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Overview Report: Federal Government Entities Involved in the Decision to Invoke the *Emergencies Act*

Prepared by: Commission Counsel

Summary of Report

The following Overview Report summarizes the entities within federal government that were involved in the decision-making process leading to the invocation of the *Emergencies Act* on February 14, 2022. It focuses on the Prime Minister, the Cabinet, the Privy Council Office, and the Prime Minister's Office. It provides a high-level description of the mandates, roles, and interactions between these bodies.

Note to Reader

Pursuant to Rules 41-45 of the Commission's Revised Rules of Practice and Procedure, the following Overview Report contains a summary of background facts and documents relating to the Commission's mandate.

Overview Reports allow facts to be placed in evidence without requiring those facts and related documents to be presented orally by a witness during the public hearings. The Overview Report may be used to assist in identifying issues relevant to the Commission, make findings of fact and enable recommendations to be made by the Commission.

The Parties with standing at the Commission have been provided an opportunity to comment on the accuracy of this Overview Report. Commission Counsel and the Parties may call evidence from witnesses at the Inquiry that casts doubt on the accuracy of the content of the documents underlying this Overview Report. The Parties may also make submissions regarding what, if any, weight should be given to the Overview Report and the cited documents.

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Overview Report: Federal Government Entities Involved in the Decision to Invoke the *Emergencies Act*

1. The Governor in Council

1. Many pieces of federal legislation refer to an entity called the “Governor in Council.” This includes section 17(1) of the *Emergencies Act*, which gives the Governor in Council the formal authority to declare the existence of a public order emergency.

2. The Governor in Council refers to the Governor General acting by and with the advice of the King’s Privy Council for Canada. By constitutional convention, powers held by the Governor in Council are exercised on the advice of members of the King’s Privy Council for Canada who are in the current Ministry and the members of Cabinet. In matters such as the proclamation of an emergency, the Governor General is, by convention, bound to follow the advice given to her by the Privy Council. Decisions of the Governor-in-Council are often formally expressed by orders-in-council.

3. The Governor-In-Council issued four separate orders in council in the context of the public order emergency. The first directed the issuance of the proclamation declaring the public order emergency; the second made the *Emergency Economic Measures Order*; the third made the *Emergency Measures Regulations*; and the fourth directed the issuance of a proclamation revoking the declaration of a public order emergency.



2. The Prime Minister, Cabinet, and Federal Departments

4. The Prime Minister is the Head of Government and is the leader of the party that has the confidence of the House of Commons. In almost all cases, that is the party that elected the largest number of Members of Parliament.

5. The Cabinet is currently composed of the ministers formally appointed by the Governor General on the recommendation of the Prime Minister. By convention, Cabinet Ministers are usually elected members of the House of Commons. The powers, duties, and functions of ministers are set out in various departmental statutes. Those acts describe the default mandates within which those ministers and departments are expected to act, and are supplemented by other acts of Parliament, as well as the authorities derived from the royal prerogative.

6. In practice, federal departments are presided over by ministers, but day-to-day operations are carried out on behalf of the ministers by appropriate officials reporting to the deputy minister. Some agencies within the portfolio of a minister operate at varying degrees of arm's length and sometimes powers, duties, and functions are vested directly in an agency or its deputy head. For example, the head of the Canadian Security Intelligence Service is the Director; the head of the Canada Border Services Agency is the President; and head of the RCMP is the Commissioner. All report to the Minister of Public Safety.

7. Deputy ministers are the most senior members of the professional, non-partisan public service. They are appointed by the Governor in Council on the recommendation of the Prime Minister. Deputy ministers serve "during pleasure." That means that the Prime



Minister has the power to recommend to the Governor-in-Council that they move to a different position or remove them as he sees fit.

8. The full Cabinet is a political decision-making body that is chaired by the Prime Minister. It is a forum for ministers to discuss which policies the government should pursue and how its priorities should be advanced. The Prime Minister sets the agenda of Cabinet. Decisions of Cabinet are not necessarily made by majority vote: the ultimate decision-maker is the Prime Minister.

9. In addition, there are several Cabinet committees that support the work of Cabinet. Their membership and mandates are established by the Prime Minister. These committees do not have formal decision-making authority unless they are chaired by the Prime Minister. The Cabinet committees relevant to the mandate of the Commission are discussed below.

a) The Confidentiality of Cabinet Deliberations

10. In the Canadian system of government, ministers must collectively support both the decisions made by ministers collectively and the actions taken by ministers individually. While individual Cabinet ministers may express disagreement with one another during Cabinet meetings in private, once a collective decision has been made, ministers are expected to publicly support that decision if they wish to remain in the Ministry. This is known as the convention of Cabinet solidarity.

11. The convention of Cabinet secrecy requires that ministers, and any officials attending Cabinet meetings, not disclose the substance of deliberations of Cabinet. Protecting the confidentiality of Cabinet deliberations is a critical factor for maintaining



Cabinet solidarity because it ensures that ministers can frankly and vigorously express their views with their colleagues while being united in public. All ministers must swear an oath of secrecy upon joining the King's Privy Council for Canada.

12. Cabinet confidentiality is also protected by the common law and federal legislation. The main statutory provision is s. 39 of the *Canada Evidence Act*, though provisions of other statutes such as the *Access to Information Act*, RSC 1985, c. A-1 also operate to protect Cabinet confidences. Under section 39 of the *Canada Evidence Act*, a minister of the Crown or the Clerk of the Privy Council may object to the disclosure of information constituting a “confidence of the [King's] Privy Council.” This phrase is defined as including various classes of documents such as Cabinet memoranda, discussion papers, agendas, or records containing discussions between ministers.

13. Section 39 does not, of itself, operate as a bar to the disclosure of Cabinet confidences. Rather, it gives the Clerk of the Privy Council or a federal minister the power to object to their disclosure when faced with such a request. An objection may be made in the form of a certificate issued by the Clerk or a minister. A certificate issued under section 39 operates an absolute bar against the disclosure of information covered by it.

b) Cabinet Committees

14. Two Cabinet Committees played a role in the management of the events surrounding the events that led to the proclamation of a public order emergency: the



Cabinet Committee on Safety, Security and Emergencies (SSE) and the Incident Response Group (IRG).¹

15. The SSE was chaired during the relevant period by the Minister of Emergency Preparedness and President of the Queen's Privy Council for Canada. The mandate of the SSE is to consider threats and risks to the safety of Canadians, to manage ongoing emergencies, and to ensure leadership for emergency management. It was established as a formal Cabinet Committee after the 2021 election.

16. SSE met three times in early February to discuss the protests in Ottawa and at other locations in Canada.² Management of this issue was then transferred to the IRG. The IRG is chaired by the Prime Minister and therefore has decision-making authority, unlike the SSE.

17. The IRG's mandate is to serve as a dedicated emergency committee in the event of a national crisis or during incidents elsewhere that have major implications for Canada. It is responsible for coordinating a prompt federal response to an incident. Typically, it remains engaged until a determination is made that the management of the situation no longer requires its involvement.

¹ Canada, Office the Prime Minister, "Cabinet Committee on Mandate and Membership," August 31, 2022, **COM00000919**. Also available online: <https://pm.gc.ca/en/cabinet-committee-mandate-and-membership#security>.

² **SSM.NSC.CAN.00000292**_REL.001 (SSE Committee Minutes, February 3);
SSM.NSC.CAN.00000293_REL.001 (SSE Committee Minutes, February 6);
SSM.NSC.CAN.00000295_REL.001 (SSE Committee Minutes, February 8).



18. The IRG has no pre-identified members other than the Prime Minister. Rather, its membership is dependent upon the nature of the event that caused it to be convened. The ministers and senior government officials most directly affected by, and interested in, the situation will be invited to participate in a supporting role.

3. The Privy Council Office

19. There are two offices that play a key role in supporting the Prime Minister, Ministers and Cabinet: the Privy Council Office and the Prime Minister's Office. This section describes the Privy Council Office. Section 4 of this Report addresses the Prime Minister's Office.

a) Overview of the Privy Council Office

20. The Privy Council Office (PCO) is the central coordinating agency in the federal public administration. It is often described as the Prime Minister's Department. It provides non-partisan advice to the Prime Minister, Cabinet and Cabinet Committees on matters of national and international importance, supports the Cabinet decision-making process, and ensures the implementation of the government's policy and legislative agenda across all federal departments and agencies.

21. PCO is headed by the Clerk of the Privy Council and Secretary to the Cabinet. She is assisted in the discharge of her responsibilities by the Deputy Clerk and Associate Secretary to Cabinet. The Clerk has three principal roles.

22. First, she acts as the deputy minister to the Prime Minister. She is the most senior public service advisor to the Prime Minister. Her role is to advise the Prime Minister and Ministers on how the executive functions of the government should be fulfilled.



23. Secondly, she is the Secretary to the Cabinet. In that capacity, the Clerk is responsible for the smooth running of all Cabinet business and for ensuring effective decision-making. She is the custodian of the Cabinet records and, as discussed above, plays an important role in protecting the confidences of the Cabinet.

24. Finally, the Clerk is the Head of the federal public service. In that role, she assumes overall responsibility for the entire public service. She is the most senior member of the deputy minister community. She provides recommendations to the Prime Minister on the appointment of deputy ministers across the public service.

25. In addition to its primary role as the central coordinating agency in the federal government, PCO provides support to several ministers, including the Minister of Intergovernmental Affairs and the Minister of Emergency Preparedness. The Intergovernmental Affairs Secretariat and Emergency Preparedness and COVID Recovery Secretariat are the PCO components that support these two ministers. They are discussed further below.

b) National Security and Intelligence Advisor

26. The National Security and Intelligence Advisor (NSIA) to the Prime Minister provides information, advice and recommendations on issues relating to national security, foreign and defence policy, and emergency preparedness. The NSIA has the status of a deputy minister. She is housed in PCO and reports to the Clerk.

27. One of the main roles of the NSIA is to ensure the effective coordination of Canada's security and intelligence community across the federal government. The NSIA regularly briefs Cabinet, the Prime Minister, and the Clerk on national security matters.



28. Members of the intelligence community outside of PCO, such as the Director of CSIS, the Chief of the Communications Security Establishment and the Deputy Minister of Public Safety do not report to the NSIA.

c) The Emergency Preparedness and COVID Recovery Secretariat

29. The Emergency Preparedness and COVID Recovery Secretariat (EPCRS) was created in October 2021 to support the dedicated role of the Minister of Emergency Preparedness. It assists the Minister in coordinating federal activities related to the four phases of emergency response (prevention, preparedness, incident response, and recovery). EPCRS works closely with the Department of Public Safety and Emergency Preparedness.³ It is headed by a Deputy Secretary to the Cabinet who reports to the NSIA.

d) The Intergovernmental Affairs Secretariat

30. The Intergovernmental Affairs Secretariat (IGA Secretariat) advises and assists the Minister of Intergovernmental Affairs and the Prime Minister in the overall management of federal-provincial-territorial relations. This includes the coordination of bilateral and multilateral engagement and issues, and policy support across agencies in the areas of federalism, internal trade, and Canadian unity.⁴

³ See, Prime Minister of Canada, “President of the King’s Privy Council for Canada and Minister of Emergency Preparedness Mandate Letter,” December 16, 2021, **COM00000921**. Also available online: <https://pm.gc.ca/en/mandate-letters/2021/12/16/president-kings-privy-council-canada-and-minister-emergency-preparedness>.

⁴ See, Prime Minister of Canada, “Minister of Intergovernmental Affairs, Infrastructure, and Communities Mandate Letter,” **COM00000918**. Also December 16, 2021, available



31. Section 25 of the *Emergencies Act* requires, before a declaration of a public order emergency is issued, that the government of each province affected by such a declaration be consulted. Pursuant to this requirement, the IGA Secretariat organized the First Ministers' Meeting that took place on the morning of February 14, 2022. The IGA Secretariat also led the drafting of the report on consultations held with the provinces and territories. Section 58 of the *Emergencies Act* requires that the government table such a report before the House of Commons and the Senate upon the declaration of an emergency.⁵

e) Senior Civil Servants Committees

32. Two standing committees of senior public servants were involved in the development and the execution of the government's response to the protests. These were the Assistant Deputy Ministers' National Security Operations Committee (ADM NS Ops) and the Deputy Ministers' Committee on Operational Coordination (DMOC). Both committees are chaired by senior PCO officials.

33. The ADM NS Ops is a standing committee that meets on a weekly basis. It is co-chaired by the Senior Assistant Deputy Minister, National and Cyber Security Branch at Public Safety Canada and the Assistant Secretary to Cabinet, Security and Intelligence. It aims to coordinate the actions of the main departments and agencies within the national security community and to ensure situational awareness across the federal government.

online: <https://pm.gc.ca/en/mandate-letters/2021/12/16/minister-intergovernmental-affairs-infrastructure-and-communities>.

⁵ Report to the Houses of Parliament: *Emergencies Act* Consultations, **SSM.CAN.000000123_REL** (French) and **SSM.CAN.00000124_REL** (English).



It puts its members in a position to brief their respective deputy ministers (or equivalent) on matters of interest and to provide them with relevant information. The ADM NS Ops may also be convened on an *ad hoc* basis when national security incidents arise. A dozen departments and agencies are represented on this committee.

34. The DMOC is a standing committee that, like the ADM NS Ops, meets on a regular basis and on *ad hoc* basis in response to particular situations. Meetings of DMOC are convened by the NSIA. The purpose of DMOC is to facilitate information exchange, to ensure situational awareness across federal agencies, and to coordinate responses to events. The DMOC is comprised of deputy ministers (or equivalent) from across the security and intelligence community.

35. Both ADM NS Ops and DMOC had numerous meetings in late January and throughout February 2022 in connection with the protests taking place in Ottawa and in other locations throughout Canada.

4. The Prime Minister's Office

36. The Prime Minister's Office (PMO) supports the Prime Minister in exercising his duties as head of government, leader of a political party recognized in the House of Commons, and Member of Parliament. Political Staff at the PMO work with counterparts in the public service and ministerial offices, advising the Prime Minister on matters such as policy, communications, and parliamentary affairs. The PMO also acts as extension of the Prime Minister in all his dealings with Ministers, Parliamentary Secretaries, and Members of Parliament.



37. The PMO is headed by the Prime Minister's Chief of Staff, who oversees a staff of approximately 100 people including communications staff, regional advisors, and policy advisors. PMO personnel are not members of the public service and are referred to as "exempt staff." They are not subject to the strict neutrality and impartiality rules that apply to public servants. PMO operates as the link between the partisan interests of the Prime Minister and the operations of government.

38. Like the Prime Minister, all ministers are supported by exempt staff. One of the purposes of having ministerial offices separate from a minister's department is to provide ministers with advisors and assistants who share their political commitment and who can provide political advice. Exempt staff in ministerial offices do not have the authority to give directions to public servants. They can, however, ask for information or transmit their minister's instructions, which is usually done through the deputy minister.⁶

39. The PMO maintains a close relationship with exempt staff in all ministers' offices to ensure the flow of information and coordination on policy and operational issues within and across the government. For instance, there are regular meetings of all ministerial chiefs of staff and senior officials at the PMO. Members of the PMO also have regular contact with PCO officials.

⁶ Canada, Privy Council Office: *Governing Responsibly: A Guide for Ministers and Secretaries of State*, (2004), at 23, **COM00000920**.

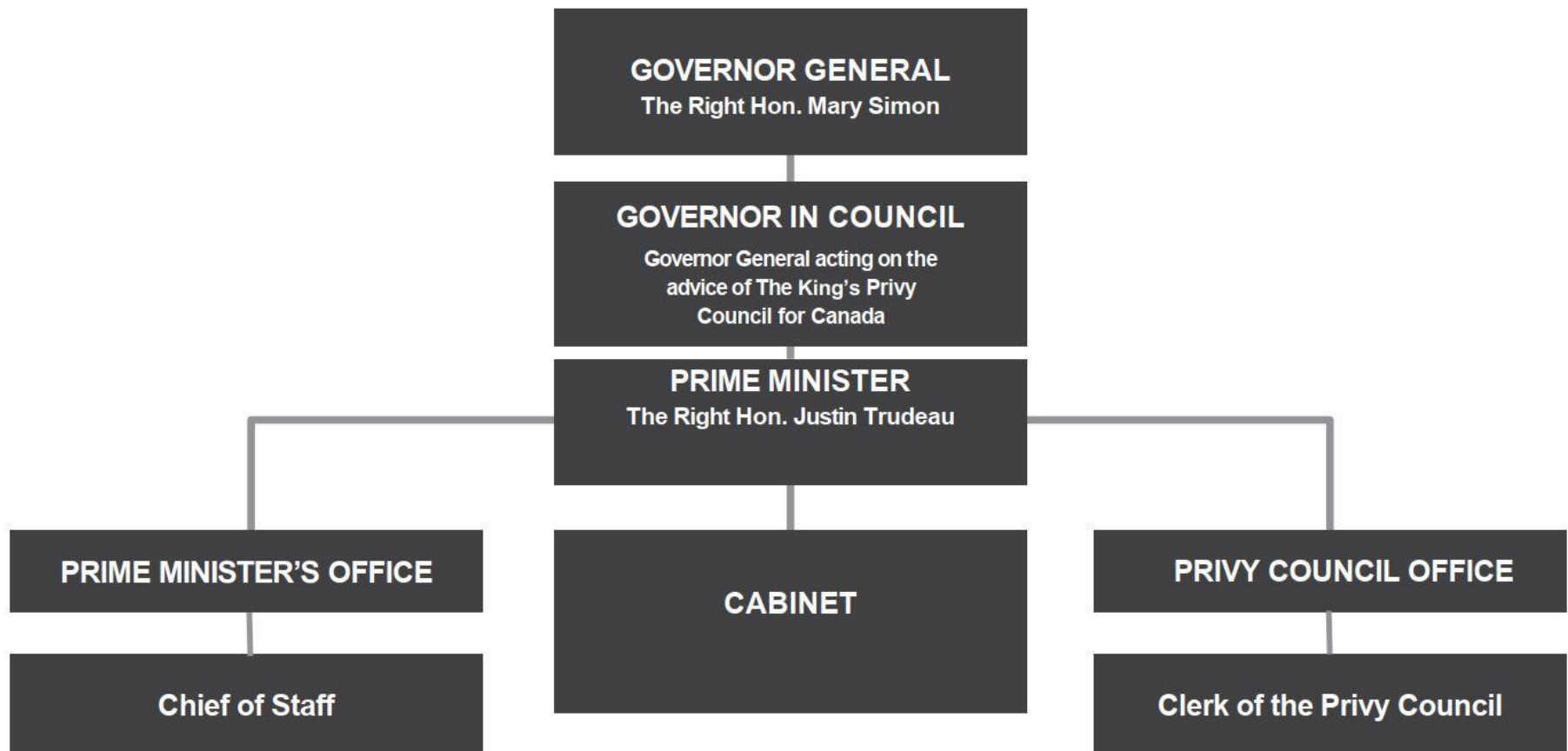


Appendix A: Glossary of Key Acronyms

ADM	Assistant Deputy Minister
ADM NS Ops	Assistant Deputy Ministers' National Security Operations Committee
Associate DM	Associate Deputy Minister
CAF	Canadian Armed Forces
CBSA	Canada Border Services Agency
CDS	Chief of the Defence Staff
CAF	Canadian Armed Forces
CSE or CSEC	Communications Security Establishment Canada
CSIS	Canadian Security Intelligence Service
DM	Deputy Minister
DMOC	Deputy Ministers' Committee on Operations and Coordination
DND	Department of National Defence
EPCRS	Emergency Preparedness and COVID Recovery Secretariat
FINTRAC	Financial Transactions and Reports Analysis Centre of Canada
FMM	First Ministers' Meeting
GAC	Global Affairs Canada (formally: Department of Foreign Affairs)
GOC	Government Operations Center
IAS	Intelligence Assessment Secretariat
IGA	Intergovernmental Affairs
IRG	Incident Response Group
ITAC	Integrated Terrorism Assessment Centre
NSIA	National Security and Intelligence Advisor
OSINT	Open Source Intelligence
PCO	Privy Council Office
PMO	Prime Minister's Office
PPS	Parliamentary Protective Service
RCMP	Royal Canadian Mounted Police
RFA	Request for Assistance
SSE	Cabinet Committee on Safety, Security and Emergencies

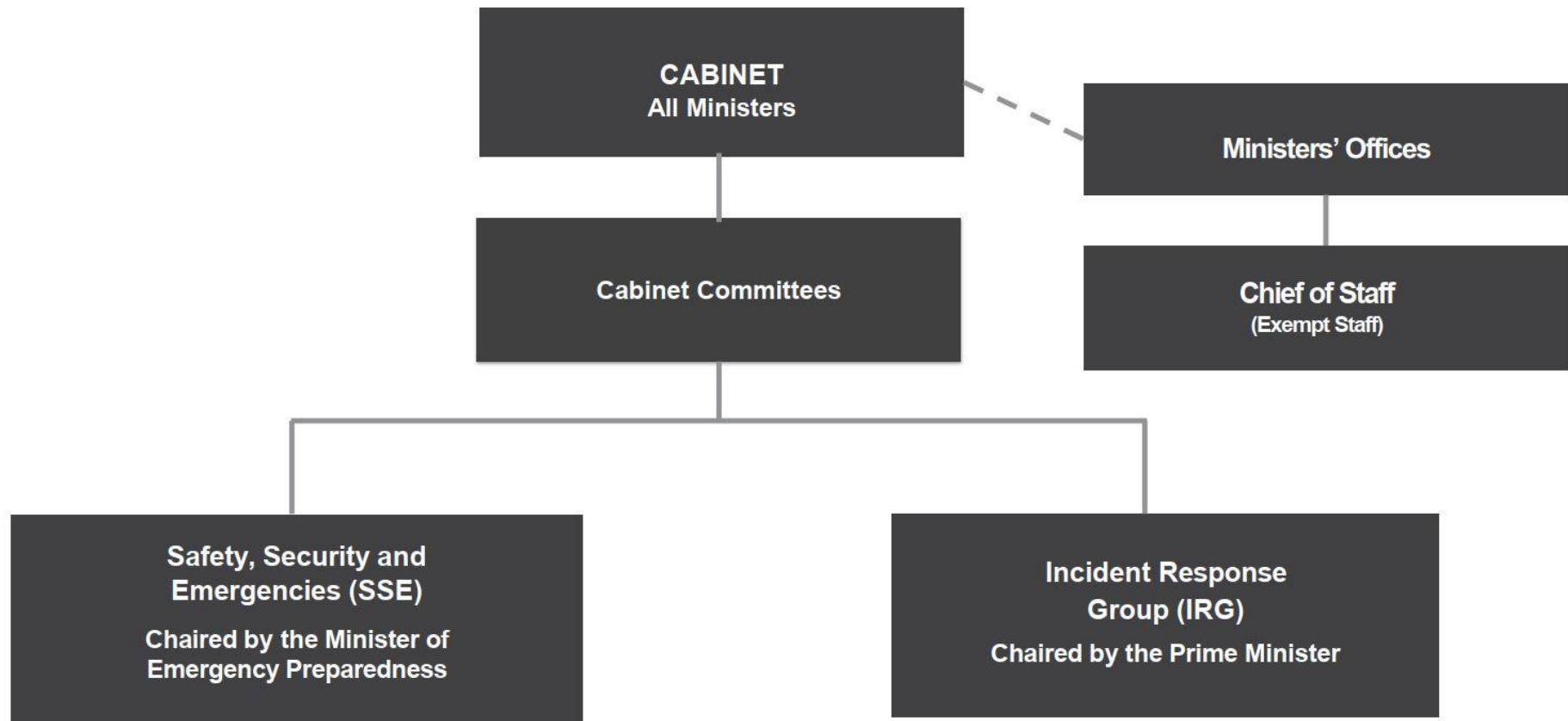


Appendix B: Overview of the Federal Executive



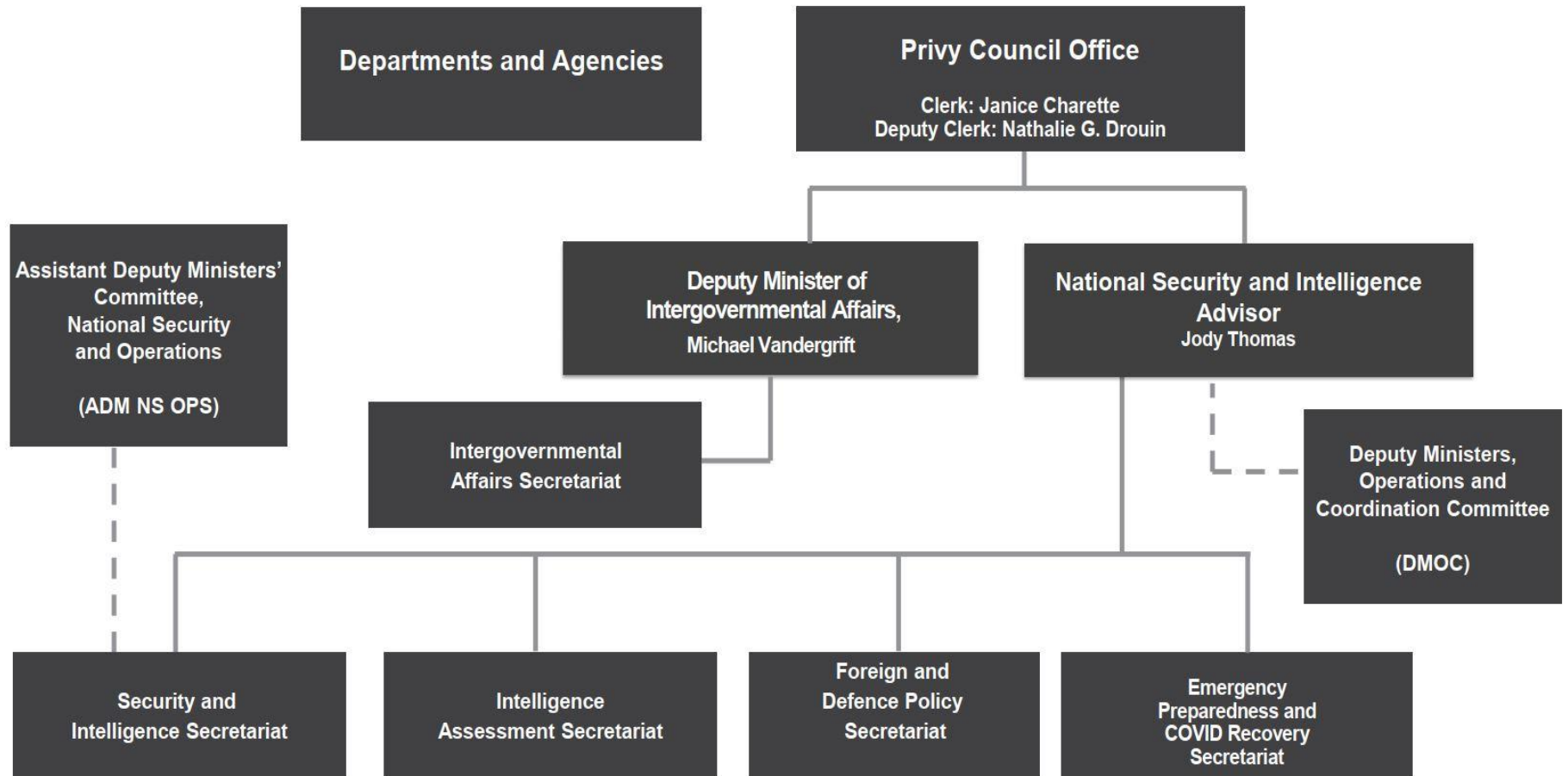


Appendix C: Structure of Cabinet





Appendix D: Structure of the Federal Public Service





Appendix E: Departments and Agencies Involved in the Declaration of Public Order Emergency on February 14, 2022

Canada Border Services Agency
(CBSA)

Canadian Security Intelligence Service
(CSIS)

Department of Public Safety and Emergency
Preparedness

Public Service and Procurement Canada
(PSPC)

Global Affairs Canada (GAC)

Integrated Terrorism Assessment Centre
(ITAC)

Department of Finance (FIN)

Financial Transactions and Reports Analysis Centre
(FINTRAC)

Royal Canadian Mounted Police
(RCMP)

Transport Canada
(TC)

National Capital Commission
(NCC)

Department of National Defence &
Canadian Armed Forces (CAF)