



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

44th PARLIAMENT, 1st SESSION

Special Joint Committee on the Declaration of Emergency

EVIDENCE

NUMBER 008

Tuesday, May 31, 2022

Joint Chairs:
The Honourable Gwen Boniface Mr. Matthew Green Mr. Rhéal Fortin



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• (1835)

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin (Rivière-du-Nord, BQ)): I'd like to call the meeting to order.

Welcome to meeting number eight of the Special Joint Committee on the Declaration of Emergency, created pursuant to the order of the House of Commons on March 2, 2022, and of the Senate on March 3, 2022.

Today's meeting is taking place in a hybrid format, in accordance with the order of the House of Commons dated November 25, 2021.

For health and safety reasons, I'd like to thank the people who are present for complying with the recommendations from the public health authorities and the directives of the Board of Internal Economy.

In the event of technical challenges, please advise me, so that we can suspend for a few minutes, if necessary, to ensure that all members are able to participate fully in the meeting.

The committee is meeting today to discuss its future work. It is up to the committee to decide what motions it wants to discuss. A revised version of the committee's work plan has been distributed to committee members. The committee has three scheduled meetings left before the summer recess: Tuesday, June 7, Tuesday, June 14, and Tuesday, June 21. It will be necessary to decide which witnesses the clerks will invite to appear at each of those three meetings.

I think I understand that something in particular will be happening this evening: votes will be held in the Senate. Please signal me when it's time and I will adjourn the meeting so the senators among us can go and vote.

Ms. Bendayan, Mr. Motz and Mr. Naqvi wish to speak.

Ms. Bendayan, the floor is yours.

Ms. Rachel Bendayan (Outremont, Lib.): Thank you, Mr. Chair.

I know we have a lot of work to do and a number of motions have been distributed. Obviously, we are all impatiently awaiting the discussion on the production of documents.

Personally, I will have a motion concerning the timetable for our meetings and the availability of the witnesses we have already discussed, among them the Minister of Finance and the Minister of Public Safety, Bill Blair.

Would you agree to my presenting that motion and for us to deal with it fairly quickly? These dates are approaching. We would then return to the other motions.

Mr. Chair, I propose to the committee that we discuss this motion. I'm going to ask the clerk to circulate it to all committee members. I also have copies.

The Joint Chair (Mr. Rhéal Fortin): Mr. Motz, the floor is yours.

• (1840)

[*English*]

Mr. Glen Motz (Medicine Hat—Cardston—Warner, CPC): Thank you, Chair.

Just to Ms. Bendayan's motion, I would respectfully suggest that we deal with at least one of the motions that are before us today, and that's on documents, and then we work on a work plan after that. I don't think the documents motion is going to take long. Then we could move forward with developing a work plan and witnesses and so on, which could take the majority of our session.

I'd hate to be in the middle of the work plan discussion, which could take us the whole meeting, and then not get to the documents motion. This documents motion has been before us for some time, so I would suggest we do that first, and then look at the work plan moving forward and who is going to be here and on what dates and what that looks like.

That's my suggestion.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): Thank you.

Would someone else like to indicate whether they prefer that we study the motion about production of documents or the motion relating to the witness list first?

Mr. Brock, the floor is yours.

[*English*]

Mr. Larry Brock (Brantford—Brant, CPC): I concur with my colleague, Mr. Motz.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): Ms. Bendayan, do you want to add something?

[*English*]

Ms. Rachel Bendayan: To respond to Mr. Motz, I totally agree.

Obviously we will be dealing with the production of documents motion that you have put forward, colleague. I have moved this motion, so I'm not sure if you're suggesting that we adjourn debate on this motion. I would just signal that these are witnesses we've already all agreed to. This is just a matter of slotting them in over the few weeks that are left of this session. I wouldn't anticipate that this would be subject to very much debate. These are the availabilities of ministers. We either take them or leave them. I certainly hope we will take them. It's not a full work plan; it's a matter of the next few weeks.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Mr. Green, the floor is yours.

[English]

The Joint Chair (Mr. Matthew Green (Hamilton Centre, NDP)): I wanted to indicate to the committee that the motion was duly put. It is live. For that reason, I support moving forward with getting that segment done. I would anticipate that we'll have plenty of time to get to the production of documents.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Ms. Bendayan, did I understand correctly that you agreed that we study the motion about production of documents first?

Ms. Rachel Bendayan: No. I said that...

The Joint Chair (Mr. Rhéal Fortin): So you want us to debate your motion first.

Ms. Rachel Bendayan: That's right. I just wanted to point out that it would take only a few minutes, since we have already decided, as a committee, that these witnesses were to appear. It's just a matter of agreeing on the dates.

The Joint Chair (Mr. Rhéal Fortin): I don't have your motion. You say you have hard copies. Can you distribute them?

[English]

Mr. Glen Motz: I want to put another thing on the record as well. We put our witness list together some time ago. I haven't seen the list here. We had a document come out from the analyst on a work plan moving forward. Then, prior to May 13, there were some more witnesses added. Interestingly enough, many of those witnesses, who were Liberal witnesses, ended up in the work plan without a conversation. I find that interesting, and I want that to be on the record.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): We had actually already established the witness lists for meetings number 9, 10 and 11, in the work plan. I think I understand that we had agreed on that.

Ms. Bendayan, is what you're proposing for the meetings after that? What are you wanting to do, exactly?

Ms. Rachel Bendayan: Mr. Chair, you have in front of you the motion that lists the witnesses for June 7, and for June 14, which is the week after, and then for June 21. Unfortunately, we had to cancel our meeting two weeks ago because of the systematic obstruction by some of our colleagues in other committees, so the dates

had to be revised. Of course, what we had to do was make sure the ministers are available, and we have done that.

I would reiterate that these are witnesses we have already discussed in the committee. You have the list in front of you.

I would also note that the last time we wanted to talk about the committee's work plan, we were told it was not the right time and it had to be done at a meeting dealing with the committee's work.

• (1845)

The Joint Chair (Mr. Rhéal Fortin): Right.

Mr. Virani, the floor is yours.

Mr. Arif Virani (Parkdale—High Park, Lib.): I would just like to say something about the subject Mr. Motz mentioned.

[English]

He said that Liberal witnesses are appearing without a conversation. Perhaps I misheard him, but I'm going to reiterate that people like the Department of Justice officials, Department of Public Safety officials, the Minister of Finance, the Minister of Emergency Preparedness, the PPS, the Usher of the Black Rod, the Sergeant-at-Arms, the OPP and the Ottawa Police Service were all extensively discussed over the last four weeks. All we're dealing with now is when they should arrive, not whether they should arrive.

I wanted that clarified.

Secondly, this motion, as Mr. Green pointed out, is correctly on the floor, so we have to deal with this motion before we decide whether to deal with the production motion.

I wanted to put that out there.

[Translation]

Thank you, Mr. Chair.

The Joint Chair (Mr. Rhéal Fortin): Thank you, Mr. Virani.

On the list of people who wanted to speak, there was Ms. Bendayan, Mr. Motz and Mr. Naqvi, and they have already spoken. The same for Mr. Green. Now there are Mr. Brock and Mr. White.

Mr. Brock, the floor is yours.

[English]

Mr. Larry Brock: I have a couple of things, Mr. Chair. Thank you.

There's another option. We can adjourn debate on Ms. Bendayan's motion so that we can get down to some of the other stuff we had proposed to deal with at this point in time.

I also want to correct the record. Ms. Bendayan indicated that we lost this session two weeks ago due to filibustering at various committees. The chair was at a committee that I was at—justice—two weeks ago, and the correct interpretation of what happened was that the Liberal committee members refused to adjourn the proceedings at 5:30. We had a two-hour block as a result of their refusal to adjourn those proceedings, which was supported by the NDP, and we continued the session, which ultimately prevented this committee from sitting.

I want that clarified on the record. Thank you.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Thank you, Mr. Brock.

Mr. White, the floor is yours.

[English]

Hon. Vernon White (Senator, Ontario, CSG): Thank you very much, Mr. Chair.

I have a couple of things. If this list is what we've already discussed—and from looking at it, I believe it is—I am fine with it, but I will be bringing a motion that we go in camera to discuss any new witnesses. There will be a discussion that I don't think should be made public about whether we should or should not call specific individuals as witnesses here, and there's the fact that maybe we'll be challenging or discussing their credentials and things like that. I don't think there's a different list from what we have now, which we've discussed over the last six weeks. In that case, I'm fine.

There are issues with who represents the Parliamentary Protective Service. The Usher of the Black Rod is actually not responsible for security in the Senate. Julie Lacroix, who is departmental security, is, unlike the Sergeant-at-Arms in the House of Commons, so it's the wrong person.

I would make a suggestion that for group number three, we finish the session with people who work on the Hill, because we're going to have bells and such. We could have the OPP and the OPS the week before.

As long as we're not adding anyone new, I'm okay with our dealing with these ones. However, I would like to flip groups three and four, mostly because having people come from Orillia with the Ontario Provincial Police to sit outside for three hours while the Senate probably deals with bells is.... We may not get to them. It would be unfair, and it's probably important that we hear from them before we break for the summer session.

• (1850)

[Translation]

The Joint Chair (Mr. Rhéal Fortin): From what I understand, there are no other speakers on the list, so we should proceed with the vote on Ms. Bendayan's motion.

Ms. Rachel Bendayan: Mr. Chair, I think our colleague Senator White has moved an amendment. I would just like that to be clarified.

The Joint Chair (Mr. Rhéal Fortin): You're right, he moved to reverse the order of the third and fourth groups.

[English]

Ms. Rachel Bendayan: To be clear, I'll add that we would be supportive of the amendment.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Is there unanimous consent to reversing the order of the third and fourth groups?

(Amendment agreed to [See Minutes of Proceedings])

The Joint Chair (Mr. Rhéal Fortin): There is another point I would like to bring to your attention. In the event that one of these witnesses isn't available, or that the meeting is postponed, for various reasons, then the joint chairs, working with the clerks, should have the option of amending the list, for example by adding witnesses to replace the ones who aren't available. That would avoid pointlessly convening the committee. That's what I am proposing.

Is that agreeable, Ms. Bendayan?

Ms. Rachel Bendayan: Yes.

The Joint Chair (Mr. Rhéal Fortin): Mr. Brock, the floor is yours.

[English]

Mr. Larry Brock: I'm proposing another amendment with respect to clause 4.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Could we first finish dealing with my proposal?

You're saying you have another amendment to propose, is that right?

[English]

Mr. Larry Brock: I missed what you're putting forward and what you're proposing. Can you repeat it, please?

The Joint Chair (Mr. Rhéal Fortin): You didn't click on your mike, so I didn't hear you.

Mr. Larry Brock: I'm sorry.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Ms. Bendayan's motion has already been amended by Mr. White's amendment, to reverse the order of the third and fourth groups. Now, do you agree that if the witnesses were not available, the three joint chairs and the clerks could agree on other witnesses to call for those meetings?

Is that agreeable to everyone?

Voices: Agreed.

[English]

Mr. Glen Motz: I have a question about the motion and the amendment.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): The floor is yours, Mr. Motz.

[English]

Mr. Glen Motz: First of all, I know that 3 and 4 now have been flipped around, and I'm fine with that, but who will come from the Ottawa Police Service and who from the Ontario Provincial Police? That's pretty ambiguous. We need names, because I can't support an Ottawa Police Service, and I can't support an OPP.... Who are they?

We have lists of witnesses from both of those agencies who should be called. You can't have a motion like this with that.... It's not my motion, but I can't support a motion when we don't know who is going to be here.

Ms. Rachel Bendayan: Are you proposing an amendment? You can easily specify who you would like in the motion.

Mr. Glen Motz: Sure. I'd love to.

I would also suggest, once I give you the names, that our time allotment for that is certainly not enough. I know we're talking about one and a half hours for both individuals, as I read what's written here as being in number 4. That is not sufficient time for either one of those agencies, quite honestly, and if I look back over our previous discussions, we talked about expanding the number of Ottawa Police Service people who were going to be here, so that would be my suggestion.

Ottawa Police Service Deputy Chief Ferguson as well as Interim Chief Steve Bell should be included in the Ottawa Police Service list. The OPP has Commissioner Carrique and any senior officials he might bring. They should have one and a half hours each. That's an hour and a half for each session, and they need to be open to bringing officials from both agencies. The invitation should be open enough that they can bring officials who can speak to the invocation like we talk about it here. They could add some value to our meeting.

• (1855)

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Mr. Motz, I want to make sure I understood what you're proposing regarding the Ottawa Police Service properly. Do you want the committee to have the current chief and also its previous chief, Mr. Sloly?

[English]

Mr. Glen Motz: No, I'm indicating Interim Chief Bell and Deputy Chief Ferguson for an hour and a half. Then I'm proposing Commissioner Carrique from the OPP and any senior officials for an hour and a half.

The Joint Chair (Mr. Rhéal Fortin): Commissioner Carrique and then....

Mr. Glen Motz: With senior officials.

A voice: [Inaudible—Editor] cancel the parliamentary security, because there's no other time.

Mr. Glen Motz: They're listed above that, are they not?

Hon. Vernon White: Yes, but if we take the full three hours....

Mr. Glen Motz: Oh, we take the full three hours—yes. Then 3 is pretty well gone, so 3 would be removed at this point in time, and number 4 would become 3.

Ms. Rachel Bendayan: If that is being moved as an amendment, and if I'm reading the room correctly, I think that certainly would be acceptable to me. It would be unfortunate, of course, not to have the Parliamentary Protective Service, but we can schedule them for the next session.

Just to be clear, we would be calling only Bell and not Sloly. Is that correct?

Mr. Glen Motz: I think Sloly is on the list for another time, by himself.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): To summarize, on June 7, we would have a representative of the Department of Justice and another representative from the Department of Public Safety, for an hour and a half each.

[English]

Am I right?

[Translation]

At the meeting on June 14, we'll have the Deputy Prime Minister and Minister of Finance and the President of the Queen's Privy Council for Canada, also for an hour and a half each.

Then, at the meeting on June 21, we would have Commissioner Carrique, from the Ontario Provincial Police, accompanied by a senior officer, and the Acting Chief of the Ottawa Police Service, Steve Bell, accompanied by the Deputy Chief, Ms. Ferguson. And again, it would be an hour and a half for each group.

Have I understood?

Is there unanimous agreement?

(Amendment agreed to [See Minutes of Proceedings])

(Motion as amended agreed to [See Minutes of Proceedings])

The Joint Chair (Mr. Rhéal Fortin): Mr. Motz, do you want to speak?

[English]

Mr. Glen Motz: Are we done with this now? We're done with this one?

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Yes, we have now got to your motion. Go ahead.

[English]

Mr. Glen Motz: Thank you very much. I just wanted to make sure, because the translation does a good job, but my ears don't always pick it up, and then my brain has to digest it, so I'm a little slower than normal on the uptake.

Let's move forward then, if I may, Chair, to move that we resume the documents motion conversation or discussion. If possible, could I ask the clerk to read that motion again into the record, please? Then I will have some comments after that.

Mr. Arif Virani: In the interests of time, Mr. Motz, is that necessary? We all have it.

Mr. Glen Motz: Was it read into the record in an in camera session or was it read into the record in a public session?

Mr. Arif Virani: I have no recollection.

Mr. Glen Motz: I don't either, and that's why it's important, I think, to have it read into the record publicly.

The Joint Clerk of the Committee (Ms. Miriam Burke): It will be in the minutes.

Mr. Glen Motz: I'm looking at the importance of having it read into the record, not for our minutes but for those who will be joining us online, so they know exactly what we're talking about.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Given that it's a fairly long motion, it wouldn't be a bad idea to read it again. I believe I recall that Ms. Bendayan had amendments to propose to this motion. I think it would be worthwhile to make sure we clearly understand what's involved. So I invite the clerk to read the motion again.

Yes, Mr. Brock?

• (1900)

[English]

Mr. Larry Brock: While the clerk is doing that, it would be my request as well—because I am aware that Ms. Bendayan's sub-amendment was discussed in camera—that the clerk read that into the record as well.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): That's fine with me.

Madam Clerk, are you ready to read it for us?

Ms. Rachel Bendayan: Mr. Chair, that was part of the discussions that can't be made public right now.

I'm quite comfortable presenting my amendments, but I think it's up to me to present them.

The Joint Chair (Mr. Rhéal Fortin): No problem, that's fine with me.

So the clerk will read Mr. Motz's motion, and then, if Ms. Bendayan wants to propose an amendment, we will hear it.

Madam Clerk, the floor is yours.

[English]

Mr. Arif Virani: Just to be crystal clear, Mr. Chair, anything that was discussed in camera remains in camera, and all that she's reading is the text of the motion. Is that correct?

Good. Thank you.

The Joint Clerk (Ms. Miriam Burke): The motion is to resume debate on the motion of Mr. Motz moved on March 24. Is that correct?

That an order do issue for all security assessments and legal opinions which the government relied upon in determining that

(a) the threshold of “threats to security of Canada”, as defined by section 2 of the Canadian Security Intelligence Service Act, required by section 16 of the Emergencies Act, had been met;

(b) the thresholds required by paragraphs 3(a) or (b) of the Emergencies Act, concerning a “national emergency” had been met;

(c) the situation could not “be effectively dealt with under any other law of Canada”, as required by section 3 of the Emergencies Act;

(d) the emergency measures regulations were compliant with the Canadian Charter of Rights and Freedoms, including the analysis relied upon by the Minister of Justice in discharging his responsibilities under section 4.1 of the Department of Justice Act; and

(e) the emergency economic measures order was compliant with the Canadian Charter of Rights and Freedoms, including the analysis relied upon by the Minister of Justice in discharging his responsibilities under section 4.1 of the Department of Justice Act,

provided that

(f) these documents shall be deposited with the Law Clerk and Parliamentary Counsel of the Senate, the Law Clerk and Parliamentary Counsel of the House of Commons and any legal counsel which the committee may appoint, in both official languages, within one month of the adoption of this order;

(g) a copy of the documents shall also be deposited with the law clerks and any legal counsel which the committee may appoint, in both official languages, within one month of the adoption of this order, with any proposed redaction of information which, in the government's opinion, could reasonably be expected to compromise national security or to reveal details of an ongoing criminal investigation, other than the existence of an investigation;

(h) the law clerks and any legal counsel which may be appointed by the committee shall promptly thereafter notify the co-chairs whether they are satisfied the requested documents were produced as ordered, and, if not, the co-chairs shall be instructed to present forthwith, on behalf of the committee, a report to each House outlining the material facts of the situation;

(i) the co-chairs shall cause the documents, as redacted pursuant to paragraph (g), to be distributed to the members of the committee and to be published on the committee's website forthwith upon receipt;

(j) the law clerks and any legal counsel which the committee may appoint shall discuss with the committee, at an in camera meeting, to be held within two weeks of the documents being distributed pursuant to paragraph (i), whether they agree with the redactions proposed by the government pursuant to paragraph (g), provided that, upon the request of the government when depositing the documents, the co-chairs shall be instructed to present as soon as possible, on behalf of the committee, a report to each House recommending that this meeting, or any subsequent meeting where the discussion is continued,

(i) shall, notwithstanding the order of the Senate adopted on March 3, 2022, not be subject to the provisions of paragraphs (a) to (c) of the order of the Senate adopted on February 10, 2022, respecting senators on standing joint committees,

(ii) shall, notwithstanding the order of the House of Commons adopted on March 2, 2022, not be subject to the provisions of paragraph (r) of the order of the House of Commons adopted on November 25, 2021, and

(iii) may, if the Committee decides, be held outside of either House's precincts, but within the National Capital Region, at a location acknowledged by the government to be appropriate for the discussion and presentation of highly classified information; and

• (1905)

(k) the committee may, after hearing from the law clerks and any legal counsel which the committee may appoint, pursuant to paragraph (j), accept the proposed redactions, or reject some or all of the proposed redactions and request the production of those unredacted documents in the manner to be determined by the committee.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Thank you, Madam Clerk.

That is the right motion, isn't it, Mr. Motz?

[English]

Mr. Glen Motz: Yes, it is. Thank you very much. I appreciate—

[Translation]

The Joint Chair (Mr. Rhéal Fortin): I will give you the floor to speak to your motion, but I see that Mr. White also wants to speak. If there are other members who wish to speak after that, just raise your hand and I'll make a note of the names.

Mr. Motz, the floor is yours.

[English]

Mr. Glen Motz: Thank you, Chair, and thank you, Madam Clerk, for reading that out. I appreciate it.

I think what's important is that it's become clear through the process since February 23—we've had witnesses here already and comments that have been made publicly—that the government has chosen to maybe withhold or hide behind cabinet confidences or lawyer-client privilege, so there's no clarity at this stage on any of our witnesses.

I don't anticipate the government's being forthcoming with any clarity that would allow us to know who asked for the Emergencies Act, what information they were dealing with that precipitated them asking for it, or anything the government relied on to invoke the Emergencies Act. I believe the documents we're asking for in this case contain the information needed for us to make an informed decision.

We've all said around this committee, and the Prime Minister has said, that Canadians deserve transparency and accountability on this matter. I think it's prudent and it's the way to go.

I can go into more detail, but I'll leave it at that. I think the motion speaks for itself.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Thank you, Mr. Motz.

Mr. White, the floor is yours.

[English]

Hon. Vernon White: I'd like to bring forward an amendment. It removes everything from (j) to the end, leaving the rest as is.

Mr. Glen Motz: Can I ask a question of clarification on that, Chair?

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Go ahead, Mr. Motz.

[English]

Mr. Glen Motz: Senator, if you remove everything from (j) onward, can you explain how you anticipate the navigation of these documents is to take place once they're received by this committee?

Hon. Vernon White: Thank you very much, Mr. Chair.

I think once we remove that, we can then bring forward an amendment identifying how the documents are brought to us. Trying to fix this and removing redaction pieces.... It's much easier to remove it all and then put in one section stating “all documents will

be delivered in 30 days”, or that type of thing, rather than trying to deal with...because there are too many pieces to this puzzle.

• (1910)

Mr. Glen Motz: I think I understand what you're getting at, Senator. If (j) talks about the law clerks and the legal counsel, they would hold the documents and the unredacted documents as well, and they would compare them with the redacted documents.

Hon. Vernon White: That's what I'm saying. They can't do that. I'm arguing they should not do that. That's what my amendment is.

Mr. Glen Motz: Who should do it, then?

Hon. Vernon White: Nobody should compare the redacted documents with unredacted documents.

Mr. Glen Motz: Okay, so you're saying with the redacted documents we get, we might get 500 pages all in black.

Hon. Vernon White: We could, and we'd have pathways then, but right now we're presupposing what we're going to get, and we don't know what's going to come.

If I may, Glen, you and I know what we saw. We would lose three words in four sentences. We could always presuppose that we would know what was in those redacted documents at NSICOP, but we're presupposing now that we're not going to get anything.

I think we have to make a decision on what redactions we have when we get them, and then we have pathways, but we don't have a pathway now. I think asking a law clerk to look at cabinet confidence and at solicitor-client privilege and make a determination of what's right and wrong.... They don't know, to be fair, in many cases, nor should they have access to them.

I'm not suggesting we'll be happy with the redactions. I'm suggesting we won't know until we get those redactions, and then we can make decisions. I don't think we should make them now. That's all.

Thank you for your lenience, Mr. Chair.

Mr. Glen Motz: Okay.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Thank you for those clarifications, Mr. White and Mr. Motz.

According to my list, Mr. Virani and Mr. Green want to speak.

Mr. Virani, the floor is yours.

[English]

Mr. Arif Virani: Thank you, Mr. Fortin.

Thank you, Senator White, for that suggestion.

In terms of what I was going to address, first of all, I have a couple of points, just to make sure the record is clear.

Mr. Motz said in his comments that the government had chosen to “hide behind cabinet confidences or lawyer-client privilege”. Cabinet confidence is a very entrenched notion in the Westminster style of government. It's to ensure that candid cabinet conversations can take place for the betterment and the public interest of all people that reside in this country. It's quite sacrosanct in our tradition. It predates the charter and is an important thing to uphold, so it's not an issue of hiding behind something. It's actually an issue of maintaining a principle that allows government to continue.

Lawyer-client privilege is equally sacrosanct. I'll declare my subjectivity on the matter clearly, out in the open. There are many other lawyers around this table, but the reason you have lawyer-client privilege is so a client can feel confident in having open and very blunt and candid canvassing of various options with their counsel. Without that kind of secrecy to the communications, you don't have the provision of legal advice that is in the client's best interest and that is in everyone's best interests in this country. I just reject the assertion that people are hiding behind these principles. We are trying to uphold them because they're important for our democracy.

That being said, I agree with much of what Senator White has suggested with respect to a surgical amendment to Mr. Motz's motion. I would actually take it a bit further, to indicate further to his point about the documents not being potentially evaluated or compared or contrasted by law clerks or any other legal counsel. Apropos of omitting everything from (j) onwards, I would actually say that the original (h) which reads, “the law clerks and any legal counsel which may be appointed by the committee” should also be struck, and what I would further indicate is that references to the “Law Clerk and Parliamentary Counsel of the Senate” and “the Law Clerk and Parliamentary Counsel of the House of Commons” in paragraph (f) should also be struck.

Just to finish, in closing off the list, I think that in paragraphs (d) and (e), reference to specific legal advice that was provided to the Minister of Justice in respect of his responsibilities under the Department of Justice Act, to any lawyer reading those phrases—and again, there are many lawyers around this table—that clearly is legal advice that's being provided to the minister and would fall under what we call solicitor-client privilege, so I don't think it's appropriate to include it here. I would suggest that we omit that reference, the words, “including” and to the end in paragraph (d) and the words “including” and to the end in paragraph (e).

I'll pause there.

Thank you.

• (1915)

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): Thank you.

According to my list, the next speakers will be Mr. Green and Mr. White, but I'm going to suspend the meeting for a moment.

• (1915)

(Pause)

• (1915)

[*English*]

Mr. Arif Virani: Mr. Fortin, I've neglected to mention one final aspect. I propose, on my comments with respect to the law clerks and any other legal counsel, that the first four lines of paragraph (g) also be omitted.

The gist of what I'm suggesting is that the materials are deposited with the committee rather than with the law clerks, so those references to the law clerks and any other legal counsel would be struck. I see the clerk right behind me, so I'm happy to give her a copy of what I'm proposing.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): Thank you, Mr. Virani, but we can't discuss multiple amendments at the same time. We have to deal with the amendment proposed by Senator White first. Then we can examine the amendments you want to propose. I see that you have numerous amendments. So we are going to examine them one by one, otherwise I'm going to have trouble following you, and I think that's actually important.

I propose that we hear Mr. Green and then Mr. White. If other people want to speak after that, they can do so, but for the moment we are examining the amendment proposed by Mr. White, which is to strike paragraph (j) and all the paragraphs after that from Mr. Motz's motion.

Mr. Green, the floor is yours.

[*English*]

The Joint Chair (Mr. Matthew Green): Mr. Chair, I'm actually going to reserve my comments for the omnibus amendments to come, and allow this one just to move forward.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): Thank you.

Mr. White, the floor is yours.

[*English*]

Hon. Vernon White: That was my suggestion: that we just deal with my amendment and then we can deal with the chopping and slicing. I think we need to deal with one amendment, if I may....

Thank you.

The Joint Chair (Mr. Matthew Green): Actually, I'm sorry. I do have one point on this amendment.

My concern is that when it comes to the demand for documents, if there isn't a clear date put forward, then the government's refusal, delay or refusal by delay to provide them.... Unless there's an actual date on it—

Hon. Vernon White: We can add that afterwards. After we get rid of this, we'll add that.

The Joint Chair (Mr. Matthew Green): Okay. When we go back to the main...? Got it.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Does anyone else want to speak to the amendment proposed by Mr. White?

Mr. Motz, the floor is yours.

[English]

Mr. Glen Motz: I would accept Senator White's amendment as a friendly amendment on the condition that we have a date inserted on that amendment that would say documents by a certain date....

Hon. Vernon White: I think we could bring an amendment right afterwards, putting in a date.

Mr. Glen Motz: We don't want to lose sight of that.

Hon. Vernon White: Let's get rid of all this, and then we move forward on the pieces. Is that okay?

[Translation]

The Joint Chair (Mr. Rhéal Fortin): So we are ready to vote on the amendment proposed by Mr. White.

[English]

Hon. Vernon White: It's just the amendment.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Yes, the vote is only on the amendment.

I would point out that Mr. White's amendment is to strike paragraph (j) and the paragraphs after that from Mr. Motz's motion.

Madam Clerk, you may go ahead with the vote.

The Joint Clerk (Ms. Miriam Burke): Has a standing vote been requested?

• (1920)

The Joint Clerk of the Committee (Mr. Mark Palmer): Actually, I think it's unanimous.

The Joint Chair (Mr. Rhéal Fortin): I'm sorry, I thought that Mr. Motz had asked for a standing vote.

So it's unanimous.

(Amendment agreed to [See Minutes of Proceedings])

The Joint Chair (Mr. Rhéal Fortin): We can now move on to Mr. Virani's amendments.

Present them one at a time, please, Mr. Virani.

Mr. Arif Virani: Right. There are two that are similar.

[English]

It targets the exact same sentiment, so I'll start with that, because it's perhaps the easiest.

In paragraphs (d) and (e), there is effectively the exact same language. What I'm proposing is that we strike the language in paragraph (d) that reads, "including the analysis relied upon by the Minister of Justice in discharging his responsibilities under section 4.1 of the Department of Justice Act", and the exact same language in paragraph (e) where it says, "including the analysis relied upon by the Minister of Justice in discharging his responsibilities under section 4.1 of the Department of Justice Act".

The basis for this is that that kind of analysis is part of the legal advice that would have been provided to the Minister of Justice, and as such would fall under the well-entrenched principle of solicitor-client privilege.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Mr. White, the floor is yours. It will be Mr. Green's turn next.

[English]

Hon. Vernon White: Thank you very much, Mr. Chair.

I respectfully disagree. Having worked at Public Safety, I can tell you that the vast majority of the analysis we provided was not protected by solicitor-client privilege. In fact, it would not have come from a lawyer. I don't believe we should make the determination of whether it's solicitor-client privilege. That's for somebody else to make.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Mr. Green, the floor is yours.

[English]

The Joint Chair (Mr. Matthew Green): Thank you, Mr. Chair.

I've been sitting on this for quite some time, and we heard in the opening remarks of Mr. Virani this notion, stated as fact, that this idea of Crown privilege in cabinet confidence is sacrosanct and supersedes the will of Parliament. I think the references were to his experience as a lawyer, but I would like to put before this committee—and I am going to ask for your grace in doing this—a compelling argument to the contrary.

I reference the powers to summon persons, papers and records that has been delegated to standing committees by the Canadian House of Commons under Standing Order 108(1) and by the Senate under rule 12-9(2).

Diane Davidson, then general legal counsel for the House of Commons, stated:

The extensive powers which a parliamentary committee enjoys are not commonly understood and therefore, at times, not properly respected.

This may be due, in part, to understatement. Consider, for a moment, the powers of Standing Committees as set out in Rule 91 of the Senate Rules and in Standing Order 108(1) of the House of Commons. These include the innocuously-stated authority "to send for persons, papers and records." No distinctions are made between different types of documents or categories of witnesses. The very simplicity of the words granting this authority would appear to belie the strength of the power thereby delegated. When coupled with the rights a committee enjoys as a constituent part of parliament these are very full powers indeed.

I want to go a bit further and reference another important point, which is, again, on Crown privilege, that claims of Crown privilege do not diminish or derogate from the power of the House to require attendance, testimony or the production of documents.

Diane Davidson, again, when she was general legal counsel for the House of Commons, stated:

It is important to state that there exists no blanket immunity for the executive branch in making a public interest claim against disclosure of confidential information to a parliamentary committee. The so-called “Crown privilege” or its more modern designation “public interest immunity”, is often invoked by the Crown and more often by ministers in refusing to divulge matters or to produce certain documents in a lawsuit on the grounds that it would be contrary to the public interest to do so. It should be noted that this immunity

—and I put emphasis on this next point—

has never been formally acknowledged by the House of Commons as inhibiting its investigatory powers. The public interests...considered and weighed in judicial proceedings, are not the same as the public interests to be considered and weighed when evidence is sought for parliamentary purposes. In practice, parliamentary committees have more readily given consideration to claims of Crown privilege when invoked by a Minister in relation to national security matters and international affairs.... However, in the final analysis, the committee remains final arbiter of such claims.

Again, this was Diane Davidson, who was then general legal counsel for the House of Commons.

This is a convention. This has not, in any way, been something that has been given up by the House of Commons as a power. I think that, by framing this in the way in which it was framed in the opening comments of Mr. Virani, it in fact undermines our power as the grand inquisitor of the nation.

We see this time and time again. There are multiple lists. I heard that he framed it as being one of the foundational principles of the Westminster system. If he wishes to continue down that road, I have examples from many other jurisdictions where this has been defeated in its very notion in every Westminster system. I am happy to state that, should he have questions on those matters.

I am not clear that there is going to be a committee in my time in Parliament that is more important than the one that's before us. If we don't get to the heart of the matter in an open, public and transparent way, one that doesn't at every corner seek to reduce, redact and retract public inquiry into this, we're going to be back on this committee in no time flat, because that's where we are. I've stated time and time again, Mr. Chair, that regardless of what side of the issue Canadians are on, we have a duty as a committee to bring forth the truth and the facts of the matter.

The challenge we have, and I think the imbalance that this committee has, despite its very wise constitution of senators and party members, is that only one side has access to the facts.

● (1925)

As somebody who supported it, I want to be able to go back to my constituents with the facts of the matter, as presented in an evidenced-based way, that support the decision I made.

I'm also prepared, Mr. Chair, that if the facts bear out that a mistake was made, then I think our responsibility as a committee is to provide recommendations back to the House of Commons, the Senate and Parliament that will ensure that this doesn't happen again.

I don't want to allow the conversation around the table to continue to mislead Canadians on the power of this committee, or perhaps underestimate or understate it in a way that isn't actually true to the jurisprudence of the House of Commons.

Thank you.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): Thank you, Mr. Green.

On the list, there is now Mr. Motz. I have also added my name, because, although I'm chairing the meeting, I would like to speak. I see that Mr. Virani would like to speak on this subject again.

However, I see the green light blinking, so I think there is a question being called.

The Joint Clerk (Ms. Miriam Burke): No, I think it's just to indicate that the House is adjourned.

The Joint Chair (Mr. Rhéal Fortin): Right. Because we're waiting for there to be votes in the Senate. I didn't know whether the light was going to blink at that point. From what I understand, you are going to let us know when it's time for the senators to go and vote.

Mr. Motz, the floor is yours.

[*English*]

Mr. Glen Motz: Thank you.

I appreciate the evidence that was brought forward by Mr. Green. I think that it's exactly the point of doing this.

We've all given this thought on what our role is here in this committee. We remove the partisan hats, and our role is to get answers that Canadians deserve to have to the questions about transparency and accountability—that's all we want. We just want the facts, and we want the truth to come out and not be hidden, because it behooves us as a committee to gather that.

I've always wondered why.... There is a precedent—Mr. Green called it “a convention”—that allows the belief that the executive branch can withhold whatever information it deems necessary from Parliament itself, from a committee of Parliament, which represents Canadians. I appreciate that.

I certainly don't support Mr. Virani's removal of (d) and (e). Those who redact those documents, Arif, let them make that decision. Let's not make it for them.

We need to ask for full, frank disclosure and accountability of whatever information is there, on everything that the government relied upon to make its decision on invoking this act—on everything. Every possible angle the government looked at needs to be reviewed and redacted as necessary, given the parameters that redactions occur at. As Mr. White said before, then we make the decision. Did we get enough information? Do we have enough to make an informed decision on moving forward? I think that would be reasonable. The whole idea is to ask for the information and see what we get.

● (1930)

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): Thank you, Mr. Motz.

I'm going to speak now.

I understand Mr. Virani's concern. However, I agree 100% with what Mr. Green and Mr. Motz have said. I think we are here to shed some light on the situation. We can't tell people, even before getting an objection to the production of a document or some information, that in reality they won't need to object because we are going to censor ourselves. I think it would be paradoxical to go about it that way.

Mr. Motz's motion refers to an order to produce two things: the security assessments and the legal opinions that the government relied on in determining certain things, among them:

(d) the *Emergency Measures Regulations* were compliant with the *Canadian Charter of Rights and Freedoms*, including the analysis relied upon by the Minister of Justice in discharging his responsibilities ...

It refers to an analysis relied on, and not necessarily a legal opinion. It seems that an analysis was done, or should have been done, at least, and it's that analysis that the motion is requesting.

If, after learning of this motion, the minister tells us that he can provide that analysis, but not the legal opinion it is based on, because that is covered by solicitor-client privilege, then we will have to decide whether we agree or we want something else.

For the moment, we are asking the minister to send us the security assessments and legal opinions he used in doing the analysis of his responsibilities under section 4.1 of the Department of Justice Act. That seems to be minimal in the context of our work.

That is what I wanted to say.

I now turn the floor over to Mr. Virani.

Mr. Arif Virani: Thank you, Mr. Fortin, Mr. Motz and Mr. Green.

[English]

Just to clarify one component, the aspects included in paragraphs (d) and (e) refer to section 4.1 of the Department of Justice Act. Section 4.1 of the act contains the requirement for the Minister of Justice to ensure that bills, statutes, regulations, etc. that are being enacted by the government are charter compliant. From my perspective—and I believe this is shared by the members of this committee—when you're looking at charter compliance, you are looking at.... I know the word “analysis” is used in the text Mr. Motz has drafted. When you're dealing with charter compliance, of necessity you're going to be looking at legal advice as to whether something is onside or offside of the charter, thus triggering concerns about solicitor-client privilege.

I just want to make it crystal clear that what we're talking about here is only solicitor-client privilege. Previously, in a different intervention, I mentioned things like cabinet confidence, but this is not about cabinet confidence, and it's certainly not about the notion of Crown privilege, which is a more generalized notion.

I just wanted to put that out there.

Thank you.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Mr. Harder, the floor is yours. It will be Mr. Green's turn next.

[English]

Hon. Peter Harder (Senator, Ontario, PSG): I'll be very brief. I don't think we should prejudge what is sent to us. We should ask for documents in the fullness of the motion. I don't want to prejudge the issues around cabinet confidence and solicitor-client privilege. I probably would side with a generous interpretation of that, but we'll come to that discussion. Let's ask now.

I know that there are analyses and advice given, even on charter compliance, which the government has put forward on bills and may choose to put forward. I hope it will, but we'll judge that when we see what we get. Let's not fight that fight prematurely. We'll come to it. We may have a difference of views, but we'll then have that discussion and have a vote, so let's vote on it to get the broadest documentation possible.

● (1935)

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Thank you, Mr. Harder.

Mr. Green, the floor is yours.

[English]

The Joint Chair (Mr. Matthew Green): I'm going to say something that might not always go on the record, but I will concede to the infinite wisdom of the Senate on this one, and we'll fight that fight when we get there, I suppose.

Some hon. members: Oh, oh!

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Thank you, Mr. Green.

Have we exhausted that subject? Are we ready to vote on Mr. Virani's amendment?

I would remind you that this amendment is to strike from paragraphs (d) and (e) of Mr. Motz's motion the words “including the analysis relied upon by the Minister of Justice in discharging his responsibilities under section 4.1 of the *Department of Justice Act*”.

Are we unanimous on the amendment or do we need to hold a vote?

Mr. Arif Virani: Mr. Chair, I have heard the concerns of committee members.

[English]

I'm persuaded, and I've heard enough that people understand the notion of solicitor-client privilege and they appreciate that redactions are likely inevitable in this context. They just don't want to presuppose it, so I think my point has been made. What I'm proposing to do is to withdraw my suggested amendments to paragraphs (d) and (e).

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Right. Thank you, Mr. Virani.

Mr. Arif Virani: I still have other amendments to suggest.

The Joint Chair (Mr. Rhéal Fortin): Yes, we're going to get to them right afterward. Now, given that the amendment was already before the committee, it needs unanimous consent to be withdrawn.

Does everyone agree to Mr. Virani withdrawing his proposed amendment?

Voices: Agreed.

The Joint Chair (Mr. Rhéal Fortin): Mr. White, I see that you have your hand up. Do you agree?

[*English*]

Hon. Vernon White: Yes.

[*Translation*]

(Amendment withdrawn)

The Joint Chair (Mr. Rhéal Fortin): We will now move on to the next amendment that Mr. Virani would like to propose.

Mr. Arif Virani: Please forgive my grocery list, as they say.

[*English*]

Monsieur Fortin, I would group the next amendments. There are three, and they relate to this notion of documents being deposited. It is my position that the documents should be deposited with the committee as opposed to references to the law clerk and parliamentary counsel of the Senate and the law clerk and parliamentary counsel of the House, and any other legal counsel that may be appointed.

This language is tracked within three different sections, so my proposal, and I think we can deal with this all—

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): Just a minute, Mr. Virani.

Mr. White, do you have a point of order or do you want to speak to the amendment?

[*English*]

Hon. Vernon White: If I may, Mr. Chair, just for clarity, why wouldn't we start with (a), see if there are any amendments and then, if not, move to (b)?

What's going to happen, I'm afraid, is that we'll spend three hours bouncing back and forth, chopping up.... If we can get an agreement, I think we can get through this in the next hour.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): Does everyone agree that we'll proceed paragraph by paragraph?

[*English*]

Mr. Arif Virani: I believe Senator White doesn't like my grocery list, but that's fine. He has a more organized list.

That's perfectly fine, Senator White.

Hon. Vernon White: I'm late for dinner and I'm not happy.

Some hon. members: Oh, oh!

Mr. Arif Virani: It's perfectly fine. We can start with (a).

[*Translation*]

Thank you.

[*English*]

The Joint Chair (Mr. Rhéal Fortin): Since you have the grocery list, you'll pay for the groceries?

[*Translation*]

Mr. Arif Virani: Groceries are very expensive these days.

[*English*]

Mr. Glen Motz: On this point, is there really a need to go back to (a)? We're already down to (f). Between (a) and (f), we're already there.

Hon. Vernon White: He has a grocery list. Let's go to (a) and see who's okay with that. That's all.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): So we're going to proceed by that method.

Are there any comments or proposed amendments on paragraph (a) of Mr. Motz's motion?

Does everyone agree to it?

Voices: Agreed.

The Joint Chair (Mr. Rhéal Fortin): Does everyone agree to paragraph (b)?

Voices: Agreed.

The Joint Chair (Mr. Rhéal Fortin): Does everyone agree to paragraph (c)?

Voices: Agreed.

The Joint Chair (Mr. Rhéal Fortin): Does everyone agree to paragraph (d)?

Voices: Agreed.

The Joint Chair (Mr. Rhéal Fortin): Does everyone agree to paragraph (e)?

Voices: Agreed.

The Joint Chair (Mr. Rhéal Fortin): We are now at paragraph (f).

The floor is yours, Mr. Virani.

Mr. Arif Virani: So we have come back to paragraph (f), where I was 45 seconds ago.

[*English*]

As I was saying, Mr. Chair, I didn't want to necessarily repeat myself, but the basic notion with respect to paragraph (f) alone is that here it's talking about the documents being deposited and it speaks to which entities. There's a reference to the law clerk and parliamentary counsel of the Senate, the law clerk and parliamentary counsel of the House, and any legal counsel that the committee may appoint.

It is my proposition that we strike that language that I just read out and replace it with “shall be deposited with the committee”. It would then continue on the second to last line in both official languages, “within one month of the adoption of this order”.

The words “Law Clerk and Parliamentary Counsel of the Senate, the Law Clerk and Parliamentary Counsel of the House of Commons and any legal counsel which the committee may appoint” are all struck. That is the proposition.

• (1940)

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): Thank you, Mr. Virani.

Is there any discussion or does everyone agree?

You have the floor, Mr. Green.

[*English*]

The Joint Chair (Mr. Matthew Green): Just to be crystal clear, it's that it will be one month from the adoption today, should it be adopted. Thank you.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): Yes, but the one month deadline isn't stated in paragraph (f).

Mr. Virani's proposal is to delete the words “with the Law Clerk and Parliamentary Counsel of the Senate, the Law Clerk and Parliamentary Counsel of the House of Commons and any legal counsel which the Committee may appoint” and replace them by “with the committee”.

Does everyone agree to that?

[*English*]

The Joint Chair (Mr. Matthew Green): It says it has to be at the committee within one month.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): Do you agree, Mr. Virani?

Mr. Arif Virani: Yes.

The Joint Chair (Mr. Rhéal Fortin): Wait, I think Mr. Green is right: it actually does say “within one month”.

I apologize, Mr. Green, I had misunderstood. So we will keep the last part, that is, the words “in both official languages, within one month of the adoption of this Order”.

I see that everyone agrees.

Mr. Virani, you have the floor.

[*English*]

Mr. Arif Virani: With Senator White's permission I would actually propose to jump (g) and go to (h), because it's basically the same amendment. I think it's very clinical and can probably be done—

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): If you want to jump over paragraph (g), that means we agree to it.

[*English*]

Mr. Arif Virani: Okay then, I'm going to address (g).

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): Because we already decided on how to proceed.

[*English*]

Mr. Arif Virani: There are a few amendments here.

[*Translation*]

I apologize, Mr. Chair.

[*English*]

The first part of the amendment would be to strike the language that again deals with documents being provided to law clerks and any legal counsel. These are the first four lines in their entirety on my copy, with the words, “a copy of the documents shall also be deposited with the law clerks and any legal counsel which the committee may appoint, in both official languages, within one month of the adoption of this order, with any proposed redaction of”. Strike all of that.

It follows logically from what I just recommended.

In the remaining portions—I apologize if this is getting complicated, but I can provide you with a copy—it would be to insert the words “information which, in the public service's opinion”—not the “government's opinion”—“could reasonably be expected to compromise national security”.

Then I would propose inserting—

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): Mr. Virani, do you have the proposal in writing?

• (1945)

Mr. Arif Virani: Yes.

The Joint Chair (Mr. Rhéal Fortin): I think we're going to take two minutes to distribute it. Otherwise, we might not all be voting on the same text.

[*English*]

Hon. Vernon White: Mr. Chair, might I propose we take a five-minute recess so we can discuss this, because this isn't exactly what was said? I think we can get to a place where everybody will be happy.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): We will suspend the meeting for a few minutes.

• (1945)

(Pause)

• (1955)

The Joint Chair (Mr. Rhéal Fortin): I call the meeting back to order.

Mr. Harder, you have the floor.

Hon. Peter Harder: Thank you, Mr. Chair.

[English]

I propose that we rule out paragraphs (g) and (h) in their entirety, and then we vote on the main motion residing.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): The problem is that we are now talking about Mr. Virani's proposal.

Could we consider that to be a subamendment?

We're taking about paragraph (g).

Mr. Harder, is the subamendment you're proposing intended to completely strike paragraph (g)?

Hon. Peter Harder: Yes.

The Joint Chair (Mr. Rhéal Fortin): Is that agreeable to everyone?

Mr. Arif Virani: Can I answer, Mr. Chair?

The Joint Chair (Mr. Rhéal Fortin): Yes, go ahead.

[English]

Mr. Arif Virani: My understanding, after having spoken with Senator Harder during the recess, is that his expressed desire was to remove all of paragraph (g), all of paragraph (h), and I believe all of paragraph (i), because (i) refers back to (g), so (g) doesn't exist. You'd have to get rid of (i). I've consulted with Ms. Bhandari and Mr. Naqvi, and we are comfortable with that.

I want to note for the record that I have also taken observation of the fact that at different points, members of every party and of each chamber have indicated the understanding that it is not only possible but also probable that redactions will occur in terms of the information that is being turned over. I want it put on the record that those redactions might be for various reasons, such as national security, as Mr. Motz's motion originally proposed, or the existence of an ongoing criminal investigation. They may also include—and I will want the record to reflect this—things such as solicitor-client privilege, cabinet confidence or matters that are currently before the courts, as there is already litigation ongoing on a constitutional basis on the very subject matter about which we are speaking.

Having said that, I would reiterate that I believe that Ms. Bhandari, Mr. Naqvi and I are in favour of removing paragraphs (g), (h) and (i) in their entirety.

Thank you.

• (2000)

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Thank you, Mr. Virani.

Mr. Green, you have the floor.

[English]

The Joint Chair (Mr. Matthew Green): While I appreciate Mr. Virani's positioning for his caucus, I certainly do not accept that as the rationale for why I am supporting this particular thing. I come into this with no presuppositions about what we're going to receive. That's the spirit of why I'm supporting this. It doesn't in any way infer that I am condoning or accepting that we're going to receive a bunch of redacted documents.

A voice: But you are putting that on....

The Joint Chair (Mr. Matthew Green): I am putting that on the record.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Mr. Motz, you have the floor.

[English]

Mr. Glen Motz: Thank you, Mr. Chair.

Thank you both, Mr. Virani and Mr. Green.

I tend to agree with Mr. Green. I support the idea.... This committee needs the documents. I do not want to presuppose that, as Mr. Virani is suggesting, Canadians, this committee, should expect to have fully redacted documents: There's solicitor-client privilege, cabinet confidence, national security issues, all those things. Because of that, we're setting up the platform to get nothing. If we get nothing, we're not done. I'm putting that on notice, that we're not done.

A voice: That's on the record too.

Mr. Glen Motz: Yes. We're not done.

This does not mean that's what Canadians are going to get. I think that's important to appreciate. Canadians have expectations, and we're here to serve them.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Thank you, Mr. Motz.

From what I understand, Mr. Virani is withdrawing his proposal and asking instead that we strike paragraphs (g), (h) and (i) from Mr. Motz's motion.

Does everyone agree to that?

Ms. Bhandari, you have the floor.

Ms. Rachel Bhandari: Mr. Chair, it may not be very important, but I believe the amendment was proposed by Senator Harder, not Mr. Virani.

The Joint Chair (Mr. Rhéal Fortin): Yes, you're right. I apologize.

In fact, it hasn't been proposed.

Mr. Motz, you have the floor.

[English]

Mr. Glen Motz: I apologize, Chair.

I think one of the things we cannot remove is (i), to some degree—"be published on the Committee's website forthwith upon receipt". That was in the motion, and I think that needs to stay, as is indicated on.... It would be the new (h), or however that is, on Mr. Virani's.... It would read, "the co-chairs shall cause the documents, as redacted pursuant to paragraph (f)"—that's what it would be now, as there is no (g)—"to be distributed to the members...and to be published on the committee's website forthwith upon receipt". That needs to stay.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Mr. Harder and Mr. White want to speak, but before that, I want to say that I believe there's been a misunderstanding, since we have already amended paragraph (f) to say that the documents will be produced to the committee. As a result, it isn't the chairs who will receive them, it's the committee.

Mr. Motz, do you understand what I mean?

[English]

Mr. Glen Motz: Then maybe what we should do is add to (f) the end of what was previously in (i), “be distributed to the members of the committee”, which we have in (f) now—

The Joint Chair (Mr. Rhéal Fortin): It's already there.

Mr. Glen Motz: What isn't there, though, is “and be published on the committee's website forthwith upon receipt”. That is not in (f), and it needs to be in (f).

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Right. I understand.

I'm not forgetting you, Mr. Harder and Mr. White.

I just want to make sure I understand properly. Mr. Motz, you are proposing that the words “published on the committee's website forthwith upon receipt” that appear at the end of paragraph (i) be added to paragraph (f) after the sentence that states that the documents must be produced in both official languages. Is that right?

[English]

Mr. Glen Motz: Yes, Chair.

Paragraph (f) could then read, as proposed, “these documents shall be deposited with the committee, in both official languages, within one month of the adoption of this order” and then we could just add at the end of it “and be published on the committee's website forthwith upon receipt”.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Right.

I know it's against the usual rules, but in order to untangle all this, it may be useful.

Does everyone agree to Mr. Motz's proposal? No. Right.

Mr. Motz, we're going to continue discussing Mr. Harder's proposal to strike paragraphs (g), (h) and (i).

• (2005)

[English]

Hon. Peter Harder: Let's vote on it.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Yes.

[English]

Mr. Larry Brock: Your earliest interventions basically omitted everything beyond paragraph (i), though.

Hon. Vernon White: No, that was just to clean up that piece of it, and then I said we would deal with the rest paragraph by paragraph.

If I may, Mr. Chair, from my perspective, we may end up putting it all on a website, but I'd like to see what we receive rather than be obligated to throw it on a website through a motion.

My perspective is that we deal with it when we receive the documents. We'll make adult decisions as a committee. We may put everything on a website. The truth is, as a committee, we'll have the documents. Nothing stops any member from doing what they want with them, either.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Thank you, Mr. White.

We have to proceed another way, because we're going to get lost.

Mr. White, Mr. Harder, Mr. Green and Mr. Virani want to speak.

I would remind you that we are going to deal with the amendments one by one; otherwise, we're going to get lost.

We were at paragraphs (g), (h) and (i), that Mr. Harder proposes to strike. I'm going to hear comments on that proposal.

Mr. White, had you finished what you wanted to say, or do you have something else to add? No? Right.

Mr. Harder, do you want the floor?

Hon. Peter Harder: No.

The Joint Chair (Mr. Rhéal Fortin): Mr. Green, do you want to speak?

[English]

The Joint Chair (Mr. Matthew Green): I want to just state that one of the challenges I'm having with this committee is the notion that we were struck in a special way and sworn in. It's the first time I've been sworn in to a committee like that, which I assumed would have granted us a deeper access into documents.

First of all, I'm a proponent of open and transparent government. I don't know what we're going to get, but my concern is that this committee is, in many ways, being relegated to the same threshold of openness and transparency as the public, and we hopefully have a much higher mandate than that.

I'll just state on the record now that I am supporting the way in which we've modified this motion in good faith and that we will get substantive information. I'll even state on the record that, should information contained within the documents as submitted to this committee require us going in camera for review, then that's something we should expect to do, but if what we end up getting are things that would generally be available to the general public, then I would state for the purpose of the record that it would be a great disservice to this committee. That would, in fact, undermine, I think, the principles through which the House and the Senate sent us here, and it would create a whole other subset of problems down the line.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Thank you, Mr. Green.

Does anyone else wish to speak to the proposal to strike the paragraphs in question?

We're listening, Mr. Virani.

Mr. Arif Virani: I'll be very brief, Mr. Chair.

[English]

I would just agree wholeheartedly with what Senator White has said, and I think it's consistent with earlier interventions at different points in this committee's deliberations tonight about not presupposing. In the same way we have agreed by consensus not to presuppose the bases of redactions or assertions of privilege, I think presupposing what should or should not eventually appear on the website is probably premature to determine at this stage, which is why, to my mind, it makes sense to go back to Senator Harder's original suggestion, rather than referencing now what goes or doesn't go on the website, and just to strike paragraph (i) in its entirety along with paragraphs (g) and (h).

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Does everyone agree?

It seems to be unanimous.

(Amendment agreed to [See Minutes of Proceedings])

• (2010)

The Joint Chair (Mr. Rhéal Fortin): Paragraphs (g), (h) and (i) are therefore stricken from Mr. Motz's motion.

I think we now have to dispose of the motion. We have already decided to strike paragraph (j) and the following paragraphs, and we have just stricken paragraphs (g), (h) and (i). What we have left are paragraphs (a), (b), (c), (d) and (e), which have been kept as they are, and paragraph (f), which has been amended so that the documents will be deposited with the committee rather than with the law clerks and parliamentary counsel.

I therefore put the question on Mr. Motz's motion as amended.

The vote is unanimous.

(Motion as amended agreed to [See Minutes of Proceedings])

The Joint Chair (Mr. Rhéal Fortin): Are there other motions you want to discuss?

[English]

Mr. Yasir Naqvi (Ottawa Centre, Lib.): My hand is up, Mr. Chair.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Forgive me, Mr. Naqvi, I didn't see you. I forgot you.

[English]

Mr. Yasir Naqvi: You've forgotten me for the last hour. I've had my hand up a few times, but that's okay. I understand.

I would like to move a motion at this time as well.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Right, Mr. Naqvi.

[English]

Mr. Yasir Naqvi: Thank you very much. I'll read the motion, and I believe the staff will be circulating it. The motion, Chair, reads as follows:

That the committee instruct the analyst to prepare an interim report and that this report be tabled in the House no later than Thursday, September 29, 2022, and that the committee instruct the analyst to prepare a final report and that this final report be tabled in the House no later than December 8, 2022.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Can we decide on May 31 to ask for an interim report to be tabled in September?

Mr. Naqvi, did I understand the dates correctly? You want an interim report to be tabled in September, is that right?

[English]

Mr. Yasir Naqvi: I'm suggesting an interim report by September 29, 2022, and a final report no later than December 8, 2022. I believe the clerk should be getting the motion in English and in French.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): The motion is being circulated, but I think it is short enough that we can discuss it.

Mr. Green, Mr. White and Mr. Brock want to speak.

Mr. Green, we're listening.

[English]

The Joint Chair (Mr. Matthew Green): Yes, we've had all the chat around the table about presuppositions, and yet here we are presupposing we're going to have this thing wrapped up in the winter. I think that's foolhardy and it does not reflect where we are at all, in terms of our witness lists and our work plan. It's premature in so many ways. I'm referencing, from my community and from the public, the lack of communications on the public inquiry side. I'll say on the record that people are frustrated that they're not hearing anything out of that committee, and I would just put to this one that if that process is going to be a process that goes away in private and kind of takes its time to deliberate in ways that are not open and transparent, it is incumbent on us as a joint parliamentary committee, with the seriousness of what's before us here, to provide answers to Canadians in an open, transparent and public way.

This is not personal—I have a great deal of affection for Mr. Naqvi—but I just think that this is very premature and I certainly will not be presupposing that this will be wrapped up, given that we don't even know if we're going to get the documents. We don't know what witnesses are going to come from the documents. We have no idea what's going to happen over these next couple of months, and so with all due respect to Mr. Naqvi, there's no chance that I would support this motion.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Thank you.

Mr. White, you have the floor. It will be Mr. Brock's turn next.

[English]

Hon. Vernon White: Thank you very much, Mr. Chair.

The expectation is to look at documents by July 1, which means that we will not have a meeting from that point in time until an interim report is completed, and I don't agree with that. I would suggest that we adjourn debate on this and push it forward until a future date, because I don't think we will be prepared for an interim report.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): Mr. White is making a motion to adjourn debate on Mr. Naqvi's motion.

Because it is a motion that is not debatable, I'm going to call the question on the motion to adjourn debate on Mr. Naqvi's motion.

(Motion agreed to)

• (2015)

The Joint Chair (Mr. Rhéal Fortin): Mr. Motz, you have the floor.

[*English*]

Mr. Glen Motz: Thank you, Chair.

I just wanted to add a comment along with Mr. Green's about the theme of having a report done by this time. I think, quite honestly—and no offence, I have great respect for Mr. Naqvi and my friends across the way—this is just an illustration to Canadians that there is a push to get this through this committee without having the fulsome, transparent and accountable responsibility that this committee has. Actually, I'm glad that this meeting is in public, because to me it demonstrates.... I'm actually shocked that the members of the government think that this is a responsible, transparent and accountable timeline to get through this. Obviously, whoever made that decision above the members in this committee to push that has no idea of the witness list and hasn't seen the witness list, because it is extensive and we intend to go through it.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): Thank you, Mr. Motz.

Mr. Harder, you have the floor. It will be Ms. Bendayan's turn next.

[*English*]

Hon. Peter Harder: This seems to be the time for us to all give our personal perspectives. Let me say that I think it's important for the committee to get down to its work. I would also point out that the inquiry must report within a year of the revocation of the Emergencies Act, and it would be ridiculous for this committee not to report before the inquirer. That would be my view. I would encourage us to have a work plan that allows this committee to complete its work before February of next year.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): I think there are sometimes conversations that are not part of the official public debate.

With that said, if I understand correctly, Senator Harder is making a motion to say that our work should be completed before...

[*English*]

Mr. Yasir Naqvi: Mr. Chair, my hand is up.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): It seems that was just a comment.

Thank you.

Ms. Bendayan, you have the floor.

[*English*]

Ms. Rachel Bendayan: To respond to the comment by Mr. Motz, I have proposed on numerous occasions that this committee meet multiple times a week if necessary in order to get through our work. There is every intention to get through the witness list. I certainly intend to ensure that is done. There was no thought given to circumventing the full hearing that needs to happen at this committee.

Like Senator Harder, I believe we have an obligation to Canadians to report back on the work of this committee, to do so regularly, and to provide a final report before the public inquiry provides its final report. That is, I think, consistent with the intent of the legislation, which was, as you recall, originally to oversee the implementation of any invocation of the Emergencies Act, and it was meant to happen before the public inquiry files its findings.

I think I speak for many of us, and certainly my colleagues, when I say that we intend to get through the work of this committee, but the work of this committee must include reporting back in a timely fashion to Canadians.

Once again, if necessary, this committee and each of its members should be prepared to sit longer and more often in order to get that done.

• (2020)

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): Thank you, Ms. Bendayan.

I have Mr. Virani and Mr. Naqvi on my list.

Your hand is still up, Mr. Naqvi. Do you want to speak?

[*English*]

Mr. Yasir Naqvi: Yes, I do.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): Right.

I'm going to give the floor to Mr. Virani, Mr. Naqvi and Mr. Green, in that order.

Mr. Virani, you have the floor.

[English]

Mr. Arif Virani: I would echo the sentiments that were expressed by Senator Harder with respect to the need to get down to doing some more concrete work and doing it expeditiously. I reiterate that it would be extremely prudent to Canadians, to the people we represent, to wrap up that work prior to the inquiry's concluding its work. I think that is what Canadians expect of us. I would reiterate exactly what Ms. Bendayan just expressed in terms of repeated efforts on her part and the part of others on our side of the House to make sure we are doing just that.

I would reiterate, going back to the reason for the cancellation of the previous meeting and a comment by Mr. Brock that something that happened at the justice committee was as a result of efforts by Liberals to prevent an adjournment of a meeting. That meeting was dealing with a bill called Bill C-5, which is a bill that many are familiar with in this committee room, and many Canadians should be familiar with. We would not adjourn proceedings at that committee in order to prolong committee deliberations under a bill that needed to be addressed, in what it represents in terms of curing mandatory minimum penalties that disproportionately affect black and indigenous men, predominantly, in this country.

That is why that committee meeting dragged on, preventing this committee meeting from happening last week and preventing this work from occurring.

Thank you.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Thank you.

I'm going to let you finish what you were saying, Mr. Virani, but I have to say, as joint chair of the committee, that in my opinion, we should not be debating here what happened in another committee last week. I think the two positions have been stated, by Mr. Brock on the one side and Mr. Virani on the other. I suggest that we not say any more about this, that is, what did or didn't happen at the Standing Committee on Justice last week.

With that said, I give Mr. Naqvi the floor.

[English]

Mr. Yasir Naqvi: Thank you very much, Mr. Chair.

I want to state on the record that I've been fairly patient throughout the proceedings of this committee over the months. I'm growing frustrated, and I think that was reflected in the motion I presented.

It feels to me that this committee is more interested in having procedural conversations, ad nauseam at times, as opposed to getting to the work of this committee. I think today is an example. We've had another three-hour meeting doing exactly that.

I find that when we actually had witnesses, when we had the opportunity to hear from them, when we had the opportunity to ask them questions, we learned more and we shed more light on the invocation and the revocation of the Emergencies Act. That is exactly what Canadians want from us, rather than when we do what we have been doing today.

I find it a bit odd when people are suggesting that somehow by putting forward a motion like that, I or others are trying to bring an end to this committee. It is absolutely to the contrary. I'm attempting to focus us so that we can get the work done.

I agree with Senator Harder. It would be quite absurd if the work of this committee went beyond that of the public inquiry, which has a very set timeline. I think it's incumbent upon us to roll up our sleeves, bring witnesses and ask them the questions, so we can have a better understanding and we can report back to Canadians.

My last point, Chair, would be that sometimes it feels that some members of this committee are looking for almost a make-work project, that they would like this to go on and on until maybe the next election. If that's what they're interested in, I don't think Canadians are interested in that. Canadians want us to ask important questions of relevant witnesses and report back. That's why I'm part of this committee, and that's what I intend to do. Thank you.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Thank you, Mr. Naqvi.

Mr. Green, you have the floor.

[English]

The Joint Chair (Mr. Matthew Green): Thank you.

I appreciate Mr. Virani's points. Respectfully, through you, Mr. Chair, in referencing the notion of other committees' dysfunction, filibuster or what have you, we recognize the reality of the constraints of committee scheduling.

I don't want to mislead the public, or have the public be misled, about our not doing the work simply because we don't want to work more frequently. The reality is there are administrative constraints here. Coming out of this meeting, people are able to have their own comments, but they can't have their own facts. The fact remains that we don't have the carte blanche ability to sequester all the translators and clerks, and bring in Zoom, to do this multiple times a week. That's just not the case. The process is what it is because we have administrative constraints, not because anybody's looking to frustrate the process or prolong this for quite some time.

To the other point about what Canadians want, I keep hearing that. I want to reference, again, the imbalance we have when it comes to access to information—the most basic information, Mr. Chair.

• (2025)

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Excuse me, Mr. Green. I have to interrupt you for a moment.

Several of us are speaking at once and having side conversations. It makes the job difficult for the interpreters and the people who are speaking.

I don't like to do it, but I urge you to be bit more discreet. It's fine to discuss things freely outside the official forum, and sometimes it enables us to reach compromises, but I think we're losing control.

Yes, it's late. It's almost 8:30, and there is still an hour of meeting left. I urge you to be a bit more disciplined about the side discussions, to facilitate everyone's work, particularly for the interpreters.

Thank you, and I turn the floor back over to Mr. Green.

[*English*]

The Joint Chair (Mr. Matthew Green): I will exercise my discipline and cede my time for the benefit of the committee.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): Mr. Brock, you have the floor.

[*English*]

Mr. Larry Brock: I withdraw my intervention.

Thank you, Mr. Chair.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): Thank you, Mr. Brock.

Ms. Bendayan, you may speak.

Ms. Rachel Bendayan: I will be very brief, Mr. Chair.

To follow up on what my colleague was just saying, if we agree, we can ask the clerk to check whether there's a possibility of holding two meetings per week from now until the end of the parliamentary session. We have three weeks in front of us. I think everyone agrees that we could move this along faster if we met more often.

The Joint Chair (Mr. Rhéal Fortin): Madam Clerk, are there possible times?

The clerk can check and provide us with a proposal next week, when she has checked on the availability of rooms and personnel.

Mr. Brock, you have the floor.

[*English*]

Mr. Larry Brock: I've spoken to the leadership of the Conservative team, and there is absolutely no chance at all.

I applaud Ms. Bendayan's efforts to move this along, because it is important that Canadians see that we're actually conducting business, not just talking about committee affairs, and that we're interviewing and questioning witnesses. The reality is meetings are being cancelled and have been cancelled, literally, for the last several weeks because of a resource issue. It's a limitation issue. We can take a look at the larger picture and the hybrid Parliament we've been subjected to for the better part of two years. This has contributed to a stretch on resources. The decision by the Liberal government to engage in midnight sittings on a fairly regular basis has taxed our ability to find additional resources, particularly for the extra work the interpretation team is doing. They do it very well, but there's a limit to what we have.

While I applaud Ms. Bendayan's efforts to move this along, the sad reality is the government has contributed to the problem we are facing.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): Thank you, Mr. Brock.

Ms. Bendayan, you have the floor.

[*English*]

Ms. Rachel Bendayan: Yes, to respond to Mr. Brock, I certainly appreciate the information he's providing on behalf of the Conservative leadership, but with due respect, Candice Bergen doesn't speak on behalf of this committee.

I have asked the clerk of the committee to get back to us with respect to the availability of interpreters and rooms so that we may do our work expeditiously.

• (2030)

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): There's no problem, we've already agreed. Ms. Burke, the clerk, told me that she would check on availability and report to us next week. We will see what Ms. Burke tells us at the next meeting.

Mr. Brock has stated his opinion and said there would be no availability. I'm inclined to think he's right, but we shall see. It doesn't stop us trying. Let's see what availability the clerk can find us.

We will also have to consider our agenda. We have decided on a certain number of witnesses, and there are others to be heard. Are we going to sit during the summer or not? There are all sorts of questions of that kind that we can examine. For the moment, let's wait to see what the clerk's response is about the availability of rooms.

Mr. Motz, you have the floor.

[*English*]

Mr. Glen Motz: Thank you, Chair, and thank you to Ms. Bendayan for her intervention.

We certainly look forward to hearing from the clerk on availability and are open to additional meetings, however they may look. We're at least having the conversation.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): Thank you, Mr. Motz.

Does anyone else want to speak?

Senator Boniface, you have the floor.

[*English*]

The Joint Chair (Hon. Gwen Boniface (Senator, Ontario, ISG)): Thank you, Mr. Chair.

I provided a motion to the clerk to do with the oath of secrecy. I wonder if it can be shared with everyone, if that has not been done.

Mr. Chair, while that's being done, may we just take a five-minute break?

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Right.

I am suspending the meeting for five minutes. When we come back, we will consider Senator Boniface's motion.

• (2030) _____ (Pause) _____

• (2040)

The Joint Chair (Mr. Rhéal Fortin): We are going to resume our work.

I invite you to return to your seats.

We can now consider Ms. Boniface's motion.

Do you wish to speak to your motion, Ms. Boniface?

[English]

The Joint Chair (Hon. Gwen Boniface): Yes, very briefly, if I may, Mr. Chair.

I think I've spoken to each of the groups around the table. The purpose is really to give us a baseline on and a common understanding of the interpretation of the oath of secrecy, so I would move that we go to a vote.

• (2045)

[Translation]

The Joint Chair (Mr. Rhéal Fortin): The motion is subject to debate, Ms. Boniface.

So I'm going to make a note of the names of the people who want to speak.

Mr. Green, you have the floor.

[English]

The Joint Chair (Mr. Matthew Green): I wish I had that power, to just move the motion and get right to the vote.

I've just shared these comments in person. I would like to reflect on them now.

I'm quite clear that when the law clerks come back they'll likely have an opinion that the oath of secrecy pertains simply to the secret orders in council. I don't know whether we are or are not at that point yet, but I just want to be clear that in supporting this, that will be my understanding in terms of our oath of secrecy. However, I'm not willing to concede on the fact that we still have the ability as a committee to get to the heart of the matter and have parliamentary privileges that are beyond what has been presented to us.

I want to point out, Mr. Chair, that when we hear members around this table talk about frustration and getting to work, I can't imagine a scenario in which we continue to invite witnesses who continue to come before us and tell us that they can't tell us anything. That's frustrating. That was the case with the ministers we had before us. That was the case with CSIS and with the RCMP.

My hope is that in this motion we also have the ability to contemplate, when it comes back, as a committee, matters for which we are going to demand extra scrutiny. That's where we will, hope-

fully, create parameters of when we ought to be going in camera to, hopefully, be privy to the facts of the matter. As it stands now, this motion will pass, and they'll come back and just say it's a code of secrecy for the secret orders in council that were constituted over the course of the emergency, which will be likely very minimal, given what we already know as a committee.

Those are my reflections on this motion. I'll support it, knowing where it's going to go, but I will also continue to beat the drum about wanting to get to a place as a committee where we have access to real information and where we have a duty of candour from our witnesses.

The last point of contention is that, referencing back to the Attorney General, who is also the Minister of Justice, they are always both the client and the solicitor at all times, and therefore my challenge is that we're not going to have access to anything substantive.

Thank you.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Thank you, Mr. Green.

I had put my own name on the list.

Does someone else wish to speak? Ms. Bendant do you want the floor?

I'm therefore going to speak briefly, and then it will be Ms. Bendant's turn.

Ms. Boniface, I want to draw your attention to the fact that there's a translation error in your document. In English, you say:

[English]

"information the committee can access from witnesses".

[Translation]

However, in French, you say: "*quels renseignements peut consulter le Comité au sujet des témoins*".

The passage "*renseignements au sujet des témoins*" does not mean "information we obtain from witnesses" at all. I think that correction has to be made before studying this motion.

With that said, Senator, I believe I understand from this motion that you are asking for a joint opinion. That is a way of forcing the two law clerks and parliamentary counsel to reconcile their opinions, if necessary, when, in reality, it might benefit the committee to have two opinions. So if one of the law clerks and parliamentary counsel wanted to qualify something, he should be free to do so; he should not be obliged to stifle his reservations or qualifications for the purposes of a joint opinion.

First, there is the correction to be made to the French. Second, it seems to me to be wiser for the committee to have two opinions rather than one joint opinion.

And last, I am also wondering whether, for the entire exercise, it is useful to debate that now, since we don't yet know what information we're going to get. Once the witnesses have produced documents or we know part of the information, we will be able to ask the law clerks and parliamentary counsel whether or not that information is confidential. For that reason, at this point, I wonder whether we aren't going a bit too fast.

Those are the three comments I wanted to submit to the committee, the most urgent to be considered being the French translation. Of course, if we have to decide on the motion, it's important that we all be deciding on the same thing. At present, I would say that the passage that concerns me in the French version makes no sense. I don't see how the law clerks and parliamentary counsel could tell me what information to consult about the witnesses. I can go to Google to find out who a particular witness is. That's something else entirely.

Ms. Bendayan, the floor is yours.

• (2050)

Ms. Rachel Bendayan: Thank you, Mr. Chair.

I have somewhat the same concern as you. Obviously, no one can speak for the law clerk and parliamentary counsel in question, but by including the date, June 13, we are hoping he will be able to meet with us on that date. The law clerk and parliamentary counsel might be able to let us know whether that will be possible for him. I hope that will be the case.

On a similar line of ideas to yours, I note that it says in French that it must be distributed to the committee members "*avant le 13 juin*", while in English, it says "by June 13th". That's a detail.

To conclude, I'd like to ask the senator to clarify one point. It isn't necessary to actually include it in the motion. Does she expect to get something in writing?

Given that we have just adopted the motion about the committee's upcoming meetings, we could accept something in writing. However, I don't really see whether there is time left for the law clerk and parliamentary counsel to submit his conclusions to us.

Thank you, Mr. Chair.

The Joint Chair (Mr. Rhéal Fortin): Does anyone else want to speak?

Ms. Boniface, the floor is yours.

[*English*]

The Joint Chair (Hon. Gwen Boniface): Yes. Thank you for pointing out the French. It did go through translation services, so I regret that it's not accurate, but I just want to reassure you it was sent to translation services. I can have that adjusted.

The intention here was it would be a written opinion, not an appearance as such, and just for the basic information of the committee members around the table. We thought that would help us as we move forward.

I didn't see it as premature to your point, Mr. Chair. I saw it as merely giving us a piece of information to help us as that new in-

formation comes forward on redactions and such like, and in our planning going ahead for the work plan.

I'm in your hands in terms of how you'd like to do it. If you want me to bring it back to the table, I could do that with the correction that you suggest. I'm in your hands either way.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): Thank you.

Mr. Green, the floor is yours.

[*English*]

The Joint Chair (Mr. Matthew Green): In reading this, while I appreciate having the joint opinions of the law clerks of the Senate and of the House of Commons, I think that this is actually contrary to our Standing Orders and our parliamentary privilege.

My question through you, Mr. Chair, to Ms. Boniface is that as a chair, would you use this opinion to guide what questions were in or without the mandate of our questioning and our lines of questioning?

The Joint Chair (Hon. Gwen Boniface): I think your question actually demonstrates what I see as an issue around the table. I was trying to get clarity as to what information an oath of secrecy gives us. How does the oath of secrecy make this committee's operation different from others for me as an individual, both in what I have access to and also in terms of what I can share?

The whole point of this was merely to say we took an oath of secrecy. I'd like to know what exactly that allows us access to, because that's not a normal practice of the committee and it's not something we asked the clerks when they were here.

I thought this would be a rather quick motion. It was really to try to get that single clarity, because when I have discussions with individuals or in our groups, I feel that there's a very different understanding around the table on what the oath of secrecy's impact is for the work that we're doing. As I describe it to some of my colleagues at the table, I want to know what the baseline is, and that's what the law clerks' opinion would be in writing.

I leave it to the committee. It's a suggestion and a motion I put forward.

[*Translation*]

The Joint Chair (Mr. Rhéal Fortin): I added my name to the list while you were speaking, Senator Boniface.

I'd like to speak not as chair, but as a member of the committee. To simplify things, could we not invite the two law clerks and parliamentary counsel to a later meeting where we could all ask the questions on our minds about the scope of the oath of confidentiality we have taken?

It might be clearer that way. I'm wondering about that. It might be wiser to have them both here. We could tell them in advance that we want to discuss the scope of the oath we took with them. We could listen to them and then ask them the questions we want to ask them. That seems to me to be more efficient.

I'm now going to yield the floor to Mr. Virani.

• (2055)

[English]

Mr. Arif Virani: I'm just conscious of the need to get on with the business of the committee hearing witnesses, so I think the motion as created and as articulated by Senator Boniface is useful. I would just perhaps insert the word "written", so it's "seek a joint written opinion" from the law clerk, to make it crystal clear. Then perhaps if there's any necessity after the fact, after we receive the written opinion, we could pose some interrogatories to the law clerks at a later date.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Mr. Harder, you have the floor.

[English]

Hon. Peter Harder: I agree with what Mr. Virani has said, and I was going to say the same thing. With that understanding, I'd be happy to vote on this.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Do you want the committee to vote on Mr. Virani's proposal?

You want us to vote on Ms. Boniface's motion.

[English]

Hon. Peter Harder: With the understanding that it is written, I would suggest we move to a vote, Chair.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): I do want us to vote, Mr. Harder, but we are going to have to agree on the translation before voting. Otherwise, I'm going to declare the motion out of order.

I propose to suspend the meeting for a few minutes.

• (2055)

_____ (Pause) _____

• (2105)

The Joint Chair (Mr. Rhéal Fortin): We are going to resume our work, please.

Ms. Boniface, we have worked on an in-house translation of your motion. I'm going to read it in French and the interpreters will interpret it. I'm going to read it slowly to make sure we are all on the same wavelength:

Que le Comité sollicite un avis conjoint auprès du légiste du Sénat et du légiste de la Chambre des communes afin de savoir quels renseignements le comité peut obtenir, compte tenu du serment de secret prévu à l'annexe de la Loi sur les mesures d'urgence et auquel fait référence le paragraphe 62(3) de cette loi; et que l'avis conjoint soit soumis aux greffiers du comité mixte pour qu'ils le distribuent aux membres au plus tard le 13 juin 2022.

We will discuss proposals to amend, but I would like to know, first, whether the original motion that I have just read is agreeable to everyone. Do we agree on the translation? I see we do. That's good.

Mr. Virani has proposed that the joint opinion be a written opinion. We have to vote on that amendment before voting on the motion.

Personally, I would like to propose that it be two opinions rather than a joint opinion.

We will start with Mr. Virani's proposed amendment, that the opinion be a written opinion.

Does anyone want to speak about this proposed amendment?

Hon. Claude Carignan (Senator, Quebec (Mille Isles), C): I'd like to speak about the idea of a written opinion. In fact, I'm wondering about the idea of an opinion itself, whether written or not.

I think we're putting the clerks in an extremely delicate position, because this is a very theoretical question. It's a bit abstract. When we ask what information the committee can obtain from the witnesses, we're asking a very broad question. We don't have any facts, any type of information or particular situation to put to them in order to obtain an opinion.

As a lawyer, I have given this kind of legal opinion. Normally, you want a certain factual basis and you want to talk about some information in particular. I'm afraid that this is a bit of a theoretical exercise when you're not asking for an opinion about a precise document or fact.

As was said earlier, I believe this request is premature, as long as we don't have the documents in front of us and as long as we can't ask for something specific.

• (2110)

The Joint Chair (Mr. Rhéal Fortin): Thank you, Mr. Carignan.

Does anyone else want to speak to Mr. Virani's proposed amendment?

Is there unanimous consent, or do we have to vote on the proposed amendment that it be a written opinion?

In French, it would read: "*le Comité sollicite un avis écrit conjoint auprès du légiste du Sénat*".

Is everyone agreed on this proposal? Right.

I'm going to propose an amendment of my own.

Rather than a joint opinion, I propose that "the Committee seek opinions from the Law Clerk of the Senate and the Law Clerk of the House of Commons".

Mr. Green, the floor is yours.

[English]

The Joint Chair (Mr. Matthew Green): I understand the intention and the direction, but I don't know if it's fair of this committee to ask the two houses to potentially be at odds in this particular scenario. I think we're asking a lot of them as it is, for the same reasons Senator Carignan has raised and for the issues that I've brought up. I'm cautious around that. I think if we have them work together to get to whatever their legal opinion is....

I'm going to presuppose that they're going to come back to talk about the specificity of the special orders under the act that were secret, which I'm to understand didn't exist. I'm not sure there's going to be much that actually comes of this, but I also don't want to put them into a scenario where they go in completely separate directions and then we're left holding the bag on that.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Thank you, Mr. Green.

[English]

The Joint Chair (Mr. Matthew Green): We have enough entertainment here.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Mr. Harder would like to speak, but I just want to note that I have been informed that the senators must leave at 9:20.

Is that right, Ms. Boniface?

The Joint Chair (Hon. Gwen Boniface): It's at 9:40.

The Joint Chair (Mr. Rhéal Fortin): Ah, it's at 9:40, right.

Mr. Harder, the floor is yours.

[English]

Hon. Peter Harder: Thank you, Chair.

I would be against your motion for the reasons that Mr. Green has cited, but I would also make the point that it would not surprise me if the opinion had a range of understandings that might be nuanced and not necessarily narrow and prescribed. It could incorporate different perspectives, but it would be useful to have it in one document without going through the parsing out of one chamber's view versus the other chamber's view.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): Does anyone else wish to speak?

Mr. Virani, the floor is yours.

[English]

Mr. Arif Virani: I just think that if we asked five different lawyers, then we would possibly get five different opinions, so the notion of asking for more than one is probably a dangerous proposition. I agree with Mr. Green, for what might be the first time this evening.

[Translation]

The Joint Chair (Mr. Rhéal Fortin): I agree with you, Mr. Virani: if we ask five lawyers for their opinion, we will probably get five different opinions, and two, if we ask two. I'm just thinking that we might benefit from having two. In any event, I understand that the committee members aren't interested in having two opinions. So I withdraw my proposed amendment.

Does anyone else want to speak to the proposal amended by Mr. Virani, and amended by the corrections in French that I read before, for us to ask for a written opinion? Senator Carignan has said that the motion is premature, but does anyone else wish to speak to the motion as a whole or can we proceed with the vote now?

Do you wish to speak, Ms. Burke?

• (2115)

The Joint Clerk (Ms. Miriam Burke): Are you asking for a standing vote?

The Joint Chair (Mr. Rhéal Fortin): Is there unanimous agreement to the motion? So I'm asking for a standing vote.

(Motion agreed to: yeas 9; nays 2.)

The Joint Chair (Mr. Rhéal Fortin): We have ten minutes left. I was asked to clear the room at 9:30, as scheduled. There are votes in the Senate and the senators have to leave at 9:40.

In my opinion, we have exhausted the agenda.

The meeting is adjourned.

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