



12 DAYS OF

CHRISTMAS

**PUBLIC ORDER EMERGENCY
COMMISSION EDITION**



**CANADIAN
CONSTITUTION
FOUNDATION**





About the Canadian Constitution Foundation

The Canadian Constitution Foundation (CCF) is a national and non-partisan charity. We are dedicated to defending the constitutionally protected rights and freedoms of Canadians, and to maintaining Canada's constitution, including its federal structure and division of powers, as intended in the Constitution Act, 1867.

The CCF's primary objective is to ensure that government power does not infringe on the rights and freedoms of Canadians, or disrupt the principles of Canadian federalism. The CCF advances these objectives by promoting civic engagement, awareness, and education regarding contemporary issues and developments in Canadian constitutional law. The CCF also initiates and intervenes in high-profile court cases, where it advocates against government overreach and urges courts to adhere to the written text and scheme of Canada's Constitution.

The CCF and projects like this book are possible because of our donors. If you want to support our work you can make a tax deductible donation at the [CCF.ca/donate/](https://www.ccf.ca/donate/)

Joanna Baron

CCF Executive Director



TABLE OF CONTENTS

1

On the first day of Christmas, POEC gave to me...
a new and novel legal theory about the meaning of a “national security threat”

2

On the second day of Christmas, POEC gave to me...
endless claims of privilege!

3

On the third day of Christmas, POEC gave to me...
the wild claim that an economic threat can be a “national security threat”

4

On the fourth day of Christmas, POEC gave to me...
the convoy protesters' testimony about frozen bank accounts

5

On the fifth day of Christmas, POEC gave to me...
the “tanks in the streets” text exchange between Lametti and Mendicino

6

On the sixth day of Christmas, POEC gave to me...
RCMP Commissioner Brenda Lucki appearing to not know... anything



TABLE OF CONTENTS

7

On the seventh day of Christmas, POEC gave to me...
the revelation that the feds considered using the Emergencies Act as early as January

8

On the eighth day of Christmas, POEC gave to me...
the failure of the Ottawa police

9

On the ninth day of Christmas, POEC gave to me...
Tow trucks! The day before the Emergencies Act was invoked!

10

On the tenth day of Christmas, POEC gave to me...
a very bad false flag theory

11

On the eleventh day of Christmas, POEC gave to me...
the Prime Minister's failure to fully brief Cabinet

12

On the twelfth day of Christmas, POEC gave to me...
an opportunity to reform the law

INTRODUCTION



The Public Order Emergency Commission is the gift that keeps on giving this holiday season

F

For six weeks in October and November of 2022, the Public Order Emergency Commission (“POEC”) held factual hearings in Ottawa. The POEC was the legally

required public inquiry into the federal government’s first ever invocation of the Emergencies Act.

This extraordinary legislation, designed to deal with plagues, wars, and terrorist attacks, was invoked for the first time ever in response to the 2022 Freedom Convoy, a group of protesters in big rig trucks who blockaded parts of Ottawa and certain border crossings for three weeks in early 2022. These protests arose out of frustrations with ongoing government

restrictions in response to the COVID-19 pandemic, in particular, the imposition of a vaccine mandate on previously exempt commercial truckers in January 2022.

The Emergencies Act is an extraordinary law. It is the successor to the War Measures Act. It gives tremendous power to the Prime Minister and Cabinet, including the power to create new criminal law by executive order. These are powers that must have a high threshold and which we all should be wary of in a liberal democracy. The POEC was looking into the government’s justification for invoking this law in response to a highly disruptive political protest.

The Canadian Constitution Foundation (“CCF”) participated in the POEC factual

hearings as a party to the inquiry. As a legal charity that fights for fundamental freedoms in the courts of law and public opinion, the CCF provided a valuable perspective in these hearings, and we able to give opening and closing arguments and cross examine witnesses. These included midlevel and top police, previously faceless senior government officials, and Cabinet Ministers all the way up to the Prime Minister.

The hearings took place at the National Archives, which is sort of the bookend of Wellington street in Ottawa, at the very fringe of the downtown, nestled among these hulking concrete bureaucratic buildings. Ottawa in November is no vacation, and CCF lawyers spent the long weeks of the inquiry there.

Bleak as it is, the setting is apropos. The Archives is mere steps away from of the Supreme Court, and it is the very same location that found itself gridlocked by the Freedom Convoy's big rigs and tractor trailers in January 2022.

In this book, we will go through some of the biggest takeaways from the factual hearings. The things that were revealed to us through the testimony of all those key players. Since it's the holiday season, this is "the 12 days of Christmas, public order emergency commission edition" We hope you enjoy it, and that you enjoy that we won't be singing it for you.

Happy holidays.

Joanna Baron and Christine Van Geyn



CANADIAN
CONSTITUTION
FOUNDATION

Our ability to stay vigilant against constitutional overreach depends entirely on private support.

Please consider making a tax-deductible donation at www.theccf.ca/donate/



Joanna Baron is a lawyer and the Executive Director of the Canadian Constitution Foundation. Christine van Geyn is a lawyer and Litigation Director of the Canadian Constitution Foundation.

On the first day of Christmas,
the public order emergency
commission gave to me...

A NEW AND NOVEL LEGAL THEORY ABOUT THE MEANING OF A “NATIONAL SECURITY THREAT”



The government has promoted a strange and novel legal argument intended to lower the threshold for when this powerful law can be used – a law designed to deal with wars, plagues and terrorist attacks. The threshold for invoking the Emergencies Act for a public order emergency is a high one, as is plain in the text of the law itself. It requires the existence of a national security threat, and defines that term to have the same meaning as in CSIS Act. The testimony from CSIS Director David Vigneault was that no national security threat existed, which is what appears to have led to the government to develop this new theory that the thresholds under the two acts are different.

This interpretation that the two thresholds are different runs counter to the text of the law, to the standard principles of statutory interpretation,

and to the intention of Parliament when they enacted the Emergencies Act.

During cross examination of Attorney General and Minister of Justice David Lametti, CCF lawyer Janani Shanmuganathan pulled up the text of parliamentary debate from Hansard .

Ms Shanmuganathan showed Minister Lametti an excerpt of Hansard where Minister Perrin Beatty, the author of the Emergencies Act, made it clear that its definition of national security threat was same the CSIS Act definition. Beatty said that the Emergencies Act set out “double test”.

First, the government must meet the threshold in the CSIS Act, and second, the threshold of a national emergency in the preamble to the Emergencies Act. The threshold is not lower under the Emergencies Act than under the CSIS Act; it is higher. To use Minister Beatty’s language, it is “very stringent indeed”. When presented with this excerpt, Minister

Lametti sullenly responded, “well that’s your opinion.”

Now while the government gave us this new legal theory, they actually kind of cheated. Because they didn’t actually give it to us. It would be kind of like if you bought your husband a leaf blower for Christmas, but didn’t actually give it to him. You just told him it exists , printed out a picture of the leaf blower and said “I have a really great leaf blower, but you can’t see it.”

We asked the government to disclose this novel legal opinion, but they refused, claiming privilege. Which leads us to the second gift of POEC...

On the second day of Christmas, the public order emergency commission gave to me...

ENDLESS CLAIMS OF PRIVILEGE



The government has relied on a novel legal theory about the threshold of “national security threat” under the Emergencies Act, but has refused to provide a copy of the legal opinion about this novel legal theory.

On the last week of hearings, Commissioner Paul Rouleau was questioning the federal Attorney General and Minister of Justice David Lametti. Minister Lametti, a former academic, had balked at answering questions about the basis for the legality of invoking the federal Emergencies Act, claiming that revealing this information infringed upon solicitor-client privilege.

Lametti’s refusal to answer questions related to the legal opinion from the Department of Justice puts the Commission in a bind. This opinion was relied upon by key decision makers and cited by key witnesses testifying at the inquiry, including the Prime Minister’s national security advisor, the head of Canada’s spy agency and the Minister of Finance. Their testimony suggested that this opinion laid out a novel interpretation of the threshold to invoke the Emergencies Act, and one that runs counter to the principles of statutory interpretation.

The question of what this threshold is and whether it is met is the core task of the Commission. It is question everyone who spent those bleak weeks in Ottawa was there to answer: was the federal government legally justified in invoking the Act? Shielding the Department of Justice’s legal theory upon which key decision makers relied

could make the job of the Commission more challenging, if not impossible.

A bespectacled lawyer for the Commission, facing Lametti and his counsel’s abrupt invocation of legal privilege over the core question of the inquiry itself, demurred. “Commissioner Rouleau, commission counsel is in a conundrum. We have attempted to find a way to lift the veil that has created such a black box around what has turned out to be a central issue before the hearing.”

Rouleau turned to Attorney General Lametti directly: “I’m having a little trouble... how we assess reasonableness when we don’t know what [cabinet decision-makers] were acting on. Do we just presume good faith?” Lametti nodded and answered as you might expect: “Yes, in an unprecedented circumstance, we made a reasonable series of decisions.”

This was hardly the only claim of privilege that interfered with the Inquiry’s ability to do it’s job.

The government made all kinds of redactions on inappropriate grounds. On the last day of the inquiry the Prime Minister was being questioned by a lawyer for the Justice Centre for Constitutional Freedoms who pulled up a redacted document – notes from a call between political staff in the Prime Minister’s office of US officials. The commissioner had ordered the redaction removed, and underneath the black box we saw what was written: the Americans had offered to send tow trucks to Canada to help clear the entrenched protesters.

This is relevant because the lack of tow trucks was a partial justification for

invoking the Emergencies Act. If tow trucks had been available some other way, like if they were lent to us by the Americans, the use of the Emergencies Act may not have been necessary. It’s only necessary if no other means to resolve a situation are available. This redaction was removed late, on the last day, and lawyers could not put it to anyone but the Prime Minister. It would have been useful to have questioned others about it, like the staff from the Prime Minister’s office, but now it was too late.

Another redaction related to the policing plan. The Prime Minister had testified on the last day that the Emergencies Act was necessary because there was no – what he called – “real” policing plan to remove the Ottawa protesters. He said the policing plan that he saw before the Emergencies Act was invoked was no plan at all. He said we should read it.

The CCF’s lawyer, Sujit Choudhry, pulled up the first page of the policing plan. Then the Prime Minister said he hadn’t read it. Which is strange, since he had said it wasn’t any good. How would he know it wasn’t good if he hadn’t read it? Then the CCF lawyer showed Prime Minister Trudeau the next few pages – completely blacked out with redactions. The CCF lawyer asked the Prime Minister, “you told us to read this plan. Will you agree that we cannot?” And the Prime Minister said “Indeed.” The CCF asked if he would waive privilege over the plan so we can read it, but the Prime Minister, through his counsel, claimed privilege.

On the third day of Christmas,
the public order emergency
commission gave to me...

THE WILD CLAIM THAT AN ECONOMIC THREAT CAN BE A NATIONAL SECURITY THREAT



T

his bizarre claim was during the testimony of Finance Minister Chrystia Freeland. Commission counsel asked what is the link between national security and economic

security. Freeland replied there are two links.

First, she said our security is built on economic security, both as a country and for individuals. She said many people could have lost their jobs. This seemed to be a rather sudden concern here for job losses, given that there were many jobs lost in 2020 and 2021, many as a result of government imposed shut downs and mandates.

Second, Minister Freeland said while blockades were going on many Canadians felt like their security was being undermined and Canadians were getting angry. She said she was worried about violence erupting between protesters and counter protesters. She said it felt like a

powder keg. She said this speaks to economic security because the economic challenge made many Canadians angry.

The CCF's lawyer, Janani Shanmuganathan, picked this issue up on cross examination.

We took her to the definition of threat to national security in the Emergencies Act, which leads us to the CSIS Act definition: activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state.

The CCF lawyer asked if Minister Freeland would agree that economic threats don't fall into this definition. Minister Freeland evaded answering by responding that she believes the government had authority to act under the Emergencies Act, and that she believes it was the right decision. Minister Freeland said that while she isn't

a lawyer, she had a real concern that we were in a "tinderbox" where the economic and general threats risked some kind of conflict between protesters and counter protesters. She said she was further influenced by the February 12 Incident Response Group meeting about the presence of weapons in Coutts, and she was worried about "copy cats."

Economic damage is clearly not what is contemplated by the Emergencies Act. There are all kinds of things that cause economic damage. Many of the federal and provincial government's policies during the pandemic caused huge economic damage, since they literally shut down the economy. But that's not the same thing as terrorism. And it's not contemplated by the Emergencies Act as a security threat.

There was an excellent cross examination by the Canadian Civil Liberties Association done by Ewa Krajewska which picked up on the economic security claim Freeland had made.

Ms Krajewska asked if civil disobedience will sometimes cause economic disruption, for example in the case of a general strike. Minister Freeland objected to equating a general strike with the border blockades. Ewa then asked about protests like Occupy Wall Street or indigenous rail blockages. Those also cause economic damage. Minister Freeland dismissed this and said the economic damage of those are very limited compared to these border blockades.

So Ms Krajewska gave the example of port worker blockading the port in Poland as part of a general strike, which was cheered on by western democracies. Minister Freeland said that she had thought about that and she had thought about the Maidan in Ukraine. But she said these were protests against illegitimate authoritarian governments.

Minister Freeland said that the situation in Canada isn't comparable because the government here was enacting policies just after getting a new mandate following re-election.



Convoy to protest in a park. But wouldn't she agree that the right to protest encompasses more than standing on a patch of grass with a sign? Minister Freeland resisted, saying she's not going to try to draw that line right here during her testimony, but she said she does agree that in a democracy we need to protect the right to protest, that much is obvious.

***The right to protest
encompasses
more than standing
on a patch of
ground with a sign***

Ms Krajewska pushed back on this saying obviously Minister Freeland can't be saying that democracy only happens at the ballot box, it also happens in protests and people can protest the government at any time, including after an election. Minister Freeland replied yes, but claimed there's a big difference between the acts of resistance to authoritarian regimes and blockades in democracies.

Ms Krajewska closed by asking Minister Freeland about her comments that it would have been acceptable for the Freedom

**On the fourth day of Christmas,
the public order emergency
commission gave to me...**

THE CONVOY PROTESTERS' TESTIMONY ABOUT FROZEN BANK ACCOUNTS

T

here was a full week of testimony from the Convoy protesters themselves, including leaders and participants in the protests from different parts of

Canada.

The protester witnesses had varying levels of credibility and coherence, with some being credible and forthright, and others much less so. But what stood out most from the protester testimony was the impact of the government orders under the Emergencies Act to freeze bank accounts.

The Emergencies Act allowed not only for bank accounts to be frozen without a court order but also enabled federal and provincial governments to share information with financial institutions about individuals or entities funding the protests or blockades. That information could also be shared with the RCMP and CSIS. Approximately 280 accounts were frozen, with most of them targeted by the RCMP.

Ordinarily, the freezing of accounts by government would require a court order. And generally to otherwise freeze or seize assets would infringe on the Charter protected right to be free from an unreasonable search or seizure.

Testimony from protesters revealed that joint spousal bank accounts were frozen. Protesters described how this impacted them. The spouses of some protesters were unable to buy groceries. One protester testified that his family was unable to pay for necessary medication. There were protesters who were unable to make loan payments related to their businesses. There were protesters who were unable to make child support payments. Some protesters also testified that if the goal was to force them to leave to protests, freezing their accounts actually made this harder since they had no money for travel.

There could also be long term credit implications for people who had their accounts frozen. Which is an additional punitive measure placed on these protesters.

In freezing the bank accounts of Freedom Convoy protesters, Finance Canada bureaucrats said they did not intend to hurt protesters' families' ability to buy groceries or pay child support, though they admitted that may have ultimately happened.

In hindsight, Finance Canada assistant deputy minister Isabelle Jacques told the commission that the department could have better circumscribed the power to freeze Freedom Convoy organizers' bank accounts because "the intent was not to unduly affect payments of child support or other payments."

One protester testified that his family was unable to pay for necessary medication

On the fifth day of Christmas, the public order emergency commission gave to me...

THE “TANKS IN THE STREETS” TEXT EXCHANGE BETWEEN LAMETTI AND MENDICINO

One of the most revealing things in the POEC testimony and evidence was the frank and contemptuous text message exchanges between senior politicians.

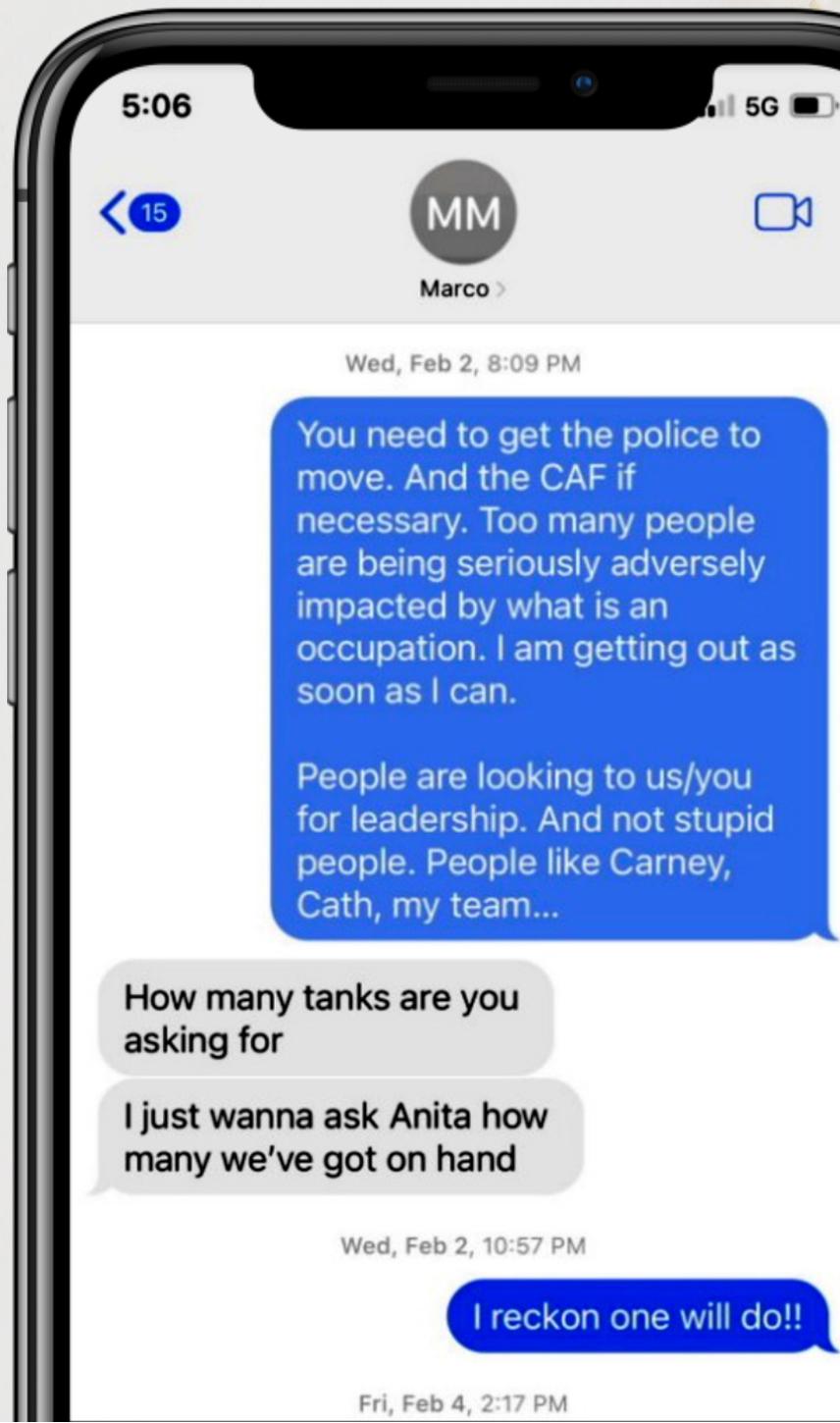
One of the most reported on exchanges was between Justice Minister Lametti and Public Safety Minister Marco Mendicino.

By February 2nd, six days into the protests, Lametti had already escalated to mulling about the use of the military. “You need to get the police to move,” Lametti texted Marco Mendicino, Minister of Public Safety. “And the CAF [Canadian Armed Forces] if necessary.”

“How many tanks are you asking for?” Mendicino replied.

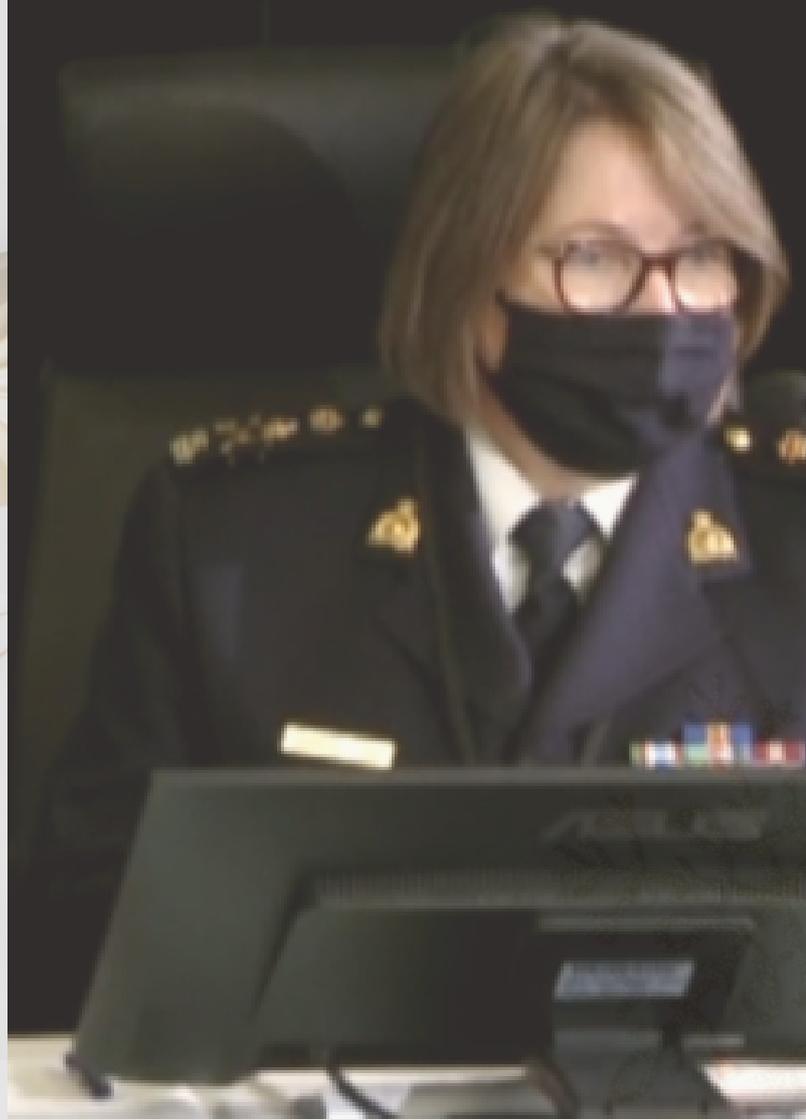
“I reckon one will do!!” Lametti responded.

On cross examination Lametti described the call for tanks as a joke. But the consideration about the possible use of the military to deal with domestic protests was sincere. And gallows humour aside, the rank contempt of Canada’s ruling class for the convoy was on full display.



On the sixth day of Christmas,
the public order emergency
commission gave to me...

RCMP COMMISSIONER BRENDA LUCKI APPEARING TO NOT KNOW... ANYTHING



Brenda Lucki is the Commissioner of the RCMP – the top cop in Canada. And her lack of knowledge during her testimony at the POEC, either real or feigned, was astounding.

Lucki was asked about the sequence for Ottawa police requesting help from other forces, like the RCMP or OPP, in order to address the Ottawa protests. Lucki testified that she doesn't know the nuances of the Ontario Police Services Act, which she said governs such requests, because the RCMP doesn't fall under it. She said she was told by OPP commissioner Carrique that Ottawa's requests needed to go to the OPP first, and when that is exhausted they go to another local police service.

This isn't correct. The Police Services Act does not require municipal police like Ottawa Police Services to seek help first from the OPP and then from the RCMP. The text of the Act does not say this. Under the Act, the Ottawa police could ask for help from the OPP and RCMP simultaneously. And even if the RCMP are not under the Police Services Act, you'd think that since all of this happened, and

since the Ottawa requests for help from other forces became a major issue during the Freedom Convoy and during the testimony from POEC, Lucki would have had a look at the Police Services Act.

Even if the RCMP are not governed by this legislation, it is clearly relevant to the situation and to the testimony she was being asked to give. Lucki just the top cop in the entire country and asked to testify in front of a national televised audience about matters her force dealt with. It would have been reasonable for her to know to look at the text of the Police Services Act at the time of the Convoy. And if not during the Convoy, certainly after.

This matters because if the RCMP could have supplied help earlier, the Emergencies Act may not have been invoked. Other legal tools, like additional police resources, would have existed to clear the protests.

Lucki was asked about tow trucks and if it was her understanding that the OPP already had some tow trucks obtained before the Emergencies Act was invoked. We had heard testimony from the OPP during POEC that these trucks had already arrived or were en route before the

Emergencies Act was invoked. But Lucki testified that she doesn't know anything about tow trucks.

The CCF cross examined Lucki as well, partly about frozen accounts. Just for lead up questions we asked Lucki to confirm that a court order is generally needed to freeze or seize assets. Lucki claimed not to know this. To be clear, it is required, and this is extremely basic police knowledge.

And lastly we have the biggest thing Lucki didn't know – which is how to properly communicate very crucial information. Lucki had stated that the RCMP did not believe all legal tools had been exhausted. This is a crucial part of the threshold for the Emergencies Act, since it is a tool of last resort. If other legal tools are available, the Emergencies Act cannot be used. How did Lucki communicate this crucial information to Cabinet? By sending it as a line in a memo to Mendicino's chief of staff. She didn't raise it directly with Mendicino, she didn't say it to the Incident Response Group, and she didn't say it when she briefed Cabinet the day before the Emergencies Act was invoked. She failed in her duty to properly inform Cabinet.

On the seventh day of Christmas, the public order emergency commission gave to me...

THE REVELATION THAT THE FEDS CONSIDERED USING THE EMERGENCIES ACT AS EARLY AS JANUARY.

It's now clear that the feds had been eyeing the Emergencies Act from the very beginning of the Freedom Convoy protests. Text transcripts revealed that David Lametti, the Minister of Justice, asked

his chief of staff on January 30th, the first weekend of protests, whether there was "contingency for these trucks to be removed tomorrow or Tuesday? (If they were Black or Indigenous...)" and asked "What normative authority do we have or is some order needed? EA [Emergencies Act]?"

It's relevant that they were considering it this early because at this point obviously legal tools had not been exhausted.



**On the eighth day of Christmas,
the public order emergency
commission gave to me...**

THE FAILURE OF THE OTTAWA POLICE



The testimony at POEC revealed many failures of the Ottawa police. It was Ottawa police that told the protesters to park on Wellington, including the big rig trucks which later

were entrenched and a challenge to remove.

Testimony from Ottawa police and the OPP revealed that the Ottawa Police Chief Peter Sloly seemed highly territorial and seemed at times unwilling to collaborate with other levels of police. There was evidence from a senior member of the Ottawa police force who described how Chief Sloly had said that the OPP and RCMP who had been sent to Ottawa to help were in fact being controlled by their “political masters”.

There was testimony that the Ottawa police originally did not provide a full plan to other levels of police that would have laid out basic information about what the officers from those forces they were requesting be sent would actually be doing in Ottawa. They described the request as just “send us 1800 officers” without details of what they would do, where they would stay, or what they would eat. Members of other police forces expressed concern about police being away from their communities to just have them sitting around in Ottawa waiting for a plan.

We also heard testimony that the Ottawa police failed to properly use their negotiating units. Which could have been key in resolving the entrenched protest.



On the ninth day of Christmas, the public order emergency commission gave to me...

TOW TRUCKS! THE DAY BEFORE THE EMERGENCIES ACT WAS INVOKED!



Tow trucks were key throughout these protests and named as one of the main reasons that the Emergencies Act was needed. And we learned that before the Emergencies Act was invoked

on the 14th, there already tow trucks that had arrived in Ottawa and many more were already on their way.

We also learned that American officials had offered the Prime Minister's Office tow trucks, and that one of the key sticking points was not the availability of tow trucks, but the compensation and indemnification for those tow trucks. A cost issue that could have been resolved with existing legal tools and without recourse to the Emergencies Act.

On the tenth day of Christmas, the public order emergency commission gave to me...

A VERY BAD FALSE FLAG THEORY

Counsel for the convoy organizers, Brendan Miller, at various points throughout his cross examinations proposed a “false flag” theory. The theory was about

photographs taken of a protester in February carrying a Nazi flag during the Ottawa protests. Miller’s theory was that this man was not in fact a protester, he was actually a Liberal operative.

This theory was not persuasive for most observers who saw materials related to a motion Miller had brought about this false flag theory. And things only got worse. At one point Miller ran down the hall in the Archives after a bearded man that Miller seemed to believe was this “false flag” operative. Miller yelled to ask if this man would testify in the hearings. But the man was merely a spectator, and he replied confused, asking who Miller thought he was. Miller was then filmed later saying “well that’s a hole in my case.” Indeed.

It’s a shame, because Miller has an important role and had been fairly effective on some of his cross examinations. He had also come across as fairly likeable (that is, until Miller was tossed out of the proceedings for continuing to interrupt Commissioner Rouleau on an oral motion he tried to bring related to the government’s privilege claims).

If you’re going to allege a false flag theory, you need to be dead certain it’s true and have incredible evidence. And the appearance that Miller could not tell various bearded men apart suggests maybe he wasn’t so sure.

But even more than that, even if the false flag theory was true – which seems very unlikely – it seemed like the POEC Commissioner wasn’t persuaded or interested. Finally, even if for some reason the Commissioner was interested, the false flag theory ultimately is not relevant to the purpose of the inquiry, which is whether the threshold to invoke the act was met. This was a lot of wasted capital.

The false flag theory was unpersuasive, and just not relevant to the purpose of the Inquiry



On the eleventh day of Christmas, the public order emergency commission gave to me...

THE PRIME MINISTER'S FAILURE TO FULLY BRIEF CABINET



Prime Minister Trudeau testified on the last day of the factual hearings at POEC. When the CCF cross examined the Prime Minister we were interested in a line of questioning we previously started about whether Cabinet was fully informed about a number of important things related to the Emergencies Act before they decided to invoke.

The Prime Minister is the chair of cabinet, and it is an important and serious responsibility. In our cross examination we learned that Cabinet was not given a copy of the legal opinion that showed the thinking behind this notion that the threshold for national security threat is different under the Emergencies Act than under the CSIS act. This is that strange and novel theory and Cabinet needs vigorous debate, and we now know that Cabinet did not receive this opinion.

The Prime Minister confirmed on cross examination that Cabinet did not see the legal opinion, but instead they were briefed orally on it by Lametti. They did not have the document itself. This matters because the written opinion may have – and likely did – lay out the gaps and risks in that legal theory. That’s typically what legal opinions do.

We also learned that Cabinet did not receive a copy of the CSIS threat assessment that said there was no national security threat, and they did not receive a copy of the operational plan being developed by police, even a high level copy of it.

Cabinet needs to be fully informed when making difficult decisions. In failing to provide the written legal opinion to Cabinet the Prime Minister failed in his role as chair of Cabinet and denied the decision makers the relevant information they needed to invoke the Emergencies Act.

In failing to provide the written legal opinion to Cabinet the Prime Minister failed in his role as chair of Cabinet



On the twelfth day of Christmas, the public order emergency commission gave to me...

AN OPPORTUNITY TO REFORM THE LAW

The policy phase of the POEC came after the factual phase, and expert legal scholars were called in to give their opinion on the Emergencies Act.

Parties to the inquiry, like the CCF, were given an opportunity to submit proposals for reforming the legislation to improve it and prevent abuse.

The CCF submitted recommendations, which included some of the following reforms:

1. Requiring the federal government to formally request provincial and territorial authorities to use existing legal tools — including provincial and territorial emergency legislation — before triggering the act.
2. The creation of a parliamentary review committee to provide real-time oversight.
3. A requirement that the government provide a fullsome explanation why existing legal tools fell short.
4. Super-majority requirements to confirm a declaration of emergency.
5. Provincial confirmation of a declaration of emergency.

6. The legality of the declaration of emergency should be sent immediately to the Supreme Court of Canada, instead of beginning at the Federal Court.

7. Broadening access to cabinet confidences and expediting judicial review of national security and cabinet privilege.

As a party, the CCF was given the opportunity to propose reforms to the Emergencies Act



CONCLUSION



What comes next?

The full report of the public order emergency commission is due in February of 2023. But the Trudeau government's invocation of a public order emergency is truly

the gift that keeps on giving. There are also legal challenges brought in federal court dealing with similar questions about whether the threshold of the legislation was met, including a challenge brought by the CCF.

We don't know yet what to expect from the POEC final report, but it is a monumental task for Commissioner Rouleau to complete the report on such an expedited timeline. We wish him the best in his work, and hope that he can enjoy his Christmas in spite of these gifts given to him and to Canadians during the testimony at POEC.