MS. JINAN KUBURSI:** Yeah. It’s, of course, a
very important part of the consideration. And so I expect that
in your role as a consumer of intelligence but not a producer of
intelligence or investigations, as we’ve heard earlier today,
that there’s a, you know, regular communication that you’re
doing with these entities and agencies that have to provide the
information that then becomes part of that information flow
through your office through to the cabinet and the prime
minister, and perhaps others as well?

MS. JODY THOMAS: Correct.

MS. JINAN KUBURSI: Right. And I expect that in
that working relationship that you have with these partner
entities and agencies, that there’s always an opportunity for
some conversation about what you need as the NSIA, what they can
provide to you; is that ---

MS. JODY THOMAS: That’s fair.

MS. JINAN KUBURSI: --- a fair expectation?

Yeah.

MS. JODY THOMAS: Yes.

MS. JINAN KUBURSI: So considering some of what’s
been discussed earlier in terms of the scope of what your office
is able to do given -- as was raised in the questioning with
counsel for Freedom Corp, that you don’t have any legislative
framework for your work, I’d like to talk about, you know, the
current situation and how you deal with addressing the needs of
your role through the entities that exist. So a first example,
you’ve spoken about a concern that, it seemed to me, perhaps
gave rise to this interest doing more in the way of social media
intelligence work, you know. And I take it that, to some
extent, the concern is related to potential threats to public
figures, the prime minister, others in the cabinet, for example.
That’s one area of concern, I take it; is that fair to say?
MS. JODY THOMAS: That’s fair, yes.

MS. JINAN KUBURSI: Yes. And so my understanding is that currently if there’s a concern in that regard, that the RCMP has a National Security Criminal Investigations office that would have responsibility for conducting threat assessments, or perhaps doing and investigation if you had a concern that you wanted to have a police agency look at; is that ---

MS. JODY THOMAS: Yes.

MS. JINAN KUBURSI: Am I correct?

MS. JODY THOMAS: Yes.

MS. JINAN KUBURSI: Okay. And in order to provide that day-to-day security for the prime minister, there’s the prime minister’s protective detail, and for others, there is the RCMP Protective Services currently fulfilling that function; correct?

MS. JODY THOMAS: Correct.

MS. JINAN KUBURSI: Correct. And so in doing that job, it’s a intrinsic part of their job to continually evaluate risks or threats to the figures that they’re protecting?

MS. JODY THOMAS: Yes, on case-by-case events.

And so what my concern is is broader than that. The RCMP may tell you -- and I’m giving you a number. It’s not necessarily the correct number -- that there were five actionable threats against the prime minister last year, and they investigated all of them. We have a concern in the intelligence -- in the security community at the deputy minister level, and certainly within PCO, about the rhetoric that is online. So five
actionable threats that they investigate -- and they may arrest
somebody, or they may warn somebody, or do any of the things
that police agencies do -- but in fact there’s 1000, maybe 1500
threats of various nature that are going affect other things
that the prime minister does. That says something about the
discourse and the concern out there.

And so it is a nuanced thing to try to explain
but we have a responsibility to understand -- we have a
responsibility to understand the country, and not on a case-by-
case basis, on the mood, the tone. And some of that’s
intelligence and some of it is other parts of -- various arms of
government, but I think that we are a little blind on what is
going on in society and we are -- in terms of the prime
minister’s protection, as an example, we are seeing a change in
the environment that he is in. We are seeing an increased level
of anger and we’re -- it’s more than just him; it’s other public
officials as well. And we have a responsibility to understand
that.

**MS. JINAN KUBURSI:** Right, I appreciate that.
And one option that is available now, at this point, to
investigate that concern. To take whatever steps might be
necessary to address that concern would be to refer that to the
RCMP; is that fair?

**MS. JODY THOMAS:** The RCMP will look at
actionable intelligence. This is a different notion. It’s a
different need. And the RCMP -- we can’t send everything to the
RCMP. They have their core functions to execute.

**MS. JINAN KUBURSI:** So I think I’m going to want
-- I think what you’re talking about -- oh, okay. It just froze for a moment. I don’t know if I froze for a moment, perhaps, but can you hear me now, Mr. Thomas?

COMMISSIONER ROULEAU: For a moment, but go ahead. Go ahead.

MS. JINAN KUBURSI: Okay. Yeah, sorry about that.

COMMISSIONER ROULEAU: You have two minutes left.

MS. JINAN KUBURSI: Okay. Okay, I’m going to move through this more quickly, then, and then get back to the point that you were making, Ms. Thomas, about, really, the big picture, and your concern about the big picture, you know, in light of the current authorities that exist for offices. So we heard earlier my friend, counsel for the Windsor Police Service, he asked you whether you’re aware of the Project Hendon that was initiated by the OPP, and we know that through these proceedings you’ve become aware of that project.

MS. JODY THOMAS: M’hm.

MS. JINAN KUBURSI: And, you know, as you can appreciate -- and you spoke to this earlier -- you know, it seems clear to me that you understand that there’s certain information that is held by law enforcement entities with their authorities and protections for information that you understand you’re not able to get directly because you were essentially a civilian office of government, right? Do we agree on that?

MS. JODY THOMAS: Absolutely, yeah.

MS. JINAN KUBURSI: So then would you also agree with me then -- and perhaps we -- just to be direct, we’re
considering the role of the RCMP in this information chain. If there’s an issue with the kind of information that you’re getting from what is an existing project that the OPP’s initiated that then that’s something you could perhaps have a conversation with the RCMP about.

**MS. JODY THOMAS:** Absolutely. And so that’s the range of optionality that we are looking at in terms of understanding what the gap is and how we’re going to fill it. We don’t have a solution yet. We know there’s a gap. What is the best, most effective most efficient way of filling it where we can have a broad view rather than a narrow view.

**MS. JINAN KUBURSI:** Right. And counsel for the Ottawa Police Service -- he took you through some of -- or with reference to some of the documents regarding the information that was available to government in those days leading up to the convoy. So you recall reviewing that with him just a short while ago?

**MS. JODY THOMAS:** Yes.

**MS. JINAN KUBURSI:** So you know, I do have a question for you. Were you made aware ---

**COMMISSIONER ROULEAU:** You're going to have to make it your last because you're over time. So go ahead.

**MS. JINAN KUBURSI:** Okay.

**COMMISSIONER ROULEAU:** This is your last question.

**MS. JINAN KUBURSI:** Okay, we’ll make it the last question.

Just on this matter of strategic review, have you
had an opportunity -- I’m going to refer to a document, OPP1600, if we could pull it up very quickly, Mr. Clerk, just so that Ms. Thomas can take a look at it. And I don’t expect you have see this before, because it is a Project Hendon Report that was produced on January 13th.

You can see it’s entitled “Strategic Intelligence Overview.” So you know, I’ll put it to you, Ms. Thomas, that this overview is an example of the kind of big picture strategic review of intelligence, without reference to individuals, talking about societal movements and how they manifest themselves. So would you agree, seeing this on its face you can perhaps take a look at it on another occasion. But this is the kind of work that you were looking for to assist you in what you were hoping to do in your office.

**MS. JODY THOMAS:** This would be the kind of information we would receive along with other information and do a broad assessment of.

**MS. JINAN KUBURSI:** Okay. Given that I’m out of time, we’ll have to end our exchange here. Thank you very much for your time. And have a good evening.

And thank you, Commissioner, for allowing me a few extra moments.

**COMMISSIONER ROULEAU:** Okay. Thank you.

Next is the Government of Canada, please.

--- CROSS-EXAMINATION BY MS. DONNAREE NYGARD:

**MS. DONNAREE NYGARD:** Good evening, Ms. Thomas.

**MS. JODY THOMAS:** Good evening.

**MS. DONNAREE NYGARD:** Donnaree Nygard for the INTERNATIONAL REPORTING INC.
Government of Canada.

I want to start out by asking you about something that one of my friends asked. The counsel for OPS put to you that the convoy participants in Ottawa wanted just one thing to be heard. What was your understanding of what the convoy participants wanted?

**MS. JODY THOMAS:** They wanted all mandates removed. And they were going to stay in Ottawa until they were removed. And there was an element of the convoy that wanted the Prime Minister removed and a proxy government formed.

**MS. DONNAREE NYGARD:** Thank you.

We haven’t spent any time today -- and I’d like to spend a little bit of time -- discussing your role coordinating the response of the federal government to the events that were occurring in Ottawa and across the country. So can you describe to the Commissioner what role you played there and what the federal government was doing in that regard.

**MS. JODY THOMAS:** Thank you. So as it has been said in my interview summary and in our institutional report PCO has that central coordinating function for the Government of Canada on a number of issues on just about every issue that goes through to Cabinet.

We play a coordination function. We have a challenge function. And when there is a crisis -- and this has been for as long as the position has existed -- the NSIA on this kind of a crisis plays a lead role. Much of the organization of meetings and documentation and briefing to ministers was organized by Jackie Bogden who is the new Deputy Secretary for
Emergency Management at PCO.

But what we did was bring colleagues together with their experts to discuss and try to understand how the federal government could assist in the resolution of not only the blockade here in Ottawa but the various convoys that were occurring across the country. Because we’ve talked a lot about Ottawa today but we haven’t talked as much about the Ambassador Bridge, and we certainly haven't talked about Coutts. And then the continual popup convoys that were happening over this period in time.

We used the forum of DMOC which you have heard that acronym to bring together the lead agencies. And we added additional departments. For example, the Deputy Minister of Justice joined us for many of our discussions. And because PCO was so very involved at every level in terms of the management of the national crisis, I invited other deputy secretaries to come to DMOC and certainly the clerk and the deputy clerk had a standing invitation.

We wanted to have as broad a view as we could of what was going on and why it was happening and how the federal government could use existing authorities and resources to respond.

You've heard the discussion of the tow truck strategy. Well, that came out of discussions at DMOC.

The work that Deputy Minister Stewart was leading on engagement, that came to DMOC for original discussion before it went to Cabinet. But that was where we brainstormed, aired ideas, and assigned tasks to various people and departments, and

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PCO, to follow up. Most of the work was tasked from DMOC down into ADM and SOPs and they went off and engaged because ADMs are that engine that do that level of work.

We briefed ministers almost daily, the core group of ministers. We did have formal Cabinet meetings as you've seen. The Safety, Security, and Emergency Management Committee, Canada and the World -- we used Canada and the World because there was already a scheduled meeting to discuss Ukraine. The right group of ministers were there so we briefed this as well.

We had briefings to the Prime Minister and then the IRG was invoked. And the full Cabinet meetings leading up in between SSE, Canada and the World, and the IRG, were also the vehicle to get information to the Prime Minister.

We tried to be very methodical in how we tracked what was on the table to review, to pursue, to engage with provincial and municipal colleagues on and that was the trackers that you’ve seen in the evidence, developed out of there.

So I did not tell any deputy minister what they should do nor what they should not do. We would agree on courses of action, what ministers were going to be briefed, how we were going to engage ministers, and the plans to try and use federal authorities and work with provincial authorities to resolve individual situations. But it is a coordination group where we talk -- we discuss operational issues and each department goes back and does their own thing and reports back in. And it’s a relatively effective use of time and energy. And it became every day going through department by department.

Yesterday you said this; what’s changed? What
are you doing tomorrow? Where are we?

**MS. DONNAREE NYGARD:** And what were you telling
the deputy minister community in those meetings about what their
approach should be to looking at this issue?

**MS. JODY THOMAS:** Well, I would like to take
credit but it’s the Clerk of the Privy Council who actually told
the community that when you're in the security environment, you
get used to crises and you get used to protests and you get used
to reading online threats, those kinds of things.

She wanted us to think differently and think more
broadly. And to understand this situation although it was
acknowledged by the security deputy ministers, was unique in
terms of its expanse across the country, that there was a thread
across all of the incidents that said something and that we
needed to look at it from that perspective as well as the
individual resolution of problems.

Yes, the tow truck strategy is an example that
was very very important. But there was a bigger broader role
for the federal government and we needed to look at that.

**MS. DONNAREE NYGARD:** And this was happening in
DMOC and at the same time there were the SSEs at the beginning
of the process that were continuing. What's the relationship
between those two?

**MS. JODY THOMAS:** There isn't a relationship
other than most of the Deputy Ministers at DMOC they're
ministers or members of the SSE Committee. And so there was a
one-to-one briefing from the Deputies to their Ministers, the
Ministers would go and prepare to SSE.
MS. DONNAREE NYGARD: So the work that was being done by the Deputy Minister community through DMOC to try and find solutions to this problem, when did that stop?

MS. JODY THOMAS: DMOC? It didn't stop.

MS. DONNAREE NYGARD: And did -- so -- I guess the point I'm getting at, on the 10th of February, when it moved from SSE to the IRG and the Track 1, and the ---

MS. JODY THOMAS: Right.

MS. DONNAREE NYGARD: --- Track 2 was put in place, what were the -- what was the Deputy Minister community working on at that point?

MS. JODY THOMAS: So it just -- moving to the IRG brought a focus from the Prime Minister, and it was very directive of "What are you doing Transport Canada? Minister Alghabra, work with your provincial colleagues to achieve X, Y, and Z", and that became the tracker. So Track 1 was anything we could do under existing legislation and with existing tools, and Track 2 became what new could you use to help resolve this?

MS. DONNAREE NYGARD: So when you moved to the Track 1 and Track 2, the Deputy Minister community was still working on the issues in Track 1, what could you do to resolve with the existing authorities? Is that fair?

MS. JODY THOMAS: Absolutely.

MS. DONNAREE NYGARD: And that continued on from February 10th until?

MS. JODY THOMAS: Until revocation.

MS. DONNAREE NYGARD: And you spoke to my friend
for the City of Windsor about your discussion with Homeland
Security in the United States. Can you tell us a little bit
more about that?

MS. JODY THOMAS: The Deputy Homeland Security --
Deputy NSA for Homeland Security is Liz Sherwood-Randall. She
reached out to me to say, "we have a concern about the
Ambassador Bridge." You've heard that concern from others. She
said nothing different than what has already been heard. The
President had been hearing from auto companies, he'd been
hearing from governors. What was the situation? What could I
tell her, and how did they -- how could they help?

MS. DONNAREE NYGARD: So fair to say that they
were expressing considerable concern about the situation?

MS. JODY THOMAS: Absolutely concerned, but no
pressure. They'd experienced their own protests. They knew
they were complex. Could we learn from their experiences and
could we keep them informed and as we were working this, and if
they could help in any way they would.

MS. DONNAREE NYGARD: So when we get to the
period of February 13th and 14th, and you've talked about your
role in coordinating the information that's coming from various
intelligence communities within the Federal Government, and
pulling that all together to provide advice to the Prime
Minister. In the period February 13th and 14th, what was your
assessment of the situation that was going on across Canada at
that point?

MS. JODY THOMAS: My assessment was that this was
an entrenched movement; that the convoys were feeding off of
each other; that they were causing significant economic
instability; that the violent rhetoric was increasing rapidly
and exponentially; that the number of threats against public
figures were increasing; that we were seeing, I don't know if
I've said this, seeing increased IMVE rhetoric that was
concerning.

Our concern on that front is not that any of the
organisers of these various groups were going to take action
themselves, but they were going to inspire a lone wolf. And our
experience in Canada is that of the injuries and deaths that
have been caused by ideologically motivated individuals, none of
them have been known, they've all been inspired by online
movements and rhetoric to do something and to act. And we have
profound concern about that.

Coutts was a point in time of huge concern
because we'd been told there were weapons found in Coutts. I
can't say that anybody was surprised there were weapons. We
expected weapons to show up in various locations, or anticipated
that they could, but that it was of the magnitude that it was
was a significant concern.

And the same language was being used in Ottawa.
OPS said there were weapons in some of those rigs. Well, what
did that mean? One person had a gun or that there was another
group similar to Coutts?

What we didn't know was as significant as what we
did know. And we were at the point where we were going into the
fourth weekend because we were through the third weekend without
resolution, and in fact, it was growing.
Ambassador Bridge, yes, moving towards being resolved, but intel every single day that new convoys were being formed to take back the bridge or they were going to take the Peace Bridge or they were going to do both.

There were convoys coming from across the country to reinforce Ottawa. If that had become violent, and of course we're working on inabsolute information and nothing is -- there is no intelligence that says tomorrow there is going to be an attack. But if it had become violent, knowing what we know now, there was not the police on the ground to manage it. And so you have to work in a world where you don't have absolutes and you have to use your best judgement on what to do, and what had to happen was it had to end.

**MS. DONNAREE NYGARD:** And you've made clear, I think in your earlier testimony, that your view that the section 2 CSIS Act definition, as applied by CSIS in the context of their particular mandate to investigate and collect information on individuals or groups, is very narrow. My understanding ---

**MS. JODY THOMAS:** Yes.

**MS. DONNAREE NYGARD:** --- that's your position? And am I understanding what you said correctly in answer to my friend from JCCF's question about this in relation to these events that your view is that it didn't meet the section 2 CSIS Act definition as CSIS would apply it in their context?

**MS. JODY THOMAS:** That's correct.

**MS. DONNAREE NYGARD:** You were asked by the
Commission Counsel about whether your views were asked at the February 13th IRG regarding whether the Emergency Act should be invoked, and you said that you had indicated yes at this time. Can you tell us why?

**MS. JODY THOMAS:** For the reasons I described earlier. That we -- if the powers existed in legislation they were not being used or couldn't be used, and that we needed to take swift and decisive action to bring this national crises to an end. We needed to compel tow trucks. We needed to have an exclusion zone so that people could no longer join the convoy.

And the funding and the logistics chain that supported, particularly in Ottawa, but in other locations as well, the funding was significant, and so we needed to understand the money. And I know that Deputy Minister Sabia explained that earlier today.

The combination of the tools that were put into the Emergency Act, time limited, as restrictive as possible, and as transparent as possible, was determined to be by the Governor in Council the most appropriate action to take at that moment in time to end what was going on across the country.

**MS. DONNAREE NYGARD:** And finally, can you tell us a little bit about how mis- and dis-information in the context of the convoy impacted on your decision-making and your advice and your assessments?

**MS. JODY THOMAS:** So mis- and dis-information is a very hot topic, and everybody presumes that the mis- and dis-information has to come from foreign sources and be foreign interference. And so there was a question that was discussed at
one point about whether, you know, Russia was fomenting the dis-information.

   The mis- and dis-information, mis- and dis-information it could be said is at the root of some of this problem of the convoy and the anger about vaccines and mandates and masks. The problem with it is that it occurs in the social media space and threads pick up on each other and they generate more. And so if you believe mis-information that's all you're going to see because you search for it and the algorithms feed it to you.

   We're actually working with social media companies to understand how the algorithms feed mis- and dis-information, and more significant, terrorist information that's come out of what happened in Christchurch. And it's quite well-known that Christchurch call. And misinformation means that people -- and disinformation -- have one source of information and it continuously feeds upon each other. We heard misinformation during this hearing when somebody mentioned that they were not going to put DNA-altering medication in them. There is no DNA-altering medication, but it's believed. And so it made it very difficult to try and build a fact base for health officials, for police officials.

   There was misinformation during the convoy, for example, that the prime minister had signed a letter. He had not, but it circulated through the convoy here in Ottawa like wildfire. Absolutely incorrect but it became fact for people, and it becomes fact very easily, and that sowed some of the seeds of discontent that we have seen.
MS. DONNAREE NYGARD: Thank you. Those are all of my questions.

COMMISSIONER ROULEAU: Thank you. Any reply?

No? Okay. For the record, there is none.

Okay, well, that’s -- we want to thank you for coming and giving your evidence. You’re free to go and enjoy what’s left of the evening.

MS. JODY THOMAS: Thank you, sir.

COMMISSIONER ROULEAU: And thank you for your evidence.

So we’re going to adjourn until tomorrow morning at 9:30. I expect it will be another long day, but it’s Friday so we can look forward to a weekend, some of us.

THE REGISTRAR: The Commission is adjourned. La Commission est adjournée.

--- Upon adjourning at 7:23 p.m.
CERTIFICATION

I, Wendy Clements, a certified court reporter, hereby certify the foregoing pages to be an accurate transcription of my notes/records to the best of my skill and ability, and I so swear.

Je, Wendy Clements, une sténographe officielle, certifie que les pages ci-hautes sont une transcription conforme de mes notes/enregistrements au meilleur de mes capacités, et je le jure.

_________________________
Wendy Clements