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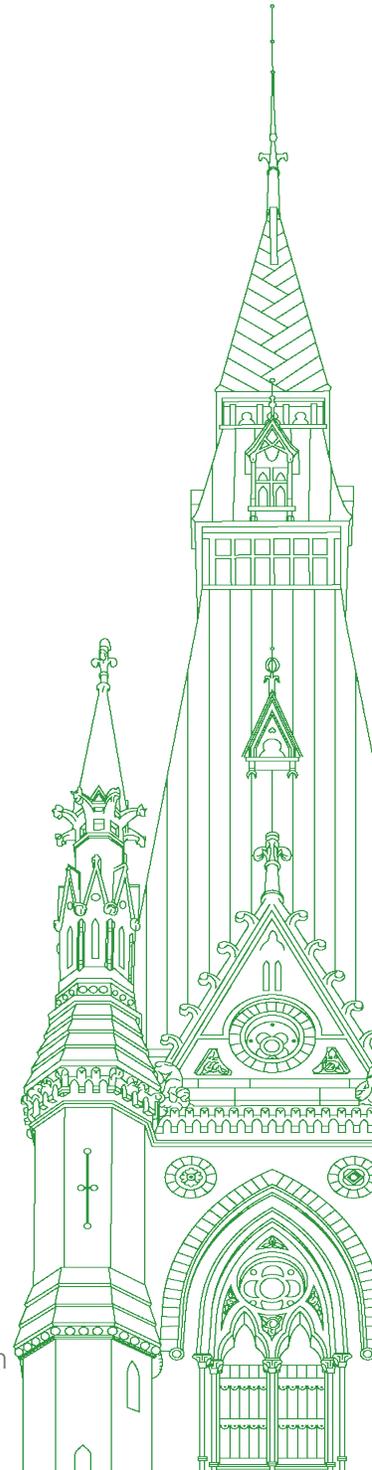
Special Joint Committee on the Declaration of Emergency

EVIDENCE

NUMBER 028

Tuesday, February 13, 2024

Co-Chairs:
The Honourable Gwen Boniface Mr. Matthew Green Mr. Rhéal Éloi Fortin



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• (1835)

[Translation]

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

I would like to welcome you all to the 28th meeting of the Special Joint Committee on the Declaration of Emergency, which was established pursuant to the House of Commons order of March 2, 2022 and the Senate order of March 3, 2022.

Today's meeting is taking place in a hybrid format, pursuant to the orders of the Senate and the House of Commons.

To ensure that all members of the committee can participate fully in the meeting, please inform me of any technical problems so that we can suspend the meeting for a few minutes if necessary.

The committee is meeting this evening to consider its future business.

I should point out that the sound tests were carried out with Mr. Naqvi, who is attending the meeting online. The clerk has confirmed that everything is in order.

We are therefore ready to begin.

Mr. Motz, you have the floor.

[English]

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

It's nice to see everyone again for this meeting.

There have been significant developments since the last time we met, specifically with the Mosley decision. I'm prepared to move the following motion, duly placed before the committee:

That, in light of developments since the Committee's most recent meeting, including a Federal Court ruling—

[Translation]

Mrs. Sherry Romanado (Longueuil—Charles-LeMoine, Lib.): On a point of order, Mr. Chair.

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): Mrs. Romanado, you have the floor.

Mrs. Sherry Romanado: I would like to know whether the order in which motions are moved should follow the order in which they were tabled. I think mine was tabled before Mr. Motz's. Since I'm a new member of the committee, I just want to check how the committee normally works when it comes to motions.

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): That's a good question. My reflex is to give the floor to those who ask for it as they go along. You are on my speaking list; the clerk told me that you raised your hand after Mr. Motz.

I may be wrong, but as far as I know, there are two motions on the table: yours and Mr. Motz's. I have no objection to dealing with one or the other first. That said, since Mr. Motz raised his hand first, I gave him the floor. We'll proceed accordingly, if you have no objection.

Mrs. Sherry Romanado: It's fine. I just wanted to clarify how the committee works, since I'm a new member.

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

Do you have a point of order, Mr. Brock?

[English]

Mr. Larry Brock (Brantford—Brant, CPC): I'd like to be put on the speaking list. Thank you.

[Translation]

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): Okay.

Mr. Motz, you have the floor.

[English]

Mr. Glen Motz: Thank you, Chair.

My motion is as follows:

That, in light of developments since the Committee's most recent meeting, including a Federal Court ruling which found that the government's use of the Emergencies Act to have been illegal and that the special criminal laws subsequently created by the Liberal Cabinet to have been an unconstitutional breach of Canadians' Charter rights, as well as correspondence from the Privy Council Office concerning translation of the evidence before the Public Order Emergency Commission,

(a) in relation to the Federal Court judgment,

(i) the Committee invite the following witnesses to appear, separately, for at least one hour each:

(A) the Honourable David Lametti, the Minister of Justice and Attorney General of Canada at the time,

(B) the Honourable Arif Virani, the Minister of Justice and Attorney General of Canada,

(C) the Honourable Marco Mendicino, the Minister of Public Safety at the time,

(D) the Honourable Chrystia Freeland, the Deputy Prime Minister and Minister of Finance,

(E) Royal Canadian Mounted Police Superintendent Denis Beauoin,

(F) representatives of the Canadian Civil Liberties Association,

(G) representatives of the Canadian Constitution Foundation, and

(H) other witnesses whose names are provided to the Joint Clerks by members of the Committee within ten days, and

(ii) an order do issue for all 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 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 Emergencies 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 these documents shall be deposited with the Joint Clerks, without redaction and in both official languages, within ten days of the adoption of this order;

(b) in relation to the translation of Commission evidence,

(i) the Committee invite the following witnesses to appear, separately, for at least one hour each:

(A) senior officials from the Privy Council Office, and

(B) other witnesses, representing parties which placed unilingual submissions before the Commission or entities whose unilingual evidence was before the Commission, whose names are provided to the Joint Clerks by members of the Committee within ten days, and

(ii) members of the Committee shall, within ten days, identify their preliminary lists of unilingual Commission evidence or submissions for priority translation to the Joint Clerks who, in turn, shall relay those requests to the Privy Council Office;

(c) to accommodate the scheduling of witnesses, (i) the Committee meet during the weeks of March 4 and 11, 2024, if necessary, and (ii) if the number of witnesses proposed under clauses (a)(i)(H) and (b)(i)(B) warrant, the Joint Chairs shall convene a meeting to discuss prioritizing their respective scheduling; and

(d) in relation to the Committee's draft report:

(i) the Committee suspend its work on the current draft report,

(ii) the analysts be directed to prepare a second draft report, incorporating the information and analysis set out in the Federal Court ruling, along with the evidence received under paragraphs (a) and (b),

(iii) members of the Committee may, after the Committee has received evidence under paragraphs (a) and (b), submit draft recommendations and conclusions for the draft report, including those which may have been negated by the Committee on May 16 and June 6, 2023, where reconsideration may be warranted in light of the Federal Court judgment or the evidence received, and

(iv) the Committee work toward a goal of tabling its final report by June 21, 2024.

● (1840)

Chair, this is a very comprehensive motion. It covers off a number of things and I believe very succinctly identifies some of the areas where I think the committee needs to go in preparation for a fulsome study of and conclusion to this particular event of the invocation of the Emergencies Act.

Now, if we look at the reason why we're here, in following along with the purpose behind our committee, the Mosley decision reflects exactly some of the areas we need to cover off. Was this legal? Did they follow the rules of law? Was it charter-compliant? Those are all things that we need to examine as a committee.

Just for everyone's reference, the Federal Court I think provided a very succinct review. I was particularly pleased with how well it was presented and provided clarity: not just that he made a decision, but he provided a rationale for the decisions, and I think they were very sound. I want to take just a moment to refresh our memory on what those decisions were.

On January 23, the Honourable Justice Mosley of the Federal Court issued his decision:

...Four groups applied for judicial review of the decision by the Governor in Council...to declare a Public Order Emergency under the Emergencies Act...

The February 14, 2022 Proclamation Declaring a Public Order Emergency...and the enactment of temporary special measures in order to deal with protests in various parts of the country—which included the occupation of the downtown core of Ottawa and blockades of ports of entry—were under review.

This was the first time [that] the Act was invoked since its enactment in 1988. The Proclamation, the Emergency Measures Regulations...and the Emergency Economic Measures Order...adopted under the Act had a three-fold impact: a) they prohibited a range of activities relating to protests in designated areas, b) they required third parties to assist the police in ending the protests and c) they authorized financial institutions to disclose information on designated persons and entities to federal officials...to suspend their accounts.

The Applicants [and] Parties raised issues which [led] to the following...questions:

1. Was the Proclamation unreasonable?

With respect to the first question, the Court considered the decision under the reasonableness standard of review and concluded that the answer was yes, the Proclamation was unreasonable and illegal (“ultra vires”)...

That is really a term that means “to act beyond one's authority or power”.

It continues:

While the Court recognized...the occupation of downtown Ottawa and the blockades of the ports of entry were matters of serious concern calling for government and police action, the threshold of national emergency required by the Act was not met. Under paragraph 3(a) of the Act, a national emergency is an urgent and critical situation that exceeds the capacity or authority of the provinces to deal with it, and that cannot be effectively dealt with under any other law [in] Canada. The Proclamation applied the temporary special measures in all of Canada's provinces and territories, despite the lack of evidence that it was necessary. Apart from the situation in Ottawa, the police were able to enforce the rule of law by applying the Criminal Code and other legislation.

While the conclusion [of] the Proclamation was illegal...[it] was sufficient to dispose of...applications, the Court addressed the other issues should it be found to have erred in its findings on the first question.

...the Court considered the threshold for “threats to the security of Canada.” Section 2(c) of the Canadian Security Intelligence Service Act...defines threats to the security of Canada as “activities...directed towards or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective.”

Under [section] 17 of the Emergencies Act, the [Governor in Council] required reasonable grounds to believe that the standard set out in section 2 of the CSIS Act had been met.

The evidence in the record before the Court did not support a finding that the impugned activities reached that threshold.

The second question that was asked was:

2. Did the powers created by the Regulations and the Economic Order violate sections 2(b)(c)(d), 7 or 8 of the Canadian Charter of Rights and Freedoms, and, if so, could they be saved under section 1 of the Charter?

● (1845)

Concerning the Charter, the Court found that the Regulations infringed the guarantee of freedom of expression under s. 2(b), as they were overbroad in their application to persons who wished to protest but were not engaged in activities likely to lead to a breach of the peace.

The Economic Order infringed s. 8 of the Charter by permitting unreasonable search and seizure of the financial information of designated persons and the freezing of their bank and credit card accounts.

The infringement of sections 2(b) and 8 of the Charter were found to be not minimally impairing, and could not, therefore, be justified under s.1 of the Charter.

The Court found that there was no infringement of the rights to freedom of peaceful assembly and....

So that particular piece of the charter was not found to have been breached.

I think it's important to recognize that, while Justice Rouleau had a role to play in his presentation of the evidence, we don't have a lot of the 250,000 documents that he said he saw. We're never going to see all of them, but he relied on 7,000 documents to write his report.

Commissioner Rouleau, in justifying his decision to support the government's invocation, did say that the evidence was overwhelming and that any other person presented with the same evidence could reach a completely different conclusion.

That didn't leave me with a lot of confidence back in the day. I've spoken about that at this committee, about how his decision did not leave me with confidence.

On the other hand, Justice Mosley's decision from a high court in this country has provided me confirmation that there was an appropriate judicial review of the act and the use of the act, that it was found to be illegal in this circumstance, and that there was a breach of the charter.

It begs a number of questions. The committee's role is to do a number of things. One of the things Mr. Beatty, our very first witness at this committee, said was that our role was to look at the act and to ensure it was adjusted so no other government could invoke the Emergencies Act under exactly the same circumstances again.

Beyond that, we asked for a charter analysis, which we never got. It was "trust us—we've done it". We never did see it.

Justice Rouleau made a comment that it was unfortunate that the government had chosen to keep its broader interpretation to itself. Mosley spoke about that, about how we were just supposed to trust them, a number of times in his decision. Well, the Canadian public has lost trust with this decision.

The motion has a number of different components to it that speak to the need to have certain people here as witnesses, the need to have documents. Again, this is not a new phenomenon for this committee. We've asked for the documents the government relied on to make its invocation, and we haven't gotten them.

In fact, it's quite telling that the government has refused, at all levels, to allow some of these documents to be released, and I think it's unfortunate.

The other issue before us, which was left over from our meetings in the fall, is the issue of translation. I don't know how we're going

to solve that completely. My personal opinion is that we need to come to some compromise on how to make that work and make it work fairly for everyone. I'm certainly open to conversations about what that might look like.

● (1850)

Again, the motion as presented deals with the report as well, where we need to go with the report and the information we need to include in the report moving forward, with the goal to correct it.

As I look ahead at our calendar, I think our longest task will be to develop recommendations to address some of the gaps in the current legislation that we might be able to fix. Hopefully, we can do a lot of it as a committee and then have a report done. If there are dissenting reports, then there's time to get those in as well.

I am certainly open to debate on this.

I will acquiesce my time to the next speaker, Chair.

[Translation]

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

Mrs. Romanado, you have the floor.

Mrs. Sherry Romanado: Thank you very much, Mr. Chair.

I really like my colleague's explanation.

[English]

As I mentioned, I too am new to the committee, and I too want to see if we can find a path forward. That is why I brought forward a motion that I think captures the two issues at hand. One is the importance of documents being translated in both official languages. On the other, obviously our colleagues have great interest in the Mosley decision. That's why I put forward the suggestion to have the two ministers who are responsible brought forward to come and testify here before the committee.

In those aspects, I am in support of the path forward. I was not involved in this committee and the incredible work you did and the meetings you had. I have read the documentation from all of the meetings that happened prior, and I did read the draft report that you're working on. I think if the goal is for this committee to do the work that we were mandated to do, based on the legislation that actually created this committee, Canadians are expecting us to submit that final report.

I believe we are there. I don't believe we need to revisit having all of the same witnesses come back based on the fact that a court has found, with the Mosley decision, something that the Conservatives were of course in support of. I brought forward a compromise in terms of bringing a path forward and opening that conversation—I think we have 12 meetings scheduled between now and June—on how the committee can find a path forward in terms of addressing the question of translation and addressing the question of, okay, while outside the scope of the mandate of this committee, with respect to the Mosley decision, how do we get further explanation? I think it's the will of the opposition to hear from the two ministers who are involved.

That is why I put a good-faith motion forward. I'm hopeful that we can come to some common ground here and move forward in a positive way so that we can issue that final report.

[*Translation*]

Thank you.

• (1855)

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): Thank you, Mrs. Romanado.

Mr. Brock, you have the floor.

[*English*]

Mr. James Maloney (Etobicoke—Lakeshore, Lib.): Mr. Naqvi has his hand up too, on the screen.

[*Translation*]

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): Mr. Naqvi is indeed on my list.

Senator Harder, you also raised your hand. So I'm going to add your name.

You have the floor, Mr. Brock.

[*English*]

Mr. Larry Brock: Thank you, Chair.

Welcome, Ms. Romanado.

Mr. Maloney, welcome to our committee.

Senator Smith, welcome. You're new and we've all been hearing evidence and discussing these issues for what may seem a daunting length of time, but these are important issues.

First, there are some takeaways I want to highlight. I certainly will try not to repeat the comments of my colleague Mr. Motz. We also would like to come to a conclusion sooner than later. I believe there is a path forward to doing that by the end of this session sometime in June. When this particular committee began its examination of the invocation of the act and the circumstances surrounding it, while we had heard rumours that there might be a charter challenge, we didn't know what that would look like and we didn't know what the results would be, but we certainly had that at the back of our minds moving forward.

I also want to highlight the issue of witnesses. Back in December 2022, with a tie vote—and in this particular committee a tie vote results in the defeating of a particular motion—a motion was brought by the Conservative team to extend the study to call further witnesses who we had deemed would provide relevant information. The vote was five to five, so by no means did that vote indicate a strong majority preference, in my view, to shut down the possibility of hearing from further witnesses.

We lived by that decision and we then instructed the analysts to prepare a review of the material and to provide us with draft reports. We are now in draft version number three.

During that time frame, we had the Rouleau commission. I want to highlight that although it's statutorily mandated that a commission be launched during the invocation of the act or following the

invocation of the Emergencies Act and although it was presided over by a justice—a Superior Court justice—the mandate of Justice Rouleau was not to provide any charter analysis of the legality behind the invocation of the act. That legal mandate did not exist, and I think in his wisdom, Justice Rouleau definitely shied away from making legal pronouncements because he knew that ultimately this was a matter that was going to be studied and argued in the Federal Court. At this point, two institutions, as outlined in our particular motion, have launched a charter challenge—the Canadian Civil Liberties Association and the Canadian Constitution Foundation.

Justice Rouleau, as my colleague indicated in his opening remarks and in the report itself, made it abundantly clear that there was no overwhelming evidence that would have led him to conclude that there was legal justification for the Liberal government's invoking of the act given the circumstances present primarily in downtown Ottawa and secondarily with respect to some of the border crossings in Alberta and in Windsor, Ontario. He made it clear that reasonable people who had the ability to review all the evidence he had heard could come to a completely different conclusion than he did. I highlight the word “evidence”.

• (1900)

This segues to the concern that our francophone members have on this committee, that the submissions and evidence heard at the Rouleau commission were not translated into the other official language, which has compromised the constitutional right that all members have in this House and in the Senate to receive information in both official languages.

The motion was drafted in such a way that we don't want every single submission or piece of material officially translated into the other official language. It would take years to do that. I think we received a figure, in terms of the cost analysis, of well over \$300 million. At one point, this committee said that sounded like a daunting task, and given the financial crisis we have in this country, the affordability issues, and the thousands of families who are literally one paycheque away from insolvency, we have to be prudent stewards of taxpayer money.

So that, in my opinion, would not be a proper exercise of our authority. We talked about perhaps just getting the index translated, such as an index indicating how the arguments were presented so that we could identify who said what, and maybe an index of the 2,500 potential exhibits. That price tag was \$5 million or \$6 million, which was another extraordinary expense that could not be justified under any circumstances.

The motion is drafted as such so that we can hear from individuals to perhaps give us the answers we seek without going through the expense. I can't speak for my colleague and chair Monsieur Fortin, but I can speak on behalf of Senator Carignan. He's certainly on the speaking list, and I don't want to take away his submissions, but I think that was a reasonable compromise.

I appreciate your approach, Ms. Romanado. I think we're not too far off in terms of where we both see a pathway to proceed with, but I think it's incumbent on us as parliamentarians and senators to give value to Canadians.

This was an extraordinary time in this country during the pandemic and the response to the pandemic by the convoy and the supporters of the convoy who descended here in Ottawa. But I think it's a reminder to us all that we are a country of law. We are a country of order. We don't interpret the laws to fit what we believe as a government, a narrative that's not supported and grounded by facts and not supported and grounded by the legislation.

The legislation in the Emergencies Act was abundantly clear. It could not be more clear that the definition of a national emergency was the same definition as defined under the CSIS Act. It did not say anywhere "or as other interpretations may be available" or "or as other circumstances may be available". The law was black and white. It wasn't grey. That's what we expect in this country.

As drafters of legislation, we use our best skills and resources to provide clarity with the law. Sometimes we get it right and sometimes we get it wrong. Courts and appeal courts, and ultimately the Supreme Court of Canada, will weigh in if we do get it wrong. In this particular case, as my colleague Mr. Motz has indicated, we heard from Perrin Beatty, who was a cabinet minister and primarily the architect of the Emergencies Act.

- (1905)

As we all know, the Emergencies Act was designed to replace the War Measures Act, which has significant flaws in terms of trouncing the civil liberties of Canadians, and there was a mandate to do better. It was a mandate to create the strongest, most powerful law available to a national government in times of true national emergencies.

Through resources that may not be wholly available to this committee, I've certainly been privy to resources from the government itself, indicating that there was even a consideration of the invocation of the Emergencies Act at the outset of the pandemic—frightening and disturbing on so many levels.

Then we had evidence very early on of then minister Lametti, the most powerful legislator and lawyer in this country, jokingly opining with Minister Mendicino on day two of the convoy, "Let's bring in the tanks." Appalling—it was a joke, but it was an appalling remark.

I have defended, and I will defend with my last breath, as a member of the Law Society of Ontario, the Charter of Rights and Freedoms.

While the Charter of Rights and Freedoms is drafted in such a way that these are not absolute rights, they are enshrined rights, and they are valued rights; the right to freedom of expression, the right to peaceful assembly, the right to be secure against unreasonable search and seizure.

All of this ultimately came to a head with this Liberal government, notwithstanding that the Ottawa Police Service, as well as the City of Ottawa municipal government, directed the convoy truckers to park on Wellington Street, directed that there be an off-site loca-

tion for the supply of materials to run back and forth. All of this was planned. It was organized. There was discussion between legal authorities and the truckers.

One thing that no witness has ever been able to answer—and if I asked it a half a dozen times, I probably asked it two dozen times—is at what point in time and at what event this lawful exercise of the freedom of expression and assembly, as directed by legal authorities, became unlawful. No one could answer that. The only thing I could surmise is that it became inconvenient to the government.

It was certainly inconvenient to citizens in downtown Ottawa, the smell of diesel, the noise, the commotion, but according to Justice Mosley's decision, that's not a national emergency. That's what protests are. Protests can be loud. They can be uncomfortable. They can be a nuisance, but it doesn't rise to the high, legal threshold of an national emergency.

All I ever heard, both from parliamentarians and from Canadians, is that this was required; that lawful, legal measures were simply incapable of dealing appropriately with the removal of this blockade. There's contradictory evidence, and I'm not going to get into that. The evidence is already on the table on that issue.

- (1910)

More importantly, what we heard from the Prime Minister, Marco Mendicino, David Lametti, Minister Freeland, Minister Blair and probably the entire cabinet bench, was that this was necessary, lawful and had legal justification; it was charter-compliant.

When we asked for evidence of charter compliance, they said, "Oh, you can't have that. That's protected by cabinet confidentiality," or, "You can't have that, Mr. Brock. That's protected by solicitor-client privilege."

The Prime Minister had no problem waiving privilege and confidentiality with Justice Rouleau, save for the legal opinion that they received from the Department of Justice, which would have laid out under what legal authority the Prime Minister and government could invoke that act. They would not share that, even with Justice Rouleau.

I remember this exchange because I watched it live, and I read the transcript. We heard the chief testimony of David Lametti, the former justice minister, and the cross examination. As judges often do and are entitled to do, Justice Rouleau questioned the witnesses.

Justice Rouleau—I'm not quoting word for word here—essentially said, "You're not going to give us the legal opinion that justified your use of the invocation of the act. Do I simply have to accept your opinion that it provided you with the legal authority?" and David Lametti said, "Yes, take my opinion."

He could be right, but also could be wrong. I think it's important that we have access to that legal opinion, which is why we set it out in the notice of motion.

Ultimately, the government telegraphed, literally within minutes, an intention to appeal Justice Mosley's decision. He's a very senior justice of the Federal Court—appointed by a Liberal prime minister, I might add.

Other significant decisions that impact the lives of Canadians are taken under advisement. The government examines all of the circumstances behind the decision and weighs its options before considering whether or not to appeal, but not in this case. It was literally a jackrabbit response.

“He got it wrong,”—we heard that from our new justice minister—“He committed judicial errors.” I'm sure that at that point our justice minister hadn't even read the full decision. It was a very lengthy decision. I would be surprised if he had the time to read the decision in full before he quickly pronounced himself on all of the judicial errors that Justice Mosley made in his decision. This again was parroted by the Deputy Prime Minister and many other ministers—“There are justifiable legal errors that we can appeal.”

If they hold true to their word—and they will appeal this decision—ultimate, the appellate court, be it the Federal Court of Appeal or the Supreme Court of Canada, is going to hear from Department of Justice lawyers as to what legal advice they gave to justify the invocation of the act.

It's eventually going to come out. If it's going to come out eventually, in this promised appeal, then let us share this with parliamentarians, with committee members and with Canadians, because they have a right to this information, as do we.

I've gone on long enough. I know other members want to talk. I don't want to sit here until 9:30.

• (1915)

I'm going to cede my time to the chair.

Thank you very much.

[*Translation*]

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

Senator Carignan, you have the floor.

Hon. Claude Carignan (Senator, Quebec (Mille Isles), C): Thank you, Mr. Chair.

Especially for the new members, who weren't there, I think it would be good to recall what happened, particularly on September 22, 2022. We wanted to call a number of witnesses, including the Prime Minister. In its wisdom, the committee said that this would double the work. We wondered why we should call witnesses who, in any case, had to appear before the Rouleau commission and a House of Commons committee. So we decided to put forward a motion to have all the evidence presented to the Rouleau commission or the other committee tabled here, before us, so that we could take it into account.

It's important to say this because we can see that it's not possible to use all the evidence from the Rouleau commission. The spirit of the motion is therefore to call certain witnesses given that we can't use the Rouleau commission's evidence because we asked for it to be translated.

At one point, we realized that the documents had not been translated. When I say “not translated”, it's not just the French speaker in me who's talking. The French evidence is not translated into English either.

Dear English-speaking colleagues: if you say that you don't understand French, but that you think you have all the evidence even though some of it is in French, I'd be a bit embarrassed if I were you. This applies to both French and English speakers. A large proportion of documents are not translated into French when filed in English and are not translated into English when filed in French.

We therefore wrote to the Privy Council Office to request that these translated documents be sent to us. After several months, the Privy Council Office replied that it would be complicated and time-consuming. Instead of telling us that from the outset, they waited until we finally pressed them several months later with a letter from the chairs asking them to tell us when they would send us the documents. It wasn't us who took a long time, but the Privy Council Office, only for us to learn just before the holidays that it would be a mammoth task.

We reached a compromise by asking them for an index so that we could at least tell them which documents we wanted translated. They told us that it would take over a year to provide us with the index alone and that it would cost millions of dollars. We were told that translating all the evidence would cost \$300 million and take years.

So what should we do? Initially, our intention was to hear more witnesses.

We reduced the number of witnesses by saying that we would use the evidence from the Rouleau commission. However, this is impossible. I worked with my colleagues to create a list of witnesses and documents, a *modus operandi*, to be able to hear from witnesses we wouldn't have needed to invite if the Rouleau commission documents had been translated; to produce the documents we'd like to have; and to provide us with a framework in which we could feel comfortable.

What is written at the bottom of the motion violates my constitutional rights. I won't let it pass. I will certainly make it a question of privilege in the Senate. I refuse to allow us to do committee work without having access to witnesses and documents we are missing in both official languages. We need them.

I have a great deal of respect for our new colleague, but her motion does not address the issue of translation. All it does is say that we're going to call in the Privy Council Office and ask them to explain what's going on. They've told us. They are going to come and explain to us why it is costing \$300 million, but then what are we going to do next?

• (1920)

How am I going to get my evidence? We have to bring in the witnesses and find a way to determine, at the very least, which documents we consider important so that they can be translated and so that we have them in both official languages. Without that, we'll only be able to do part of our work. Moreover, our constitutional rights will be violated.

I think the motion we have put forward suggests compromises and makes it possible to establish a *modus operandi*. It may need a bit of fine-tuning or tidying up, and perhaps some clarification, but we need it to complete the report and respect the spirit of the September 22, 2022 motion, in which we said that we would not hear witnesses. Now we have no choice but to hear them. They have to be heard and the documents have to be in both official languages. As we know, the work of all parliamentary committees must be done in both official languages.

As for the Rouleau commission not doing its job, I've already lodged a complaint with the Commissioner of Official Languages, and that complaint is under investigation. I have lodged another complaint with the Privy Council Office, which is also being investigated by the Commissioner of Official Languages. This will ensure that this does not happen again in the future. I hope it won't happen again with the Hogue commission. To do the work required, we need evidence and documents in both official languages.

If a member of the committee who doesn't understand French tells me that he can read a French document that has not been translated and that he will take that into account in the report, it's really problematic.

Thank you.

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): Thank you, Senator Carignan.

Mr. Maloney, you have the floor.

[*English*]

Mr. James Maloney: Thank you, Chair.

I'm also a new member to this committee. I don't have the benefit of having sat through the many meetings of testimony provided, and you've discussed all of these other issues, so I sometimes think this might be a useful perspective, because I'm a fresh set of eyes—although I'm sure some will disagree with me.

Senator, I am one of those people who does not speak French, one of my many regrets in life, so I will need the benefit of translation. I agree with you, sir, that we must do things and conduct ourselves in a bilingual fashion so that resources are available to all. Thank you for pointing that out.

I'm going to address something Mr. Brock said. If I look at the Emergencies Act and what this committee is doing, it's meant to be a contemporaneous review following the invocation of the Emergencies Act, not to review whether or not it was appropriate to invoke it, but to review the exercise of the powers and performance of its duties. Mr. Motz said in his submissions that the report needs to address gaps in the legislation. From what I've seen, read and heard, we're in a position to do that now.

There's a certain amount of irony in my mind when Mr. Brock welcomes Ms. Romanado, me and Senator Smith to the committee. Combine that with the motion when you're bringing in all of these proposed witnesses under all sections of the motion, because it sort of flies in the face of the contemporaneous notion.... Some of these people have retired and some of these people are now ministers—in fact, former members of this committee. If we proceed in the fashion that you are proposing in this motion, I suspect the three of us won't be the last new members who join this committee and have to get up to speed on this.

We have two issues at hand. One of them is the documents and dealing with the bilingual issue and getting them translated. I disagree with the senator's position, again because Ms. Romanado's motion does address that issue. We'll have people from the Privy Council who come in here, and that does not foreclose having other witnesses, but it gets us to a place where we need to be to understand why they are telling us what they are telling us in terms of costs, time and whatnot. I don't think anybody will agree that it's a good idea to spend all of those years waiting for translated documents.

Also, if I look at this motion, it occurred to me as I was looking at it that paragraph B(ii) says, on one of the witnesses they're proposing to call, “members of the Committee shall, within ten days, identify their preliminary lists of unilingual Commission evidence or submissions for priority translation to the Joint Clerks who, in turn, shall relay...”.

If I read that correctly, what's being proposed is that you bring in people who submitted documents in only one language and have those witnesses come here and testify, to what end I'm not quite sure, except that we want to make a decision based on that evidence to then decide which documents we want to translate. That seems a bit like chasing my tail, to be completely candid with you, and doesn't seem to be a productive exercise, because I don't think it will get us any closer to getting those documents translated than where we're at right now. My suggestion would be that we look closely at Ms. Romanado's motion and deal with the two issues at hand.

The other thing about this motion is that Mr. Brock talked about the Mosley decision and Justice Rouleau. I suppose I could sit here and pontificate about who was more senior at the bench and whose career was stronger and whose opinion I will put more weight on personally, but I don't think any of you would want to hear it, and it wouldn't be particularly useful or productive.

That's not our job either: We're not a Court of Appeal. We have a very specific task to do in a very limited time frame, and we're past that time frame. Part of their motion suggests that this report that we're going to deal with be done by June of 2024. It's not possible, because this appeal probably won't even be perfected by June 2024, let alone a decision.

Otherwise, why don't we just all agree? Let's reconvene after these appeals are exhausted, whether it's the Federal Court of Appeal or the Supreme Court of Canada, and then we can review all of the evidence that was put before these.

• (1925)

It's an absurd assertion, I realize, but that's sort of where we are. We have a job to do.

I would suggest we take the information we have. We have the two witnesses proposed by Mrs. Romanado, and we're going to address some components of the Mosley decision.

I don't know whether new evidence will be allowed on the appeal, Mr. Brock. I suppose somebody could argue that, but I don't think it's realistic to expect that there is going to be evidence put before an appeal court that wasn't heard at first instance. There was a suggestion that some of the documentation with respect to the justification for the invocation might appear before the court, so it's going to have exactly the same documentary record and appeal that it did at first instance, so that won't offer any new insight.

My view is that we should move quickly, move to Mrs. Romanado's motion, and deal with the two issues at hand, recognizing the time constraints we have, and the physical constraints we have because of the documents.

Thank you, Mr. Chair.

• (1930)

[Translation]

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): Thank you, Mr. Maloney.

Mr. Naqvi, you have the floor.

[English]

Mr. Yasir Naqvi (Ottawa Centre, Lib.): Thank you very much, Chair.

My apologies that I am attending this meeting virtually, given my parental duties.

I am one of the members who have been part of this committee from the get-go. I have sat through hours and hours of meetings with similar conversations with witnesses, and hearing their perspectives on what happened.

As I read the motion tabled by Mr. Motz, I am inclined to think this is an effort to have this committee act almost as *de novo* just because of a decision from a court on first instance only.

In my view, this motion is too broad. We have already heard from most of these witnesses. That information is available to us to do our job, and just because we have one decision from a trial division level does not give us enough reason to start all over again.

Not to mention, as I am hearing my colleagues speak, especially from the Conservative side, that I am again reminded that they're attempting to go beyond the scope of the legislation.

I remind members of this committee to look at subsection 62(1) of the Emergencies Act that outlines very clearly the scope of this

parliamentary review. By Mr. Brock's assertion, if Justice Rouleau were not required, under the act, to look at the issues of constitutionality, I would suggest to you, if you look at the wording in subsection 62(1), nor are we asked to look at the constitutionality of the matter.

We have the Rouleau commission before us. We have that extensive report, and we also have a decision by a Federal Court trial division.

What we need to focus on is Mrs. Romanado's motion, which presents a far more credible path in terms of inviting both the Justice Minister and the Minister of Public Safety, so that we can hear their perspectives as to the Mosley decision. We can then hear from the Privy Council to better understand the issues around translation, and collectively come up with a path that will allow us to bring this committee to a conclusion with a report that will serve the best interests of Canadians.

It's quite obvious that we may have more than one report on this matter as this has been part of this committee for almost two years now, and we are hearing people present their views, and that's okay. I think that people are entitled to do so, but let's get to the point where we can share our perspective with Canadians, given the amount of work we have done. However, going back in circles and starting anew is not going to serve that purpose. I think we will be providing a disservice to Canadians.

Thank you, Mr. Chair.

[Translation]

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

Senator Harder, you have the floor.

Hon. Peter Harder (Senator, Ontario, PSG): Thank you, Mr. Chair.

[English]

I'm going to be relatively brief even though the cameras are on.

We are now entering almost our third year in this committee. It had been my hope, for those of you who have joined subsequently, that we would report before Rouleau finished his report. You realize how naive my wishes were, but I viewed the work of this committee as rather limited and, indeed, you could argue whether or not this committee should have been formed at all, but that's another matter worthy of debate.

We are not an ongoing commentary of all of the actions taking place in other streams. Rouleau had his mandate. We've now had one trial division judge. We still have a class action suit. Are we just going to continue to sit and to pick out parts of whatever legal processes might be in place to reinforce our biases or our views? I don't think we're going to change views in our discussion, frankly. They haven't changed in two years, so I don't think that's going to come.

I think we really have to figure out: Do we want to finish or not? I oppose the motion before us because, frankly, it's a motion purporting to bring conclusion but will ensure conclusion never takes place. I would rather see us go forward in the spirit of what member of Parliament Romanado has suggested: to open it up, yes, for some additional witnesses, but we were so close to finishing our report and making our contribution, which isn't the last word, by any means.

On the issue of translation, I'm not sure I agree with my Senate colleague, as much as I respect him, that it is a constitutional right to have every document of every commission translated. The Privy Council Office has said that the actions of Rouleau in terms of translation were compliant with the Official Languages Act. That's our obligation to ensure. If there are other legal processes that will define whether or not that is adequate, God bless, go forward, but I think it's a tactical manoeuvre to prevent us from concluding.

We have Rouleau's report—900 pages. Are we really thinking that waiting four more years to have more translation will change anybody's mind or even be read? I don't think so.

I would urge colleagues to put aside the processes we've put forward to kind of pretend as though we're wanting to move forward when we're ragging the puck, and to get more ambitious about concluding this committee, so that before we rise in the summer we've made our contribution, because I think that if we adopt this motion, you can guarantee that we'll be meeting until the end of this Parliament.

• (1935)

[*Translation*]

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): Thank you, Senator Harder.

Mr. Green has the floor.

[*English*]

The Joint Chair (Mr. Matthew Green (Hamilton Centre, NDP)): I have to say that I've certainly benefited from taking the time to listen to everybody's arguments. As you know, throughout this process I've been fairly consistent on taking the positions of principle that I think are consistent with our party.

As a party that supported the invocation of the act on its face value, based on public information that was readily available, while respecting the summary that was put in terms of the context, it seems that we always miss the context that there was an armed action in Coutts, one that I think the average objective person would look at as a threat of terror, given its attempted targeting of police. As somebody who has a long history of being critical of the police as an institution, in this particular case I think it's incumbent on us to recognize the seriousness of that moment and what that could have meant across the country.

Now, you'll also recall that throughout the three years, I've been fairly consistent in supporting demands for documents. I believe the public has a right to know, to the best and fullest of its abilities, the same information that the government side has been privy to. I would state, right here on the record, that through this process I think the government has failed to articulate itself in a way that is

consistent with the law as it's been explained to us by numerous experts.

But I have to recall the frustration I had, prior to the revelation of the scope of untranslated documents, about us getting to a place where I think we were at 39 of 50 recommendations that we had already voted on. We were already there. Nowhere did I hear Perrin Beatty, who I thought was perhaps one of our most learned experts, say that it's our mandate to be a book report club for Rouleau or any other judicial proceeding. That was not in the spirit or the language of any testimony I heard, and I think we've fallen into that trap.

I think the issue of translation is a serious issue. I commend the senator for taking it through its obvious complaint and appeal processes as it relates to the commissioners and the Privy Council. However, I would agree with Senator Harder that there is a translated version of the Rouleau commission. I can tell you that I don't have the resources to sift through tens of thousands of documents. I don't think any of us do. At this point, I'm willing to accept translated documents as legislated through our Official Languages Act, and I'm ready to move forward.

I also want to honour the spirit of the search for documents and the search for particularly what the threats to security are and what the threshold is. I think that is a material issue that has to be addressed by this committee in order for us to have adequate recommendations that would hopefully modernize this act to contemplate the current social, economic and political context we're in, which certainly wasn't contemplated back when Perrin Beatty drafted this piece of legislation.

MP Romanado, don't sell yourself short. In your short time here, this is a good motion that you've put forward. I think there are concessions there in terms of the witnesses.

Let's be clear: We're offering a revisiting of witnesses in a way that we didn't consider during Rouleau. If we're going to really open all of this back up, then let's hear from the folks who were held captive in the nation's capital here, the residents and all the other people who testified at Rouleau. I don't think that makes sense for Rouleau and I don't think it necessarily makes sense for this report either.

However, what does make sense to me, and I would put this to the movers of the motion, is that if we break this up section by section, I'll tell you right now, in this open session, that I support section (a)(ii), which is your demand for documents. I've always supported that. I think Canadians do have a right to know what the legal thresholds were that the government was using to make this decision. I think that's material to our report, and I think it would help dovetail into the work we've already done on the 39 or so recommendations.

• (1940)

I'm prepared to pick up where we left off. I'm prepared to accept the Mosley decision as an appendix to this as we did with the Rouleau in its translated version. I commend MP Romanado, on the Liberal side, for agreeing to revisit the other folks. Having worked on this for three years, I know Minister Virani is going to be a very learned member, as both a participant of this committee and a new minister. Minister Leblanc is ultimately accountable under his new ministerial mandate. I think that's great.

I'm not interested in opening this back up. I've expressed this ofline, and I'm going to say it to the public now. For those who are watching, before you get your fundraising emails, this is not a cover-up. This is a three-year process that needs to come to an end based on a mandate that we have as a committee without any conspiracies. There is lots of time for folks to get their say in these upcoming appeals and civil proceedings.

I would ask that we do find that common ground, and that we break this motion up. That would allow me to support the demand for documents. I think section (b) and MP Romanado's motion are similar enough that I would be prepared to support MP Romanado's motion should it come to the floor next after having supported the demand for documents.

Thank you.

[Translation]

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

It's now Mr. Brock's turn.

Mr. Brock, I see that you're not available. Would you like to give your turn to Senator Carignan?

[English]

Mr. Larry Brock: Thank you, Mr. Chair.

I'm going to cede my time to my colleague, Mr. Motz.

[Translation]

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): Since Mr. Motz has already spoken, the next person to speak will be Senator Carignan. If you want to speak after him, I'll give you the floor.

Senator Carignan, you have the floor.

Hon. Claude Carignan: I'd like to come back to Mrs. Romano's motion.

It looks like a closure motion. The motion says that we are inviting officials from the Privy Council Office and the translation bureau to explain to us what happened on the translation side. Ministers Virani and Leblanc are also invited to speak for an hour and a half. It then says that after this meeting, no other witnesses will be heard and that all the committee's remaining meetings will be devoted to preparing the final report.

Nothing is said about the unilingual testimony that was heard or about the witnesses who would complete the part of the evidence that we did not present. There is absolutely nothing. There is nothing about producing documents and there is nothing about translating

the documents that were filed. The memorandum invoking the emergency measures has not even been translated. It's in English only. We cannot be satisfied with that.

• (1945)

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): Thank you, Senator Carignan.

Mr. Brock, are you ready to take the floor again?

[English]

Mr. Larry Brock: I'm passing my time to Mr. Motz.

[Translation]

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): Mr. Motz was next on the list anyway.

Mr. Motz, the floor is yours.

[English]

Mr. Glen Motz: Thank you very much.

I have just couple of reminders for the committee and for some who obviously haven't had a chance to review everything.

Mr. Maloney, you mentioned some comment about the committee.... I want to refresh the committee's memory about the Senate law clerk's evidence that he provided to us early on about our mandate and what it is that we're supposed to be doing.

The law clerk's evidence was:

Accordingly, this committee is master of its own affairs, subject to any direction from the House and the Senate. It can determine what information may or may not be relevant and necessary to the task it has been assigned, and it can determine whether a given line of inquiry is or is not within the scope of its mandate. In other words, the committee is within its rights to determine, on its own, whether any given line of inquiry or piece of information is relevant and necessary to its work.

Additionally, the then House law clerk opined as follows:

While the mandate of the committee does not explicitly include "the circumstances that led to the declaration being issued", it will be for [the] committee to determine whether and to what extent a consideration of such circumstances would be [given]....

Now, what's interesting is that there was another comment from the Senate law clerk, who said:

...indeed my understanding. Among other things, the role of the committee is precisely to look at whether the exercise of powers that were put into place is consistent with the charter and other instruments.

Additionally, my colleague, Senator Carignan asked a question of Mr. Dufresne. In the senator's interaction with the House law clerk, he said:

We still need to review those powers to determine if they were appropriate or not. If the powers were taken on illegally, that may mean they were exercised inappropriately.

That was Mr. Carignan's question. The House law clerk—Mr. Dufresne at the time—said:

That will definitely be part of how you interpret your mandate. You will be able to ponder [those] questions, that is, try to determine whether the powers were exercised appropriately, the situation in which the powers were taken on and whether it had been anticipated....

Again, I want to go back to the question of section 62. It says: “The exercise of powers and the performance of duties and functions pursuant to a declaration” of the act.

I appreciate your comment, Mr. Maloney, with respect to how you wondered if we should still be sitting after the fact. In an ideal world, this wouldn't have had to be invoked, but when it is, the idea of this committee is to sit contemporaneously, as you said, at the same time as the government is trying to navigate this process. Our very purpose is to ensure the government is following the law, not an interpretation of the law: that they are following exactly what the law says. That is what our role would be if this were still going on and we met at the time.

Additionally, on the performance of “duties” and “functions”, the act is very clear that needed to be charter-compliant. It needed to fit with section 2 of the CSIS Act for national emergencies. There had to be a threat throughout all of Canada.

To me, our role is quite clear: that's exactly what we're supposed to be doing. We're supposed to be looking at whether or not the government acted lawfully and whether or not they were compliant with the charter. That's what the mandate of this committee is, in my opinion. The exercise of “powers” is exactly that: Did the government act within their legislative powers to do what they did?

I appreciate that we might disagree, and that's okay. Again, I appreciate the comments that have gone on. I too don't want to sit here for years to come. I think we can get this done expeditiously. I believe that the Canadian public, who we are here to serve, deserves to know what it is that we are doing and why we're doing it. Obviously, there will be more than one version of a report. I'm confident of that.

- (1950)

I guess the question that needs to be asked is this: How long do we beat our heads against the wall to try to get a report that we can almost all agree to, and when do we say that this particular report does not align with what I believe the Canadian public deserves and you present your own?

That's just something I wanted the new committee members to be aware of. I think we'll be hearing bells here very soon, from what I'm hearing.

I do respect, Mr. Green, your suggestion that there may be some compromises, as we all say, at the very front end. We need to look at what those might be.

If everybody's in agreement, while we vote or whatever that looks like, we could maybe suspend for a little while and see how we might be able to come to some compromise from both sides.

[*Translation*]

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

Mrs. Romanado, you have the floor.

Mrs. Sherry Romanado: Thank you very much, Mr. Chair.

I'm going to give my time to Senator Boniface, who hasn't had a chance to speak yet.

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): She was next on the list.

So you're skipping your turn.

Senator Boniface, you have the floor.

The Joint Co-Chair (Mr. Rhéal Éloi Fortin):

[*English*]

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

Thanks for all the comments. I started out thinking that we weren't going to get very far, and I think we are coming to an end.

I as well have been here for almost two years. I think we need to think about the impacts of various decisions that will come. I don't disagree on taking into account what Justice Mosley has said, but I also want to remind you about what we have to work with. Justice Mosley's report is 190 pages and Rouleau's report is 2,000-plus pages. As Senator Carignan rightly commented on, a number of briefs aren't translated.

We as a committee have had 26 meetings so far. We've heard from 66 witnesses ourselves. We've spent multiple meetings drafting a report and recommendations that I would have thought we were getting near the end of. We were certainly beyond the halfway mark, to say the least. I think the work we've done around recommendations is actually very good and won't necessarily change, or some of them won't, but we have to look at it through the lens of a new perspective, which is Justice Mosley. I have no problem with that.

I really like the comments of my colleague and co-chair Mr. Green. As I look it, I would ask the question around legal opinions, because we've asked for these already and not gotten them. We will have two ministers here, one of them who will be the Attorney General of Canada. In our questions, we can ask him if he will produce those legal opinions.

My point is this, Mr. Brock. We've asked for this already and been turned down, so we're asking again. We'll have a justice minister here who can answer the question yet again. I don't think his answer and the reply that we get will be any different. That's the only question I raise around those legal opinions. I think it's something that we may want to ask ourselves, on whether or not we're going through another exercise for naught.

The only other point I wanted to make is with respect to the reference to other witnesses in the motion put forward by my colleagues from the Conservatives. For me, it's so far open; like Senator Harder, I feel that without knowing what that looks like, it seems like it's an endless exercise.

I want to reiterate that I think what I'm hearing from everybody around the table is that we want to figure out how we take all the information and all the work we've done over the 26 meetings, and all the material we have that we can work with, and continue working on our report recommendations in a way that introduces the new information around Justice Mosley's report and try to figure out how best to come to conclusions that are valuable for Canadians.

Thank you.

• (1955)

[Translation]

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): Thank you, Senator Boniface.

It's now my turn to speak.

Senator, would you like to chair the meeting while I ask questions? It's not really evidence, but I'll let you chair the meeting, in case you need to call me to order.

I won't repeat everything that's been said. We've already discussed the issue of producing documents and I don't see a way out. I agree with everyone; it didn't seem like anyone really intended to provide us with a translation of all these documents. I see that as well. Like Mr. Green, I'm not about to spend my weekend digging through millions of pages of documents before we begin drafting the committee's opinion. However, if I had access to all these documents in French, I'd be able to choose the ones that seem most relevant to me. If my selection was wrong and I left out an important document, I would be solely responsible and I'd have to take responsibility for that.

For the moment, I've been asked to indicate which documents I'd like to see. We've already been through this. Not so long ago, we asked for an index of the documents, since we couldn't have the millions of pages, indicating that we'd be able to choose which ones we wanted once we had the index. It wasn't perfect, but at least we could have tried to determine what we were less interested in and what seemed very important to read. However, we never even got the index. I think we were told that it would cost \$16 million to translate the index and \$300 million to translate the documents. I'd actually love to hear the Clerk of the Privy Council explain how he came up with those figures, which seem enormous to me.

I'd like to know why it's impossible to obtain these documents when, in principle, we have the right to work in both French and English. I think this is important. Senator Carignan was right to say that this is the case not only for francophones, but also for anglophones, because some of the evidence and documents are in French, so anglophones won't be able to read them. Would it have made a difference? Would it have changed any of our opinions? Maybe or maybe not, but we'll never know because we can't read them. I think this problem will affect the quality of our report, since we won't be able to see all the evidence, not to mention that it violates our democratic rights.

As I've mentioned a couple of times now, we have to decide whether we want a bilingual Parliament or not. We can't say that we want it to be bilingual only when it doesn't cost too much or take

too much time, and that if it becomes too expensive, we just won't bother anymore. If that's the case, perhaps we need to decide at what point bilingualism is too expensive. It would be easy to dismiss this question without a second thought, but I see it as a fundamental issue.

Personally, I think we do need to hear from officials with the Privy Council.

Mrs. Romanado, I think you put forward a good motion and I congratulate you on it. For someone who just joined the committee, you seem to have grasped the challenges involved.

That said, with all due respect, I think the difficulties associated with translation and the recent ruling by Judge Mosley are significant. Again, no disrespect, but I think we're botching our work here. Once again, until I see the documents that were tabled or presented to the Rouleau commission, and to which I was supposed to have access under the motion we adopted about a year and a half ago, I can't proceed blindly and I can't select the relevant documents.

I think it was Mr. Green—I may be wrong—who said that we could choose the documents we thought were important. That's all well and good, but if I don't know what documents are available, how can I determine which ones are important? It's a bit like telling a child to choose the candy he wants but without showing him the candy dish. His answer may come as a surprise, and the child probably won't get the candy he wanted because he didn't even know what was in the dish.

In short, I need to hear the people from the Privy Council explain, first and foremost, this business of spending hundreds of millions of dollars to translate documents. It seems astonishing to me.

• (2000)

I'm sure they'll provide us with some convincing explanations. I look forward to hearing them. That's the first step.

Next, we'll have to discuss with the Clerk of the Privy Council what we can do to obtain, at the very least, an index or list of documents to establish which ones we want translated. Of course, there's a good chance that, at the end of the day, our report will have to point out that we didn't have access to all the evidence. We may not have a choice in the matter.

I don't think we can afford to be lazy at this point. We need a minimum of rigour, and we must try to obtain as much information as possible in order to produce a report that is as consistent and rigorous as possible.

Thank you, Madam Chair.

Mrs. Romanado, you have the floor.

Mrs. Sherry Romanado: Thank you, Mr. Chair.

[English]

Given the fact that for the last hour and a half we have been discussing and referencing my motion, I think it would be a good time to actually discuss the motion.

I move that the committee proceed to another order of business, with that being my motion. It's dilatory.

[*Translation*]

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): Mr. Green, do you have a point of order?

[*English*]

The Joint Chair (Mr. Matthew Green): I want to keep with the spirit of the discussion, which is that we take some time during our call for votes to see if we can get to some kind of common ground before proceeding to your order of business, because in doing that, we may be presupposing an opportunity to find common ground. I would respectfully suggest that happen after the votes, rather than before.

We're heading to the votes now. Is that right?

[*Translation*]

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): Mrs. Romanado, if I understood correctly, you're proposing that the committee vote on your motion.

Mrs. Sherry Romanado: I want to move a dilatory motion to switch the motion we're discussing. I move that we stop debating Mr. Brock's motion and debate mine instead. With a formal discussion on the motion I want to move, perhaps we can find a way to proceed.

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): I think we've been discussing the two motions at the same time all along. They're somewhat related.

We're going to suspend for a moment. I'd like to verify a few things with the clerks.

• (2000) _____ (Pause) _____

• (2115)

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

Before we suspended, Mrs. Romanado had the floor. She asked that we change the agenda, and we said we couldn't do that. Mr. Brock is next, according to the list I have here. I'm not making this up.

Mr. Motz, I understand you have an amendment to present, but in any case, Mr. Brock said he would do it. I will therefore give the floor to Mr. Brock.

Unless I'm mistaken, he's the next speaker on the list. Of course, Mrs. Romanado will be able to speak afterwards.

[*English*]

Mr. Glen Motz: I have a point of order. If I may, we have the dilatory motion on the floor. I understand Mrs. Romanado wishes to withdraw that motion, so that we can deal with the amendments on my motion.

[*Translation*]

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): If everyone is in agreement, I'm fine with that.

Go ahead, Mrs. Romanado.

Mrs. Sherry Romanado: Thank you very much.

I seek the unanimous consent of the committee to withdraw my dilatory motion.

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): Thank you, Mrs. Romanado.

I'm sorry to have complicated things for no reason.

Mr. Brock, you have the floor.

[*English*]

Mr. Larry Brock: Thank you, Chair.

I wish to move an amendment to the motion read out by my colleague Mr. Motz.

The amended motion is as follows: After the word "That", in the preamble, all of the remaining language in that preamble is to be deleted, so it would read: "That (a) in relation to the Federal Court judgment, (i) the committee invite the following witnesses to appear for at least 90 minutes," deleting (A), keeping (B), deleting (C) to (H), and adding "(I) the Hon. Dominic Leblanc, Minister of Public Safety".

(ii) would remain unchanged.

(b) would remain unchanged with the exception of the full deletion of (B). So (b)(i)(B) would be completely deleted, and then an additional (C) would read, "officials from the translation bureau."

(b)(ii) would now read, "members of the committee shall, within five days of the appearance of the Privy Council Office, identify their preliminary lists of unilingual commission evidence or submissions for priority translation to the joint clerks who, in turn, shall relay those requests to the Privy Council Office."

(c) and (d) would be deleted, and that's the end of the motion.

Was that impossible to follow?

• (2120)

[*Translation*]

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): I'm sorry, Mr. Brock, but it was impossible to follow.

Hon. Claude Carignan: I can read it in French.

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): I'm not sure it will be any easier to understand, but go ahead.

Hon. Claude Carignan: I move that, in relation to the Federal Court judgment, the Committee invite the following witnesses to appear for 90 minutes: the Honourable Dominic LeBlanc, Minister of Public Safety; the Honourable Arif Virani, Minister of Justice and Attorney General of Canada—

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): So we are keeping part (a)(i)(B)?

Are we also keeping part (a)(i)(A)?

Hon. Claude Carignan: No, we are only inviting Mr. Arif Virani and Mr. Dominic LeBlanc.

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): We are deleting parts (a)(i)(C), (a)(i)(D), (a)(i)(E), (a)(i)(F), (a)(i)(G) and (a)(i)(H).

Hon. Claude Carignan: Exactly.

We are keeping part (a)(ii) in its entirety.

[English]

Mr. Glen Motz: It then goes down to (b).

[Translation]

Hon. Claude Carignan: Wait a moment. I have the list here.

So we are keeping part (a)(ii) in its entirety, up to (a)(ii)(E) and up to:

provided that these documents shall be deposited with the Joint Clerks, without redaction and in both official languages, within ten days of the adoption of this order.

It goes on to say:

(b) in relation to the translation of Commission evidence,

(i) the Committee invite the following witnesses to appear, separately, for at least one hour each:

(A) senior officials from the Privy Council Office; and

(C) officials from the Translation Bureau;

[English]

Mr. Glen Motz: So (B) is gone.

[Translation]

Hon. Claude Carignan: Then there is part (b)(ii).

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): Wait a second. It says: “senior officials from the Privy Council Office.”. Isn't it the Clerk we want to hear from? No? It's anybody.

Hon. Claude Carignan: That's what it says. It can be amended.

It continues:

(b)(ii) members of the Committee shall, within five days, identify their preliminary lists of unilingual Commission evidence or submissions for priority translation to the Joint Clerks who, in turn, shall relay those requests to the Privy Council Office;

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): Wasn't it 10 days?

Hon. Claude Carignan: No, it's five days.

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): Could you repeat that?

Hon. Claude Carignan: “...within five days...”

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): Is it five days or 10 days?

Hon. Claude Carignan: It's five days, not 10 days.

[English]

Mr. Glen Motz: Everything else is deleted. Let him know that.

Hon. Claude Carignan: Yes.

[Translation]

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): What about part (c)?

[English]

Mr. Glen Motz: Everything else is....

[Translation]

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): Are parts (c) and (d) being removed?

Hon. Claude Carignan: Everything else is deleted.

A voice: [Inaudible—Editor]

Hon. Claude Carignan: It's \$2,000.

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): Is that everything, Senator Carignan?

Hon. Claude Carignan: Yes.

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): Mr. Maloney, go ahead.

[English]

Mr. James Maloney: Thanks, Chair.

We're running out of time for this meeting. I'm okay with the amendments, with the exception of (a) (ii), where it says at the beginning, “an order do issue”, and says at the end, “adoption of this order”. I would suggest that the wording be changed to “a request be made” at the beginning, and that it end with “after the request be made”, instead of “adoption of this order”.

Because the next meeting is in two weeks and we don't want to lose that date, why don't we agree as part of this that the first hour and a half will have the ministers, and the second hour and a half will have the Privy Council and translation people come?

With those two amendments, I think we have an agreement.

● (2125)

Mr. Glen Motz: Chair, we agree to having at the next meeting on the 27th the ministers, Privy Council and translation bureau, but not to change the wording of every request we've made from this committee, which is that an order is issued.

I'm sorry. That's not something I'm willing to change at this stage. It's something we've done all along. It's the language we've used in every request we've made. That's the proper language.

We're not requesting it. This committee has the power to order those things. They can refuse and be in contempt, which the DOJ is already.

The Joint Chair (Mr. Matthew Green): Do you want to separate it out? I don't want it to kill the whole thing here.

Mr. Glen Motz: You can do a subamendment if you want, or just leave it as is. We agree to the 27th, obviously.

Mr. James Maloney: I think we have agreement on everything except for that one point.

Mr. Glen Motz: I'm not going to change my mind on it.

Mr. James Maloney: Neither am I.

We can vote on that one provision, if you want.

Mr. Glen Motz: Change the word “order” to “request”, basically.

[*Translation*]

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): Okay.

At this point, do we have unanimous consent on the text put forward? Do I understand correctly that the only item we will be voting on is Mr. Maloney's amendment?

I'd like to know whether or not we have an agreement on everything else.

Mrs. Romanado, go ahead.

Mrs. Sherry Romanado: Item (b)(i)(A) needs to be clarified. It reads as follows:

[*English*]

“the Committee invite the following witnesses to appear, separately, for at least one hour each”

We have the PCO as well as the translation bureau. The goal here, based on the agreement right now, if we can, is to have them both come together for an hour and a half. In the next meeting, we would have an hour and a half with the two ministers, and an hour and a half with the Privy Council and the translation bureau.

The way it's worded right now, it doesn't say that. I just want to make sure that it's clear to everybody what we're agreeing to.

Mr. Glen Motz: We agreed in our conversations that it would be a 90-minute meeting with the ministers and a 90-minute meeting with the Privy Council and the translation bureau.

Mr. James Maloney: Right, but then the word “separately” has to be removed.

Mrs. Sherry Romanado: Exactly.

[*Translation*]

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): Okay.

We agree on that clarification.

Now, some dispute remains over the text of item (a)(ii), specifically whether we're talking about issuing an order or inviting—

Hon. Claude Carignan: It's a translation of documents.

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): Yes, but the question is, to whom are we issuing the order?

If it says, “the Committee issue an order for all legal opinions”, who is that order directed at? Who are we going to invite?

I understand the issue is whether it's an order or an invitation, but who is it directed at?

Go ahead, Senator Harder.

[*English*]

Hon. Peter Harder: Colleagues, I would respectfully suggest we use “request” because we have already sought the documents and been told no. My sense is if we use “order”, we're walking down a path that will get into a contest of will.

There may be a desire to take it to the chambers themselves. I would like to avoid that. I think we should have a respectful relationship with the ministers when they come. We should ask for it and see what they say.

I would support “request”.

● (2130)

[*Translation*]

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): Thank you, Senator Harder.

Go ahead, Mr. Green.

[*English*]

The Joint Chair (Mr. Matthew Green): I would just suggest, to my original point, to separate this point out, allow us to vote. We can then move on to adopt the motion as amended.

[*Translation*]

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): We will now vote on Mr. Maloney's amendment, which proposes to replace the words “the Committee issue an order” with “the Committee require all legal opinions”.

Is that agreed?

Go ahead, Mr. Motz.

[*English*]

Mr. Glen Motz: Just to be clear, a “yes” vote means that you support the change from “order” to “request”. Is that right?

“No” means that it stays the same, as “order”. Okay.

Mr. James Maloney: To be clear, Mr. Clerk, at the end of that section, where it says, “adoption of this order”, it should say, “within ten days of the request being made”. You change both or neither.

Mr. Glen Motz: We'll address that if it passes.

Mr. James Maloney: Yes, obviously. We can change it if it doesn't pass.

[*Translation*]

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): We will now proceed to the vote.

(Motion agreed to: yeas 6; nays 5)

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): So we will make a request, not issue an order.

I don't want to make this an amendment, but, as I said earlier, we should perhaps identify to whom we want to address this request. Is it the Clerk of the Privy Council, the council being the Prime Minister's department? Do we need to ask the Minister of Justice, who should have, in his records, the legal opinions he relied on at the time?

In my opinion, if we want our motion to make sense, we need to indicate to whom it is addressed.

Mrs. Sherry Romanado: I think we're all in agreement. We just voted on it. I think we already have confirmation from the ministers' offices. The ministers are prepared to appear at the next meeting.

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): The question, really, was who we should ask for the documents.

[*English*]

Hon. Peter Harder: May I make a suggestion?

The Privy Council Office is the keeper of those documents, so I would say, "request of the Government of Canada" so that we are free to ask the ministers, as representatives of the Government of Canada, as opposed to asking the Clerk of the Privy Council, because then we're getting a third party involved.

I would say, "the Government of Canada". Understand, however, that it's the Privy Council Office that is the keeper of cabinet confidences and documents.

[*Translation*]

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): What you're saying, Senator Harder, is that the Privy Council Office holds these documents. I therefore suggest that this request be addressed to the Clerk of the Privy Council.

If we don't have the documents, whose fault is it?

● (2135)

[*English*]

Hon. Peter Harder: It's a small point. I don't really want to keep going. The Clerk of the Privy Council acts on behalf of the government, so it is the Government of Canada that will decide. He's just the clerk.

The Joint Co-Chair (Mr. Matthew Green): Glen, the clerk is not a political target anyway.

Mr. Glen Motz: Oh, okay.

Mrs. Sherry Romanado: I'm okay with that.

[*Translation*]

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): Shall we leave the wording as it is?

Is that everything for today?

[*English*]

Mr. James Maloney: The word "separately" in the first paragraph is being removed. We discussed it and agreed upon it, but I don't know that we formalized that discussion.

[*Translation*]

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): Which word are you referring to?

[*English*]

Mr. James Maloney: "Committee invite the following witnesses to appear, separately, for at least one hour".

The word, "separately" is to be removed. Mr. Motz agreed to that.

The Joint Clerk of the Committee (Ms. Miriam Burke): In my version it is.

Mr. James Maloney: Okay.

[*Translation*]

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): Are we talking about Arif Virani and Dominic LeBlanc?

The Joint Clerk (Ms. Miriam Burke): Yes. It's in the text I received, but I wasn't able to distribute it.

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): Okay.

Everyone seems to have received the motion, as amended, so we'll go to a vote.

(Motion agreed to)

The Joint Co-Chair (Mr. Rhéal Éloi Fortin): The meeting is adjourned.

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