PUBLIC ORDER EMERGENCY COMMISSION

WRITTEN SUBMISSIONS OF THE

CANADIAN CONSTITUTION FOUNDATION

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Part I – Overview

1. The *Emergencies Act* is extraordinary legislation. It hands the federal Cabinet the power to unilaterally proclaim a public order emergency. Such a proclamation serves *de facto* as a temporary constitutional amendment. Under the Act, after the Cabinet proclaims a public order emergency, vast legislative authority is delegated to the Cabinet. This authority encompasses the power to create new criminal offences and police powers, without recourse to Parliament, advance notice, or public debate. The Act also grants the Cabinet legislative power in core areas of provincial jurisdiction, such as property and civil rights, without any requirement for provincial consultation or consent.

2. The *Emergencies Act* is dangerous legislation that has a dark and troubled history in Canada. The Act was originally introduced to replace the *War Measures Act* ("*WMA*"), which was used during the Second World War to intern Japanese Canadians and Italian Canadians, and which was abused during the FLQ Crisis in Quebec. In order to combat this history, the drafters of the *Emergencies Act* set out a carefully crafted and demanding set of legally binding conditions to ensure its use would only be possible as an absolute last resort.

3. To the credit of all previous governments, the *Emergencies Act* was never invoked during the decades after its passage, until now. Since the Act was passed in 1988, Canada has weathered terrorist attacks, economic hardship, and an unprecedented global health pandemic, all without ever resorting to the incredible powers contained in the *Emergencies Act*.

4. That restraint was shattered when the federal government invoked the *Emergencies Act* on February 14, 2022, in response not to a natural disaster or the outbreak of war, but to a series of disruptive but largely peaceful protests, organized and carried out by Canadians, that crudely used parked cars and trucks to clog public roadways. The protests had been underway for a couple of weeks by the time the Act was invoked. During that time, there had been no rioting and no significant property damage. Not one person had been seriously injured.

5. To be blunt, the protests were not even close to the sort of national crisis Parliament had in mind when it passed the *Emergencies Act*. To be sure, the protests were frustrating and disruptive, and something needed to be done to end the blockades. But invoking the *Emergencies Act* was a dramatic and entirely illegal overreaction.

6. In making this point, the Canadian Constitution Foundation will focus its written submissions on two statutory criteria set forth in the *Emergencies Act* that plainly were not met before the Act was invoked.

7. **First**, Section 16 of the *Emergencies Act* defines a public order emergency as a situation that arises from "threats to the national security of Canada" that are "so serious" that they amount to a "national emergency." In defining what a "threat to national security is," the *Emergencies Act* explicitly incorporates *the same definition* that is used in the *Canadian Security Intelligence Service Act*.

8. We know this requirement was not met because CSIS *told us* it was not met. CSIS concluded that these protests were not a threat to the national security of Canada. In the face of that conclusion, it was not only statutorily impermissible for the Government to invoke the *Emergencies Act* — it was also just plain wrong for them to do so. The Government profoundly violated the spirit of the Act and its overarching intention to protect us all against the grave potential for government overreach.

9. **Second**, the protests did not constitute a "national emergency" as defined in the Act. A national emergency is an "urgent and critical situation of a temporary nature" that "cannot be effectively dealt with under any other law of Canada". But here, the government and law enforcement already had, in the form of existing municipal bylaws and federal *Criminal Code* provisions, all of the legal tools they needed to effectively address whatever "emergency" the protests were said to be creating. *These* are the tools that were ultimately used to clear out the protests — not the powers created under the *Emergencies Act*. The Government has wholly failed to establish that the situation could not have been effectively dealt with under existing laws in Canada.

Part II — The federal government failed to show that the convoy protests and blockades were a threat to the security of Canada under the *Emergencies Act*

10. The federal government carries the burden of demonstrating that the protests were "threats to the security of Canada" under section 16 of the *Emergencies Act*. It cannot do so, for the following four reasons:

A. The term "threats to the security of Canada" under section 16 of the *Emergencies Act* bears the same meaning as it does under section 2 of the *CSIS Act*;

B. CSIS concluded the protests did not constitute a "threat to the security of Canada" as defined in section 2 of the *CSIS Act* ("CSIS Threat Assessment");

C. The federal Cabinet ("Cabinet") lacked "reasonable grounds" to conclude that there were threats to the security of Canada, because the CSIS Threat Assessment concluding that there was no threat to the security of Canada was not provided to the full Cabinet; and

D. The Cabinet lacked "reasonable grounds" to conclude that threats to the security of Canada existed because it did not provide any evidence and reasons as to why it disagreed with the CSIS Threat Assessment.

A. The term "threats to the security of Canada" under section 16 of the Emergencies Act has the same meaning as under section 2 of the CSIS Act

11. Several federal witnesses — National Security and Intelligence Advisor Jody Thomas, [1] Deputy Clerk Nathalie Drouin,[2] Minister of Justice and Attorney General David Lametti,[3] and

[1] POEC Transcript of Evidence of Jody Thomas on November 17, 2022 at p. 239 (TRN00000025)
[2] POEC Transcript of Evidence of Nathalie Drouin on November 18, 2022 at p. 218 (TRN00000026)
[3] POEC Transcript of Evidence of Minister Lametti on November 23, 2022 at pp. 116-117 (TRN00000029)

Prime Minister Trudeau[4] — testified that "threats to national security" under section 16 of the *Emergencies Act* has a different meaning than under section 2 of the *CSIS Act*.[5]

12. This is wrong. In fact, precisely the opposite is true. The term "threats to the security of Canada" under section 16 of the *Emergencies Act* has the *same* meaning as it does under section 2 of the *CSIS Act*. This conclusion flows from: i) the text of the *Emergencies Act*, ii) its drafting history, and iii) the greater threat that the *Emergencies Act* poses to individual liberty than the *CSIS Act*.

i. *Text*

13. Section 16 of the *Emergencies Act* provides that "threats to the security of Canada has the meaning assigned by section 2 of the *Canadian Security Intelligence Service Act*". This language is clear on its face. The term "has the meaning assigned" can only mean that the term "threats to the security of Canada" has the *same* meaning under both statutes.

14. Had Parliament intended to adopt a different definition of "threats to national security" under the *Emergencies Act* than under the *CSIS Act*, it could have chosen one of several different options. It could have defined that term without reference to the *CSIS Act.* It could have defined that term in language *identical* to that found in the *CSIS Act*, but without providing that the term "has the meaning assigned" by the *CSIS Act.* It could also have left the term undefined altogether — as it has done in at least one statute, the *International Transfer of Offenders Act*.[6] Parliament did none of these things.

15. Severing the definition of "threats to national security" under the *Emergencies Act* from its meaning under the *CSIS Act* would have unintended consequences for a whole range of other federal statutes that incorporate the section 2 definition in identical or very similar language, including the following:

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[4] POEC Transcript of Evidence of Prime Minister Trudeau on November 25, 2022 at pp. 49-51 (TRN00000031)

[5] Section 2 of the *Canadian Security Intelligence Service Act*, R.S.C., 1985, c. C-23 (COM00000935)

[6] Section 10(1)(a), *International Transfer of Offenders Act*, SC 2004, c 21

a. the *Access to Information Act*, section 16(1)(a)(iii);[7]

b. the *Citizenship Act*, section 19(1);[8]

c. the *Corrections and Conditional Release Act*, section 183(2)(a)(iii);[9]

d. the *Excise Tax Act*, sections 295(5.05)(a)(i);[10]

e. the *Income Tax Act*, section 241(9)(b)(i) and (9.1)(b);[11]

f. the *Privacy Act*, section 22(a)(iii);[12] and

g. the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, section 2(1).[13]

On the federal government's argument, the meaning of "threats to national security" in these statutes would *not* have the same meaning as under the *CSIS Act*. This would be an absurd consequence. On the contrary, the use of the phrase "has the meaning assigned" (or similar language) across a range of statutes leads to precisely the opposite conclusion — that "threats to national security" has the same meaning in all of them, including the *Emergencies Act*.

ii. *Drafting history*

16. The drafting history of the *Emergencies Act* also supports the conclusion that the meaning of "threats to national security" to be used in the *Emergencies Act* is the same as the one in the *CSIS Act*. The Honourable Perrin Beatty, the sponsor of the *Emergencies Act*, delivered the following remarks in the House of Commons on November 16, 1987:

> Likewise, it has been said that probably the most contentious clause in this Bill is the one that deals with public order emergencies. This is the type of situation which gave rise to the use of the *War Measures Act* in 1970. This clause takes its definition of threat from the

[7] *Access to Information Act*, RSC 1985, c A-1.
[8] *Citizenship Act*, RSC 1985, c C-29.
[9] *Corrections and Conditional Release Act*, SC 1992, c 20.
[10] *Excise Tax Act*, RSC 1985, c E-15.
[11] *Income Tax Act*, RSC 1985, c 1.
[12] *Privacy Act*, RSC 1985, c P-21.
[13] *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17.

Canadian Security and Intelligence Service Act. This fact alone should make us very cautious because of the difficulties already encountered with CSIS in determining what is subversion and what is legitimate dissent. That was one view of the legislation.

I would remind Members of this House that the definition of "threats to the security of Canada" received exhaustive scrutiny by Parliament in 1983 during deliberations on the *CSIS Act.* The language in this definition has, therefore, already received Parliament's blessing.[14]

17. Minister Beatty could not have been clearer: the decision to incorporate the definition of "threats to the security of Canada" from section 2 of the *CSIS Act* was more than a mere drafting convenience. It was a deliberate choice to rely on a definition that had already been exhaustively scrutinized by Parliament in the recent past. That definition, in turn, was a direct response to the report of the Royal Commission of Inquiry into Certain Activities of the RCMP (the McDonald Commission), which documented widespread abuses of power by the RCMP Security Service. The federal government's interpretation would dangerously cast aside this legislative history and its concrete implications for the interpretation of the *Emergencies Act*.

iii. *Emergencies Act poses greater threat to individual liberty than the CSIS Act*

18. Finally, severing the definition of "threats to the security of Canada" under the *Emergencies Act* from its meaning under the *CSIS Act* ignores the fact that the *Emergencies Act* poses a greater threat to individual liberty than the *CSIS Act*. The *CSIS Act* adopts "threats to the security of Canada" as the threshold for taking measures to reduce such threats under section 12.1(1) and for issuing warrants under section 21.1(3). Section 12.1(1) measures expressly *exclude* law enforcement powers (section 12.1(4)) and the power to detain people (section 12.2(1)(e)). Section 21.1(3) authorizes the surveillance of individuals.[15] By contrast, under section 19(1) of the *Emergencies Act*, in a public order emergency the Cabinet can adopt restraints on public assembly and travel and create criminal offences. The *Emergency Measures Regulations* and *Economic*

[14] Beatty Speech Nov 16 1987 at p. 10810 [emphasis added] (POE.CCF00000003)

[15] Sections 12.1(1), 21.1(3), *Canadian Security Intelligence Service Act*, R.S.C., 1985, c. C-23 (COM00000935)

Measures Order did just that. The greater threat to individual liberty posed by the *Emergencies Act* means that its definition of "threats to the security of Canada" should be *at least* as stringent as under the *CSIS Act.*

19. The federal government's novel interpretation of "threats to the security of Canada" under the *Emergencies Act* was advanced *for the very first time* through the testimony of federal government witnesses at the Commission, in November 2022. The federal government had *never* previously offered this interpretation, either in Parliament or in the Federal Court in any of the four Applications for Judicial Review currently underway against the *Emergency Proclamation*. Notably, this interpretation is found *nowhere* in the Section 58(1) Explanation which the federal government filed with Parliament. Section 58(1) provides that the Explanation must include "the reasons for issuing the declaration". These reasons must include the *legal* basis for the declaration, which in turn must include the legal interpretation of the *Emergencies Act*.

20. In addition, the federal government revealed at the Commission, for the first time, the existence of a confidential legal opinion which sets out this novel interpretation. When asked by counsel for the CCF under cross-examination whether he would waive solicitor-client privilege over this opinion, Prime Minister Trudeau refused through his counsel.[16]

21. At this point in the Commission's proceedings, there are two paths forward for the federal government. First, it is hoped the federal government will deliver closing submissions to the Commission that set out the first ever public written justification for its novel interpretation of the definition of threats to the security of Canada in the *Emergencies Act*. In that event, the CCF will seek leave from the Commissioner to file a brief written reply.

22. Second, and admittedly less likely, is that the federal government will *not* publicly defend its novel interpretation, and will ask the Commissioner to determine that the Cabinet acted lawfully because it acted in good faith. Minister Lametti arguably took this position in answers to Commissioner Rouleau's questions at the end of his testimony.[17] Should the federal government

[16] POEC Transcript of evidence of Prime Minister Trudeau on November 25, 2022 at p. 108 (TRN00000031)

[17] POEC Transcript of evidence of Minister Lametti on November 23, 2022 at p. 176 (TRN00000029)

adhere to that position in its closing submissions, the Commissioner would have no choice but to draw an adverse inference that the federal government had not justified its novel interpretation.

B. CSIS concluded the protests did not meet the section 2 threshold

23. CSIS concluded that the protests did not meet the section 2 "threats to the security of Canada" threshold. As stated in the CSIS/ITAC Interview Summary of CSIS Director David Vigneault:[18]

> Mr. Vigneault learned that the EA referenced the threat definition set out in section 2 of the CSIS Act once the federal government began to seriously consider invoking the EA [between February 10th and 13th]. He requested that the Service prepare a threat assessment on the risks associated with the invocation of the EA. He felt an obligation to clearly convey the Service's position that there did not exist a threat to the security of Canada as defined by the Service's legal mandate

24. Director Vigneault confirmed his evidence in the Canadian Security Intelligence Service (CSIS) *in camera*, *ex parte* hearing:[19]

> Mr. Vigneault confirmed a statement from the Commission's interview with CSIS and ITAC to the effect that at no point did the Service assess that the protests in Ottawa or elsewhere (the "Freedom Convoy") constituted a threat to the security of Canada under section 2 of the CSIS Act, and that CSIS cannot investigate activity constituting lawful protest unless conducted in conjunction with a threat-related activity.

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[18] Interview Summary: David Vigneault, Michelle Tessier, Tricia Geddes (Canadian Security Intelligence Service) and Marie-Hélène Chayer (Integrated Terrorism Assessment Center) at p. 8 (WTS.00000060)

[19] Public Summary: Canadian Security Intelligence Service (CSIS) in camera, ex parte Hearing at pp. 6-7 (WTS.00000079)

25. Director Vigneault further confirmed his evidence in the public hearing.[20]

C. The Cabinet lacked "reasonable grounds" to conclude that there were threats to the security of Canada, because the CSIS Threat Assessment was not provided to the full Cabinet

26. The drafting history of the "reasonable grounds" test in the *Emergencies Act* should guide its interpretation. At first reading, Bill C-77 (the *Emergencies Act*) provided (emphasis added): [21]

> when the Governor in Council *is of the opinion* that a public order emergency exists in Canada and necessitates the taking of special temporary measures for dealing with the emergency, the Governor in Council, after such consultations as required by section 23, may, by proclamation, so declare.

27. At the committee stage, Minister Beatty proposed to replace the phrase "is of the opinion" with "believes on reasonable grounds". According to Minister Beatty, the purpose of this language was to enhance the power of the courts to judicially review emergency proclamations:[22]

> … this will give someone who wants to contest the government's decision to invoke a declaration of a national emergency the ability to take us to court, if they believe it has been frivolously done. It will guarantee Canadians the ability that the courts could rule on whether the government had reasonable grounds to believe that a national emergency existed. This will, as a consequence, give added protection to the civil liberties of Canadians and I think it is something that should give considerable reassurance to Canadians.

28. The "believes on reasonable grounds" standard replaced the "of the opinion" standard throughout the *Emergencies Act*. Thus, section 17 of the Act stipulates that the Cabinet may only

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[20] POEC Transcript of evidence of Director Vigneault on November 21, 2022 at pp. 53-55 (TRN00000027)
[21] Beatty speech Legislative Committee on Bill C-77 February 23, 1988 (POE.CCF00000002)
[22] *Ibid*

declare a public order emergency if it believes on reasonable grounds that a public order emergency exists.

29. The Commission's mandate under section 63(1) of the *Emergencies Act* to examine "the circumstances that led to the declaration being issued" includes determining whether the Cabinet had reasonable grounds to determine if a public order emergency existed under section 17.

30. Although the Cabinet has enormous political power, for the purposes of the *Emergencies Act*, it exercises statutory powers granted by Parliament. The Cabinet has no other emergency powers under the Constitution or the common law. The presumptive standard of review of *any* statutory grant of power, even to the Cabinet, is reasonableness. Applying that standard here, the question is whether Cabinet reasonably decided if the grounds to declare a public order emergency existed.

31. *Vavilov* held that a reasonable decision is one that is "justified in relation to the constellation of law and facts that are relevant to the decision".[23] In order words, *Vavilov* holds that a reasonable decision is one where the decision-maker considers the most "relevant" legal and factual considerations that bear upon the decision. The application of this standard must be contextualized to the nature of the particular decision-maker.

32. The Cabinet is unlike any other administrative decision-maker in the federal government. It is chaired by the Prime Minister and its members are Ministers who are Members of Parliament. The Clerk of the Privy Council is the Secretary to the Cabinet. The Clerk is also the Deputy Minister of the Privy Council Office, which serves as the nerve centre for the line ministries that generate proposed policies and legislation. One such proposal was the proposal to declare a public order emergency by Minister Marco Mendicino. The Cabinet is organized around committees, such as the Incident Response Group, which consider proposed decisions before the full Cabinet.

33. Both the Prime Minister and Chief of Staff Katie Telford confirmed in their testimony that the Prime Minister ultimately decides the Cabinet's agenda. Moreover, when the Cabinet is asked to decide an issue, it receives "inputs" in form of draft proposals, analysis and other information. Both the Prime Minister and Ms. Telford confirmed that the Prime Minister is responsible for

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[23] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 105.

ensuring that that the most relevant inputs are before Cabinet. Moreover, the Prime Minister chairs Cabinet meetings.

34. When applied to the decisions of the Cabinet, *Vaivlov*'s reasonableness standard requires that we ask whether these inputs included the materials that addressed the factual and legal considerations most relevant to making that decision. Section 17's requirement that the Cabinet must have reasonable grounds to conclude that a public order emergency exists requires that these inputs include materials that address the most relevant factual and legal issues. The Prime Minister is ultimately responsible for ensuring that Cabinet has those inputs before it, and as chair of the Cabinet, for ensuring that the agenda provides opportunities for discussion of those inputs.

35. Under section 16 of the *Emergencies Act*, a public order emergency "arises from threats to the security to Canada", a phrase that in turn "has the meaning assigned" by section 2 of the *Emergencies Act*. One of the most relevant inputs is CSIS's expert assessment of whether a section 2 threat existed at the time. It was the Prime Minister's responsibility to ensure that this input was before Cabinet. Indeed, as the Prime Minister agreed in cross-examination, the decision to invoke the *Emergencies Act* was historic, and it was particularly important in those circumstances to ensure that the Cabinet had all the relevant information before it before making the decision.

36. The evidence before the Commission is clear that the full Cabinet was *not* provided with the CSIS Threat Assessment, either verbally by Director Vigneault, or in writing.

37. Director Vigneault first discussed a draft version of the CSIS Threat Assessment at the February 12 IRG meeting.[24] A written version of the CSIS Threat Assessment was provided to the IRG for its February 13 meeting.[25] At the February 13 IRG meeting, Director Vigneault discussed the CSIS Threat Assessment.[26] Director Vigneault testified that Prime Minister Trudeau asked that the CSIS Threat Assessment be shared with the full Cabinet at its February 13 meeting. Notably, although the written CSIS Threat Assessment was available for distribution for the full Cabinet at

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[24] Public Summary: Canadian Security Intelligence Service (CSIS) in camera, ex parte Hearing at p. 6 (WTS.00000079)
[25] *Ibid*
[26] Interview Summary: David Vigneault, Michelle Tessier, Tricia Geddes (Canadian Security Intelligence Service) and Marie-Hélène Chayer (Integrated Terrorism Assessment Center) at p. 8 (WTS.00000060)

its meeting later on February 13, Mr. Vigneault does not know if it was in fact distributed.[27] Deputy Clerk Nathalie Drouin, under cross-examination, could not confirm if the CSIS Threat Assessment was ever provided to the full Cabinet.[28]

38. Nor was the CSIS Threat Assessment discussed at the full Cabinet meeting. Deputy Minister Robert Stewart testified that Director Vigneault was not asked to provide the CSIS Threat Assessment.[29] Both Clerk Charette and Deputy Clerk Drouin confirmed under cross-examination that Director Vigneault did not speak at the Cabinet meeting.[30]

39. It was the Prime Minister's ultimate responsibility to ensure that the Cabinet was provided with the CSIS Threat Assessment, to place it on the agenda, and to ask Director Vigneault to address it. While the Prime Minister may have asked that the written CSIS Threat Assessment be provided to Cabinet, that was never done. The CSIS Threat Assessment was one of the most relevant materials to be put to Cabinet. The Prime Minister should therefore have identified and corrected the failure to provide it to Cabinet immediately (and the Clerk should have advised him to do so). Moreover, the Prime Minister could have mitigated the error by calling on Director Vigneault to speak. However, he did not. As a consequence, the Cabinet was not presented with one of the most relevant inputs for its decision. Without this essential input before it, Cabinet lacked reasonable grounds under section 17 to conclude that a public order emergency existed.

D. The Cabinet did not have "reasonable grounds" to conclude that threats to the security of Canada existed because it did not provide evidence and reasons for why it disagreed with the CSIS assessment

40. The *Emergencies Act* relies on the *CSIS Act* definition of threats to the security of Canada. But the decision of whether such threats exist rests with Cabinet, not with CSIS. It is a straw man argument to insist that, since the *Emergencies Act* definition of threats to the security of Canada

[27] *Ibid.*
[28] POEC Transcript of Evidence of Nathalie Drouin on November 18, 2022 at pp. 250-251 (TRN00000026)
[29] POEC Transcript of Evidence of Deputy Minister Rob Stewart on November 44 at p. 115 (TRN00000022)
[30] POEC Transcript of Evidence of Janice Charette and Nathalie Drouin at p. 252 (TRN00000026)

has the same meaning as the *CSIS Act* definition, it necessarily follows that this determination is *delegated* to CSIS.

41. Section 16's reliance on the *CSIS Act* definition of "threats to the security of Canada" means that the CSIS Threat Assessment is relevant to determining if Cabinet has reasonable grounds for concluding that a public order emergency exists. If Cabinet disagrees with the CSIS Threat Assessment, it must provide evidence and reasons for why it did, in the form of an alternative threat assessment ("Alternative Threat Assessment"). It is not enough to simply assert – as did Clerk Charette and Deputy Clerk Drouin – that Cabinet relied on a broader range of inputs.[31] The CSIS is an expert, non-partisan security intelligence agency with a statutory mandate to assess threats to national security. If Cabinet chose to disagree with the CSIS assessment, it had to provide evidence and reasons in an Alternative Threat Assessment.

42. Three pieces of evidence lead to the conclusion that an Alternative Threat Assessment was never prepared.

43. *First*, at 1144 AM ET on February 14, 2022, the National Security and Intelligence Advisor Thomas sent the following email with the subject line "Urgent" to a small group of recipients:[32]

> I need an assessment for Janice about the threat of these blockades. The characters involved. The weapons. The motivation.
> Clearly this isn't COVlD and is a threat to democracy and rule of law.
> Could I get an assessment please. David is this you? It's a very short fuse
> Please call if you have questions

The topic of this email is the "threat of these blockades". The email was sent the day after Cabinet had delegated to Prime Minister Trudeau the power to declare a public order emergency, subject to consultation with the provinces, which had taken place that morning. It is reasonable to infer from this timing that "threat" meant "threats to the security of Canada". "Janice" in this email

[31] POEC Transcript of Evidence of Janice Charette and Nathalie Drouin at p. 175 (TRN00000026)
[32] POEC Transcript of Evidence of Jody Thomas on November 17, 2022 at pp. 207-208 (TRN00000025)

likely refers to Clerk Charette. Given the topic of threats to national security, "David" likely refers to Director Vigneault.

44. Clerk Charette had clearly asked NSIA Thomas to prepare the Alternative Threat Assessment. This email does not take the CSIS Threat Assessment as the starting point. Nor does it systematically identify a broader range of inputs to analyze to serve as the basis for Cabinet's disagreement with the CSIS assessment. Indeed, it does not even mention the CSIS Threat Assessment. Cabinet had met the evening before, during which meeting it presumably determined that such a threat to national security existed. This email is evidence of *ex post* justification of the decision that Cabinet had taken the evening before. A relevant piece of context is that the NSIA is appointed by and reports directly to the Prime Minister, and unlike CSIS lacks any statutory footing. Moreover, NSIA Thomas testified that she had no previous expertise in intelligence (unlike Director Vigneault), and does not have a "Domestic Intelligence Assessment Unit" to analyze intelligence.[33]

45. *Second*, also on February 14, Clerk Charette wrote a memorandum to Prime Minister Trudeau recommending that the *Emergencies Act* be invoked.[34] On page 2, the memo states "A more detailed threat assessment is being provided under separate cover". Clerk Charette testified:[35]

> We have looked to see whether or not – we've done -- gone back and search all our records, was this provided under separate cover, did it follow? We've not been able to find that. To the best of my knowledge, there was no written detailed threat assessment provided under separate cover.

This "detailed threat assessment" is not the CSIS Threat Assessment; it is the Alternative Threat Assessment which presumably would have concluded that there was a threat to national security under the *Emergencies Act*. It is undoubtedly the Alternative Threat Assessment that Clerk Charette asked NSIA Thomas to prepare. However, this "detailed threat assessment" was never prepared. The Prime Minister, exercising the power delegated to him by Cabinet, declared the public order emergency without any alternative threat assessment.

[33] POEC Transcript of Evidence of Jody Thomas on November 17, 2022 at p. 233 (TRN00000025)
[34] Memorandum for the Prime Minister (SSM.NSC.CAN.00003224_REL.0001)
[35] POEC Transcript of evidence of Janice Charette at pp. 9-13, 174 (TRN00000026)

46. *Third*, there is the Section 58(1) Explanation. As stated above, the Explanation must include the *legal* basis for the declaration, which in turn includes the legal interpretation of the *Emergencies Act*. The Section 58(1) Explanation does not set out the *CSIS Act* definition of "threats to the security of Canada", let alone attempt to apply it in any way to the protests. Nor are there any references to the *CSIS Act*, or to CSIS itself. The emphasis in the Section 58(1) Explanation on the economic impact of the protests is striking, since those impacts fall entirely outside the scope of section 2 of the *CSIS Act.* The Section 58(1) Explanation, at a bare minimum, should have offered an account of how the protests posed threats to the security of Canada under the definition in section 2 of the *CSIS Act*, and the basis for that conclusion. It falls conspicuously short of meeting even this minimal requirement.

Part III — The Government has not established that existing law could not effectively deal with the protests

A. Existing laws in Canada provided the government and the police with the tools they needed to effectively deal with the protests

47. The Government's invocation of the *Emergencies Act* can only be justified if existing laws at the federal, provincial, and municipal levels in Canada were not sufficient to "effectively deal with" the protests that were taking place. Section 16 of the *Emergencies Act* defines a "public order emergency" as a situation that arises when threats to the security of Canada are so serious they amount to a "national emergency". The term national emergency is itself defined as an "urgent and critical situation of a temporary nature" that "*cannot be effectively dealt with under any other law of Canada*" (emphasis added). We term this the "last resort clause".

48. When proposed, Bill C-77 did not contain the last resort clause. Moreover, it did not define a "national emergency" in an operative provision. Rather, "national emergency" was defined in the preamble as follows:[36]

> … national emergency, that is to say, an urgent and critical situation of a temporary nature that imperils the wellbeing of Canada as a whole or that is of such proportions or nature as to exceed

[36] Bill C-77, First reading, preamble.

> the capacity or authority of a province to deal with it and thus can be effectively dealt with only by Parliament in the exercise of the powers conferred on it by the Constitution.

This definition of "national emergency" did not include the last resort clause.

49. At the Committee stage, Bill C-77 came under attack for lacking a statutory definition of a "national emergency", thus creating the risk that it did not include adequate safeguards to prevent the declaration of an emergency. The federal government responded to this criticism by proposing to move the definition of "national emergency" from the preamble to an operative provision, and to define it as follows (in a new section 3):[37]

> an urgent and critical situation of a temporary nature that imperils the well-being of Canada as a whole or that is of such proportions or nature as to exceed the capacity or authority of a province to deal with it and thus can be effectively dealt with only by Parliament in the exercise of the powers conferred on it by the Constitution.

50. Committee members and witnesses said this proposed amendment did not go far enough. For example, the CBA's written submissions stated (emphasis added):[38]

> In our view, the term "emergency" should be defined, in the bill with reference to the need for extraordinary powers. We propose the following definition: "emergency" means an urgent and critical situation of a temporary nature in which government requires extraordinary powers to meet its fundamental obligations.

The Canadian Labour Congress stated in oral testimony (emphasis added):[39]

> … the definitions of national emergency need some tightening to *ensure that this proposed act will be used only as a last resort, and only when nothing else can be used*.

La Ligue des droits and libertés testified (emphasis added):[40]

> We think that a bill of this type must be based on certain principles. It must be used as a last resort. All other regular or special legislation must be tried and found lacking before turning to this legislation. … In our opinion, *it is a law of last resort*, a law that is completely extraordinary. … But when *it is a matter of an extraordinary law, a law of last resort*, the definition must be very precise and very stringent and in our definitions, the

[37] POE.CCF00000031, p. 316.
[38] POE.CCF00000031, p. 88.
[39] POE.CCF00000031, p. 260.
[40] POE.CCF00000031, p. 366

door must be closed to any possible arbitrary use of this law that could inflict a great deal of damage. … *this act must be used as a last resort: over and above normal law, the government would be empowered to invoke special laws. Under the Emergencies Act, there should be a provision forcing the government to explain why it is unable to cope with an emergency situation under current law or a special law.*

51. Bud Bradley (Parliamentary Secretary to the Minister of Defence, Perrin Beatty) moved to add what became section 3, including. the last resort clause The amendment was supported by the NDP. The Chair of the committee, Derek Blackburn (NDP) had the following exchange about the proposed amendment with a federal witness, Bill Snarr, the Executive Director, Emergency Preparedness Canada, which sponsored Bill C-77 (emphasis added):[41]

> Mr. Blackburn (Brant):
>
> It says:
>
> and that cannot be effectively dealt with under any other law of Canada.
>
> *Does that mean the government, when contemplating proclaiming an emergency, would have to make absolutely clear that the Criminal Code, for example, could not handle the situation*; in other words, if we had a riot or a series of riots in a city and it was not felt that, by "reading the Riot Act" and imposing or using the Criminal Code, the regular law enforcement agencies could cope with that situation?
>
> Mr. Snarr: *That is exactly right*.

The new section 3, as proposed by Bud Bradley, was reported out to the House, and ultimately adopted into law by Parliament. Mr. Bradley explained the last resort clause on Third Reading (emphasis added):[42]

> The definition of "national emergency" as now formulated captures the four elements common to all the proposals put to the committee. It represents the distilled consensus of the collective wisdom of the highly qualified people whose advice we were fortunate to receive. The four elements incorporated in a new definition of national emergency are; first, the notion of urgency; second, the temporary character of the abnormal situation; *third, the inadequacy of the normal legal framework*; and finally, the presence of a serious

[41] POE.CCF00000031, p. 615.
[42] 1988 House of Commons Debates (Hansard) 33 Parl 2nd Session Vol 12 at p. 14765

threat, either to the security of the country as a whole, or to public safety in circumstances which exceed provincial capabilities.

52. By defining a "national emergency" as a situation that cannot be dealt with effectively under any other law of Canada, section 3 creates a straightforward requirement. Parliament is precluded from using the *Emergencies Act* as a tool of convenience. A "national emergency" only exists when there are no other laws at the federal, provincial, or municipal levels in Canada that can address the "urgent and critical situation" that is said to amount to an emergency.

53. This standard was not met in this case. Existing law was sufficient to deal with the protests and invoking the *Emergencies Act* simply was not necessary. Municipal bylaws already empowered the police to clear out the vehicles causing the blockade.[43] And the *Criminal Code* gave the police the power to arrest and charge protestors for a number of offences, including the defiance of court ordered injunctions which enforced municipal bylaws.[44] The *Emergencies Act* did not add anything *absolutely necessary* to the equation. The best evidence of this comes from the fact that it was these criminal law powers were the tools that were ultimately *actually* used to effectively clear out the blockades and end the "emergency" — not the powers that were created through the invocation of the *Emergencies Act*.

54. The *Emergencies Act* passed on February 14, 2022, and its powers came into effect on February 15, 2022. However, the blockades were already cleared or being cleared under existing law before these dates:

- Windsor police and the OPP started to clear the Ambassador bridge blockade on February 12. The Windsor Police Service tweeted that the bridge was cleared at 12:00 on February 14, 2022.[45]
- The RCMP had started making arrests at the Coutts blockade on the night of February 13, 2022, and Premier Kenny expressed that the situation had been "secured".[46]

[43] For example, the injunction issued by Justice McWatt on February 15, 2022 noted several City of Ottawa by-laws including Noise By-Law 2017-255, Use and Care of Roads By-law 2003-498 and Idling Control By-Law 2007-266 (OTT00028978.0001)
[44] Section 127, *Criminal Code*, R.S.C., 1985 c. C-46
[45] POEC Transcript of Evidence from PM Trudeau on November 25, 2022 at pp. 80-81 (TRN00000031)
[46] *Ibid*

55. Notably, even after the Government invoked the *Emergencies Act*, every single criminal charge that was laid in response to and in order to quell the protests was done under already existing offences in the *Criminal Code.* The Institutional Report of the Ottawa Police Service included a chart setting out the total *Criminal Code* charges laid during the protest.[47] The chart is reproduced below:

[47] Institutional Report of the Ottawa Police Service, Schedule C (OPS.IR.00000001)

SCHEDULE C

Total Charges from Convoy Protest																				
Charge wording	29-Jan	30-Jan	3-Feb	6-Feb	7-Feb	8-Feb	9-Feb	11-Feb	12-Feb	13-Feb	14-Feb	16-Feb	17-Feb	18-Feb	19-Feb	20-Feb	21-Feb	25-Feb	12-Mar	Total
Assault Peace or Public Officer Sec 270 CC													3	4	3		1			11
Assault Peace/Public Officer and Carry/Use or Threaten to Use Weapon or Imitation Weapon															1					1
Assault Sec 266 CC									4		1			1						6
Assault with Weapon or Imitation Weapon Sec 267 CC			1												2					3
Breach of Probation Sec 733.1 CC					1			1							2					4
Carry Concealed Weapon, etc. Sec 90 CC		1													1					2
Carry Weapon, etc. to Public Meeting Sec 89 CC		1																		1
Cause A Disturbance by Fighting/Shouting/Swearing Sec 175 CC													1		1					2
Cause a Disturbance by Impeding/Molesting Persons Sec 175 CC														1	2					3
Counsel an Uncommitted Indictable Offence Sec 464CC							7					1			2	2	3			15
Dangerous Operation Sec 320.13 CC					1								1	1						3
Disobey Lawful Order of Court, etc. Sec 127 CC							1							37	42	6	1			87
Disturb Occupants of a Dwelling in Apt. Complex Sec 175 CC															1					1
Fail to Comply with Release Order/Not Failure to Attend Court Sec 145 CC								2												2
Fail to Comply with Undertaking Sec 145 CC																	2			2
Flight from Peace Officer Sec 320.17 CC					1															1
Fraudulent Concealment of Property Sec 341 CC					1															1
Fraudulent Concealment Sec 341 CC								1												1
Incite Hatred in Public Place Sec 319 CC																			1	1
Intimidation by Blocking or Obstructing Highway Sec 423 CC							3								1	1				5
Intimidation by Threats of Violence Sec 423 CC							1								1					2
Mischief Inoperative or Ineffective Sec 430 CC														1						1
Mischief Sec 430 CC				3	1		1		1	1		1	1	47	43	6	1			106
Mischief/Obstruct Property Sec 430 CC				3	1		2		1	1				44	46	9	1			108
Mischief/Damage Property Not Exceeding $5,000 Sec 430 CC	1										7									8
Mischief/Obstruct Property Exceeding $5,000 Sec 430 CC							2					1		2	1		2			8
Mischief/Obstruct Property Not Exceed $5,000 Sec 430 CC					1						7									8
Mischief/Obstruct User Property Exceeding $5,000 Sec 430 CC							1									1				2
Obstruct/Resist A Public/Peace Officer Sec 129 CC					1	1	3		1				1	51	43	8	3			112
Obstruct/Resist Person Aiding Public/Peace Officer Sec 129 CC					1									2		1	1			5
Operation of a Conveyance while Prohibited																	1			1
Possess Firearm, etc. while Prohibited Sec 117.01 CC								1												1
Possess Proceeds of Property or Thing Obtained by Crime/ Exceeding $5,000 Sec 354 CC								1												1
Possess Restricted or Prohibited Firearm without holding a Licence and Registration Certificate								1												1
Possess Weapon, etc./Dangerous to Public Peace Sec 88 CC		1									1				2			1		5
Possess Weapon, etc./For Committing an Offence Sec 88 CC			1								1									2
Take Weapon of Peace Officer in Execution of Duty Sec 270.1 CC														1						1
Unauthorized Poss of a Prohibited or Restricted Weapon Sec 91(2) CC															1					1
Unlawfully Possess Schedule I Substance Sec 4 CDS Act					1			2												3
Uttering Threats/Death or Bodily Harm Sec 264.1 CC			1				1						1					1		4
Uttering Threats Property Damage Sec 264.1 CC															1					1
Total	**1**	**3**	**3**	**6**	**10**	**1**	**22**	**9**	**7**	**2**	**17**	**3**	**8**	**192**	**196**	**34**	**16**	**2**	**1**	**533**

56. The chart reveals that the Ottawa Police Service laid 533 charges against the protestors in Ottawa. The protestors were committing a wide array of offences. Although the vast majority of these charges were laid *after* the government invoked the *Emergencies Act* on February 14, 2022, all of the offences were ones that already existed in the *Code*.

57. This is a fatal problem at the heart of the Government's decision to invoke the *Emergencies Act*. Invoking the Act cannot just be helpful or expedient. It has to be *absolutely necessary* because existing laws cannot effectively address the situation. Here, that was manifestly not the case. The blockades were being cleared out successfully before the *Emergencies Act* was invoked. Municipal bylaws and federal criminal laws already created offences that prohibited the blockades that gave rise to the alleged 'emergency', and these provisions are ultimately what was used to effectively end the protests.

B. The solution to the "policing failure" in Ottawa was the deployment of additional RCMP officers, not resort to the Emergencies Act

58. The Government points to the apparent initial failure of the Ottawa Police Service to effectively control the protestors in Ottawa as the main justification for its claim that there were no existing laws that could effectively deal with the emergency. In the Section 58 Explanation, the Government states that in Ottawa "the Ottawa Police Service has been unable to enforce the rule of law in the downtown core due to the overwhelming volume of protesters and the Police's ability to respond to other emergencies has been hampered by the flooding of Ottawa's 911 hotline, including by individuals from outside Canada."[48] In the paragraph that follows, the Explanation goes on to state that "The inability of municipal and provincial authorities to enforce the law or control the protests may lead to further reduction in public confidence in police and other Canadian institutions".[49]

59. The Ottawa Police Service being "overwhelmed" was a theme the Commission heard frequently during the hearing as well. Deputy Minister Rob Stewart testified, for instance, that

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[48] Section 58 Explanation at p. 13 (COM00000670)
[49] *Ibid*.

Ottawa municipal and provincial authorities were not used more extensively because the Ottawa Police Service was overwhelmed by protestors.[50]

60. The problem with this position is that it actually does not establish that existing laws could not effectively deal with the protest. If the Ottawa Police Service were overwhelmed and ineffective in their response, this does not establish that new laws and powers were needed to address the situation. It shows only that a municipal police force was struggling to effectively *enforce* already existing laws. In truth, the most that can be said is that the Ottawa Police Service simply needed help, primarily in the form of boots on the ground, but also in coming up with an enforcement plan.

61. This enforcement problem does not justify invoking the *Emergencies Act*. The reality is that existing laws were sufficient both to deal with the protests themselves, *and* to get the Ottawa Police Service the help it needed to enforce the law as it already existed on the books. In particular, the solution to the OPS enforcement problem was not resort to the *Emergencies Act*, but rather the deployment of additional RCMP officers to Ottawa.

C. The RCMP were empowered to enforce the law on the ground in Ottawa

62. During the inquiry, the Commission heard from the RCMP panel consisting of Commissioner Brenda Lucki and Deputy Commissioner Michael Duheme. The RCMP panel confirmed that the RCMP is under contract with some provincial governments and constitutes the "police of jurisdiction" in those areas, and that Ontario is not one of these provinces. The RCMP, however, has some RCMP officers stationed in Ottawa to fulfill its "protective policing mandate" — a mandate that includes protecting officials such as the Prime Minister, Governor General, the Chief of the Supreme Court, and visiting dignitaries, among others. Deputy Commissioner

[50] POEC Transcript of Evidence of Deputy Minister Rob Stewart on November 14, 2022 at p. 182 (TRN00000022). See also Interview Summary: Rob Stewart, Dominic Rochon, Talal Dakalbab, Deryck Trehearne, Department of Public Safety and Emergency Preparedness at p. 18 (WTS.00000066)

Duheme testified that there were approximately 400 people assigned full time in Ottawa as part of this protective policing mandate.[51]

63. In cross-examination, Commissioner Lucki was asked whether there were any legal barriers that prevented the RCMP from deploying additional officers to Ottawa. In response, Commissioner Lucki claimed that the RCMP was not the "police of jurisdiction in Ottawa", that there is a "police of jurisdiction for a reason" and that the RCMP could not "simply walk in and decide that we were the police of jurisdiction".[52]

64. This evidence is a red herring. Whether the RCMP were the "police of jurisdiction" in Ottawa is neither here nor there as a matter of law. The RCMP do not need to be the technical "police of jurisdiction" in a province in order to have the legal authority to enforce the *Criminal Code*. Section 18(a) of the *RCMP Act* sets out the powers of RCMP officers, and states:

> 18 It is the duty of members who are peace officers, subject to the orders of the Commissioner,
>
> to perform all duties that are assigned to peace officers in relation to the preservation of the peace, the prevention of crime and of offences against the laws of Canada and the laws in force in any province in which they may be employed, and the apprehension of criminals and offenders and others who may be lawfully taken into custody [emphasis added];[53]

65. Under section 18 of the *RCMP Act*, RCMP officers possess the power to enforce the *Criminal Code* and there are no territorial limits placed on this power. Commissioner Lucki ultimately confirmed that the RCMP does not need to be police of jurisdiction to enforce the *Criminal Code*. If an RCMP officer, for instance, saw a person on Wellington Street in Ottawa

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[51] POEC Transcript of Evidence of Commissioner Brenda Lucki and Deputy Commissioner Michael Duheme on November 15, 2022 at p. 12 (TRN00000023)
[52] POEC Transcript of Evidence of Commissioner Brenda Lucki on November 15, 2022 at p. 245 (TRN00000023)
[53] Section 18 of the *Royal Canadian Mounted Police Act*, R.S.C., 1985, c. R.10 (CCF00000029)

committing an offence under the *Criminal Code*, the officer could arrest that person. The RCMP officer would not be powerless to act, nor required to call the Ottawa Police Service.[54]

66. While there was evidence that RCMP officers would need to be sworn in as special constables under the *Police Services Act* to possess all the same enforcement powers as officers of the Ottawa Police Service, this was not a significant impediment — and certainly not one that could justify invoking the extraordinary powers of the *Emergencies Act*. Pursuant to section 53 of the *Police Services Act*, RCMP officers can be sworn in as special constables with the Solicitor General's approval.[55] In reality, this was simply a "formality" that required signing a paper.[56]

67. Even if for some reason RCMP officers could not be sworn in, they could still have had the power to enforce municipal bylaws in order to help regain control over the protests, because of the Superior Court injunction issued on February 15, 2022. This injunction prohibited anyone from violating noise and road encumbrance bylaws in the City of Ottawa.[57] Section 127(1) of the *Criminal Code* in turns makes it a criminal offence to "without lawful excuse, disobey a lawful order made by a court of justice".[58] The effect of the injunction was to transform municipal bylaw breaches into *Criminal Code* offences that the RCMP did have jurisdiction to enforce, regardless of whether they had been sworn in under the *Police Services Act*.

68. The CCF therefore submits that, while tradition and intergovernmental practice may discourage the RCMP from enforcing the *Code* in Ottawa, there was no legal barrier that prevented the RCMP from doing so.[59] Nothing in the *RCMP Act*, for instance, requires that a request from the "police of jurisdiction" be made before RCMP officers can be deployed directly to the jurisdiction. The deployment of RCMP officers to enforce the *Criminal Code* was an option the Government had before it but did not adequately pursue, and it cannot establish that existing laws

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[54] POEC Transcript of Evidence of Commissioner Brenda Lucki on November 15, 2022 at p. 245 (TRN00000023)
[55] Section 53, *Police Services Act*, R.S.O. 1990, CHAPTER P.15 (CCF00000011)
[56] POEC Transcript of evidence of Mario Di Tommaso on November 10, 2022 at p. 146 (TRN00000021)
[57] Superior Court of Justice Injunction issued by Justice McWatt on February 15, 2022 (OTT00028978.0001)
[58] Section 127, *Criminal Code*, R.S.C., 1985 c. C-46
[59] POEC Transcript of Evidence of Commissioner Brenda Lucki on November 15, 2022 at p. 246 (TRN00000023)

did not provide an effective solution to the Ottawa Police Service's enforcement problem as a result.

D. There was no need for the Ottawa Police Service to seek help from the OPP before the RCMP

69. The Commission also heard that the Ottawa Police Service actually *sought* help from the RCMP and asked for additional officers. The response to this request was baffling. The RCMP position was that while it could provide "some help", to the extent that "more help" was required, the Ottawa Police Service really ought to have been asking the Ontario Provincial Police for support.[60] The apparent authority for this position was said to come from Ontario's *Police Services Act*.

70. The *Police Services Act*, however, does not actually support this position. The relevant sections are section 9(1) and section 9(6) which state:[61]

> 9 (1) If the Commission finds that a municipality to which subsection 4 (1) applies is not providing police services, it may request that the Commissioner have the Ontario Provincial Police give assistance.
>
> …
>
> (6) A municipal chief of police who is of the opinion that an emergency exists in the municipality may request that the Commissioner have the Ontario Provincial Police give assistance [emphasis added].

71. Sections 9(1) and 9(6) merely *enable* the Ottawa Police Service to seek help from the Ontario Provincial Police. Neither section requires that the Ottawa Police Service seek help from the Ontario Provincial Police before seeking help from the RCMP. Nothing in the *Police Services*

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[60] POEC Transcript of Evidence of Deputy Minister Stewart on November 14, 2022 at pp. 184-185 (TRN00000022)
[61] Sections 9(1) and 9(2), *Police Services Act*, R.S.O. 1990, CHAPTER P.15 (CCF00000011)

Act stands for this proposition, nor does any other law or legislation. For instance, nothing in the *RCMP Act* requires that the RCMP respond to a municipal police force request only after the force exhausted the provincial police force first. The reality is that there was no legislative barrier to the RCMP giving the OPS the help it needed and asked for immediately after it was requested. The view that this request should have been made to the OPP first appears to be one police force trying to "pass the buck" on to another police force, rather than a legislative requirement.

E. It remains unclear how many RCMP officers were deployed to Ottawa

72. When Deputy Minister Stewart was taken to the language of the *Police Services Act* during cross-examination, he admitted that it was the first time he had seen the legislation, but claimed that as he understood it, "the RCMP was willing to help and did not stand on principle as to whether they were the first or the second asked".[62]

73. But as the below chart reveals, as of February 12, 2022, only 167 RCMP officers had been deployed to Ottawa.[63]

Ottawa Truck Demonstration 2022 - Deployments

Role | Level | Agency	30-01-2022	31-01-2022	01-02-2022	02-02-2022	03-02-2022	04-02-2022	05-02-2022	06-02-2022	07-02-2022	08-02-2022	09-02-2022	10-02-2022	11-02-2022	12-02-2022	Daily Avg
Public Order	98	103	76		71	75	63	62	11	57	60	53	212	180	86
Municipal	33	33										36	114	81	59
Durham Regional Police Service													42	42	42
London Police Service	33	33										36			34
Peel Regional Police													33		33
York Regional Police													39	39	39
Provincial													40	40	40
Ontario Provincial Police													40	40	40
Ottawa	65	70	76		71	75	63	62	11	57	60	17	58	59	57
Ottawa Police Service	65	70	76		71	75	63	62	11	57	60	17	58	59	57
Civilian	8	10	9		6	10	8	10	5	5	8	7	8	8	8
Sworn	57	60	67		65	65	55	52	6	52	52	10	50	51	49
Regular Members	318	221	230	257	241	329	362	355	307	335	345	352	371	455	320
Federal						20	45	52	49	54	56	60	89	167	66
Royal Canadian Mounted Police						20	45	52	49	54	56	60	89	167	66
Municipal							5	6	4	3	3	35	53	1	14
Cornwall Police Service									3	3	3	6	5	1	4
Durham Regional Police Service												21	22		22
Kingston Police Service							5	6	1						4
Peel Regional Police												8	26		17
Provincial	20	29	59	59	54	48	63	63	64	64	66	61	66	105	59
Ontario Provincial Police	20	29	59	59	54	48	63	63	64	64	66	61	66	105	59
Ottawa	298	192	171	198	187	261	249	234	190	214	220	196	163	182	211
Ottawa Police Service	298	192	171	198	187	261	249	234	190	214	220	196	163	182	211
Civilian	30	12	13	14	14	17	19	19	15	14	15	14	16	20	17
Sworn	268	180	158	184	173	244	230	215	175	200	205	182	147	162	195
Grand Total	**416**	**324**	**306**	**257**	**312**	**404**	**425**	**417**	**318**	**392**	**405**	**405**	**583**	**635**	**400**

Note: External Public Order Deployments are incomplete between Jan 30 and Feb 09, 2022.

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[62] POEC Transcript of Evidence of Deputy Minister Stewart on November 14, 2022 at pp. 186-187 (TRN00000022)

[63] Ottawa Truck Demonstration 2022 – Deployments – 20220212 (OPB00001014)

74. It also remains entirely unclear how many RCMP officers were actually ever deployed to Ottawa in response to the apparent emergency that later justified invoking the *Emergencies Act* and were not simply to fulfil their federal mandate. Deputy Minister Stewart agreed that there was tension between Ottawa Chief of Police Peter Sloly and the federal government, because he was questioning how many of the RCMP officers that were purportedly deployed to help in Ottawa were being used only to fulfill their mandate of protecting federal spaces and federal assets, instead of actually helping the Ottawa Police Service enforce legislation like the *Criminal Code* and the *Highway Traffic Act* to deal with the protests.[64]

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[64] POEC Transcript of Evidence of Deputy Minister Stewart on November 14, 2022 at p. 183 (TRN00000022)

Part IV — Conclusion

75. The Government's unprecedented invocation of the *Emergencies Act* was illegal. It failed to comply with at least two requirements of the legislation. As determined by CSIS, there was no threat to the security of Canada as defined in the *CSIS Act.* Cabinet did not have reasonable grounds to conclude otherwise, as it was not provided with the CSIS Threat Assessment when it decided to invoke the Act, and no Alternative Threat Assessment was prepared. In addition, the Government has failed to demonstrate that existing municipal, provincial and federal law could not effectively address the difficulties caused by the protests.

76. The *Emergencies Act* is extraordinary and dangerous legislation. Its requirements must be strictly interpreted and carefully complied with, and the government's actions must be subjected to exacting scrutiny. That scrutiny reveals this invocation of the Act was illegal.