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The Honourable GEORGE J. FUREY,
Speaker

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(Daily index of proceedings appears at back of this issue).

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THE SENATE

Tuesday, February 22, 2022

The Senate met at 9 a.m., the Speaker in the chair.

Prayers.

ORDERS OF THE DAY

EMERGENCIES ACT

MOTION TO CONFIRM THE DECLARATION OF A PUBLIC ORDER EMERGENCY—DEBATE

Hon. Marc Gold (Government Representative in the Senate), pursuant to notice of February 21, 2022, moved:

That, pursuant to section 58 of the *Emergencies Act*, the Senate confirm the declaration of a public order emergency proclaimed on February 14, 2022.

He said: Honourable senators, it is with a profound sense of responsibility that I rise today to speak to the motion before us. For the first time since it was passed in 1988, on Monday, February 14, 2022, the Government of Canada invoked the *Emergencies Act* to proclaim the existence of a public order emergency in Canada.

Last night, our elected colleagues in the other place approved the government's decision, thereby maintaining the additional authorities under the act. I might add, because I believe it is material to the decision before us, that the other place's consent was given with the support of the New Democratic Party.

As Government Representative in the Senate, it is my responsibility to explain to the Senate why the government has invoked the act and to seek the Senate's confirmation so that the act can continue to apply in the coming days under our supervision. I do so with humility, but I also do so with the firm conviction, confirmed by the events of the past seven days, that the government had reasonable grounds to invoke the act.

As we begin our debate, I would like to start by thanking the law-enforcement professionals who have been working day and night to bring peace back to the streets of Ottawa and to thwart emerging plans for new blockades, ensuring that blockades of critical infrastructure stop metastasizing across our country.

And as we stand on unceded Algonquin Anishinaabe territory, I also want to pay tribute to all who call Ottawa home — citizens who have been besieged for weeks by folks who have not respected the rule of law or the democratic institutions that our national capital represents. As senators, the people of Ottawa host us every week. They lodge us in hotels around the Hill. They feed us in restaurants, in the Senate cafeteria or even in the Rideau Centre. They staff our offices. They do the hard work of ensuring that our democratic institutions can always function, even during a pandemic or a blockade. They keep us safe. And no one should fear coming to work in this place.

The people of Ottawa deserve the freedom to live their lives free from assault, free from fear, free from harassment, free from crime and free from chaos. I know that the citizens of Ottawa have our backs.

With extraordinary measures having been in place for a little over one week, we in the Senate are now called upon to concur with our elected colleagues and accept the government's initial decision to invoke the *Emergencies Act*. Should we do so, we will then bear the weighty responsibility, together with our House colleagues, to act as a check to monitor, supervise and adjudicate the uses of the act. As parliamentarians, we are now called upon to determine whether the government has satisfied the terms of the act such that the measures taken pursuant to it may remain in effect until they are no longer required.

Today, however, we have a luxury: the benefit of hindsight. We take our decisions during an unprecedented and multifaceted law-enforcement operation in which the tools created under the act are being used effectively to bring this emergency to a successful end as quickly but as peaceably as possible. As we have seen, the impact of the act has been pivotal. We know it is making the difference, because those implementing the operation are telling us so and are asking us to keep it in place so that we do not squander the progress that has been made.

In many ways, we are deciding whether our government and law-enforcement agencies across Canada can continue to use the tools that, so far at least, have turned the tide and shifted momentum back into the camp of law and order. Now we decide whether we allow these measures to continue so that Canadians can effectively put this chapter behind us and begin a process of healing.

[Translation]

Honourable senators, the government proclaimed the existence of a state of emergency.

Once the declaration is made, special temporary measures can be implemented to respond to the emergency situation. Any measure taken under the legislation must be carried out in accordance with the Canadian Charter of Rights and Freedoms and must be carefully adapted to limit any impact on Charter rights and be reasonable and proportionate in the circumstances.

In order to support senators and ensure they are well informed, our office organized two technical briefings, made ministers available to answer senators' questions, and distributed and tabled every document required under section 58 of the *Emergencies Act*. It is essential that the act also provide for oversight and thorough review by Parliament at every stage of the process. I will actually come back to that later.

[English]

Let me briefly outline the temporary measures that have been put in place to date, both under the Emergencies Act and the regulations promulgated thereunder. These measures were carefully chosen and designed to respond to the situation, and to fill gaps in provincial and local authorities and capacities. I would summarize these measures as follows: measures to temporarily regulate and prohibit public assemblies that lead to a breach of the peace and go beyond lawful protest; measures to temporarily designate and secure places where blockades are to be prohibited, which could include borders, approaches to borders, other critical infrastructure, the Parliamentary Precinct in Ottawa or other places where there is evidence of imminent unlawful assembly; and measures to temporarily authorize or direct any person to render essential services to relieve the impacts of blockades on Canada's public and economic safety, and for those persons to be fairly compensated for that work.

Colleagues, this has made it possible to remove many of the large trucks that have blocked access to the Parliamentary Precinct and have imposed unacceptable hardships on the residents in the area. These include measures to temporarily limit financial support for unlawful assembly, notably through the temporary cessation of services from financial institutions and the application of reporting requirements on crowdfunding platforms. They include measures to temporarily enable RCMP to enforce municipal bylaws and provincial offences where required, and the imposition of fines or imprisonment for contravention of certain orders and regulations made under section 19 of the Emergencies Act.

• (0910)

All these measures have been used effectively and in a responsible and respectful manner as we have seen and are seeing in Ottawa.

Let me turn now to the provisions of the act setting out the criteria for invoking a public order emergency. The government is firmly of the view that it has met the legal threshold outlined in the act. To lawfully invoke the act, the legislation requires that the government have reasonable grounds that a public order emergency exists. Based on all the facts and evidence at its disposal, the government believes that it has such reasonable grounds, and that is why the act has been invoked.

Allow me to outline for the chamber the relevant provisions of the act, which, as you will see, point to a highly fact-driven analysis. I will subsequently elaborate on the facts, context and circumstances that can be disclosed that have led the government to the conclusion that the act had to be invoked.

Section 17 of the act is the most crucial. It provides as follows:

When the Governor in Council believes, on reasonable grounds, that a public order emergency exists and necessitates the taking of special temporary measures for dealing with the emergency, the Governor in Council, after such consultation as is required by section 25, may, by proclamation, so declare.

The criteria defining what constitutes a public order emergency under the act are highly contextual. Section 16 of the act defines a public order emergency as:

... an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency;

The act therefore requires the government to have a belief, rooted in reasonable grounds, that there exists an emergency arising from, "threats to the security of Canada," and that it considers, again on the basis of reasonable grounds, that those threats amount to a "national emergency."

The concept of threats to the security of Canada is defined in section 2 of the Canadian Security Intelligence Service Act, and it includes the following activities under section 2(b):

... foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person ...

Section 2:

(c) activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state, and

(d) activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada.

Meanwhile the concept of "national emergency" is defined in the Emergencies Act as:

... an urgent and critical situation of a temporary nature that

(a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it, or

(b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada

and that cannot be effectively dealt with under any other law of Canada.

Based on all the facts at its disposal, the government has reasonable grounds to believe that over the course of the past few weeks the threats posed by the convoy movement has amounted to this.

I would underscore in passing that some provinces requested assistance or explicitly expressed that the situation went beyond their capacity to deal with it, including Ontario and Alberta. In fact, over the course of the past weeks, a range of local authorities, from municipalities to police chiefs to provincial premiers, stated that they did not have sufficient capacity to act at various points in time.

In invoking the Emergencies Act, the federal government is responding to the assessments of those levels of authority. I, for one, would be astounded — if not indeed flummoxed — if a court ever deemed that, despite all of the public statements and requests for assistance we have seen, the local authorities had the capacity to deal with the situation in an effective manner.

I would also note that, while one may argue that the situation could have been dealt with using other laws, one would be hard pressed to make the case that the situation could have been dealt with effectively, which is what the act talks about. Here the benefit of hindsight is very helpful. We have now seen how ineffectively the situation was managed without the Emergencies Act and how effectively the situation has improved since it was invoked a week ago. We also have every reason to believe that the Emergencies Act remains necessary for Canada to be able to respond to ongoing threats to re-establish blockades at critical infrastructure or border crossings.

Law enforcement agencies are currently relying on the act to set up secured areas in downtown Ottawa and at border crossings, preventing foreign money from continuing to fund illegal blockades and ensuring that our borders remain open.

Yes, the Ambassador Bridge in Windsor and the Coutts border crossing were eventually cleared, but at what cost? And as the discovery of weapons and body armour revealed, what was the risk to law enforcement and the public?

Indeed, the Emergencies Act has played a crucial role in ensuring that the situation is brought under control, avoiding a renewed spread of blockades by occupiers and their sponsors looking for a new target.

I will now endeavour to provide senators with further context and factors that have led the government to conclude that there were sufficiently reasonable grounds to believe there is a public order emergency: that is, an emergency arising from threats to the security of Canada that is so serious as to be a national emergency.

I would note that this highly factual and contextual question necessarily relies upon information that may not be shared in the context of our debates. In that regard, I think the government is owed a certain degree of deference vis-à-vis the security assessment it has made.

I would also note that the position of the government is elaborated in one of the documents tabled in the Senate on Monday and shared with all senators last week entitled February 14, 2022 Declaration of Public Order Emergency, Explanation pursuant to subsection 58(1) of the *Emergencies Act*.

The document states:

The “Freedom Convoy 2022” was the first manifestation of this growing movement centered on anti-government sentiments related to the public health response to the COVID-19 pandemic. Trucker convoys began their journey from various points in the country, and the movement arrived in Ottawa on Friday, January 28, 2022. Since then, the movement has only continued to gain momentum across the country, with significant increase in numbers in Ottawa

as well as protests and blockades spreading in different locations, including strategic ports of entry (e.g., Ambassador Bridge, Ontario; Coutts, Alberta; and Emerson, Manitoba).

And later the document continues:

The movement has moved beyond a peaceful protest, and there is significant evidence of illegal activity underway. . . .

Colleagues, the ongoing occupation of downtown Ottawa by the so-called “Freedom Convoy” held the city and its residents hostage for three weeks. Far from being peaceful, they caused considerable harm to the city and its residents. There was evidence of destructive, racist and violent behaviour. Small businesses endured illegal obstruction of their neighbourhoods and harassment of their patrons and staff. The convoy’s rhetoric was toxic, dangerous and at times hateful. Swastikas, Confederate flags and other odious symbols of anti-Semitism and White supremacy are disgraceful and unacceptable, yet they also played a role.

The calls to topple our democratically elected government and its institutions by relying upon a show of force in our nation’s capital was evident and encouraged by the extremist entities. There were incidents of threats, an attempt to set fire to an apartment building and the need for police protection for a brave young woman who sought and won an injunction against constant noise in the downtown core.

Moreover, across the country we saw blockades at borders in multiple provinces that harmed our economy and endangered public safety. For example, near Morden, Manitoba, because of a convoy blocking traffic it took over an hour for a woman in her 80s suffering from chest pains to get to hospital.

After the federal government announced its intention to invoke the Emergencies Act, and in the days since, many of these blockades resolved, but the situation across Canada remains volatile and unpredictable. The possibility of further blockages and other illegal activities has not disappeared, as was evidenced in Quebec City and in Surrey, B.C. this past weekend.

• (0920)

Colleagues, the negative economic impact of all these activities cannot be overstated. Cities, especially Ottawa, have spent millions of taxpayer dollars battling the situation. More broadly, these occupations and blockades had and continue to have adverse effects on the Canadian economy — an economy that is still recovering from the impacts of the pandemic. Critical supply chains have been disrupted and this is hurting many Canadians, including workers who rely on cross-border trade for their livelihood. The blockades have adversely affected Canada’s relationship with our trading partners, particularly the United States. There have been breakdowns in the distribution and availability of essential goods, services and resources to Canadians.

These demonstrations have raised the levels of unrest and violence in our country to unacceptable levels, threatening our safety and security. Indeed, there is clear evidence that some participants in these activities are prepared to use violent means

to achieve their goals. We have heard reports of threats of force to oppose removal of the blockades. The recent seizure by the RCMP of a cache of firearms with a large quantity of ammunition in Coutts, Alberta, and evidence that some protesters are alleged to have conspired to murder RCMP officers are troubling examples of this fact. Demonstrators across the country, emboldened by the blockades and the occupation of our nation's capital, have made clear that their objective is to force the government to remove all COVID-related measures, or to overthrow our democratically elected government, potentially by force.

Colleagues, what began as a protest against vaccine mandates for truckers at the border morphed into a joining of forces of all those opposing the mandates — really, all public health measures — by all levels of government, those wanting to destabilize the government through outside foreign influence and those angry about the results of the last election and who are determined to overturn it.

The memorandum of understanding put forward by Canada Unity called for a duly elected government to be replaced. The MOU reads:

In this case the parties are “THE PEOPLE OF CANADA”, the “SENATE OF CANADA”, and “THE GOVERNOR GENERAL OF CANADA”, the highest authorities representing the Federal Government. The matter to be discussed and agreed upon is this; The Senate of Canada and the Governor General, combined referred to as the Federal Government are to uphold and enforce all Canadian and International Human Rights Laws that are clearly laid out in the MOU or “RESIGN their lawful positions of authority Immediately”.

The founders of Canada Unity are the same people who have also called for charges of treason to be levelled against the Prime Minister, and they are some of the first organizers of the convoy to Ottawa.

Another organizer and folk hero of the convoy has stated publicly that COVID-19 is a man-made bioweapon and warned of an “endgame” to “depopulate the Anglo-Saxon race.” In December, while talking of public health measures on his live stream, he said, “The only way this is going to be solved is with bullets.”

In its 2020 report, CSIS stated that “Some violent extremists view COVID-19 as a real but welcome crisis that could hasten the collapse of Western society.” CSIS is so concerned about these groups that it has elevated ideological, violent extremism to the highest threat to Canada ahead of religious extremism and groups like al Qaeda.

The crowdfunding site GiveSendGo was hacked and a list of donors was made public. Of those who donated to the illegal protest in Ottawa, there are reports that more than 300 donations came from Oath Keepers, the group that participated in the January 6, 2021, attack on the U.S. capitol.

In Coutts, Alberta, along with the seized firearms and ammunition, there was body armour with the insignia of a group called Diagonol. According to Candyce Kelshall, an expert from

the Justice Institute of British Columbia, Diagonol's purpose is to incite “a race war.” This weekend, there were reports that members of Diagonol posted on social media the names of police officers who've been helping give the residents of Ottawa their city back. And let's remember that the charges laid in Coutts include conspiracy to murder police officers.

These are but a few examples of the threats that Canada faces, not only in Ottawa but wherever a regrouping may be planned via social media.

Honourable senators, even if the initial intention of the convoy was to come to Canada and express displeasure about border vaccine mandates, these efforts were co-opted by extremist elements who used good-faith protesters as a Trojan Horse to advance their nefarious intentions.

It is a matter of public record that there have been threats of serious violence against persons and property, including critical infrastructure, for the purpose of achieving a political or ideological objective within Canada. This alone satisfies the definition of a threat to the security of Canada, which is a key element of a public order emergency as defined by section 16 of the act.

The other element is that this threat to our security must rise to the level of a national emergency as defined in section 3 of the act. As I have already outlined, it is clear that the convoys and blockades pose a serious danger to Canadians. As has become evident over three long weeks, as blockades became entrenched and started spreading across the country, provincial and municipal law enforcement were unable to effectively enforce the law in their jurisdictions within a reasonable time frame. For example, despite invoking provincial emergency measures, Ontario did not have the ability to compel service from towing companies, which was one of the main challenges both in Ottawa and on the Ambassador Bridge. In Windsor, tow trucks from Michigan came north to help out, but that's not an option everywhere. Using the Emergencies Act, the federal government enacted measures to overcome this challenge.

Also, no province or territory acting alone could effectively cut off financial support for the blockades. Some financial service providers are provincially regulated, but each province can only regulate its own, and banks are federally regulated. Using the Emergencies Act, the federal government has been able to target the funding that was paying for the food and fuel sustaining the blockades.

But that is not all. As outlined in the document tabled yesterday, the blockades and protests threaten the security of Canada's borders, with the potential to endanger the ability of Canada to manage the flow of goods and people across the border, the safety of CBSA officers and to undermine the trust and coordination between CBSA officials and their American partners. Additional blockades are anticipated.

This has been a national crisis beyond the capacity of any single province or territory to address. While after this weekend we hope we are turning a corner, we are by no means out of the woods. For this reason, the federal government has stepped in and used the legal tool at its disposal to address this unique situation. This unprecedented step of invoking the Emergencies

Act is being taken in response to an unprecedented state of affairs. These measures are necessary to bring an end to the illegal activities and blockades and to deter their repetition. As stated by our colleague Senator Vern White and former cabinet minister Peter Mackay in their joint article for the *National Post*:

... what we have seen in the occupation of Ottawa and blockages at border crossings is not the right of protest enshrined in our constitution, but illegal activity that represents a national security and economic threat to Canada.

Law enforcement professionals from Senator White to the Canadian Police Association and the Canadian Association of Chiefs of Police have been clear in recent days that the emergency orders have been a key factor in the progress we have seen in Ottawa.

Michael Kempa, Associate Professor of Criminology at the University of Ottawa, has made clear that:

Once the protest took possession of downtown space, once rights for others were infringed by the illegal protests and illegal protesters, once it expanded to include border crossings affecting the economy, it became a national emergency when it threatened the stability of the economy and rights of others. Municipal, provincial governments did not have the power or the resources.

[Translation]

Esteemed colleagues, the government has taken the decision to invoke the Emergencies Act seriously. The government made that decision after carefully considering the situation across Canada, continuously working with public officials and police forces nationwide and holding in-depth discussions over the course of three meetings of Cabinet's Incident Response Group on February 10, 12 and 13, 2022.

Before invoking the act, the government also consulted with the premiers of the provinces and territories as required under section 25 of the Emergencies Act. A number of premiers, including Premier Doug Ford, said they were unable to manage the blockades and occupations and asked the government to take action and provide support. Other premiers said that they had the tools to keep things under control in their respective provinces.

• (0930)

A report of these consultations and a summary of the engagements between the government and other municipal and provincial decision makers were tabled Monday in the Senate and distributed to all senators last week.

Invoking the Emergencies Act was deemed necessary in order to provide additional tools to law enforcement agencies and other organizations so that they could respond to the emergency. These tools remain necessary, even though the situation in Ottawa appears to have significantly improved.

[English]

As Ottawa Police Service Interim Chief Steve Bell stated during his news conference on February 18:

The three levels of Government that have come together to support our efforts in this have led us to be able to have the success we're starting to see right now.

He said the Emergencies Act, the provincial state of emergency, as well as the City of Ottawa state of emergency and injunction:

... have created the ability for us to use powers and use new and existing powers to be able to properly deal with the demonstration to ultimately bring it to an end. Without the authorities that had been provided to us through these pieces of legislation, we wouldn't be able to be doing the work we are today.

Colleagues, the blockades and assemblies are not isolated incidents, nor are they spontaneous. There is evidence of coordination between the various convoys and blockades. There is also evidence of significant funding and other support being provided by those connected to far-right extremist groups, both in Canada and elsewhere. The measures authorized under the Emergencies Act are required to stabilize the situation and ensure that further illegal activities and blockades do not continue.

Let me turn to several issues and questions that have been raised about the act and the measures that have been authorized by it. The first concerns the application of the Canadian Charter of Rights and Freedoms. The Charter applies to the Emergencies Act and to all actions taken pursuant to the act. There is no temporary suspension of rights or freedoms as there was under the old War Measures Act. Furthermore, all acts must be consistent with our international human rights obligations. But don't take it from me, take it from Ed Broadbent the former leader of the New Democratic Party of Canada who yesterday said:

Compared to the War Measures Act, the Emergencies Act has reduced powers, added significant Parliamentary review, and was created in part to support and uphold the Charter.

And this is one of the key reasons that the Emergencies Act is different: The Charter of Rights and Freedoms is not suspended. There is parliamentary oversight. And the Act would expire in its application after thirty days.

Along these lines, Professor Michael Kempa explains as follows:

The Emergencies Act is simply not the War Measures Act. The War Measures Act, you flip a switch, on or off, and when you turn it on, it suspends everybody's civil liberties across Canada. The Emergencies Act does not work that way. It's an incremental act that works within the Charter, and the government takes existing laws, puts them together and amps them up for a period of time, and it has only been applied to people who are either directly involved in the

illegal protest or who are supporting the illegal protest. It has not otherwise affected Canadians across the country — a much better law than the old-fashioned War Measures Act.

Because the proclamation is not legislative in nature, no Charter Statement was produced. Nevertheless, let me say the following: The Charter guarantees rights and freedoms subject to reasonable limits that are prescribed by law and can demonstrably be justified in a free and democratic society. There is no doubt that freedoms of assembly and expression are fundamental to Canada's democratic society. In particular, freedom of expression and freedom of peaceful assembly ensure that Canadians of diverse experience, perspective and opinion have an opportunity to make themselves heard and to contribute to public discourse. Nothing in these measures negates this opportunity.

Section 2 of the emergency measures regulations provides specificity on illegal public assemblies that may lead to a breach of the peace. This narrow limitation is measured and limited in time. Canadians have exercised their freedom to assemble peacefully during the pandemic, whether to support or oppose public health measures or to take positions on other causes, as they continue to have that freedom.

However, these illegal occupations and blockages have been intimidating, harassing and pose an ongoing threat to Canada's security and economy. They do not aim to contribute to a public debate but rather to dominate it through intimidation and physical force. These actions are beyond what any free and democratic society should be expected to tolerate.

It bears repeating that the Emergencies Act cannot be invoked to respond to peaceful protest, which is protected by our Charter, nor even to respond to unlawful protests that can, in the ordinary course, be controlled by provincial or local authorities. But the organized occupations and blockages in multiple places across our country in recent weeks bear no resemblance to peaceful protest and go well beyond the kinds of civil disobedience that we've seen in other contexts.

The emergency measures are carefully tailored to the underlying objective of responding to the national emergency and restoring public order. While some of the measures, notably those set out in the second regulation promulgated pursuant to the declaration, may engage privacy rights under the Charter — and I should add that the terms of the Privacy Act still apply — the measures are designed to strike a reasonable balance between privacy and the objective of addressing the public order emergency.

Finally, the act does not oust or limit the jurisdiction of the courts to address claims that rights and freedoms were infringed. Indeed, as we know, proceedings have already been initiated to that effect.

[Translation]

The second issue I want to raise relates to the geographical scope of the proclamation and the measures, and the fact that several provincial premiers are opposed to the application of this legislation in their province.

[Senator Gold]

This is federal legislation, which means it has legal application throughout the country. However, the government has been very clear that not all of the measures available under the act will be used, and the measures that are used will be targeted to only where they are needed.

[English]

Canadians in towns, cities and provinces where there are no ongoing blockades or occupations will likely see nothing arising from the invocation of the Emergencies Act. Even in places where there are ongoing occupations, if municipal and provincial law enforcement do not require federal assistance or the additional tools provided under the Emergencies Act to restore order, they need not use them.

The ultimate goal for the government is to end all the illegal occupations and blockades. Local and provincial authorities were unable to resolve these incidents in the weeks leading up to the declaration of a public order emergency. Since the intention to declare a public order emergency was announced, many situations have been successfully resolved — both in Ottawa, where police used the emergency powers explicitly and effectively, and elsewhere, where perhaps the invocation of the Emergencies Act sent a message to some participants that it was time to go home. This is good news. This is the act achieving its intended purpose.

The third issue concerns the measures surrounding the funding of unlawful activities. Temporary measures under the Emergencies Act direct Canadian financial institutions to review their relationships with anyone actively participating or actively supporting the illegal occupations and blockades. On a temporary basis, a bank or other financial service provider can immediately freeze or suspend an account without a court order. In so doing, they are protected against civil liability for actions taken in good faith. This order covers both personal and corporate accounts. To quote Michael Kempa again:

The freezing of accounts motivated a huge number of people to leave, and it couldn't be done without the Emergencies Act.

The actions in Ottawa might be the best example, but it is by no means the only example, of the need for funding in order to continue and maintain a blockade or long-term incursion. Those individuals or businesses that contribute to illegal occupations and prolong the illegality will and should suffer the consequences.

• (0940)

Moreover, crowdfunding and payment service providers used to raise funds for the protests must register with the Financial Transactions and Reports Analysis Centre, Canada's main monitor for money laundering and terrorist financing, and they must report large and suspicious transactions. While this is a temporary measure, the government has signalled that it intends to introduce legislation to apply FINTRAC reporting requirements to crowdfunding platforms on a permanent basis.

Also under the emergency orders, federal government institutions may share relevant information about persons and entities participating and supporting unlawful assemblies with banks, and other financial service providers, where it will help stop the funding of illegal activities under the regulations. Following the money is an important step that will help put an end to these illegal blockades and protests.

Questions have been raised about how these measures will be applied and what protections or safeguards exist to protect Canadians who have had their bank accounts frozen or their insurance suspended.

The order requires financial service providers to review, on an ongoing basis, whether their customers are participating in or funding unlawful assemblies. The intent is that if you stop participating in the protest the bank unfreezes your account. This is meant to incentivize people to stop making contributions or to drive their truck away from a blockade and go home. As such, it's in the government's interest for those who make that sensible choice to have their account unfrozen quickly.

Colleagues, these temporary financial measures are not being applied indiscriminately. Let me quote the February 21, 2022, RCMP "Statement on the freezing of financial accounts":

Under the Emergency Economic Measures Order (Emergencies Act), the list that was provided to financial institutions included identities of individuals who were influencers in the illegal protest in Ottawa, and owners and/or drivers of vehicles who did not want to leave the area impacted by the protest. At no time, did we provide a list of donors to financial institutions.

We are now working with the banks to build a process to address the accounts that were frozen.

If someone feels a mistake has been made or believes they're being treated unjustly, there are a number of steps they can take. First, they can reach out directly to their bank or to police to demonstrate that they're no longer participating in a blockade. That alone should be enough to have their account unfrozen.

If there's an exceptional case where that doesn't work, the person can make a complaint to the Financial Consumer Agency of Canada. And, ultimately, Canadians have recourse to the courts.

But it's highly unlikely that will be necessary. The purpose of this short-term emergency order is for people to have their accounts frozen while they're actively participating in the blockades and to have them unfrozen as soon as their participation stops. Importantly, these measures related to bank accounts do not apply retroactively. Let me be clear: This order does not apply to people who made donations or who participated in the blockades before February 15.

It's worth noting that, as of Sunday, some 200 bank accounts had been frozen out of tens of thousands of donors and participants. It certainly does not appear that this measure is being overused.

Finally, let me address the concern that the invocation of the Emergencies Act sets a dangerous precedent for future governments that might be tempted to use it to shut down Indigenous protests or protests by environmental activists.

The Emergencies Act has been on the books since 1988, and this is the first time it has been invoked. As the Prime Minister has said many times this past week, it is not a tool of first resort or second; it is a tool of last resort.

Of course, there is no way to predict what a future government might do in the face of a perceived national emergency. But if the act is invoked, all actions must be consistent with the constitutionally protected rights guaranteed by the Charter, and the courts will be there to protect those whose rights and freedoms may be infringed. Equally importantly, the act requires rigorous democratic oversight if it is invoked, and ongoing oversight and review even after the temporary measures it authorized are no longer in effect.

It is to these democratic mechanisms that I now turn.

A distinguishing feature of the Emergencies Act is the comprehensive way in which it contemplates and structures parliamentary oversight and review, of all stages in the process, once a government declares the existence of a national emergency.

The first step is the one with which we are seized. Under section 58 of the act, both the Senate and the House of Commons must begin debate on a motion to confirm the declaration within seven days after its issuance. As stated at the outset, the legal test is whether the government had reasonable grounds to believe that a public order emergency exists, necessitating the imposition of special temporary measures for dealing with the emergency. If either the House or the Senate votes not to confirm the declaration, the declaration is revoked effective that day and all the measures previously authorized cease to be in force.

But that is not all. The act also provides parliamentarians with the tools to move that a declaration of emergency be revoked, even after having initially confirmed it. As set out in section 59 of the act, at any time after the declaration of a national emergency, a motion seeking the revocation of a declaration of emergency, if signed by 10 senators — or 20 members of the House — may be filed with the Speaker, and that motion must be taken up and considered within three sitting days after the motion is filed. Colleagues, this provides parliamentarians the ability to challenge the continuation of the emergency measures if they deem the emergency to have passed.

A similar power is granted with respect to orders or regulations made pursuant to a declaration. With the exception of those orders or regulations exempt from publication in the *Canada Gazette* by regulations made under the Statutory Instruments Act, all orders and regulations must be laid before each House of Parliament within two sitting days after they are promulgated. Section 61 of the act provides a process whereby a motion to revoke or amend a regulation or order must be filed with the Speaker and taken up within three sitting days.

In these ways, the act provides further recourse for parliamentarians to reconsider whether the emergency measures should continue, and to vote to terminate them, even before the 30-day period elapses.

Furthermore, if the government wishes to extend the state of emergency beyond the 30-day limit prescribed in the act, section 60 provides that the extension must be confirmed by both the Senate and the House in the same manner, and within the same time frame, as when it was invoked initially.

But there is even more. Section 62 of the act also provides for the establishment of a parliamentary review committee of both houses of Parliament to review the declaration of emergency and to report back to both houses of Parliament.

This committee has the responsibility to report the results of its review at least once every 60 days while the declaration of emergency is in force. However, in cases where there is a motion for the revocation of the declaration, it must report to Parliament within three days. Where a proclamation continuing the declaration is issued, or where a declaration has expired or been revoked, the committee must report within seven sitting days.

The review and reporting functions of the committee are crucial to enhance democratic accountability. This will allow senators and our colleagues in the House to stay apprised of how decisions were made, to assess what worked and what didn't, to reflect upon the lessons learned and to inform future actions. The roles and responsibilities of this committee also provide ongoing oversight of the measures taken pursuant to the declaration.

For example, where a regulation or order is exempted from publication in the *Canada Gazette*, that order or regulation shall be referred to the committee within two days after it is made, or if the committee has not yet been constituted, within the first two sitting days after it is designated established. Should this be the case, the committee will have 30 days to amend or revoke them. This is another mechanism to ensure ongoing democratic review and oversight of the measures taken under a declaration of emergency.

I wish at this time to advise this chamber that there currently are no orders or regulations expected to be made that would be referred to the committee. By that, I mean any that have not been deposited or would be deposited publicly before both houses of Parliament.

• (0950)

The act is silent as to when the parliamentary review committee is to be established. That said, the establishment of the committee would follow the usual rules for standing up joint committees. Accordingly, if the declaration of emergency is confirmed, I will be working with my counterpart in the House to move as quickly as possible to get the committee constituted.

Regarding membership on the committee, the act is silent as to its size, nor does it say how many members should be senators and how many should be MPs. Section 62(2) provides only that the committee shall include:

... at least one member of the House of Commons from each party that has a recognized membership of twelve or more persons in that House and at least one senator from each party in the Senate that is represented on the committee by a member of the House of Commons.

It does not preclude the naming of additional categories of members, whether from the House or the Senate.

After the expiration — without extension — or the revocation of the act, section 63(1) states:

The Governor in Council shall, within sixty days after the expiration or revocation of a declaration of emergency, cause an inquiry to be held into the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency.

Colleagues, the questions and the concerns leading up to the invocation of the Emergencies Act are far too numerous to list, and many are not even yet known. But section 63(1) will allow a committee to thoroughly investigate the “how,” “who,” “what,” “when” and “why” leading up to the decision. How did this movement begin and gain momentum? Who coordinated and organized the protests? What was the catalyst for its inception? When did the anger explode? Why was the illegal response of blockades and occupations considered the remedy?

The actions of governments at all levels, as well as the actions or inactions of law enforcement, will also need review. This review will begin within 60 days of the termination of the order and a report must be tabled within 360 days after study begins.

The Emergencies Act was passed in 1988, long before the composition of the Senate changed. It is the position of the government that all recognized parliamentary groups in the Senate should have at least one member on the parliamentary review committee.

As a matter of course, the expectation is that the committee will generally conduct its meetings in public. This committee, like all committees, can meet in private but would usually only do so to consider draft reports or if confidential information is involved. The committee is only required to meet in private if it is considering orders or regulations that cannot be published in the *Canada Gazette*.

To close, Canada is a country founded on the principles of peace, order and good government. Canadians expect government to protect our economy, the rule of law, our values, and most importantly, the safety and security of our people.

We select —

The Hon. the Speaker: Honourable senators, every senator who wishes to speak to this matter will have an opportunity to do so.

If, while a senator is speaking, a matter comes up that you want to question or that you disagree with, please take note of it and, when the opportunity arises, you can ask a question or speak to it yourself. Otherwise, please show some courtesy to senators who have the floor.

Hon. Senators: Hear, hear!

Senator Gold: Thank you, Your Honour.

We select our government through democratic elections, not through threats or the use of force. We respect individual rights and freedoms. We protect each other, as we have done throughout these last two challenging years.

And when we disagree, we say so loudly, boisterously and sometimes angrily. We march, we chant and we wave banners. We vote. Sometimes, we push the bounds of the law, and we know there may be consequences for that.

Allow me to quote the Prime Minister, who yesterday said the following:

In a democracy, you can protest, and you can share your opinion at the top of your lungs, you can disagree with elected officials, and you can certainly disagree with me. But you can't harass your fellow Canadians who disagree with you. You can't hold a city hostage. You can't block a critical trade corridor and deprive people of their jobs. You can't attack journalists for reporting, which is essential to our democracy. What you can do is vote. What you can do is run for office. That's how change happens in a democracy.

When we're at our best, we listen to each other. Without a doubt, we could all resolve to listen more and listen better.

On that point, though, this weekend, as police were advancing, one of the demonstrators was saying on TV that he only came to Ottawa to engage in dialogue, if only someone would have dialogued with him. Perhaps that individual really did come here in good faith, but on the whole, to the question of whether this could have been de-escalated through discussion, let me say this: When you show up waving banners directing profanity at the Prime Minister, calling for him to be jailed and explicitly demanding the overthrow of our democratically elected government, that is a curious way to signal interest in constructive conversation.

Organized activities designed to destabilize our democracy have been under way across this country for weeks. They are coordinated, well funded and persistent. Many participants have been prepared to use unlawful means and violence to achieve their ends. There is no reason to assume that those behind this movement have abandoned their plans to disrupt and destabilize our country. We cannot let this continue.

The temporary measures put in place under the Emergencies Act have already made a material difference in restoring order. While the use of the act is extraordinary, the measures themselves are not extreme. They have been designed and used in a focused and proportionate manner, and they have been effective.

Even though calm is being returned to the streets of Ottawa, the need for these temporary measures remains. We need to let police and other authorities finish the work that these measures have allowed them to undertake.

You get the feeling that the people of Ottawa understand that all too well. On Sunday, for the first time in almost a month, the residents and workers of downtown, our hosts when we come here to the Senate, were able to walk around their neighbourhoods feeling — I'm searching for the word — free.

But perhaps they were not quite feeling safe — not yet. On Friday, Ottawa's emergency lines were deliberately jammed once again. On Saturday, the Ottawa Hospital went into lockdown because of a bomb threat. As well, a number of demonstrators have regrouped down the highway and are vowing to return. As one man told *La Presse* —

[Translation]

— and I quote, "This is not over. As soon as we can, we'll be back!"

[English]

Obviously, the emergency measures we're debating are temporary; they'll have to end before long. But it has only been a couple of days since a phalanx of police officers from across the country was required to uproot a siege in this city. Police are saying they need a bit more time to consolidate the work they did this weekend, and I think we should give it to them.

Honourable colleagues, I humbly ask for your support to confirm the declaration of emergency that has been put before you. Thank you for your kind attention.

The Hon. the Speaker: Senator Gold, there are a number of senators who wish to ask questions. Are you prepared to take questions?

Senator Gold: Of course.

Hon. Donald Neil Plett (Leader of the Opposition): I have a number of questions. I'll ask one or two, as you allow, and I will ask to be put back on the list for questions later.

Senator Gold, you said the government had been very clear. The government has been anything but very clear. Yesterday, I asked you a straightforward question in Question Period about invoking the Emergencies Act. Instead of answering the question, you said you looked forward to answering it during Tuesday's debate. So here is my second attempt, Senator Gold.

• (1000)

When the Prime Minister invoked the Emergencies Act, he claimed it would be geographically targeted. In the other place on Saturday, the Parliamentary Secretary to the Minister of Justice confirmed that the legislation applies to all of Canada.

Senator Gold, what guidelines did the Trudeau government use before making the call to declare a historic national emergency throughout our entire country? Do you have an answer to that question directly today, Senator Gold?

Senator Gold: Thank you for your question. In my speech, I did indeed address all the circumstances underlying the government's decision to declare this a national emergency affecting the whole country. I'm glad for the opportunity to reinforce a number of points.

It is not simply that there were activities in many provinces of the country that caused serious harm to our economy and represented threats to people and security — and I will not repeat what those were. The activities took place with the participation of individuals and groups from across this country. They were funded by individuals and groups from not only across this country but beyond, elsewhere, in other countries. These measures and the ongoing threats for them to continue affected our borders: border crossings in Surrey, border crossings in Alberta, border crossings in Manitoba, and indications of possible border crossing protests for Saskatchewan. Clearly, we know what happened here in Ottawa with concerns about border crossings.

Frankly, it is clear that all the country is potentially affected by the movement which has hijacked legitimate and understandable concerns and frustrations with the impact of the pandemic. Moreover — and this is really critical — if you examine exactly how these measures are being applied in the last week, they are being applied only where they are needed, only where the local authorities have said we need these additional tools. Whether it is the police in particular jurisdictions or, in some cases, premiers who have asked for assistance, that's where you see the actions being taken on the ground; nowhere else. In that regard, though, it is a federal law applying to the whole country because the whole country is at risk from the events that gave rise to the blockades on the bridges, which gave rise to the occupation and siege of Ottawa. It is an incontrovertible fact that the government had reasonable grounds to believe that was the case. At the same time, using the targeted focused measures contemplated by the Emergencies Act, being true to the letter and spirit of the Emergencies Act, actions are only being taken where they are absolutely needed in coordination with local authorities, whether governmental or police, and no other actions will be taken.

Senator Plett: I have one supplementary, if I could, Your Honour, but, as I said earlier, there are a lot of people who want to ask questions, so I'll go on the list for a little later.

Senator Gold, you will excuse some of us if we just simply don't believe the rhetoric that we are being given by the government both in the other place and here.

On Saturday, the Minister of Public Safety said at least 76 bank accounts had been frozen under the Emergencies Act. This action took place before the House of Commons and the Senate — before the House of Commons and the Senate — had the opportunity to weigh in on whether this instance of invoking the Emergencies Act is necessary.

Yesterday afternoon, David Akin of Global News reported new information he received from Public Safety Canada that 208 financial products have been frozen. Senator Gold, you referred to that in your speech as well, and you seem to think that is not really significant and that people can somehow get these

unfrozen in due course. We all know it could take weeks and even months to get that done, and somebody cannot move; somebody cannot operate.

Leader, what are the specific guidelines, the very specific guidelines — not the government thinking somebody may have done something nefarious. What are the specific guidelines being used to determine if a bank account should be frozen? When we freeze the Mafia's bank account, we have to get a court order; you can't just freeze their bank account. When you have a murderer out on bail, you don't freeze their bank account. We have people who are avoiding taxes; you don't freeze their bank accounts without court orders.

So what are the specific guidelines or criteria that are being used to determine if a bank account should be frozen, as well as the guidelines or criteria being used to determine which type of accounts or financial products can be seized?

Senator Gold: Thank you. There are a number of questions that you have asked. With regard to the very first, the act is in force the minute it is proclaimed, but unlike the War Measures Act, Parliament is required to confirm within the time, and that is what we are seized with. The nature of an emergency is such that you have to respond to the emergency. The unique and appropriate measures set out in the Emergencies Act, passed in 1988 by the Mulroney government, is such that it provides, unlike the War Measures Act, for democratic oversight and judicial review.

With regard to your comment about bank accounts, I was trying to be as up to date as possible. Yes, there have been 200 or so bank accounts frozen. I don't take any of them lightly, but they do represent a tiny proportion of the number of donations and therefore potential bank accounts that have been implicated.

As I will repeat, the focus is on those who actively participated and are continuing to participate in either the funding or the support of illegal activities as of February 15. The banks and police authorities are entitled to share information, and the banks, as they have done in other circumstances, are required to review their accounts to ensure that the monies that are there are not being used to fund and support illegal activities proscribed or prohibited under the act.

The difference between this situation, colleagues, and any others is that we are dealing with a national emergency where the security of Canada is at risk, where funds, whether Canadian or American, are being used to support and maintain a movement that, as I have done my best to explain and as the government explains in the document that was tabled yesterday, undermines the security of Canada, the security of Canadians and our economy, and that cannot otherwise be dealt with by ordinary means and that requires temporary measures to address the emergency.

Hon. Leo Housakos: Will the government leader take a question?

Senator Gold: Sure.

Senator Housakos: Government leader, I think you will agree that the country has never been at a lower stage in our history than it has been over the last few weeks. I listened to your speech very attentively. My questions are as follows. Would you not agree that we have had many protests in the history of this country, many protests that were not on the scale of this but a lot more violent than this? And yet we've never seen any prime minister refuse to dialogue, refuse to speak to these frustrated Canadian citizens, Canadian taxpayers. On the contrary, instead of speaking to them, he spoke down to them.

Would you also agree that it is the responsibility of the Prime Minister to be measured when there are frustrated mobs out in the streets who are not happy with their government, not to call them names, not to stoke the flames of division, as he seems to do on a regular basis? I have been around politics for a long time. I have seen many prime ministers and governments use wedge issues, but I have never in my life, in my 37 years of active politics, seen a prime minister double-down, triple-down, go to any limits rather than to calm the situation.

• (1010)

At the end of the day, and I saw it in your speech today, we have seen the Prime Minister on a couple of occasions call protesters in this country — taxpayers, Canadian citizens, marchers with those swastikas — defenders of Nazism. He has used those terms. He stood up in the House of Commons and he actually proclaimed to a child of Holocaust survivors, a member of Parliament, duly elected, that she is a defender of the swastika. He said that in the House of Commons. She marches. You and the opposite benches who “stand with people who wave swastikas.”

I'm allowed in debate, as you know, Senator Downe, to make my point.

Senator Downe: You are up on a question.

Senator Housakos: I did get up on a question. You are not the Speaker last time I checked.

The question here, government leader, is very simple. Do you agree with Prime Minister Trudeau that any parliamentarian, and anybody who took the time to listen to these protesters, to take their calls, to meet with them, that we are Nazis and we are supporters of the swastika? Is that a view you share, the view that the Prime Minister has expressed publicly and refuses to apologize for?

Senator Gold: Thank you for your comments and for the question.

I did not say and am not asserting anything of the sort. The fact is, and it is a matter of public record, that — not only at the beginning of this protest in Ottawa but, indeed, even through the course of it — there were representations by people with an expression —

It is a matter of public record, if I may continue, that at the beginning, and even to the end, there was a display of signs that were intimidating, harassing, racist, ugly and unacceptable.

To your question, I do not agree with your characterizations of the Prime Minister's actions. I'm really trying hard, honourable senators, to be factual, clear and not get drawn into what is clearly an anger with the Prime Minister, a frustration with this government and legitimately partisan rhetoric from others.

I'm not going to talk about what it must feel like to a father to be looking at signs — and I won't repeat the ugliness of some of the signs — calling for him or describing him. That's not what I want to say.

I simply want to say that the Prime Minister and the government took very seriously its obligations under the law, thought long and hard about whether or not this crisis could be managed without invoking the Emergencies Act — consulted, reviewed, took advice from intelligence and police officers — and reluctantly came to the decision there was no other way to resolve this crisis.

With regards to your question about the tone or measure, actions speak louder than words, honourable senators. The actions on the ground in Ottawa, the intimidation of health care workers, of people of colour, of people wearing masks, the need to provide police protection for ordinary citizens of Canada, is not a measured response to COVID-19 restrictions or mandates.

The measures put in place on the ground, not in the abstract but on the ground by the Government of Canada to address this, were measured, proportionate. We saw this with our own eyes here in Ottawa.

To your question, honourable senator, no, I do not agree with your characterization of the Prime Minister's actions. The Government of Canada stands convinced that the measures that it reluctantly took were necessary to secure the peace, order and good government of Canada.

Senator Housakos: Senator Gold, I would appreciate it if you stop always belittling questions from the opposition as partisan. We have as much right to partisan questions as you have the right to partisan answers. That is what we do in parliament. Can we cut this nonsense about what we do is more partisan and somehow what you do is God's work here? It has to stop at some point. There has to be some respect.

You made an inference that somehow my questions are partisan in tone, and you do that constantly. Your answers are partisan in tone, Senator Gold. Excuse me, but I'm entitled to that opinion.

Furthermore, I am also entitled to my opinion that these protesters have been — every single time we have had protests in this country, you have a group of extremists that try to tag along. That is what has happened in this case. Again, for a Prime Minister to smear everybody with one brush and call these protesters, millions across Canada, Nazis, which he did, and “people who wave swastikas,” is categorically false.

I do not agree with your premise, because I took the time last week to walk up and down and speak to protesters. They went out of their way to be measured in their protest.

My next question, Senator Gold, has to do with your speech where you said the Emergencies Act only affects these particular protesters, and it does not affect all other Canadians.

Last time I checked, in the last two days to get past military-style checkpoints here in Ottawa to get to my job here, I had to provide ID. I had to provide proof of exclusion to the police. Who determines that? Who is giving that list to the police at those checkpoints of who has the right to that exclusion to enter the downtown Ottawa area?

I remind everybody the downtown Ottawa area includes Parliament Hill. Maybe it has gone absent to parliamentarians here, but this is the first time in the history of this country that the Parliament Hill of Canada has been closed to Canadian citizens; never before.

When Parliament was under attack a few years ago — under attack, where we had a violent attack — the Speakers at the time refused to shut down Parliament Hill, with all kinds of pressure from the RCMP. We said it is a fundamental right for Canadians.

So don't say in your speech that the measures only affect the protesters. It affects every citizen. Anybody who wants to come to Parliament Hill today to speak to their parliamentarians about what is happening in Ukraine, or anywhere else in the country, they can't. So don't say in your speech it only affects the protesters. It affects each and every Canadian who wants to come here to protest on Parliament Hill.

The Hon. the Speaker: I am sorry, Senator Housakos, and this is for all senators who wish to ask questions: Senators are obviously aware that you can only speak to this matter once. So when you are asking questions, please don't use that as a platform to get in a second or a third speech.

Senator Gold: Of course, these are important issues. That is why we are debating them.

For the record, I did not say you didn't have the right to be partisan in your questions. I said it was challenging to respond to serious questions on serious matters.

May I continue? I said what I said in my speech, and I stand by what I said.

The fact that the police continue, for the time being, to set up checkpoints is clearly designed to make sure that those who have expressed their intention to return when they can, as I quoted in my speech, are not able to.

Yes, having to show ID, as I did this morning walking here from my apartment in Centretown, is an inconvenience, so I am affected. This is a proportional and acceptable limit on my ability to continue to walk with my hands in my pockets, as compared —

If I may finish my sentence, and I will continue my answer.

— as compared to the impossibility of residents of Centretown, however old, young, single or with families, to leave their houses out of fear of being assaulted, harassed, intimidated and slurred by those occupying the streets.

There was one last point. I might ask you to interrupt me so that I can answer that last question, Senator Housakos. There was a last point; if it comes to me, I will say it after.

Hon. Dennis Glen Patterson: Senator Gold, my question is to you.

There was a certain amount of “trust us” in the government's justification for these extreme measures we are debating today. However, this comes at a time when trust in governments at all levels clearly is eroding on the part of many citizens. I know this order is based on a perceived threat to the security of Canada, but yesterday during a briefing for senators, Minister of Public Safety Mendicino referred to matters within his knowledge that could not be shared. You told us today the review committee could meet in private if confidential information is required.

• (1020)

My question is this: Will the review committee have access to unredacted security information required to do their job of, as you put it, seriously investigating the justification for this order?

Senator Gold: That is a very good question. The short answer is no. The parliamentary review committee will not be required to have the level of security clearance necessary to review confidential security information. We have an institution, the National Security and Intelligence Committee of Parliamentarians, or NSICOP, where the members are cleared and do have access to such information. Information of that kind is shared with those members on an as-needed basis.

I was referring, Senator Patterson, to those regulations that, by law, are not to be published in *Canada Gazette*, but to make sure that all regulations — even those under the Statutory Instruments Act that are exempted from publication — are nonetheless reviewed by this committee, which, if I recall, has to take an oath of secrecy but does not otherwise have the security clearance that would be required for intelligence information to be shared. I hope that answers your question.

Senator Patterson: Senator Gold, thank you for a clear answer to my question, but it does concern me. You said that the review committee set up under section 63(1) will be empowered to seriously investigate the justification for this order, yet you have just said that the committee will not have access to unredacted security information. I wonder how you can say that the review committee will have the power to seriously investigate — those were your words — when you have just said that certain matters will not be available to the committee.

Senator Gold: Thank you for the question. Let me be clear. There are a number of processes in place under the Emergencies Act both to review on an ongoing basis and to report after the fact, and that's the review committee. It will have certain powers appropriate for the task, largely to consider whether the regulations promulgated under it should be revoked or amended. That is an important task, as well as reporting back to Parliament on a regular basis if the emergency carries on.

Also contemplated in the act is an inquiry to do, dare I say, a post-mortem on the situation and report back.

Colleagues, we know very well — and this is not a feature of the Emergencies Act — that we accept that in a democratic society there are nonetheless categories of information that cannot and should not be made public, such as ongoing police investigations, the sharing of intelligence information between agencies — whether it is CSIS, the RCMP or the Communications Security Establishment — and information shared between governments. This has always been the case. We have well-established laws — such as the National Defence Act and the Canada Evidence Act — that provide structure for when these matters may or may not be shared. Indeed, we have legal and administrative processes for fine-tuning and challenging decisions when information is being withheld on national security grounds. There is nothing new here.

I will also remind this house that if you search Hansard and all of the public statements of this government, this government has not stood up and said, “Hey, trust us, but we can’t tell you anything that is going on.”

The declaration that was filed in this place and articulated in my speech outlines a sufficient number of publicly known facts — facts on the public record that, in the opinion of the government, more than clearly satisfied the legal test that the government had reasonable grounds to believe that the national emergency was such that the act needed to be invoked and these measures put in place.

Hon. Denise Batters: Senator Gold, section 62 of the Emergencies Act sets up the parliamentary review committee. This will be an important accountability mechanism to review how these unprecedented powers have been used. It is a joint parliamentary committee and its membership is set out at section 62(2) of the act, as you read out in your speech, and indicates that it shall include:

... at least one senator from each party in the Senate that is represented on the committee by a member of the House of Commons.

Well, Senator Gold, I guess the fake nomenclature in the Prime Minister’s independent Senate has come home to roost, because right now the only senators who will be able to be members of that committee, prescribed by the Emergencies Act, are Conservative Party of Canada senators. So I guess my Conservative Senate caucus colleagues and I will have to fill this committee with only Conservative senators. That’s because we don’t have any Liberal, NDP or Bloc Québécois senators.

Senator Gold, your party and your government, I should say, has been in power for six and a half years. Your attempt to amend the Parliament of Canada Act — first introduced here almost a year ago as Bill S-4, now just starting in the House of Commons as Bill C-7 — has not yet been passed. According to section 62(6) of the Emergencies Act, this parliamentary review committee is supposed to report to Parliament at least every 60 days while the declaration of emergency is in effect. We are already more than one week into this.

Senator Gold, who other than Conservative senators will sit on this crucial committee? Quite frankly, Senator Gold, your government’s poor planning and procrastination does not constitute our Emergencies Act escape hatch.

Senator Gold: Thank you for your question. Lawyer to lawyer: The act and the membership set out does not limit the number of members, whether of the House or the Senate, to the minimum requirements that are set out in terms of representatives of parties. This is standard statutory interpretation doctrine. The government’s position is clear that a proper, literal and contextual reading of this act does not preclude the naming of senators or, indeed, members of the House that do not otherwise fall within the minimum set out. For that reason, the position of the government is that the act — as it is written, even though it was written in 1988 — does not preclude the appointment of at least one member of every recognized group in the Senate.

Senator Batters: Senator Gold, as we speak, Ukraine is at severe risk of invasion by Putin’s Russia. There are 1.4 million of my fellow Canadians who are of Ukrainian descent, as I am. We are gravely concerned. Given the invocation of the Emergencies Act and that illegal public assemblies are prohibited and that Parliament Hill is designated as a protected and secure place under the act’s regulations, will Ukrainian Canadians be allowed to come to Parliament Hill this week to express their grave concerns about Russia’s aggression towards Ukraine?

Senator Gold: As the descendant of someone from Ukraine — and I know I speak for all of us — we stand in solidarity with the people of Ukraine. For as long as the Emergencies Act remains in force, one of the tools is to designate certain areas as off limits other than for those working or residing in the area. We’ve already seen that the areas have been adjusted, I think notably around the ByWard Market.

• (1030)

So I cannot predict, Senator Batters, on Tuesday what the situation will be around the Parliamentary Precinct on Friday or Saturday. What I can say is that all those Canadians, whether of Ukrainian origin or other, should use whatever means they have — a telephone, social media and indeed the ability to come and protest peacefully in Ottawa — but for so long as the measures are in place to protect the Parliamentary Precinct from the return of the illegal protests, all Canadian citizens have to comply with the legal requirements that are in place now. I hope they will be confirmed in this chamber, but we all hope they will not last for a second longer than necessary.

Hon. Marty Deacon: Honourable senators, before I ask my question, I want to share that earlier this morning I had a chance to have breakfast with many of our police officers to thank them. Their information and their insight — they were in this journey — has been quite enlightening for the debate we are having today.

I would like to back up, take a breath and go back to maybe seven days ago. I would like to dig a little deeper into the early stages that built us to recommending the Emergencies Act.

Government Representative, are you aware of which levels of our national security apparatus or others were consulted and listened to when the government was considering the invocation of the Emergencies Act? In other words, what sectors were at the table before it went to premiers and ministers?

Senator Gold: Honourable senator, thank you for your question. You'll permit me to pause for a second as I consult the documents that the government has already provided.

As the government has stated on a number of occasions, honourable colleagues, the decision to invoke the act was not taken lightly. It was taken after a series of engagements, both with law enforcement, with the intelligence community with whom it is in regular contact as well as with municipal and provincial authorities. Furthermore, it was considered and debated seriously in three separate meetings of a special cabinet committee focusing exclusively on crisis issues such as we're facing.

Because I don't know the information that a specific agency would have shared, and it wasn't shared with me because I don't have the clearance to receive that kind of information, it is nonetheless the case that the government was informed by all of the law enforcement and intelligence services upon which it relies in matters like this. Combined with its own consultations with political instances, it came to the conclusion that there were reasonable grounds to believe these measures were necessary.

Senator M. Deacon: Thank you for that. I'm really trying to understand those early stages. I appreciate that.

As we move and progress forward, will the government be relying strictly on advice from local law enforcement when deciding to revoke the EMA or are these national security and intelligence agencies becoming increasingly involved as this crisis drags on?

Senator Gold: Again, senator, thank you for your question. I think the fairest way that I can answer it, and the most transparent way I can answer it, is that I'm assured and I can advise this chamber that the government is monitoring the situation and consulting with all of the institutions and organizations that it has been consulting with literally on an hourly basis. The objective of the government at this stage of the emergency, seven days into it, is to determine when it is safe and prudent to revoke the Emergencies Act.

The government has been advised — and some of this is on the public record — from police, the police chiefs and associations that it is not the time yet. The government has been advised that more time is needed for law enforcement to complete the work that it has done, to make sure that there is not a return whether to blockages of our borders, sieges of our cities and the like.

As the government has said on many, many occasions, as soon as the government concludes that the emergency no longer exists that requires these measures, they will be lifted.

Hon. Elizabeth Marshall: Senator Gold, thank you very much for your opening remarks.

You were saying that the government is responsible for the security of the nation, but they went from tolerating the protesters over a three-week period to invoking the act. It was a big step. They went from doing practically nothing or what seems to be doing nothing to invoking the act. We all knew the protesters were coming. Probably in mid-January we were aware they were coming to Ottawa, and there was nothing really done.

These threats that you spoke about in your opening remarks, you said they were too numerous to mention and they didn't happen overnight. You even said yourself that they were on their way for weeks, but it seems like nothing was done.

We have received general explanations as to the thought process that went into invoking the act. But this is a serious step that we're contemplating here today. What exactly happened that the government decided to invoke the act? Did it seem like a good idea at the time? Did something specific happen? For three or four weeks, it seemed like there was nothing happening and we were just tolerating it. In interviews, ministers were just saying, "We want the protesters to go home." So what happened? Be specific. I know you're giving us generalities, and I think someone said earlier, "trust us, trust us." What happened that made the government decide to invoke the Emergencies Act?

Senator Gold: Thank you for your question. I won't belabour the point to repeat some of the things I said.

We live in a federal country. The City of Ottawa is under municipal jurisdiction as far as Wellington Street is concerned. In terms of the highways, it is the jurisdiction of the Province of Ontario. And the federal government has jurisdiction. What happened was a series of events that led to a situation being out of control, a situation where local authorities — and that includes the provincial authorities — were simply incapable of responding effectively. There will be time in the processes set out in this act to look more comprehensively at what could have been done differently, how the police might have acted differently, how the province might have acted differently and how the federal government might have acted differently. But three weeks ago, the federal government and the Parliament of Canada did not have the tools to assist local police to get the job done. The Emergencies Act provided tools that no level of government would have otherwise been able to use, whether broadening the requirements of reporting to FINTRAC vis-à-vis the funding or providing other tools like directing tow truck operators to clear the streets — measures which were not invoked by any other level of government. Yet the result of this was to keep this city at siege.

• (1040)

As I've tried to explain, the federal government was in regular consultation all the way through the beginnings of this protest and tried to do its best to support and did, in fact, provide support through the RCMP and other local police. Unfortunately, it reached a situation that had become simply impossible for local authorities, using the tools that they had at their disposal or that were provided at their disposal by their provincial governments, to manage the situation. That's why the government acted. It wasn't doing nothing; it was providing ongoing support. It was an ongoing dialogue in all of the relevant instances. But it

reached a point where it affected the government as a whole, and it is the role of the federal government to step in under those circumstances.

Senator Marshall: It wasn't the tools that I was concerned about with regards to having the police come in and provide assistance. What I'm focused on is the intelligence. The convoy started around January 20 or January 23. Why didn't the government know that there were threats then? If there are threats, why didn't they know then? Why did it take until the middle of February to know that there were threats serious enough that they have to invoke the Emergencies Act? That is the question I would like to have answered.

Since it took them so long to figure it out, how much confidence can we have in regard to them invoking the act and also deciding when it should come to an end? Those are the concerns that I have. Could you address that issue with regard to the intelligence, the assessment of the threat and why the government appeared to be so late in assessing this monumental threat or numerous threats that they're talking about?

Senator Gold: That is an assumption. With respect to Senator Marshall, that is not correct. It is not correct to assume the government was not aware of the threats or made aware of the threats, nor is it correct to assume that the government didn't share its concerns about the threats. It's equally clear — as we all know and as I stated in response to an earlier question — that I cannot and the government cannot and should not share the intelligence it may have received that helped inform their decision. That goes without saying.

Again, all of the circumstances, all of the successes, failures or actions taken that led us to this unfortunate place will and must be reviewed, and they will be reviewed under the terms of the act as is appropriate in a democratic country such as Canada.

Hon. Frances Lankin: Honourable senators, my question is for the Government Representative. I appreciated your speech, thank you very much, and I appreciate the questions that have been raised here.

In their questions, Senator Patterson and Senator Batters both touched on the issue of the review committee. I've read the documents and I thought I completely understood them. Between the questions and the answers, I might have some confusion now. My first question is to ask you to be very clear about the scope and powers of the parliamentary committee versus the inquiry that will be held within 350 days.

Senator Gold: Thank you for your question. The parliamentary review committee has a general review function and reporting. It also has what I would call an oversight function because it has the ability to consider, at the request of either senators or members of the House, the revocation of regulations or the amendment of regulations. It has both a review and a reporting function, as I tried to set out in my speech. I hope that answers your question.

Senator Lankin: You didn't touch on the inquiry, but that's fine. As I understood the parliamentary committee, part of its role is more akin to oversight than review. I would point out that in the context of Canada, not other countries, it is quite

extraordinary that there is a role of immediate oversight of sensitive information — not necessarily classified. I imagine that to be one, as actions continue and as we hear reporting of things that have happened or that powers — more to the point under this act — are reviewed and determined by that committee to be necessary or to be an overreach. For example, if there was an allegation of a Charter violation, there is an oversight function.

It occurs to me that this is extraordinarily important. We are a week or more into the application of the declaration of the emergency and we do not have a committee in place and do not have names. I understand the government House leader in the other place is working on that and is responsible. I thought it would have been up and running by now, but at the very least, when we come to our vote tomorrow or Thursday, whenever that takes place, there should be an announcement made so that the parliamentary committee can begin immediately. If this is an emergency and if this committee is to oversee that the measures are being applied appropriately and not in contradiction of the Charter, then that committee should be up and running. Can you please tell us when to expect that?

Senator Gold: This is an important question dealing with an important democratic instrument. My understanding is that the constitution of the committee will require a motion in both houses of Parliament, as is the case for the standing up of special joint committees.

I am regularly in touch with my counterpart. Obviously, I'm not going to share those discussions, but my understanding is that my counterpart Minister Holland is in discussions with his counterparts in the House vis-à-vis the composition and process for this. It was only last night that the House voted to confirm, and I'm not yet aware that an understanding has been reached in a minority House between all the parties in the House as to how their representation would be constituted.

I have shared with this chamber the government's position vis-à-vis the Senate, at least in terms of who should have at least one seat, but the discussions are ongoing. I, like you and the government, want to get this up and running as quickly as possible. It's an important institution to ensure democratic accountability. As soon as I know more, I will report it.

[Translation]

Hon. Claude Carignan: Leader, I have many questions for you.

The act is pretty clear when it states, and I quote:

For the purposes of this Act, a national emergency is an urgent and critical situation of a temporary nature that

(a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it . . . and that cannot be effectively dealt with under any other law of Canada.

I'm trying to understand how you can claim that the municipal, provincial and Canadian laws currently in place were insufficient to arrest people on Wellington Street for mischief or possession

of weapons. I don't have a list of all of the charges that were laid or the tickets that were issued for disturbing the peace, but law enforcement officers are obligated to respond when such acts are being committed, and they can easily do so under the existing legislation. I'm therefore having a hard time understanding why the protesters could not have been forced to leave and the vehicles on Wellington Street could not have been towed under federal, provincial or municipal laws.

• (1050)

Senator Gold: Thank you for the question. This is not just about whether existing measures could have been effectively deployed to deal with the crisis in Ottawa. Even though the City of Ottawa declared a state of emergency and the Province of Ontario then followed suit, the fact is that the police were unable to manage the situation on the ground, even with reinforcements. The measures that were taken after the state of emergency was declared — those regarding funding and the reporting of financial information, the ability to designate secure areas and to force towing companies to do the work they did not want to do, since laws don't exist for that — were necessary because the municipal, provincial and police administrations were unable to manage the situation effectively, regardless of all the powers they theoretically have. The criteria of the act were met, and that is why the Government of Canada deemed it was appropriate to invoke the act and declare a state of emergency.

Senator Carignan: I am surprised at your response, where you say that people were incapable. I saw that the Ambassador Bridge was open a few days before the emergency measures were adopted, under similar conditions, with truckers and people blockading. The difference there was that the U.S. President called asking that the bridge be opened. Maybe there should have been a call to get the entrance to the U.S. Embassy opened. What is the difference between the powers or solutions that the police had for the Ambassador Bridge and those they could not use on Wellington Street?

Senator Gold: There are several aspects to my response. First, as I said in my text and in responding to other questions, there were powers that neither the Government of Ontario nor the Government of Canada had to be able to remove and move the trucks involved in the blockades in order to reopen the bridge. That required support from tow truck operators from Michigan.

Just as importantly, it is true that the Government of Ontario took action on this issue. I do not want to speculate, as this was the topic of discussion for quite some time, on the possibility that the government would proclaim the Emergencies Act. I do not want to speculate on the possible repercussions for the people who were on the Ambassador Bridge. It is undeniable that the Province of Ontario did not do much to provide support to the local police forces to ensure that they could take action. Tools were deployed, we saw that here in Ottawa, that did not exist in provincial legislation nor in municipal bylaws, tools that were necessary for ending this blockade and illegal occupation here in Ottawa.

[Senator Carignan]

[English]

Hon. David Richards: Thank you for your talk, Senator Gold. Also, thanks to the police. I have seven police officers in my family, and I have three in my caucus whom I respect a lot.

It's funny that the support for this legislation comes in good part from a party whose members, up until two years ago, wanted to defund the police.

However, my question is about your statement that the Indigenous peoples wouldn't be subject to this legislation. Are these always to be considered illegitimate protests, and can an Indigenous protest become violent? And if not, what would constitute a violent protest if the attempted derailing of trains and burning of police cars are never considered so? I think that reaches a level of violence. I would like you to comment on this, Senator Gold, please.

Senator Gold: Thank you for your question. I'll go right to the question, not the comment about who supported it.

All I said in my speech, senator, was that people may be preoccupied and worried that future uses of the Emergencies Act may target other groups, and I mentioned Indigenous protests or environmental activists. The fact remains that if violent actions threatening the security of Canada cannot be dealt with effectively by existing laws or institutions, then and only then would at least one aspect of the underlying rationales for the Emergencies Act be invoked. If, in fact, a situation arose, regardless of who was committing the violent acts, and it met the criteria of the act — again, not simply that it was unlawful. We have laws against crime. Not simply that it was violent. We have laws against violent crimes. But that such actions that cannot be effectively addressed by the laws in the jurisdictions that apply — then and only then would a government have the right to consider whether or not the Emergencies Act would be applied and if it has reasonable grounds, as the government believes it has in this case, would an emergency be proclaimed. It would then trigger the same kind of democratic process that we're engaged in right now.

• (1100)

Senator Richards: This is a supplementary question.

I'll preface this by saying that, a few days ago, one of our reporters waded into the crowd on Wellington Street. I'm glad the crowd was taken care of by the police; I'm not saying that I want them to continue this forever. However, those at the network were appalled when he was called a "Nazi." They said someone being called a "Nazi," maligning a person's character, was appalling and horrendous. And I agree that it is appalling and horrendous to call people "bigots," "racists" and "misogynists." It's like calling a person a "demon" in Salem in 1640: There is no coming back from that.

I want to ask this: Are they right in saying the word "Nazi," "misogynist" and "odious and sickening Appalachians" when dealing with such whimsy to fellow Canadians? And does the easy stigmatization of so many people show a lack of moral fibre and a moral weakness in our government?

Senator Gold: It is unacceptable to tar an individual or a person with a hurtful racial epithet. On that, we would all agree. The fact remains that evidence of hateful symbols appeared and continue to appear, not only here in Ottawa but in other respects.

It is not the position of the government that all protesters are Nazis or White supremacists; that has never been the position of the government. It is the position of the government, however, that this convoy, however well intentioned it might be and however well intentioned many of the participants might have been, was nonetheless hijacked by extremist elements. It is on the public record — White extremist groups funding it in Canada and elsewhere; the heart of organizing and mobilizing the convoys from the beginning. Those are facts we cannot escape. They are uncomfortable facts.

It is not to tar those who came with those attitudes, but it is nonetheless to affirm that once the act was proclaimed, once a state of emergency was declared and once activities were publicized as being unacceptable, each and every person, whatever their particular views, should have left and obeyed the law. It is regrettable that it took the invocation of the Emergencies Act and the strong presence of police officers from across the country to force that to happen.

[Translation]

Hon. Pierre-Hugues Boisvenu: Would Senator Gold take a question?

Senator Gold: Of course.

Senator Boisvenu: Senator Gold, as you know, the Emergencies Act is the successor of the War Measures Act, which was only used three times in the history of our country. I was not yet born the first two times it was invoked, which was during the First and Second World Wars; however, on the third occasion, I experienced first-hand the October crisis of 1970. I was the president of a university student association. Senators will recall that, at the time, the Front de libération du Québec had conducted operations since the 1960s to destabilize the Quebec government. It organized riots, planted bombs in mailboxes, for example, and was involved in kidnappings, in particular that of a diplomat, James Cross, and the deputy premier of Quebec, Mr. Laporte, who was murdered.

Despite these deplorable actions, many historians believe that Pierre Elliott Trudeau was wrong to deploy the Canadian army in Quebec. Police could have easily dealt with these odious crimes. That is undoubtedly the reason why several years later Prime Minister Brian Mulroney changed the War Measures Act to make it more rigorous and to ensure it would remain useful in exceptional circumstances, given consultation with the provinces and the agreement of parliamentarians.

These two criteria have not been met under the existing legislation. The majority of the provinces did not want the act being applied in their province. In the other place, two opposition parties opposed this motion. Hence, there was not unanimous agreement. I think the situation in the country right now is vastly different than the situation in the 1970s, and the Liberal government's abuse of power in invoking the Emergencies Act must be followed up with justification.

My questions are very simple. What current threat justifies the invocation of the Emergencies Act? Did the RCMP have information on the weapons that may have gotten into the hands of protesters? How many protesters were members of terrorist groups?

Senator Gold: Thank you for the question, senator. I was in Montreal at the time. I was 20 years old and saw the army in the streets. I was with some friends who were arrested. As you pointed out, the Emergencies Act has nothing to do with the War Measures Act. The actions taken here in Ottawa also have nothing to do with the old legislation.

I tried to explain why the government determined that there were reasonable grounds to believe that declaring a public order emergency under the act was necessary.

The only thing I want to add is that, as I've said many times, I'm not in a position to share information received from our law enforcement agencies or intelligence services, nor can I share any advice they may have provided to the government. However, there are so many things that are already public and that demonstrate that there were indeed people, not just those on the fringe of what happened, but behind what happened, who are prepared to use violence and prepared to encourage others to come to Ottawa to destabilize or even overthrow our democratically elected government.

We know there were people there who belong to racist groups and extremist groups, and this information is publicly available. So, once more, according to public information that everyone is aware of, the government had enough evidence to warrant using the act.

Senator Boisvenu: Thank you, Senator Gold. You used a phrase that in my opinion runs contrary to the act: "This legislation was necessary." You should have instead said, "This legislation was obligatory," because over the last 24 days, no criminal act has been committed. I have not seen any criminal charges laid in the last 24 days. Also, what actions has the government taken in those 24 days to clear out the occupants? What physical or legal measures has it taken, apart from thinking about it and choosing to do nothing?

• (1110)

Senator Gold: Perhaps I misunderstood the question, but I'll try to answer nonetheless. First, in a democratic country like Canada, neither the government nor Parliament directs the police. Every government must act within its own jurisdiction.

By the way, because you mentioned something earlier, I want to say that the legislation is very clear. It is not necessary for every premier or every province to agree. The text is very clear: There is a duty to consult, and if the government decides that there's a crisis that's not limited to one province, then it's simply required to hold a consultation, and that is what happened. Only if an emergency that needs to be dealt with exceeds the normal, ordinary powers of the provinces and is limited to one province, and only in this circumstance, does the legislation require consent from the government concerned.

For three weeks, the government stayed within its jurisdiction and respected the jurisdiction of the police, which it does not direct. Municipal and provincial governments are separate and have their own jurisdictions. It's wrong to say that the federal government did nothing. On the contrary, it shared information, provided its opinion, and consulted with other government bodies. I would add that, unfortunately, there were several meetings that the Premier of Ontario did not attend. It is not true that the government did nothing.

Respectfully, colleagues, the real issue is not necessarily what the government did in the beginning, during the second week or even before proclaiming the act. The government did what it could in its area of jurisdiction with the tools available to the Government of Canada, as opposed to the tools and other powers at the provincial or municipal levels.

[English]

Hon. Robert Black: Will Senator Gold take another question?

Senator Gold: Of course.

Senator Black: My question is related to agriculture, which I know is no surprise to you or my colleagues here in the chamber. The question refers to the use of the term "critical infrastructure" under paragraph 2(1)(b) related to prohibition and public assembly, which does not confer upon the Minister of Public Safety the power to designate additional places, similar to the designation of protected places per 6(f) of the regulation.

The Emergency Measures Regulations provide a definition of critical infrastructure, which is not reflective of the importance of agriculture supply chains here in Canada and to the world. For example, the definition does not include agricultural processing and distribution facilities, like the food terminal in Toronto or processing plants across the country, most of which are located on private property and not on federal or provincial land. This means that the regulation which prohibits assemblies that interfere with the functioning of critical infrastructure does not include many of these agricultural supply chain vulnerabilities. Further, it means that the Emergency Economic Measures Order does not cover financial activities designated to disrupt agricultural processing and distribution facilities. By contrast other essential services, like ports and hospitals, currently fall within the scope of the order.

Senator Gold, why is the agricultural sector not included as critical infrastructure? Is this an oversight? And while we have been told agriculture supply chains are included under section 2, the actual buildings used for the food processing and distribution would not be. Would the government support efforts by the Senate to amend the Emergency Measures Regulations pursuant to subsection 61(3) of the Emergencies Act related to this necessary change?

Senator Gold: Thank you for the question, senator. The Government of Canada knows how critical the agricultural sector is to the economic and social well-being of Canada. Indeed, as I think the government has expressed on other occasions and in connection with this, there is no question the measures that are being taken under the Emergencies Act, notably the securing of our borders and trade routes, have enormous significance and

benefit to the agricultural sectors, whether it is livestock out West or a huge panoply of products that go across at Windsor and elsewhere in the country.

• (1120)

As to your question, it is true that agricultural facilities are not defined as critical infrastructure, and the regulations do not authorize that to be added to it sort of pro forma. You are also right, however, to point out that there is a mechanism where, were there sufficient senators so inclined to refer that question to the committee to which I referred, it is possible to amend the regulations.

The other point I might add is that provisions of the regulations may, in fact, potentially apply were it to be the case that an unlawful protest and activity have the effect of shutting down a facility or impeding access to a facility, because the prohibitions against such acts are not limited to those that affect critical infrastructure. That's under section 2(1).

So it is possible that activities outside of a facility could be covered, and it would open to the Senate to amend the regulations to so designate a facility or facilities as critical infrastructure.

Finally, it is still the case that there is the ability under the current regulations to designate additional protected places.

There are tools in the act that could be used, potentially, without change or, if amended, to address the situation you have raised. Thank you for the question.

Senator Black: Thank you, Senator Gold. The government has chosen to prohibit certain assemblies around places that administer COVID-19 vaccinations, which means effectively all pharmacies across this country. At the very least, government or Parliament can take small but significant steps to offer similar protections to key pieces of critical agriculture infrastructure.

Could you please convey to the minister the section 2 critical infrastructure definition would need to be updated by the Senate or by cabinet, as this is a fundamentally different section than the ability of the minister to designate certain areas as protected places under section 6?

Senator Gold: I would be happy to communicate that. Thank you.

Hon. Mary Coyle: Would the government representative take a question?

Senator Gold: With pleasure.

Senator Coyle: Senator Gold, thank you very much for your clear speech kicking off this serious and historic debate. And thank you to my colleagues from all sides in this chamber for your important questions.

I was disappointed we were prevented from having a well-moderated Committee of the Whole with the ministers associated with the Emergencies Act as part of today's sitting. I found the briefing last evening and questions asked by my

colleagues to be very helpful as we individually and collectively work to understand the situation leading to the Emergencies Act being proclaimed and the implications of that.

The following is the question I had wanted to ask the ministers last night: You have said the government was reluctant to invoke the Emergencies Act, and it plans to end it as soon as possible. You mentioned the government is in regular, sometimes hourly, communication with law enforcement and other sources of intelligence about the situation of continued risks and threats.

Now, I would like to look at a future scenario. Let's say, based on satisfying the reasonable grounds that have been discussed, the Emergencies Act is revoked sometime between now and the 30-day mark. We know there is a highly sophisticated, well-connected, well-resourced organization endowed with highly effective communications capabilities behind the recent occupations and blockades. That is not in question. But it worries me. What if they were to regroup quickly after the revocation of the act and act again in illegal ways to cause further serious harms of a similar or worse nature and/or magnitude to the ones caused recently? Are there new non-Emergencies Act measures and tools being developed now, or is there a plan to quickly develop those by the government and its counterparts to fill the gaps that caused us to have to use the Emergencies Act now for this first time, or would we be in a position of having to proclaim the Emergencies Act as the only response again? Thank you.

Senator Gold: Thank you. That is an important question. You are not the only one preoccupied with the possibility that the calm that we now see may be the calm before other events, whether here in this city, as some have expressed an intention to return, or at our border crossings, as some have expressed as well.

There is evidence that, in fact, the provinces and police forces across the country have learned some lessons from what was allowed to happen here in Ottawa. That's why there is concern about protests in other cities. Winnipeg has been occupied to some considerable degree. It has been off the national radar, but has been going on for some time. That is why, for example, the initial truck convoys to Quebec City were managed better than the convoys when they arrived here. So there are lessons that have been learned and will be properly studied and evaluated in the context of the inquiry that is contemplated at the end.

As I mentioned in my speech, the federal government is already considering and planning to introduce legislation to expand the scope of FINTRAC so that it covers the fundraising platforms. The world has changed so dramatically, and social media has had a dramatic impact — not only on how it shapes people's attitudes and inclines and mobilizes them, but in terms of how money gets moved around. Add to that crypto-currency, which we have seen very much at play here. One of the lessons the government has learned is that we need something more durable and enduring that doesn't require the invocation of these measures.

The details escape me, but I know that there are measures being considered by the Province of Ontario to specify greater powers or the use of existing powers in a more targeted way so that were the situation to arise, they would be able to do their part to resist the return of blockades and the like.

At the end of the day, one hopes that the lessons learned — ordinary measures that all legislatures and Parliament should be thinking about — will be sufficient. But if not, then the act remains there in those extraordinary, last-resort circumstances.

The other point I should have made earlier, and excuse me for the order of my answer, is even when the Emergencies Act is revoked — and we all hope it is sooner rather than later — the investigations and the prosecutions that are underway will continue. Just because the act ceases to be in force — at some time soon, one hopes — doesn't mean that the illegal acts that were taken, while they were illegal, are forgiven.

One also hopes that the measures taken — and sometimes it is under the Criminal Code — the Emergencies Act supplements the existing jurisdictional framework.

• (1130)

The charges that have been laid, the measures taken to deal with the freezing of bank accounts and so on, one hopes will also provide some disincentive for those inclined to want to continue the project of occupying, blockading and destabilizing our country.

[Translation]

Hon. Renée Dupuis: Will Senator Gold take another question?

Senator Gold: Yes.

Senator Dupuis: Senator Gold, section 19 of the Emergencies Act gives the government considerable discretionary power, the power to make such orders or regulations as it "... believes, on reasonable grounds, are necessary" The orders or regulations can be used to prohibit any public assembly, and so on. A little further on in subsection 19(3) and paragraph 19(3)(b), it reads, and I quote:

The power under subsection (1) to make orders and regulations, and any powers, duties or functions conferred or imposed by or pursuant to any such order or regulation, shall be exercised or performed ...

(b) with the view of achieving, to the extent possible, concerted action with each province with respect to which the power, duty or function is exercised or performed.

Can you confirm that the review by a parliamentary committee provided for under section 62 — a joint committee of the House of Commons and the Senate — would deal with section 19 and paragraph 19(3)(b)?

In other words, can you confirm that a discretionary power will be exercised and that the measures will have to be taken with the view of achieving, to the extent possible, concerted action with each province concerned? Can you confirm that this particular aspect of the act will be part of the parliamentary review committee's mandate?

Senator Gold: Thank you for this important question, senator.

As you know from reading the Emergencies Act, the legislation provides very little detail in terms of the committee's mandate or agenda, apart from what is written.

As is done with all Senate committees, I think this will be sorted out as we go along, as long as it is framed by the relevant sections in the act, and it is the committee itself that will determine the topics.

I don't see anything in the statutory language that would prohibit or rule out a review of that aspect of the act.

I can't give a clearer answer than that, because there is no specific provision that would prohibit it, apart from what is already written in the act. In my view, if there is no statutory language specifying that it's outside the scope of this committee, I think the committee will be able to decide exactly what issues and topics will be reviewed.

Senator Dupuis: Senator Gold, to follow up on my first question on section 19, which states that the orders and regulations and powers, duties or functions must be exercised or performed with the view of achieving, to the extent possible, concerted action with each province, can you confirm that with respect to the inquiry — I am no longer referring to the parliamentary review committee — that must be held within 60 days after the expiration or revocation of the declaration of emergency, the Governor-in-Council is required to cause an inquiry to be held, not only into the circumstances, but also into "... the measures taken for dealing with the emergency."

Can you confirm that in this part of subsection 63(1), "... the measures taken for dealing with the emergency" refer to a Governor-in-Council decision, which means it is the government that must request the inquiry, not only into the circumstances, but also into the measures taken? Would this also cover the concerted action to the extent possible with the provinces?

Senator Gold: Once again, thank you for the question, senator. I'll respond the same way I did with the first question.

It's absolutely clear that the idea and objective, not only of this inquiry, but also of the parliamentary committee that will be established, is to ensure that we, as parliamentarians, can take part in each stage of the process to fulfill our democratic duty, which is to analyze, report and make amendments based on the circumstances outlined in the act.

Simply put, there's no reason and nothing in the act itself that would limit the scope of this inquiry.

I would also add that, as you know, the consultation with the provinces must happen before the Emergencies Act can be invoked.

For all of these reasons, dear colleague, although I can't give you a more specific answer about the regulations in the provinces concerned, there is no reason to think that this subject would be outside the scope of this inquiry.

I hope that answers your question.

[English]

Hon. Jim Quinn: Honourable senators, my question is for Senator Gold. I wanted to reach back to Senator Patterson's and Senator Marshall's questions with respect to the role of the committee and the types of information that would be made available. We know that there's ongoing, hourly contact with various officials to see what the current situation is. So that type of risk assessment is introducing new information on an ongoing basis. Much of that information, as you've indicated, would probably be classified as confidential. Yet my understanding of the committee's work would be that the Statutory Instruments Regulations will apply, which means that section 15 in that particular piece of paper will list a very confidential type of information.

My question really comes down to this. This committee is important for all parliamentarians to have confidence in the work that they're undertaking. But wouldn't the confidence of parliamentarians be enhanced knowing that they have access to confidential information that will better inform their work and, in turn, better inform parliamentarians?

Senator Gold: Thank you for your question. There are different categories of information with different levels of protection and different levels of access. As you note in the text of the act, every member of the parliamentary review committee would be required to take an oath of secrecy as set out in the schedule. But there is nothing in the act that requires members to have been given a security clearance, such as, for example, members in this chamber who sit on the National Security and Intelligence Committee of Parliamentarians, or NSICOP, have been required to go through and which gives them access on an as-needed basis — not at large; even that is constrained — to information that is otherwise not made public to parliamentarians under any other circumstances.

So, of course, it is important — to return to your question, Senator Quinn — in order for the parliamentary review committee to do the job we expect it to do, the job that the drafters of the bill expect it to do, that the committee needs to and will have access to all relevant information that is made available. In this case, and you alluded to it, there will be some measures — not intelligence information I hasten to add, but certain regulations that may be promulgated. There are none that exist now and there are none that are contemplated, as I said. But were such regulations to be promulgated that by the operation of the Statutory Instruments Act could not be for reasons that it contains confidential information published in the *Canada Gazette* and therefore available to the public, then, yes, that committee would have access in private to that information to help it inform its decision. Again, I hope that answers your question.

• (1140)

Senator Quinn: It's very difficult, having worked in emergency situations in another life, to not be able to have access to all that vital information to help the decision-making process. Nevertheless, earlier we talked about the possible post-mortem — I'm not sure if that's the right language. Does this committee, as I understand it, have a specific life? When the

emergency ends, does it have a week or two or will it be extended or have a life that will allow it to be part of any post-mortem that may take place?

Senator Gold: Again, thank you for your question.

The provisions of the act set out the mandate, roles and responsibilities of the parliamentary review committee, and it certainly has a role that would survive a motion to revoke the Emergencies Act. However, it appears to be separate and distinct from the inquiry that is contemplated under section 63, which calls for the inquiry within 60 days after the expiration or revocation of the declaration and which also contemplates that the report must be deposited in both houses of Parliament within 365 days. It does not mention this is an inquiry or the task of this review committee.

We have to understand that there are two mechanisms. The parliamentary review committee — as I mentioned earlier and was underlined by our colleague Senator Lankin — largely has a reporting function to keep us apprised if this goes on longer. However, it also has an oversight function.

The inquiry is separate. The inquiry is where we will do an after-the-fact assessment of everything — what led into it. The inquiry is where we will put under the microscope, I expect, the actions of all levels of governments — and police instances, frankly — and learn more, I hope, about what lay at the origins and the heart of this movement that had metastasized, as I said, into an explosion of illegal activities here and elsewhere in the country.

Hon. Scott Tannas: Senator Gold, first of all, let me thank you also for hastily arranging the meeting we had last night with ministers — the informal meeting. It was helpful, and an issue was mentioned. Minister Lametti or Minister Mendicino — I can't remember which — spoke to the issue of the foundation of the act and its continuance through an emergency. One of those ministers, whichever it was, said that the emergency must continue to exist in order to hold everything up. It is incumbent on the government to determine whether or not the emergency continues to exist. I suspect that's why we keep hearing this word and have hourly contact with all kinds of people. Those are the words that give us assurance that the emergency still exists. Otherwise, the government is in a position where they must find that the emergency is over and therefore the act must be withdrawn.

Nobody's been killed in this, thank God. In the entire emergency — all of the activities that have gone on — not a soul has been killed. I've actually not heard of anybody in the hospital at this stage. A lady was knocked over by a horse and may or may not have been injured and may or may not have gone to the hospital. It's incredible — remarkable — and is a testimony to the civility of Canadians, even when they're hot under the collar, and the professionalism of the police. There are no blockades today. What emergency exists today that convinces the government hour by hour that this has to continue? Never mind the invocation of it. Many of us can understand that. I think there's a slim majority of Canadians that supported it, according to polls.

However, what emergency exists today other than some secret emergency that you can't tell anybody about and our oversight committee won't get to know about either?

Senator Gold: First of all, thank you for acknowledging the efforts that we made to make ministers available to senators. I appreciate that, and I hope it was useful to senators.

The Emergencies Act is valid constitutionally under the "peace, order and good government" clause of the Constitution and in the leading case — and there have been many subsequent — that said that if, and only if, there is an emergency affecting the nation as a whole could temporary measures be authorized. That is at the heart of the foundation for this act, as you correctly point out.

I'm not going to be legalistic with you and with this chamber. I have been tempted to say that we're in a section 58 debate to confirm — thumbs up or thumbs down — whether on February 14 the government had reasonable grounds to believe there was an emergency. I've made that case, and I'm not going to belabour the point.

I do understand that seven days into it, people's minds are asking different questions. Nor, colleagues, have I or will I insist on, "Hey, that's the wrong question, there's a section 59 process. If you think it's over, line up nine other senators, file it with the Speaker and we're off and running on that." Indeed, I believe that was attempted in the House immediately upon the vote. I'm not saying that. I understand, we're all Canadians. We all want this to end.

One more comment, if I may, with respect. I'm not standing up here — and I haven't stood up here and the government hasn't stood up here — and saying, "Just trust us, we know stuff you don't know." That is precisely not what I said. This is a mature chamber. Yes, we have different points of view. I respect people's right to believe that the most important thing in this country is to bring the government down. You are entitled to your opinion, and I've always tried to answer those questions respectfully, even if at times I bristle.

This is an important debate in Parliament. We are mature, informed, sophisticated people. If you interpret me saying — listen, there are certain categories of information that have never been made public and can never be made public independent of the Emergencies Act. If that is considered to be an inappropriate statement, I stand by it nonetheless. I have confidence in all of us, apart from whatever our differences are, to understand some of the foundations of a free and democratic society and what it requires to remain free and democratic.

To your question, the government continues to believe, based upon the advice — and these expressions are not secret but public — from our police, law enforcement and the chiefs of police, and supported by many academic commentators as well, that the job is not yet done. There is still a concern that is still needed to ensure that there is not a swift and dangerous return to the situation, whether it's blockades of bridges or ports of entry or occupations of a city. It is also a matter of public record that those who are still staying not that far from here in Ottawa and elsewhere have expressed a desire, if not indeed an intention, to continue the illegal activities if they're able to.

So there is public evidence that the risk is not over.

The government re-evaluates the situation on an ongoing basis. As I and other government ministers have said, once the criteria of the act are no longer met, the emergency order will be revoked.

• (1150)

We still see police enforcing protection around the Parliamentary Precinct to make sure that the trucks do not return and to consolidate the success that they had over the weekend. They still believe they need the tools to keep minors away and keep them out of harm's way. They still need the tools to compel the towing services. They still need the economic measures that are designed to limit financial support for these illegal blockades. They continue to play an important role.

As I mentioned just a moment ago, it is a matter of public record that many of those engaged in the blockade have assembled in locations just down the highway and are promising to return. There is an ongoing need to protect our border crossings and other critical infrastructure. This is not secret information. There are letters from the Canadian Association of Chiefs of Police and the Canadian Police Association. These are clearly short-term measures.

In my response to an earlier question from Senator Coyle and others, there is no question that all levels of government are re-evaluating their responses on the ground. We hope the police in Ottawa reconsider how they responded. Provincial and federal governments are reconsidering, and considering additional legislation in order to better manage the situation.

For the moment, it is the view of the government and the view of the police services, with whom they are in constant contact, that these emergency measures remain necessary. But when the police and security professionals advise otherwise, the government will be more than happy to see this come to an end.

Senator Tannas: I want to ask a question, and perhaps get an undertaking from you, leader, with respect to the review committee. As you mentioned, it's legally required. Many of us in this chamber know that committees that are legally required sometimes don't happen. We have the Special Joint Committee on Medical Assistance in Dying that hasn't been reformed for many months.

You mentioned that your counterpart in the House of Commons has been in discussions. I don't think we've been in discussions. You haven't been in discussions — at least I'm not aware of it. You have some work to do. I presume that will happen immediately upon this decision if it is to carry on.

I wonder if, on every sitting day that the joint committee is not constituted, you would commit to finding the ability to rise in your place and explain why — every day after this vote — until such time as it is constituted.

Senator Gold: Thank you for your question.

As I said earlier, honourable senator, I'm going to be brief, and we will all get a break in five minutes, which is needed.

It's important. This is an important committee. As I said, I am in regular discussions with the House leader to understand the government's thinking on this. I will undoubtedly require leave of the Senate, because our orders don't otherwise give me an opportunity to do that. I will certainly, if it's the will of the Senate — and with the consent of the Senate — be happy to provide a report. I'm happy to report on the state of affairs. As I said, that will require consent, because once I sit down I'm done.

Hon. Salma Ataullahjan: Senator Gold, I worry about the precedent set by the invocation of the Emergencies Act. As you mentioned earlier, it is unknown what future governments might do in light of a perceived national emergency.

How will the current security thresholds be updated and clarified to ensure the reliable use of the Emergencies Act by future governments?

Senator Gold: Thank you for your question. That's an important question. I know it is a preoccupation of many, regardless of their particular cause or ideological perspective.

This act was passed in 1988. It was passed after the Charter was proclaimed and was passed, as many have mentioned — indeed, as I did in my speech — in response to the invocation of the War Measures Act and some of the abuses that took place. These abuses took place not only in my province, but indeed in Vancouver and elsewhere, when journalists and others were rounded up and their civil liberties completely suspended.

I think Canadians should be proud of the work that the Mulroney government did in 1988 to put into place a measure that is much more focused, much more temporary, much more limited, that does not purport to oust the application of the Charter and that provides the kind of democratic accountability that I've tried to outline.

Can the act be amended and improved? Of course. Honourable senators who were here when we debated Bill C-59, the National Defence Act — which I had the privilege of sponsoring — know that there were measures put in place in the 1970s and 1980s that need to be updated. There are many reasons to update measures, if for no other reason than technological and societal changes, and changes in the world that needed to be addressed. We did that with Bill C-59. We may very well need to do that with the Emergencies Act.

Again, at the risk of sounding legalistic, today we're here to decide whether to confirm the government's decision to invoke the act. There will be time, whether it is in the inquiry or anything that we in the Senate may choose to initiate, to take a closer look at the text of the Emergencies Act to see how it might be improved upon.

Senator Ataullahjan: Senator Gold, in your speech you said that this activity was planned for weeks. In response to Senator Marshall, you said it's not correct to assume that the government was not aware of the threats.

If the government was aware of the threats, and Canadians look to their government to keep them safe, why was nothing done once the protesters were on the streets? Was there any action taken to defuse the situation? Were there any conversations taking place?

Senator Gold: I understand your question. I want to be clear about what I said and didn't say. Again, Hansard is the test of that.

I didn't say to Senator Marshall that nothing was done. Whatever I said to Senator Marshall, let me respond to you. The government was aware, and security services undoubtedly were aware, of the threats potentially posed by the convoy once it was mobilized and on the road. The federal government at that point was in communication with provincial and municipal counterparts, as well as law enforcement counterparts. The reason they were in contact was to share information.

When the Emergencies Act was enacted, it gave extra powers to law enforcement and allowed for the rapid coordination of police forces — municipal, provincial, RCMP, to say nothing of provincial police forces from other jurisdictions. That allowed them to mobilize and work together without having to swear in individual officers. These are tools with which the federal government could take action under the Emergencies Act, along with the measures to define and cordon off areas; without the act, it did not have the jurisdiction to do so.

• (1200)

There would be a hue and cry not only in this place but across the country if the federal government, hearing that there were some rather extreme folks trying to encourage and mobilize and fund a convoy setting out to block bridges, ports or occupy a city, says, "Oh, my God, we know these things. So we're going to take over municipal policing in Ottawa. We're going to take over the jurisdiction of the Province of Ontario that has jurisdiction over its highways," et cetera. That's inconceivable in a federal country like Canada.

With all respect, it is the wrong question to ask, "Why didn't the government act?" It had certain limited powers. It had a very strong and important responsibility, and it discharged that responsibility by working with other levels of government and police and law enforcement, which must remain independent from government direction. It is sad and regrettable that despite all of that, we arrived at a situation where these measures were necessary.

The Hon. the Speaker pro tempore: Honourable senators, it is now noon. Pursuant to the order of Monday, February 21, 2022, I am required to leave the chair for a pause in the sitting.

(The sitting of the Senate was suspended.)

(The sitting of the Senate was resumed.)

• (1300)

MOTION TO CONFIRM THE DECLARATION OF A PUBLIC ORDER EMERGENCY—DEBATE

On the Order:

Resuming debate on the motion of the Honourable Senator Gold, P.C., seconded by the Honourable Senator LaBoucane-Benson:

That, pursuant to section 58 of the *Emergencies Act*, the Senate confirm the declaration of a public order emergency proclaimed on February 14, 2022.

Hon. Pamela Wallin: Honourable senators, my question is for the government leader, Senator Gold. This morning, you said that people who have concerns about what has happened to their bank accounts, be they frozen or that there is some other impact on their economic or financial life, could appeal to their bankers, to other organizations or even to the police. However, it is my understanding that this bill explicitly states that there is immunity from liability for financial institutions.

Hon. Marc Gold (Government Representative in the Senate): You're correct, it's in the regulations, senator. I think section 7 of regulation 2 provides an immunity to banks for civil actions taken in good faith. So that is correct. In order for the banks to do the job we need them to do — to review and report on activities — that is what was required.

However, it is still the case, and as the RCMP statement illustrates, there is close work between the RCMP and the financial institutions to work out appropriate processes to be fair to those whose accounts may have been frozen but who are no longer actively participating in illegal activity.

I think I mentioned in my remarks that if that turns out to be unsatisfactory, and there is no reason to assume that it will be, then there can be further steps that a customer might take to the Financial Consumer Agency of Canada.

Though it is true, senator, that section 7 of these temporary regulations provide this immunity, it is still the case that the courts are open to challenges based either on the constitutionality of the act, whether the regulations themselves were properly authorized by the act or for Charter challenges based upon breaches that allegedly infringe the Charter.

I think that is most the complete answer I can give you at this juncture.

Senator Wallin: The remedies you suggest assume you have resources, which is the problem if your resources are frozen or you don't have access to them.

The other concern I have is that banks, in an attempt to comply with this legislation — which is both extraordinary and not detailed yet because we have to learn from experience — will have to overreact in order to protect themselves so they are not seen to be exempting someone from this law or not taking tough

enough measures. We have seen in many other cases that people overcompensate when the law is unclear. What strategy do you have to combat that?

Senator Gold: Thank you for your question. I don't think there is any evidence or reason to believe that banks will overreact. The text of the law is relatively clear. The banks have an obligation to review, on an ongoing basis, the activities of their clients that may be implicated in these illegal activities. For at least a decade, they have been monitoring their accounts out of concern for whether there is money laundering or terrorist financing going on.

There is nothing in the act that appears to expose the banks to liability or prosecution that would lead them to overreact. On the contrary, banks make money because they have clients who have accounts. I think it's in the interest of both the banks and their clients to resolve these issues amicably so that the banks can continue to provide service to Canadians for which they have a right under the Bank Act, if they otherwise comply with the exegesis of the Bank Act and the regulations.

Hon. Diane F. Griffin: Honourable senators, I'm inquiring about youth.

In the emergency regulations, there is a requirement that children under the age of 18 are not to be present in an unlawful assembly area or to be within a 500-metre radius, which is a full half kilometre. Why is it a 500-metre radius — a whole half kilometre — in downtown Ottawa that catches kids simply going to the park? Why is it not just in the unlawful assembly area? The area itself is quite comprehensive, especially in the urban area.

Senator Gold: Honourable senator, it's a fair question and I'll answer it. Before I do, I'll remind senators that for three weeks, the residents of Ottawa with children were literally terrorized and afraid in so many cases to leave their homes. That is on the public record.

With regard to your question, I believe we would all agree that everything should be done to prevent harm to minor children, to keep them out of harm's way, especially under circumstances where, when these regulations were promulgated and the emergency proclaimed, there was a huge number of people, large numbers with children, present within the area that is now considered to be off limits.

Because the Emergencies Act was proclaimed for many reasons, one of which was to allow for a more coordinated, concentrated and planned use of police forces to, step by step, warn and ultimately take steps to clear the barricade, it is all the more important that minors not be either approached or certainly be placed in harm's way. It was thought appropriate, and the government thinks it remains appropriate, to create a sort of *cordon sanitaire* around and approaching the areas that are off limits to provide a clear message not to come to people otherwise tempted to come.

As one senator asked about earlier today, all of these measures provide some inconvenience to residents, just as it provides a measure of inconvenience for us to have to show our ID when we walk here. But it pales in comparison with the risks of the children were they to be allowed to approach an area on the other

side of the barrier, on the other side of mounted police, on the other side of police with tools that they have. So I think it's out of concern for the safety of the children that the measures were enunciated as you described.

Senator Griffin: Thank you, Senator Gold. My next question also relates to minors, but in this case it's what I would call mature minors. The older children who sometimes want to do things on their own whether their parents know it or not. Why would we be putting the penalty on the adult for the presence of a mature minor? Why is this not mirroring the Youth Criminal Justice Act where young people between the ages of 12 and 18 can be sentenced and receive penalties like adults? I'm sure we all know there were local young people involved in this. They weren't here with their parents in a truck or other vehicle from away. Thank you.

• (1310)

Senator Gold: Well, senator, the best answer I can provide is that facing an emergency of this kind, with all of the factors unknown, the law has to draw a line. It has to be a clear line. It has to be a line that leaves no interpretation to parents, children or youth, that they are or are not mature. You draw a line as we do in law so often. It's easy to say, "well, somebody falls on one side or the other."

What we saw in Ottawa, quite apart from some Ottawa youth who may have wanted to take part in what was going on, and I'm going to use words that are blunt; children were instrumentalized. They were used as instruments. I would go so far as to say that there were some, consciously or unconsciously, that put their children in positions where they were the equivalent of human shields in order to discourage or deter or slow down the police actions of which they had been warned, more than once.

For all these reasons, this was a reasonable response, however blunt, because the law is sometimes blunt and has to draw a line between ages. And mercifully, we hope, this won't last much longer.

Hon. Tony Loffreda: Senator Gold, my question is on strategy. In the initial planning stages, to what extent were our banks consulted? Have they shared concerns about public perception with respect to their independence?

Like law enforcement, I know many Canadians expect their financial institutions to be independent and free from government intervention. I do appreciate that these are emergency measures, that they are targeted and temporary, but they are unprecedented.

Senator Gold: Thank you for your question. Look, I have been advised that there were conversations and an engagement with some banks in the course of this, but I do not have the details, Senator Loffreda, so I don't want to state more than I know.

But only to say — of course I'm speaking to you as someone with as much experience in banking as most of us in the chamber, with very few exceptions — that the banks in this particular instance, although charged with an additional responsibility to review and share information, nonetheless have

the competency to do it and the desire to do it, to assist our efforts as a country, to make sure that illegal funds do not support illegal activities.

Senator Loffreda: Thank you for your response. We all agree that illegal funds must not support illegal activities.

My supplementary question was on the exit strategy which has been discussed in detail. Senator Gold, any further insights on new developments in the future on the exit strategy would obviously be welcome. I also very much welcome the following parliamentary review and inquiry on the matter. Thank you.

Senator Gold: Thank you for your question. I have nothing new to report. The ongoing conversations between government, law enforcement and the like continue. There remains an ongoing concern that we are not out of the woods yet, that there are stated plans still afoot to reoccupy and continue the illegal activities. Whether they will be realized or not, let's hope not.

At such time as the government reaches the conclusion that the emergency is past, of course, we will be the first to know or amongst the first to know. That's all I really am able to say at this juncture.

Hon. Mobina S. B. Jaffer: Leader, first of all, I want to thank you for your very comprehensive speech. I know many of us will read it a number of times. Thank you also for answering all our questions.

Senator Gold, this is a question very different from all the questions you have been asked. We have spent a lot of time talking about the current state of Canada. We have talked about protests, blockades, trade disruptions. I'm sure everyone in the chamber would agree that the current state of affairs is very troubling.

Leader, while we work to discuss where we are and where we need to go, I think we also need to — especially this inquiry and find further ways to look at the root causes of what got us here. In the public inquiry and even earlier, you said that the inquiry itself will be a post-mortem.

So my question to you: Will this inquiry not only look at why the act was invoked, but also look at what led to this situation? Specifically, will the inquiry look into how the root issues, which underpin the mass occupations we have seen across Canada, contributed to the creation of the situation? Thank you, leader.

Senator Gold: Well, thank you for your question and your kind words. The mandate of the inquiry that's contemplated in section 63 in terms of reference, if I may use that term, are fairly circumspect and fairly brief. I'm going to read from it so I can create the framework for my further elaboration. What is contemplated is an inquiry "... into the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency."

The inquiry, like committees in this place and in the other, have broad latitude subject to the terms that set them up. As I said earlier, to determine what issues they want to look at, what witnesses they may want to call, what facts that they want to explore further.

I am confident that a fair reading of this act, in the context of what the inquiry is supposed to provide, is certainly broad enough to look beyond simply the events of three weeks ago or what might have been brewing under the surface, but the larger social, political, demographic and cultural issues that I think underlie many of our concerns.

There is a problem in this country that people face. There are problems that people face that are independent of the protest, that have to do with feelings of being left out of the good life, impacts of globalization. I should stop because the academic in me could go on at some length. Sufficient to say that the inquiry is designed to throw a spotlight on what has happened. If the commissioners or those involved who would constitute the inquiry believe that it's important to explore what the underlying social causes are, there is nothing in the act that would preclude them from doing that. I think we would all welcome that.

Senator Jaffer: Senator Gold, as a person of African descent and a Muslim, extra police powers always really worry me. I have first-hand experience of it. In 2001, I was in the chamber and we passed the Anti-terrorism Act. My community is still suffering from the effects of what we passed in 2001.

What I want to know, has anybody thought of how to reach out to African-Canadians, to Indigenous people, to people of colour so that they are not policed more than others under these acts. I know that many of them were not directly involved, but I can tell you that I have heard from many people in the community that these will be more powers that can be used against them.

• (1320)

Have you had any discussions with any ministers or the Prime Minister about this? Thank you.

Senator Gold: Although I am not at liberty to disclose the content of conversations, let me say this: At least from what we have seen on the ground in Ottawa and elsewhere, there is no evidence that people of colour, Muslims or other vulnerable or marginalized communities were subject to "extra policing." On the contrary, those folks, such as you have described here in Ottawa, have benefited from the intervention of the police and from the fact that some of the abuses to which they have been subjected — verbal, physical and the like — are no longer taking place.

Again, these are temporary measures in an extraordinary circumstance. These are not powers that are going to last one minute longer than the emergency requires.

[Translation]

Hon. Patrick Brazeau: My question is for the Government Representative in the Senate.

[English]

This question is very specific to the illegal Ottawa occupation. Let's face it, we had a Chief of Police for the City of Ottawa, Peter Sloly, who had to step down because of this illegal occupation. Therefore, can you tell us if the Government of

Canada is aware of whether the Ottawa Police Service had been compromised or if there was an attempt at compromising the police force?

Senator Gold: Thank you for your question, senator. I have absolutely no information to that effect whatsoever.

Senator Brazeau: I have a quick supplementary.

If I understand the Emergencies Act correctly, if this motion passes this chamber, similar to what the House of Commons did last night, there is going to be an investigation or an inquiry with respect to the “five W’s” pertaining to the illegal occupation. We know that, oftentimes in our democracy, politicians and the police like to police themselves. If passed, will this inquiry actually get to finding answers to the kinds of questions I asked earlier? Thank you.

Senator Gold: Thank you for your question. I fully expect that the inquiry will address all relevant questions surrounding the circumstances leading to the declaration of the emergency, which would include how policing was handled, both here and elsewhere. In that regard, I think the chamber should rest assured that the inquiry will be able to address the full scope of relevant concerns.

Hon. Wanda Elaine Thomas Bernard: Honourable senators, my question is for the Government Representative in the Senate.

Senator Gold, first let me thank you and your team for all of your work to get us to this point today.

I want to start by asking a question regarding racism and White supremacy that we have seen evidence of in the media during this occupation. Could you tell us if there is specific evidence that supports the reports that we have seen that protesters did, in fact, carry neo-Nazi and White supremacy flags, and that there were also verbal and behavioural threats reported? Is there evidence to that effect?

Senator Gold: Thank you for your question. As I believe I outlined in my speech — and I believe it’s also set out in the declaration the government tabled and that I tabled in this place — yes, quite apart from what security agencies may know, there was very public reporting of circumstances that showed the presence of representatives or adherence to far-right extremist and White supremacy groups.

Let me just cite one group. Protesters bearing the symbol of the group Diagonale were found at Coutts and the symbol was also found on the body armour of some of the protesters here in Ottawa, even after the police initiated their action to clear out our streets. As I mentioned in my speech, according to an expert from the Justice Institute of British Columbia, Candyce Kelshall, this is a group that was formed by a former member of the Canadian Armed Forces and its stated purpose is “to incite a race war.”

This is not the only example, however, of signs, symbols and rhetoric that reflect a particular world view or ideology that privileges one group of citizens against all others depending upon their race and the colour of their skin.

Again — and I repeat, colleagues — it is not the position of the government that everybody who joined this convoy, whether initially or even in Ottawa, adheres to these views. That would be a grotesque distortion of not only my position and the government’s position, but also of the truth. However, it is still the case that when you stand in a crowd with people wearing the Star of David, equating vaccine mandates with the Holocaust, and when you stand in a crowd of people brandishing Confederate flags, you are giving silent encouragement — perhaps unconscious, perhaps unwitting — nonetheless you’re standing alongside those whose agenda may be far different from yours. It’s not acceptable in our society to allow to prevail that kind of imagery or rhetoric, to say nothing of the plans underlying some of the participants and some of the key drivers of this convoy.

Senator Bernard: I have a supplementary.

Thank you, Senator Gold. As we’re considering this motion, how much of that silent encouragement or condoning of the racism and the violence that underpins it should we be taking into consideration as we’re reflecting on our specific, respective positions with regard to this motion?

Senator Gold: That’s actually a very profound question, and it’s not an easy one to answer.

We live in a free country. People can believe what they want to believe. People believe about my people whatever they want to believe. It’s the actions that are taking place based upon beliefs that matter in a free and democratic society.

What troubles and concerns the government, the police and all who have responsibilities to protect Canadians is that some of the elements and driving forces behind this convoy that have taken hold and mobilized people’s understandable frustrations with life in a pandemic and with life, more generally, in uncertain times — that some of these folks publicly and proudly espouse views about our democratic institutions and our fellow citizens — who may not be “true Canadians” in their eyes — and that some of the organizers and some of the major mobilizers of funds are explicitly on the record with what their agenda is. And it is precisely out of concern that the powers, resources and the will and intention that they have continue to represent a threat that required the invocation of the act and still requires, for the time being, the maintenance of the measures that were promulgated pursuant to that act.

[Translation]

• (1330)

Hon. Diane Bellemare: My question is for the Government Representative in the Senate. It’s somewhat in line with what you just said. My first question was about the financial system, and you answered it, so I’ll go on to my next question.

At the source of all this, it is obvious that extreme fatigue has set in when it comes to our struggle against COVID-19. This has led some people to protest, some of whom were likely manipulated by much more organized groups. As we debate a motion to adopt the government’s declaration, we sometimes forget the source of all these protests and the occupation in

Ottawa. If Parliament passes the Emergencies Act and supports the government, does the federal government plan to work with the provinces to come up with a plan to lift restrictions, so as not to further alienate many Canadians, especially young people who are done with COVID-19? Will it take a positive approach, rather than just coercive measures, so that we can begin a reopening process that is consistent with that of the provinces?

Let's face it, if the provinces seem to be ending the vaccine passport system but the federal government decides to maintain it internationally and for truckers, obviously this will cause a lot more frustration. Do you have any thoughts to share about this, Senator Gold?

Senator Gold: Thank you for the question. You raise an important issue that we have been concerned about since the start of the pandemic. The federal Minister of Health regularly speaks and meets with his provincial and territorial counterparts to try to better understand the various issues that come up in a country as vast as ours. Each province has its own jurisdiction and an obligation to act as it sees fit.

The federal government also has responsibilities toward its employees, such as those under federal jurisdiction. Its responsibilities also extend to our borders and so on. I can tell the chamber that these conversations on coordinating or, at the very least, sharing information are ongoing. They were taking place before this crisis, and they will continue going forward.

As we can see, the vast majority of provinces are attempting to adjust their health measures based on their reading of the situation, the needs of their residents, and the scientific evidence on the transmissibility of this wave and the next one that's coming. At the federal level, the rules also change as the circumstances change. I can assure you that conversations between the federal, provincial and territorial governments will continue in an effort to better manage the pandemic and offer Canadians a sense of consistency. Living in a federation means accepting that there are different rules. For example, the rules in play in Gatineau are different than the ones in Ottawa when it comes to restaurants, gyms and so on. That's all I can say on that subject.

Hon. Julie Miville-Dechêne: My question is also for Senator Gold. First, I want to thank you for participating in this marathon of questions, which has been going on for more than three and a half hours. That is quite impressive. One thing is bothering me. The government is keeping the emergency measures in place at this time, when there are no visible signs of a crisis. It is saying that, based on secret information, the risk is still too great to revoke the law. Senator Gold, doesn't this create a dangerous precedent for the future? Could this special legislation be invoked again solely on the basis of secret information, which would obviously be difficult to accept in a democracy?

Senator Gold: Thank you for the question. Listen, I completely agree with you. It would be abhorrent if a government, either present or future, tried to convince parliamentarians and Canadians that, even though everything was calm, there was a lot of information that absolutely justified setting aside provincial and municipal jurisdictions. But that is not the case here. We have proof on the ground, in real time, based on publicly available information, that what is happening

and the intentions of those who organized and mobilized this convoy are having an impact on Ottawa residents, Canada's economy and our border security.

We are not currently in a situation where the government is asking us to trust it. That is not the case at all. I repeat that, if such a situation arises in the future with a government, regardless of its party, ideology or stated reasons, I hope that the parliamentarians here and in the other place, as well as civil society, will insist that that government provide the necessary evidence, just as the current government has done in the declaration that was tabled here, in the regular briefings that are being held, and in the way that I am answering your questions, which I hope is adequate. That is not the case here and, with all due respect, we need to at least try to remain focused on and make decisions about the current situation and the tools and measures that we have. I hope that the information provided by the government will explain and justify these special measures.

Senator Miville-Dechêne: I want to be sure that Senator Gold understood what I was saying. I'm talking about the current situation. Now that the occupation is over — and I'm talking about what was said yesterday at the briefing, when you said that you had privileged information about the intentions or threats — I have a simple question. How can we, as parliamentarians, as senators, be called upon to make an objective judgment on the threats you've mentioned without actually knowing what they are? How can we make an objective judgment on whether the Emergencies Act is still required today?

Senator Gold: Listen, if I misunderstood your question, I apologize. I understand perfectly well. Again, I want to stress one thing. The reason the government has said that the work is not over isn't based on secrets that can't be disclosed. There is always information or intelligence that can't be disclosed, as I've explained several times. But that's not the case here.

• (1340)

Police services are also publicly saying that more time is needed and that the emergency measures must be kept in place. Furthermore, some of the people who came to Ottawa in trucks to protest have moved a few kilometres away and have said that they are going to return.

Esteemed colleagues, we would be naive to believe that people prepared to take up arms to make death threats against the police would be dissuaded from doing so simply because we are restoring order in the streets and at the borders.

We find ourselves in a situation where the police are saying they need more time. Certain public statements prove that some protesters have not yet returned home to resume their lives. That is why the government deems that emergency measures must continue for the time being.

[English]

Hon. Marilou McPhedran: Honourable senators, my question is to the government leader in the Senate. I, too, want to thank you, Senator Gold, and your team, for being in such good form in

being able to respond and also to keep calm and to engage in respectful listening. It is a model of conduct that I think we can be proud of, and I hope we will be able to continue in this way.

My question picks up on a comment you made a moment ago about trucks from the occupation still being “nearby.” My question is geared to the fact that in some circumstances the world learned from Ottawa in that the kind of occupation of Parliament Hill that has occurred for over 20 days in Ottawa has not been allowed to occur in some other capital cities — Paris, for example — because of measures that police were able to take, and they were able to take those measures without resorting to this kind of emergency declaration.

Section 59 of the Emergencies Act specifies that 10 senators and 20 members of Parliament are in a position at any time to bring a motion to revoke, under any of the four parts of the act. In this case, it’s clear that we’re looking at subsection 59(1)(a), which deals with Parts I and II, because this has been declared an emergency of public order.

My question is this: If there were to be such a motion — preferably not from any one particular political caucus — and if that were to be presented, respectfully and thoughtfully, would this kind of motion that is allowed for under the Emergencies Act have a place in our ongoing debate and our interactions with the government on this decision?

Senator Gold: Thank you for your question. I followed your question, which is an important one, up until the very end. I’m not entirely clear what the last phrase was. I will make an effort to answer, but I would encourage you to follow up if I have misunderstood the thrust of it.

Thank you for pointing out the different provisions, which I won’t elaborate on; I’ve said it in my speech.

A motion under section 58 is what we are seized with. Our job is to confirm or deny. As I said earlier, I am not going to lean on the fact that we’re dealing with one process under the act and then there is another process.

However, since you raised it — and it’s important for senators to appreciate, as I’m sure they do — even if we confirm, as I hope we do, the government’s decision to invoke the act and declare an emergency as of February 14, which is technically the question before us, the act, in its wisdom and in the wisdom of the parliamentarians who drafted it, gave us tools to continue to challenge the government’s maintenance of an emergency, even if both houses of Parliament confirm it.

Now, I know that for many who are tired — “tired” is maybe the wrong word; who are concerned about the maintenance of extraordinary measures, I think is more accurate — they want to see an end to this as quickly as possible. The government’s position is that it is not appropriate to end the measures now and that it is appropriate to confirm the decision the government took on February 14. It is equally true that even if those of you who would want to end it now do not win the vote, there are other methods and means that you could and should use, if you so wish, to have us, as parliamentarians, revisit it.

I should add, senator, as you well know, that it does not require both houses of Parliament to agree. All it would take would be 10 senators here — it could be from one group or from all groups, including unaffiliated senators — to trigger a process with which we would be seized. As a senator, putting aside my role as Government Representative, I would be pleased to see us, as parliamentarians — I’m not encouraging you to do this; please don’t misunderstand me — but as a senator, as someone who believes in our democratic institutions, I would be proud that we were using all the democratic tools in our kit in order to make sure that what the government does, this government or any other government, is held to account.

Lest I be misunderstood, it is the position of the government that it had reasonable grounds on February 14 and that the measures are still necessary for the time being. It is also the position of the government to applaud the previous government for having put into place a law that has so many checks and balances and protections; one that does not oust our fundamental rights and freedoms. That makes me proud as a Canadian, as a senator and as the representative of the government.

Senator McPhedran: As part of my question, I want to reinforce a point I made earlier, but let me pose a very focused question. Do we need now these extreme measures?

Let me anecdotally share that I was in Ottawa for the first days of the occupation. I tried to get to my office at ten o’clock at night and ended up getting caught in the convoy loop. There were a lot of difficulties as a result of that. I’m very grateful to our Parliamentary Protective Service, our security at the Senate, for their assistance that evening.

At that point, at the beginning, the trucks were not able to get to Parliament Hill. The police had blocked and stopped them. They were able to create tremendous disruption. They honked non-stop day and night, and people were able to get close. And we know that some of those people exhibited horrible, ugly demonstrations of racism, anti-Semitism, sexism — you name the form of discrimination; it was all on display. But the trucks could not get to Parliament Hill at that early stage, and that was January 29. So I have to reinforce my question: Do we need these extreme measures now?

• (1350)

Senator Gold: Thank you. There is no question that the situation on the ground here in Ottawa has changed. Happily, it has changed for the better. But, as I’ve said on a number of occasions and will repeat, the position of the government is that the work is not finished. What does that mean? Investigations are not complete. A lot of information was gathered: licence plates, the names of people who were present here in Ottawa. Those investigations will continue, including of those who did not leave after it became illegal.

In addition, there is reason to worry that some of the organizers have not given up an intention — a desire certainly, if not indeed an intention — to reoccupy, whether this city or elsewhere, and to reblock bridges or ports of entry. For those reasons, and considering that those whom we have trusted and who acted admirably — with as much restraint as was humanly

possible — to return the streets and the neighbourhood of Ottawa to order, are saying, “Please, we need a little more time to finish the job.”

The important thing, senator, is the act is in place. But all the way through it, and this has been the position of the government, only those measures needed, in the places and to the extent they are needed — with due regard to our constitutional rights and to be exercised in a proportional way — will be used. That’s the case.

The fact that we do not see police using extraordinary powers or abusing their extraordinary powers, should I say, now that the streets are calm, is a testament to the fact that this act is being applied surgically, proportionately and fairly.

Hon. Victor Oh: Honourable senators, my question is also for the government leader in the Senate Chamber.

Senator Gold, you say CSIS indicated that there was foreign influence in this protest or occupation. Can you share with us who the foreign influences were and what we are going to do about it?

Senator Gold: Thank you for your question. Respectfully, that’s not exactly what I said. I did not say — and would not say and could not say specifically — what CSIS might have disclosed. I was referring to a CSIS annual report, and there have been many of them that pointed out a long period of ignoring the rise of far-right extremism in Canada. CSIS — and indeed the National Security and Intelligence Committee of Parliamentarians, or NSICOP, in its report, also, if I recall — signalled that. Based upon information to which, frankly, I’m not privy, even as a member of the Privy Council, there has been such a rise and threat posed by far-right extremist groups such as to re-engage CSIS’s focus and place them at the top of the list with which CSIS is concerned — more so than other forms of terrorism or extremism that have dominated the public mind, and in some cases tragically in terms of actual acts.

That’s what I was saying, senator. It is a matter of public record that our security services have identified far-right extremism. We have evidence of foreign funding as well. CSIS has made the link publicly between the agenda of these extremist groups and the COVID-19 fatigue that has allowed them to mobilize that to other ends.

Senator Oh: Senator Gold, I was watching television media last night from U.S. networks. Some of them mentioned that Canada was under foreign influence. So you might want to take it up with the government.

Senator Gold: Thank you for that invitation. I will certainly pass on your concerns to the government.

Hon. David M. Wells (Acting Deputy Leader of the Opposition): Senator Gold, would you take a question?

Senator Gold: Of course.

Senator Wells: In the beginning of your remarks, you talked about the profound sense of responsibility that we have here, and I agree with that, and the need for rigorous parliamentary

oversight, and I agree with that. In fact, it’s baked into the act. You also said specifically — it was one of your first lines — that we are called upon to concur with our colleagues in the elected chamber. You’ll remember you said that.

We hear a lot in this chamber about the elected chamber and what the elected chamber did and how this motion has received overwhelming support in the elected chamber. Frankly, I see that, as many others do, as a code to be subservient to their will. In fact, to me, that’s used when the argument is weak.

We are an independent chamber. In fact, it is in the act that we act independently of the other chamber. We’re not doing a pre-study here. We’re not receiving a bill from the House as a *subjugant* to what they might want.

Not to blame your speechwriter, but could you tell me your thoughts on the necessity for this chamber to be independent of what the other place might be with regard to this matter, which is not a bill? It’s a motion resulting from a very important action by the government.

Senator Gold: If I had a speechwriter, I would — but, no. Thank you. It’s an important question. And let me be clear: I was being descriptive and factual because by the time our debate started — and we had all hoped it would start earlier, frankly, but the police activity made it impossible for us to return as planned.

We are an independent chamber, *pointe finale*, in all respects. In this respect of the Emergencies Act, it’s absolutely clear and to be applauded that we are to decide independently. We don’t have to wait for them to decide. We had not intended to wait for them to decide. We had no control over the other side. Had we been sitting and the House adjourned, it’s very possible we would have started the debate before them and even concluded it.

The fact does remain, however, that by the time our debate had started today, the House had spoken. I was pointing out to the chamber that the House has spoken, and it’s not simply the government party but also one of the opposition parties that supports it, as did their former leader Ed Broadbent.

So, colleagues, please know, as I assume you do, the respect that I share for us as an independent, complementary institution. I reserve the right, in the context of legislation, to speak about what our role is vis-à-vis the elected officials, which is hard-wired or baked into the Constitution. This is the understanding of what the Senate was and was not to be by those who created our Constitution and created the country of Canada. The country was here before. But in this particular situation, this is not a case where it’s a question of deferring to the other place. Our job is to decide whether we confirm the invocation of the act or deny it, and that’s entirely up to us.

I find it relevant, nonetheless, that, after a long and charged debate, the other place has decided to confirm it. I invite senators to consider that fact or disregard it as you see fit. I think it’s relevant. But it’s not because we are subservient. On the contrary, the act makes it clear, as does the Constitution, we are an independent chamber and shall remain so.

• (1400)

The Hon. the Speaker: Senator Gold, we're about to start our second round of questions. Do you want to continue taking some questions?

Senator Gold: With great pleasure.

Hon. Donald Neil Plett (Leader of the Opposition): That's the nice thing about having a mask on, Senator Gold. You could not say that with a straight face, "with great pleasure."

Senator Gold, earlier in answer to one of our colleague's questions, you talked about having respect for other views and other opinions. I have worked together with you now for a few years, and I believe that. Your exchange with Senator Housakos earlier today, however, didn't show that. It clearly showed that you had — I want to choose my words carefully — some disdain for partisan views that you didn't share. I know you're shaking your head, and if that isn't true, I will accept that. However, if somebody just listened to the exchange, that wouldn't seem to be how you feel.

Senator Gold, I'm going to quote for you an exchange that took place on CTV last Thursday night, where one of your colleagues from the other place showed his disdain for certain views. Evan Solomon asked the Minister of Justice:

A lot of folks said, look, I just don't like your vaccine mandates, and I donated to this. Now it's illegal. Should I be worried that the bank can freeze my account? What's your answer to that?

Minister Lametti responded:

Well, I think if you are a member of a pro-Trump movement who is donating . . . to this kind of thing —

— not to Trump but "this type of thing" —

— then you ought to be worried.

Leader, in other words, if you hold an unacceptable view, you should be afraid that your bank account will be frozen is in essence what Minister Lametti said.

Now, you say that you believe in other people having views other than your own, and that's acceptable. Can you tell us, Senator Gold, does the Prime Minister share your views? Does Minister Lametti share your views? Because his actions and his words would not indicate that. How can this comment from Minister Lametti be viewed as anything other than political retribution?

Senator Gold: Thank you for your question and for your confidence in my respect for different views, which I do have.

The Prime Minister was really clear, as recently as yesterday, in drawing a sharp distinction between political dialogue of sharply opposing views, even angry dialogue, and actions that threaten the security and safety of individuals in the country and that persist even after they are declared illegal.

With regard to the financing issue, I have been clear in this chamber, as a representative of the government, that the position of the government and the reading of the act and the regulations is that only if you continue to fund illegal activities after February 15 are you at risk of having your bank account frozen. People were warned, and if they stayed and continued, either to engage in these activities, for whatever reasons, ideological or other, they have broken the law and are subject to that possible sanction.

Again, I repeat that, of the thousands and thousands of donations that were made for many weeks prior to the proclamation of a state of emergency, only 200 — the number may very well be growing since I last got the number — but only a few hundred initiatives were taken, as the government stated, focusing on those organizing or contributing significantly or accumulating the funds to continue to be used to support the illegal activity.

Senator Plett: "Only a few hundred," you say. You have said that a number of times today, like these 200 people are insignificant.

There were only a few — a very, very few — people in Ottawa at any time that were flying a Confederate flag or possibly promoting a swastika. Only a very, very few. And yet, you have constantly, leader, been referring to those few as being the "leaders of this movement." It seems that when it serves your purpose, 200 people having their bank accounts frozen is somewhat insignificant, and it's "only" 200. But if it's only 2 or 5 or 10 out of hundreds of thousands of people that were part of this protest across the country, that is very significant. I find that strange.

Leader, the Prime Minister called these people a "fringe" group, called them "racist" and he called them "misogynistic," from when they left Vancouver all the way through to here. That's what they were. I find this so difficult, leader. I am wanting to give you the benefit of the doubt. I have, quite frankly, given up with the rest of the government, but I still would like to give you the benefit of the doubt that we still are living in a society where everybody's views are appreciated and respected if they are not racist and, indeed, misogynistic. But just because Justin Trudeau says they are, doesn't make it so, leader.

Clearly, I am not going to get a clear answer on that issue as we haven't been getting very clear answers on many issues here today. I am going to ask you another question.

An Hon. Senator: What's the question?

Senator Plett: Well, I will ask that, sir. Instead of me doing this every time somebody says something, I'll keep on talking, and you can keep on interrupting and I will continue to talk.

And you can continue interrupting, too. I have no problem and I won't do this.

As we deal with the Emergencies Act and its ramifications, I keep thinking about how our country got to this point, and I keep coming back to how this all started. It began with Canadians protesting — as is absolutely their right to do in any liberal

democracy — the Trudeau government's actions in dealing with COVID-19 and this government's inability to follow the science and bring forward a plan to end the mandates.

Now, without question — you have said it, others have said it, and we all agree — we are tired. We fight amongst friends. We fight amongst families. We have differences of opinion. Some family members believe you should be vaccinated. Others believe there is a conspiracy theory. We all, I'm sure, every one of us, at least knows people, if they aren't in your own families. So we are tired of that. We recognize that.

But that doesn't make Canadians bad people when they say, "I'm tired of this. I'm tired of this government telling me what to do."

Senator Gold, Canadians would like to understand what exactly the Trudeau government believes is the difference between a legal protest and an illegal protest. When did this protest become illegal? Was it when Justin Trudeau decided it was illegal? Senator McPhedran made a good point that for the longest time the trucks were held at bay. When did it become illegal? Was it when all of a sudden they moved the blockades and let trucks in? Who did that?

• (1410)

At what point does a legal protest become an illegal protest in the eyes of Justin Trudeau?

Senator Gold: Let me respond to your last question first and perhaps permit me to make a comment or two about some of the other remarks.

The Emergencies Act itself, the declaration issued pursuant to it and the regulations all draw a distinction between illegal protests, illegal assemblies, illegal actions and lawful, peaceful protests. It is well established in Canadian law that there is a difference between vigorous protest — even protest that is inconvenient, as it often is, as we know here on the Hill — and those that are accompanied by violence, threats of violence, rhetoric that is demeaning and hurtful, and actions of intimidation and harassment of ordinary citizens.

The law and our jurisprudence sets out the difference between lawful, legal and illegal protests. It's not "Justin Trudeau" that decides, and it wasn't Justin Trudeau alone that decided. The decision to invoke the Emergencies Act, as I said and will simply repeat, came —

Senator Plett: That's not the question. When did it become illegal? That's the question.

Senator Gold: Strictly speaking, some of the activities became illegal upon the proclamation of the state of emergency. It was only illegal to continue to stay in areas like the Parliamentary Precinct when the tools were finally made available to the authorities to protect our Parliamentary Precinct, and the neighbourhoods, may I add, where people live and work. So that is the narrow legal question.

The broader question, which I was trying to answer, was that the circumstances arose and became quite clear for some time before the invocation that whatever might have started out as a

peaceful protest degenerated, morphed into something that was far from a peaceful protest and, as I outlined in my speech and in the declaration, is an intolerable situation in any free and democratic society.

If I may briefly address, respectfully, some of the other things that you said, I never said 200 individuals were insignificant. What I was —

Senator Plett: "Only" 200.

Senator Gold: What I said was of the thousands and thousands and thousands of donations, it is a relatively small percentage of those that have been targeted for investigation with the result of their bank accounts being temporarily frozen.

What I intended to communicate through that — and it seems to be unclear — was that this was not a blanket witch hunt against people who, for whatever ideological reasons, decided to support this protest in January or early February. But as of February 14, those who continued to or for the first time became engaged in the activity that was deemed illegal by a law of Canada, then they and only they are the ones that are being targeted by the measures. "Target" is the wrong word. They are subject to the measures that are promulgated under the act. That's that point.

Nor, honourable colleague, have I said in this chamber or do I believe, for what that is worth, that everybody who is in Ottawa or elsewhere, on highways cheering on the convoys, associate themselves with the extremist and repugnant views represented by the signs that I have described. I have never said it; I don't believe it. The Prime Minister doesn't believe it either.

But what is indisputable is that the residents of Ontario, of Ottawa and the people of Canada were exposed to folks who, at one and the same time, were bathing in hot tubs and having their little children bounce on bouncy castles while others were promoting ideas that are hurtful and repugnant to every value that we all stand up for in Canada.

Again I repeat, it is not to tar everybody in the same breath. I would never do that, but we cannot deny what comes out of the mouth of key mobilizers and organizers of this convoy. You cannot rewrite history. You cannot untweet or delete the social media messages of people that have hundreds of thousands of followers and are encouraging them to join this protest when they have made clear that they are proud of their agenda. That's what I was trying to point out; it was not to tar Canadians who came here because they are tired of COVID measures.

It's to say that the threats to our security gave rise to the need to invoke that, and it may not be possible to fully resolve them today, at least according to the information and the advice that we're getting from the police community we charge with protecting us.

Hon. Denise Batters: Senator Gold, when Prime Minister Trudeau announced that he was invoking the Emergencies Act, he told Canadians that it would be in a "geographically targeted way" applicable only to those within the zone specified. However, we see in reality the federal government's massive overreach in the proclamation that declares a public order

emergency which states that the public order will apply “throughout Canada.” This country has the second-largest land mass in the world, Senator Gold. How is declaring a public order emergency throughout Canada possibly geographically targeted? If you’ll properly admit that it isn’t, why did Prime Minister Trudeau misinform Canadians in this way?

Senator Gold: There was no misleading of Canadians. Though I have addressed this question before — clearly I’m doing the best job I can to answer your questions — obviously I will have to answer the same question more than once.

The situation that faced Canada was not confined to Ottawa nor was it confined to Ontario, whether it was what happened in Coutts, Alberta, for which the Premier of Alberta, in writing, requested assistance from the federal government saying he needed the assistance and was not able to manage it alone; what happened in Manitoba and is continuing to happen in the streets of Winnipeg; what is happening in Surrey and the border crossing in B.C.; and certainly what is happening here — did I forget to mention the Ambassador Bridge? I did indeed.

The threats to the stability of our democratic institutions are not confined to one province. The act is clear that in cases where the national emergency extends beyond one province, it is appropriate, responsible and prudent for the government to declare a national emergency across Canada because elements of this are found in all parts of the country.

We need to draw a distinction, and lawyers and parliamentarians alike will appreciate the difference between the law on the books and the law in action. There is no evidence that the measures that have been authorized under the declaration, the proclamation or the regulations are taking place anywhere else where they are not needed. There is no evidence of overreach in Quebec, in Manitoba, in Saskatchewan — your province, senator — or anywhere else where there is no need for these extraordinary powers. I remind colleagues — and this is really critical — it is only where local authorities, whether legislatures, municipalities or police forces, are not capable of managing a crisis. This includes a crisis that could be very violent.

• (1420)

It’s only when you’re not able to deal with it that the act would potentially apply. But again, it hasn’t been applied where it hasn’t been needed. That’s what the Prime Minister was trying to communicate, and that’s what is appropriate for him to have communicated.

It would be irresponsible for any federal government — regardless of whatever you think of this particular government — to deny itself the ability to respond, in a crisis, to a situation that could emerge — in an instant — tomorrow were someone to return to the border, whether in Alberta, B.C., or elsewhere in the country. It would be irresponsible to deny the local authorities and the local jurisdictions the ability to invoke on a temporary basis the tools that we saw working so effectively to liberate our city and return it to its citizens.

Senator Batters: Senator Gold, how will a bank know that someone has “stopped participating in the protest” and then unfreeze their bank account?

Senator Gold: Thank you for the question. It’s an important question.

My understanding is that there is two-way communication between the banking and financial institutions and the police authorities. The banks may have suspicions and may communicate with the police. The police, in turn, may have information that a particular person or company has a truck in the middle of Wellington Street and is refusing to leave. Therefore, there is a communication which the act legitimates and authorizes such that that goes back and forth. The same channels of communication extend to when someone leaves.

Let’s say that on Sunday, a person decided to leave and did leave. That information would be communicated to the bank, or that person could communicate that information to the bank, which would be verified. It’s my understanding — though it’s early days, obviously, in the application of this — that is how the information would come to the attention of the bank.

As I have answered in previous questions, there is work being done between the banks and the RCMP to regulate the process.

[Translation]

Hon. Claude Carignan: My question is about alternative dispute resolution mechanisms.

In any demonstration, whether we’re talking about strikes, street blockades or crises, like the one in Oka in 1990, two years after the Emergencies Act passed — and which was an actual emergency — alternative means of resolution are often used, including mediation, and authorities sometimes try meeting with protesters and building bridges to resolve the impasse.

In fact, your father, whom I greatly admired, was appointed as mediator to settle the Oka dispute, and he was quite successful. Did the government make any attempt at conciliation or mediation with the people occupying Wellington Street to resolve the problem, as was done in Oka in 1990 under the Brian Mulroney government, at the federal level, and the Bourassa government in Quebec, when your father was tasked with resolving that crisis?

Senator Gold: Thank you for the question.

You will recall that I also started off that way at Premier Bourassa’s request, although maybe not at first. However, mediation was preceded by the arrival of the army and the Sûreté du Québec. There were violent incidents and confrontations that were not resolved, notwithstanding the intervention of the Canadian Armed Forces at the Quebec premier’s request.

As you well know, by arriving in Ottawa and setting up camp, even on the first weekend and well before that, the things said by those who had the microphone, their speeches with the flags . . . I will not repeat those things because it is unparliamentary language.

We heard threats to the Prime Minister’s life, we heard statements to the effect that for some members of the freedom convoy the objective was to overthrow the government, the Governor General, the Senate as well as the others I already

mentioned in my speech. These are not conditions or a discourse conducive to opening a dialogue between reasonable people. We were confronted with a group where those who identified themselves as leaders — allow me not to fall into a trap — wanted to replace the government. They hurled insults, not just at the government, and their language was deplorable.

The truth is that the government tried to let the police address this issue legitimately, not with the anger of the people who had dragged them into all of this, who had the microphone and who seized the public forum.

I believe the decision that was made was understandable. But let me just say that whatever happened, we are not addressing the motion that is before us. Rather, we are discussing what could have been done and why things weren't done differently.

We are, without a doubt, free to ask questions and think. What we must decide, however, is whether or not to confirm the public order emergency that was declared on February 14, no matter the reasons. We were in a situation where the city was taken hostage. Fortunately, all this just ended, including the blockades, which went on for far too long at tremendous cost to the local economy and our reputation.

That's the question we should be asking, and we will have time to ask it. This question is valid, and I appreciate the reference to my father, whom I miss dearly. There will be time to think about this issue, but right now, we must decide whether the government was right to invoke the Emergencies Act. The Government of Canada's position is that it was the right decision and that we still need to keep this act in effect.

Senator Carignan: I don't want to start a debate with you over this issue.

We are talking about an order being confirmed under an act that sets out emergency measures. There are conditions set out in the act that must be met in order to be able to confirm the order.

One of those conditions is that the crisis cannot be resolved under the existing federal, provincial and municipal laws so special emergency measures are needed to deal with the situation. That is the criterion.

As you may have noticed, my questions are about the justification for why the existing laws were insufficient to intervene and why the use of emergency measures was warranted. If there was a mediation process that can or must be used and it wasn't used in this case, then I think it's fair to ask whether the conditions of the act have been met before confirming the order.

You explained earlier that there was a problem coordinating the various police forces —

• (1430)

The Hon. the Speaker pro tempore: Do you have a question, Senator Carignan?

Senator Carignan: Yes, and I am certain you will like it.

You explained that it was a problem to coordinate the various police forces to deal with the situation before us, and that this required the use of emergency measures.

In 2010, at the G8 and G20 Summits, 21,000 police officers from different police forces were called in to provide security.

At the Summit of the Americas, 6,000 officers from four different police services provided security.

Why is it that what was possible at the Summit of the Americas, the G8 Summit and the G20 Summit was impossible here, in Ottawa, and that it was impossible to tow vehicles that were parked on Wellington Street?

Senator Gold: There were several aspects to your question, so I'll try to give you a clear answer.

First, there's a wide range of measures that should be seen as a set of measures authorized through the proclamation of a state of emergency and that, combined, made the difference here in Ottawa and are making a difference in keeping us protected now.

Without the proclamation, there is a whole swearing-in process to bring in, for example, 1,000 officers from the Sûreté du Québec, and to give them the authority to enforce the law here in Ottawa. That takes time. There was a crisis. The city had been taken hostage.

Therefore, one aspect of the highly targeted measures was to temporarily eliminate the swearing-in requirement so that we could bring in police officers from across Canada who would be able to immediately get to work. Without getting into what the Ottawa police were capable of doing before and what they would have had the time to do, it was quite clear that they did not have the means to ensure that the various police forces could work together in downtown Ottawa and on Parliament Hill.

We therefore had to make changes to the leadership, and we had to use the proclamation to allow for a coordinated police effort and an adequate number of police officers to put an end to the blockade.

Other means were also used. The impact of the financial measures, which were another important tool, must not be understated. It's important to note that despite a state of emergency being declared in Ottawa and across Ontario, there was no way to protect Parliament Hill or downtown residents until these measures were brought in. I also mentioned the other tools — and I don't want to take up too much time, as I'm sure there will be more questions — but it would have been impossible to get the trucks out without the measures that were brought in.

While it's true we can always ask "what if?" and think about what could have been, I'm here to tell you and to try to convince you that the government not only took the exercise seriously, but it also met the requirements of the law to conclude, on reasonable grounds, that a public order emergency existed and these measures were necessary.

That is the government's position, and I think it has been clearly demonstrated by the facts on the ground.

[English]

Hon. Frances Lankin: Honourable senators, my question is for the Government Representative in the Senate.

Senator Gold, on a number of occasions today, you've tried to bring our attention back to the fact that this is a motion to confirm or not. Of course, some of the things we have been talking about will be examined through the inquiry and will be monitored through the joint parliamentary committee. We'll find out about those. However, there is a threshold in the Emergencies Act that we as a chamber must determine has been met in order for this Act to receive our support.

Senator Carignan's first question with respect to attempts to mediate or discuss is writ large and is, in general, a good question. It is one that may come out in the inquiry. But as we begin the discussion, I'd like to note I've rarely heard such discussions in major protests that I have participated in — or strike situations with blockades at entrances to workplaces. It has been my experience that those negotiations have never actually happened with the government, even though it was a public sector protest that was happening, but they have happened with the police dealing directly with protesters.

We're aware that the mayor of Ottawa had conversations with the organizers of the protest. Perhaps this has been reported and I missed it, but I'm not aware whether the police had active conversations. I believe conversations and dialogue are important, even when we know that the Canadians involved in organizing this have deep ties to a number of organizations you have already referred to.

Are you aware if there were any other discussions? And are you aware of how the federal government came to a decision not to engage in discussions?

Senator Gold: To your latter question, I'm afraid I don't have information in that regard, and I want to be careful not to assume I know something that I don't.

This much I think we all know: We all know that there were discussions with the convoy — or the spokespeople for the convoy — as it was arriving. Certainly, the police had discussions because the police were reassured, "We're staying for a weekend, and we're gone." Therefore, the police said, "Okay. Welcome." It turned out not to be the case, sadly. It didn't take very long for them to become so ensconced and entrenched to essentially take control of the streets in the Parliamentary Precinct.

I'm assuming, based upon what I've read, that there were conversations not only with the mayor but also with police authorities as there continued to be even after they were ensconced and even in the days and weeks leading up to the introduction of the proclamation.

Again, it will be appropriate for us to ask what else might have been done to prevent this. It is, however, the position of the government that the legal requirements of the act have been satisfied. I won't repeat them. There are certain formal requirements like consultation and the timely tabling of documents.

• (1440)

More importantly, there is a legal requirement that the nature of the crisis could not effectively be dealt with without additional measures such as those that were promulgated under the regulations.

Senator Lankin: Thank you for your response, Senator Gold.

As I have been struggling to understand the analysis that supports or doesn't support the threshold criteria in the Emergencies Act having been met, I — along with all members in this chamber and all Canadians — have heard about the nature of the organizers, the nature of the untruths they told their supporters in the streets and the manipulation that went on.

We've been told about the ties of those organizers to a number of nefarious organizations and organizations that have been called domestic terrorist organizations; that kind of characterization has come from both CSIS and other intelligence agencies and is open-source information. You mentioned Diagon. Well, the Sons of Odin were there as well. The Three Percenters were there. There are other groups.

In this chamber, we know that CSIS has made us aware of their view that the rise of right-wing extremism is the most significant challenge we face right now. I know some senators have scoffed at that. That's what we have been told. In fact, in our own Standing Senate Committee on National Security and Defence we were told that by David Vigneault, who was the then director — Richard Fadden, before him, has said that — in response to a question from Senator Oh, so we know that.

As I look at it, the only thing I don't know is what top-secret classified information cabinet had before them to make this decision. Last night in the informal briefing, Minister Mendicino said at some point in time you have got to give deference to cabinet, who has that information.

I think we should have a debate about how we effectively do lawmaking when, at times, we can't get access to the information. What's the mechanism? Do we swear in this committee coming in and provide them with that? Do we take away their parliamentary privilege — as has happened with people on NSICOP appropriately — so that you are liable if you breach classified information? We can have that conversation.

At this point in time, when I listen to you and I look at the threshold criteria, I can say yes or no to the criteria. I can interpret it differently from others, perhaps. But I can't respond to your having to give deference to cabinet without just deciding whether I'm going to do it or not.

I want you to talk about that aspect of our democratic decision making in which parliamentarians will not always have, as frustrating as that is, the classified information before them, but cabinet does. Help us all understand.

Those who say, "just trust me" — you'll never use those words, but it does come down to a matter of trust in our democracy and in our government in a time of crisis doing the right thing. Perhaps you could address that.

Senator Gold: I will do my best. You're asking a question that lies at the heart of how, in a democratic society, we also protect our safety and security. If you will allow me, I'm scrambling here because it is such a deep, important question and there is no easy answer.

Our courts face this all the time. How do you give due process to somebody charged with an offence — say a terrorism offence, to use an example that will be understood by all — when the evidence against them cannot be disclosed?

It has often been discussed and criticized, but we have a system in Canada with special judges and with in camera proceedings, friends of the court and so on, to try to find that right balance, because not all values that are important always fit together so easily; they bump up against each other. This is one of these cases.

Our Constitution — indeed, it's an exercise of the Royal Prerogative in foreign affairs — confers upon the government, as opposed to Parliament, certain responsibilities and gives access to certain kinds of information that is not shared. It has everything to do with today, but it is not unique to the Emergencies Act.

Whether the solution is to create something akin to NSICOP, to mandate NSICOP or something like that which would have access, although not able to divulge it to parliamentarians, it is a question of whom do we trust. I am showing my age from old TV shows.

There is no right answer here.

If you will allow me to revert to what I think is really at the heart of it, this is not the case where the government is saying, "I know you don't see any problem here, but we have all this information; trust us." It's really not that.

I'm not going to overstay my welcome by reciting everything in my speech or in the declaration. There is plenty of evidence, in the opinion of the government, that we saw with our eyes and heard with our ears that is such that it rose to that level of the threshold. It satisfied the threshold.

As I said in my speech, simply the presence of those armed and threatening the use of force to destabilize a democratic institution itself satisfies an element of the definition. The blockades, and the risk of their return, also meet the criteria.

It is all of that that is known that supports, in our opinion, the government's decision to invoke the Emergencies Act on February 14. Yes, they may know more than they're able to share.

I have to be very careful what I say, because everything gets tweeted out, so I want to choose my words carefully. Either we do or do not have confidence that the Government of Canada, whatever you may think of the Prime Minister — whatever you may think of his economic policies, how he has handled the pandemic or not — I don't care. You're entitled to feel whatever you want.

If we as parliamentarians do not have confidence in our government that comes forward after weeks of seeing what happened in Ottawa — everything that happened in Ottawa, and everything that I have described and that you're aware of — and if we don't have confidence that our government, sworn to uphold the Constitution, applying a law that demands that their actions be proportionate and consistent with the Constitution, trusting parliamentary institutions, the Senate and the House of Commons, to apply themselves to a serious examination of whether or not we can confirm the government's decision that this was necessary, then I despair.

It's not a question of "trust us," because you will hear it. I reserve the right, as I said, to argue on some other occasion with a piece of legislation that we ought to defer to the elected officials. I'm not making that argument. I am not saying that we have to defer to the government.

If we don't have confidence that the government isn't lying to us, that this is not, like some have argued, a black flag operation to turn Canada into a dictatorship under Prime Minister Trudeau — as one hears on certain media south of the border for sure, and maybe elsewhere as well — then I don't know why we continue to serve our country.

We continue to serve our country because we're doing our job as parliamentarians. We are doing our job. I am proud of the job we do. I think the government has responded responsibly and proportionately.

I believe that I have presented the case and the government has presented the case that clearly establishes that the threshold was met for the invocation on February 14.

Some Hon. Senators: Hear, hear.

• (1450)

Hon. Leo Housakos: Thank you, government leader, for your patience in taking all these questions today, even though I have to admit I find you're defending the indefensible.

I don't think there are any parliamentarians here that don't recognize that there are extremist groups. There have been for decades. It's not a new invention. It's just that other governments dealt with those extremist groups using measured approaches. We are a country that believes in law and order and in rights as well. When you have just law and order and not rights, then you are no longer a great democracy.

I want to ask a couple of succinct questions because I've been trying to get an answer to them, and I really haven't. One of them is a supplementary to Senator Batters' question. She was pretty clear. When the government investigates or freezes an account, how do the citizens whose accounts are being investigated or frozen know? Also, what measures do they have? What's available to them in order to defend themselves? As you know, and I saw from your answer, you recognize — and you said it — there is communication constantly between the RCMP, police authorities and banks when they're investigating or when they've identified something to be suspicious. As you know, banks will

not call their clients and say, “You are under investigation.” They will not inform them that they are being investigated for terrorism, money laundering or whatever the case may be.

I have a case right now of a constituent who happened to be going to a financial institution a couple of days ago simply to transfer an account from one institution to another, and they said, “Your account is frozen.” He asked why, and they said, “We can’t tell you.” That individual might never find out or when he does find out might be, in terms of their rights, a little bit too late.

We need a clear answer other than just the answer that police authorities are constantly in communication with banks. My question is this: What are the measures to make sure they do not overstep their authority, and who determines that?

My next question is related: How do bank seizures of accounts facilitate the cleaning out or moving out of protesters from Wellington Street? I just don’t see the connection.

Senator Gold: Millions of dollars flowed into Canada very quickly in support of the so-called “Freedom Convoy.” Large sums of this money went into relatively few hands. That money is believed to have been used to support and sustain the three-week occupation and, indeed, whatever other activities required funds, whether for fuel, food or what have you.

It’s the view of the government and of experts who have stated publicly — and indeed of our colleague, Senator White, publicly — about following the money. Choking off the support that nourishes and sustains the illegal activities is one critical step. I would be astounded if some of the protesters, whether folks in a minivan or folks in a big rig, didn’t think twice about whether they should stay and expose themselves to that risk when they were asked to leave repeatedly before measures were taken against them. That’s to your second question.

To your first question: Again, at the risk of repeating myself, it is clear that certain protections against civil actions against banks are built into Article 7. There is no denying that. But it’s also clear that in all other respects, the courts are there to deal with challenges to the applicability of the regulations and challenges to any other measure where someone can legitimately demonstrate and claim, with some justification perhaps, that their rights were infringed.

I did also invoke the interaction that customers and their banks will have — and typically have — if someone like the constituent to whom you referred finds that their account is frozen. My understanding is — and it’s based upon the terms of the law and what the RCMP who are involved with this aspect of it have stated publicly — that there is a work-in-progress to ensure that only those properly subject to the freezing of assets will have those assets or bank accounts unfrozen if and when they leave the area — if that’s the grounds on which they were frozen — or cease their activities, funding or otherwise, in support of illegal activities.

Senator Housakos: With all due respect, Senator Gold, it still sounds a lot like “trust the government; we are not going to cross the line.”

[Senator Housakos]

I have another couple of questions. I have been asking them and have not received a clear answer. You keep saying, for example, that we needed to return Ottawa back to the people. Can you tell me, then, if the residents of Ottawa have the right to enter the red zone? Can they come and do commercial business here? Can they walk along the canal? Can they come up and visit senators and parliamentarians if they have issues to discuss with them? Again, the question is very succinct. There is a list of who can enter and not enter the red zone. Who determines that list and tells the police authorities who can enter? The next question is a simple one: Municipalities and provincial governments have, effectively, all the tools and laws at their disposal to deal with what Ottawa had to deal with. We saw it in Quebec City, in Coutts and at the Ambassador Bridge. There is nothing that justifies the Emergencies Act to supplement those tools that were already at their disposal.

Senator Gold: Again, respectfully, colleague, I disagree. On the second point, I listed on many occasions the additional measures that were not available to any level of government but for the proclamation of the emergency and the promulgation of the regulations, and I won’t repeat myself.

To your first question, it is not the government that determines. The government doesn’t direct police in our democratic society. My understanding is that residents or people who have legitimate business to do, or people who work in an area that is otherwise restricted, can enter the red zone. There are checkpoints. We have all gone through them in the last while. Of course, it is relatively easy for us because we have the card, to be sure.

However, I would just say this. The inconvenience to residents of Ottawa for having to demonstrate that they have valid reasons for being in a particular area — as opposed to having either no reason to be there or are clearly foolish enough to reveal their desire to reoccupy — pales in comparison to the inconvenience that residents of Ottawa endured for three weeks, unable to sleep until a courageous woman got an injunction to stop the horns. For her civic actions, she required police protection because of threats and harassment against her. There are always many sides to a discussion, but they’re not always of the same weight. Respectfully, to minimize what the citizens of Ottawa went through and what the country goes through when it is threatened with economic dislocation, when borders and bridges are closed, when its institutions are threatened, when the leaders duly elected are threatened and when police officers are threatened. With all respect, that weighs much more heavily and should weigh more heavily in terms of the responsibilities that any government, any federal government should assume than requiring residents of Ottawa to take a detour if they want to take a walk along the canal.

[Translation]

• (1500)

Hon. Pierre-Hugues Boisvenu: Senator Gold, will you take another question?

Senator Gold: Absolutely.

Senator Boisvenu: You’ve gotten used to it since this morning.

Senator Gold, when a government wants to use such harsh legislation that could jeopardize civil liberties, the top priority is transparency.

Yesterday, you saw the debate in the other place about whether or not the vote would be a confidence vote. The leader of the government categorically refused to confirm or deny to the members, especially those from the Bloc Québécois and the Conservative Party, whether the vote was a confidence vote. We get the sense that this was Mr. Trudeau's strategy for getting the NDP vote. If you don't vote with us, then it will be a confidence vote, which will trigger an election.

When the legislation was adopted, it was Mr. Beatty who said:

The government must justify its actions to Parliament if it wants to use such legislation. This is to prevent the federal government from granting itself overly broad powers.

That is not happening at present. The Government of Canada has information that it prefers not to share. From the start of this debate this morning, other senators have asked the same question as I did. You are asking us to vote on a motion that will legalize the application of the bill, but you have information that we don't have. Basically, you are telling us to trust you. That is not the definition of transparency and trust.

Senator, the application of this act is subject to the provisions of section 3:

- (a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it; or
- (b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada.

My questions are the following. Has the government demonstrated that it has lost its ability to govern and preserve Canada's sovereignty? Has the government proven that Canada's security is under threat? Has the government proven that Canada's integrity is under threat?

Senator Gold: Thank you for these questions. These issues are of concern to us.

I tried to present the arguments, the facts, the background and an analysis of the law and how its provisions must be interpreted in context. I presented all the information that I am allowed and required to share with you here in this chamber. I did it, and the government did it in a fully transparent manner. It listed its reasons in the declaration. It answered questions from parliamentarians and journalists on many occasions.

I am convinced that, according to the provisions of the act, and given the facts that we know, the government has met the tests and criteria set out in the Emergencies Act and satisfied the "burden of proof." I'm using legal vocabulary because it is a legal text. Our job — we aren't judges here; we are parliamentarians — is to answer the following question. Allow me to say it English.

[English]

Did the government have reasonable grounds to believe that a national emergency existed that required this?

[Translation]

That is the question before us today. The government's answer is yes, based on the reasons that have been disclosed to the public and shared here in this chamber and in the other place.

As for the other parts of your question, I have nothing to say about what happened in the other place or about the political and partisan games played in a minority House. Here, in the Senate, we shouldn't be concerned by what happens in the other place. We are independent, we have a job to do, and that is what we are doing. As I said, I am proud of the work that we do, but I don't want to confuse the issue. We must come to an independent decision, one that reflects our experience and constitutional duty to act as parliamentarians.

Senator Boisvenu: Senator Gold, I regret to inform you that the time to assess a government's transparency is before, during and after a crisis. The government's actions in the other place are an indication of its lack of transparency.

You spoke about reasonable doubt. This act requires absolute certainty. It is not our job to reason, here. We require evidence beyond any doubt. When you say that some groups could intervene, you are talking about probability, not certainty. In light of the impact this act has on the lives of Canadians, don't you think that you're taking another risk that, unfortunately, could cause Canadians to lose confidence in this government and its politicians?

Senator Gold: Thank you for the question. The answer is no.

If I may, I would like to read the key and central excerpt that requires us to answer the question. Subsection 17 (1) states:

When the Governor in Council believes, on reasonable grounds, that a public order emergency exists and necessitates the taking of special temporary measures for dealing with the emergency, the Governor in Council, after such consultation as is required by section 25, may, by proclamation, so declare.

Let me repeat that again, "believes, on reasonable grounds."

This is the legal test we need to interpret, analyze and vote on.

[English]

Hon. Dennis Glen Patterson: Senator Gold, several of my colleagues, including Senator Lankin, have drilled down further into my concerns about the powers of the parliamentary review committee. I have listened to your answers very carefully. You have said that the parliamentary review committee will require an oath of secrecy but not to the same degree as the committee overseeing the Canadian Security Intelligence Service and the National Security and Intelligence Committee of Parliamentarians.

You also said that the committee will have access to information they need but not intelligence information, and this is a reason to support the bill. The order is the review committee and the inquiry, but I'm still concerned about how you can have serious oversight unless you have access to all the relevant information. I'm sorry, but "trusting us" is not good enough for me and probably not for many Canadians.

• (1510)

Here is what I would like to ask you: Couldn't the parliamentary review committee members be temporarily sworn into the Privy Council so they can be given information in strictest confidence about things like terrorist threats or weapons that could warrant a continued emergency situation? They will be looking forward as well as backwards in that review. Couldn't they be sworn in temporarily into the Privy Council as done for parliamentarians at NSICOP, for this parliamentary review committee?

Senator Gold: Thank you for the question. I do understand the dilemma. I hear the frustration of senators who know, because we live in a democratic country, that intelligence services and police have information that they may share, but that cannot be published or made public. As I said in an earlier answer — and I won't repeat myself — it's a dilemma. It's a dilemma, not only in the case that we're facing now, but in other respects, whether it's the work of parliamentary committees or of our courts.

Of course, it is possible that a decision could be made to do that, though there is nothing in the act that so provides. It is not necessarily the case that, even sworn in as a member of the Privy Council, that would necessarily give you access to all information that may or may not be relevant. In this case I'm betraying my own ignorance of various levels of security, but I do recall from earlier in my life that there are levels of security clearances that are independent of secrecy obligations and independent of a being sworn in — although there is a security dimension to being sworn in as I recall, going through the Privy Council. So your question is a legitimate one, for which there is no answer in the act and, frankly, I have no knowledge of, furthermore.

I would remind honourable senators that when the parliamentary review committee is up and running, it will have the ability to define its agenda in the terms of the act and to seek the information that it wants and needs. And if it turns out that it needs information that it could not otherwise have, to be the driving force, to try to effect some changes temporary or otherwise, so they could have access to a greater range of information. But for the moment — and this is important to focus on — its role of review and oversight, which includes the possibility of responding to a motion to revoke regulations, is not the same thing as the function of, say, an NSICOP.

It remains to be seen exactly how this committee conceives of its work, and I have every confidence that parliamentarians, if they feel they don't have the tools to do it, will make representations. I have every hope and confidence that the government, within the constraints appropriate in a free and democratic society, will be open to those entreaties from members of the committee if that's what it comes to.

Senator Patterson: Thank you, Senator Gold, for that answer. You're doing yeoman service today and that's greatly appreciated. I appreciate getting some further clarity on what might be possible.

Senator Gold, you have said it's possible a decision could be made to swear members into the Privy Council, or allow them access to sensitive, strictly confidential information. We're debating a motion here, as I understand it today. I'm wondering, would the government be open to an amendment to that motion that would clarify my concern — and probably the concern of other members — that members of the parliamentary review committee should be given, under strict conditions, the maximum authority reasonably permitted to be fully aware of the sensitive information, that would not be otherwise available or disclosed publicly, to validate the security threat to Canada, to justify the order or justify the continuing of the order? Would the government be open to considering a reasonable amendment along those lines? Thank you.

Senator Gold: Thank you for the question. The government would not consider reasonable, or would oppose any attempt to amend this motion. It is not necessary for us to do the job that we're asked to do — to confirm or reject the invocation of a state of emergency. I hope my answer to you was not taken to indicate that I thought it was necessarily a good idea. I said it is possible that members of this committee could be members of the Privy Council subject to whatever other security clearances.

I want to correct an assumption you may be making. You don't temporarily swear someone into the Privy Council. Indeed, let me cite for your edification section 10 of the NSICOP Act, which requires:

Each member of the Committee must

- (a) obtain and maintain the necessary security clearance from the Government of Canada;
- (b) take the oath or solemn affirmation set out in the schedule; and
- (c) comply with the procedures and practices set out in the regulations.

It's not something you dip in and out of. That's not the way in which the committee would get access to additional information. I repeat, the committee, when struck, will assess what it needs and what it requires. It will make requests and will be responded to in a responsible way.

If I may bring us back, honourable senators, to the position of the government, it is the position of the government that the government has met the legal test set out in the Emergencies Act by virtue of information that is currently in the public domain. The government is not relying upon a "trust me, I know things you don't know" approach. If I made the mistake — and I surely hope it wasn't a mistake — to remind parliamentarians that in Canada, there is in fact an intelligence service. There are police services, there are investigations and relationships with our partners abroad that have to be protected. If I made the mistake of reminding you that this enters into the government's calculations, not only whether to invoke an Emergencies Act but

in all hosts of measures, including how we conduct ourselves on a foreign stage, and how we work with our allies, my apologies. The fact remains, there is sufficient evidence in the public domain to more than justify the decision that the government took. It had reasonable grounds, it acted on those grounds and we are seeing the fruits only one week later with a return to some measure of order and to the benefit of Canadians, our economy and our security.

[Translation]

Hon. Renée Dupuis: Would Senator Gold accept another question?

Senator Gold: Why not.

Senator Dupuis: Thank you for taking part in this question and answer exercise, which began around ten o'clock this morning. It is now 3:18 p.m. My question for you is this. A number of senators have called for a Committee of the Whole to be held in order to begin the Senate debate on the declaration of a state of emergency. You have received a written request from at least one facilitator of a parliamentary group, supported by the facilitator of another parliamentary group. Why was that solution not accepted? In Committee of the Whole, we could have heard from the ministers responsible for this emergency declaration, the ones directly involved in drafting this declaration. That would be an opportunity for them to present their views in public, before the members of the Senate and also to the public at large. Senator Gold, why couldn't you organize such a committee? What stopped you?

• (1520)

Senator Gold: Thank you for the question. Before I answer, allow me to add a response to the previous question from Senator Patterson on the receivability of an amendment to the motion. Once again, my apologies for not remembering that, in fact, according to subsection 58(6), amendment of the motion is not receivable under the act.

Getting back to your question, it's common knowledge that the Government Representative Office truly hoped to respond to the request made by several senators, because most of the groups in the Senate wanted to have a Committee of the Whole. We supported this request because we believe, in the context of this unprecedented and historic debate, that senators have the right to receive key ministers who could answer their questions and that they could benefit from this.

However, in the circumstances and given the tight deadlines for this process, it would require the unanimous consent of the Senate to hold such a committee.

I can't speak about what happens in private meetings with the leaders or other people. What I can say is that we attempted to find a way to obtain unanimous consent for the three ministers to appear in this chamber before starting the debate, but that was not possible. For that reason, I'm pleased that we were able to organize something outside the chamber. It wasn't my first choice, but it did nonetheless give senators access to the ministers. We are pleased that we were able to organize that meeting, which fulfilled a legitimate and important request made

by several senators. It's too bad Canadians couldn't participate and attend, but we are bound by certain rules, and the rule of unanimous consent is not always accessible to the Government Representative in the Senate. That is all I can say on that matter.

Senator Dupuis: Am I to understand, Senator Gold, that the request from some senators to receive ministers so they could get information from the people who made these important decisions was not fulfilled because a certain number of senators were opposed to it?

Senator Gold: Once again, thank you for the question. All I can say and want to say, esteemed colleagues, is that we were sure we wouldn't be able to obtain unanimous consent. For that reason, we chose to proceed differently. We did not want to play political games. We respect the House and our rules, but we must also respect our duty and the need to have all the information from the government, which is asking for your consent. That's why we tried, unsuccessfully, to organize a Committee of the Whole. Fortunately, we at least succeeded in giving you access to the ministers, and I am grateful for their time. The ministers agreed to talk with us and answer our questions while the House of Commons was sitting, just before the vote. I am also very grateful to the senators who attended. I trust that it was a valuable experience.

[English]

Senator McPhedran: My question is to Senator Gold. Although, Senator Gold, I remain keenly interested in the section 59 motion by senators and members of Parliament crossing all political boundaries, if possible, I do have to ask if you will forgive me because I misspoke. I gave information from only my perspective, from my office, which is many blocks away from Senator Pate's office. After I indicated that trucks had been stopped by our security forces, Senator Pate sent me a photograph taken at four o'clock on Friday, January 28, clearly showing me that there were trucks parked in front of her office on Wellington. Please, I hope you will accept this correction and the fact that I made a statement based on my limited perspective.

The Hon. the Speaker pro tempore: Do you have a question, Senator McPhedran?

Senator McPhedran: I stated that at the beginning, Your Honour. My question to Senator Gold was whether he would forgive me for that partial information.

Senator Gold: The answer is yes.

The Hon. the Speaker pro tempore: Honourable senators, we have completed a second round of questions. Senator Gold, do you wish to continue with questions?

Senator Gold: I did not want to be the one to stop senators from asking questions that I have not yet answered when it may be on their mind. I am mindful of that. It has been a long morning and a long afternoon. So in that regard, although I have the right to say no, I'm reticent to do so.

Senator Plett: We'll be nice. We'll stop pretty soon.

Senator Gold: But I would ask, since I have the ability to ask — I have done my best to answer the questions you have asked. You may not be happy with all my answers. You're not going to get any different answers if you ask me the question again. So I will be prepared to answer more questions, and would ask honourable colleagues to respect not me, I like standing up and being the centre of attention. I'm an old law professor and rock 'n' roller, so hey, you know. But this is a serious debate so I don't want to be the one to keep you from getting information that you can. But I would ask you, out of respect for other colleagues who have prepared speeches, who want to speak — and believe me, I want to hear them and I want to hear you. There is expertise in this place, whether it's constitutional, legal, police, citizens, your expertise matters in this debate. I have taken up far too much time, so I am prepared to take more questions. I would ask for some understanding that others are waiting to speak, and this is an important debate that we want to allow to proceed. Thank you.

Some Hon. Senators: Hear, hear.

Hon. Lucie Moncion: Senator Gold, if you have already answered a question that is being asked again, could you just say that the question has been asked and answered?

Senator Gold: Why didn't you just say that to me earlier, Senator Moncion?

• (1530)

Senator Plett: Honourable senators, let me, first of all, say thank you, Senator Gold, for continuing with this gruelling day that you have had. I do appreciate that. If His Honour and you will give me a little indulgence, I had two questions prepared, but I believe that Senator Dupuis' question and your answer requires me to at least address that point as well. If you will allow me to ask a question there, as well as the two questions that I have prepared, then I will not ask any more questions today. I'm hoping that you, Senator Gold, will indulge me, and I am hoping His Honour will as well.

Senator Dupuis asked about a Committee of the Whole. Many years ago, a good friend in Montreal said, "Don, your fig leaf is getting a little small." Although you tried very hard to walk the line, I would suggest that your answer could also be characterized in that way.

I am going to let Senator Dupuis know that it is Senator Don Plett who wasn't prepared to give leave. You didn't want to say that, but I will say that.

I will also say that I offered — and because it was I who offered, both inside and outside of our meeting, I think I can say that — that we would be very happy if we could have both sides presented at a Committee of the Whole, which is not uncommon for committees to have. When we have committee meetings, colleagues, we ask proponents of the legislation to come forward, which is typically ministers and their people, and then we have alternative witnesses come forward who are opposed to the legislation.

This has also been done at Committee of the Whole. For all of our colleagues who are thinking that we did not want to hear the ministers — well, no, I didn't because, quite frankly, I heard their speaking points. Be that as it may, we were prepared to listen to them, but we also wanted the contrarian opinion. We wanted the Canadian Civil Liberties Association to come and tell us why they thought this was very bad legislation. I don't think that was an unreasonable request, colleagues.

I want to be on the record saying that, and I am sure Senator Gold would have liked to have said that, had he believed he could do that without breaking a confidence. I will simply leave it at that. We did support a Committee of the Whole under different circumstances.

I will now ask my two questions, honourable senators. Much to the happiness of everyone here, I am sure, I will not ask any more questions. However, I will regale you all; and if you give me a hard time now, my speech will be a little bit longer. Remember, I also have unlimited time to speak and I may well take all of it, so be prepared.

Senator Gold, you may have touched on the issue of the blockade at the Canada-U.S. border in Coutts, Alberta, but you did not answer this question: The border in Coutts, Alberta, was dealt with through existing laws and resources, not through government overreach of the Emergencies Act. The Alberta Minister of Municipal Affairs said that the Alberta RCMP were supported by additional personnel transferred from the B.C. RCMP and that the Government of Alberta procured the necessary heavy equipment to remove commercial vehicles.

The resolution of the Coutts blockade came about through traditional, conventional policing. Thirteen people were arrested and serious charges were laid — among them, conspiracy to commit murder. Many others left the blockade without incident.

In Emerson, Manitoba, the RCMP negotiated with protesters at the border to open the border so that livestock trailers could come through. They then negotiated that other vehicles could go 30 minutes out of their way to a different border crossing and cross. Although it was inconvenient, it worked. No violence, no shutdown, because people talked to people and they worked their way through it.

Leader, why does the Trudeau government believe that the trucker convoy in Ottawa rises to the level of a national public order emergency when the Coutts and Emerson blockades were resolved through traditional, conventional policing?

Senator Gold: Thank you for your question. By the time the convoy arrived in Ottawa, circumstances made it clear that existing measures could not be effectively applied. The convoy that arrived in Ottawa was not an isolated convoy, independent of that which shut down Coutts, Emerson or, indeed, has found its way, with different degrees of impact, to many other cities.

The government took the decision when it was clear that not only could the situation in Ottawa not be handled in the way in which it was handled in Coutts or elsewhere, but also out of an understanding and recognition that these were not isolated, disconnected phenomena and that unless and until the situation in Ottawa was resolved — properly, peacefully, but effectively —

there was a likelihood that the movement, inspired and emboldened by its success in literally taking over control of the streets here, would simply continue to disrupt Canada, the lives of citizens, our economy and our national security.

Senator Plett: Well, we will leave it at that.

Last Monday, leader, when the Prime Minister announced that he would invoke the Emergencies Act, he repeatedly said those powers would be time limited. He said that numerous times.

Just a few days later, the Trudeau government reversed itself entirely. When it comes to their new financial surveillance powers, in a press conference, Minister Freeland stated:

We will be putting forward measures to put those tools permanently in place. The authorities of FINTRAC, I believe, do need to be expanded to cover crowdsourcing platforms and payment platform and their payment providers. So that is something that we need to do and we will do and that needs to be in place permanently.

Leader, on Monday this power was brought forward as a time-limited act, and by Friday it was permanent.

My question, leader, is this: How and when does the Trudeau government intend to make this financial surveillance power permanent? Will it be bundled into an expected budget implementation act later this spring to be voted on as a confidence measure?

As was clearly the case with the motion before the other place tonight, leader, numerous times today you have referred to one of the opposition parties supporting the government. You failed to mention that the Prime Minister — and I'll call it a threat — threatened everyone with this being a confidence vote: If you don't support this, we're in an election. Is that what he is planning on doing again or will they be brought forward in stand-alone legislation?

Senator Gold: Thank you for the question. I'm going to answer the question on the legislation and permit myself not to engage in what every parliamentarian or citizen of Canada understood was at stake in the vote yesterday. It would be inconceivable to me that were the vote to have been lost in the House yesterday, that the members of Her Majesty's Loyal Opposition would say, "We still think the government deserves to stay in power." But I digress.

• (1540)

To your question, the government recognizes and has recognized the need, as a prudent government would, that the instruments regulating financial transactions and the reporting of them have simply not kept pace with technological and other changes in the ways in which assets are moved around. Money — even the definition of money, to invoke cryptocurrency but also to invoke the ways in which money is raised through crowdfunding, et cetera . . .

Recognizing this and having put into place a temporary measure to deal with this crisis is responsibly saying, "You know what? We need to do this." I have no knowledge, honourable senators — I just don't know — what their plans are or what the

times of their plans are. I sound like I'm in Question Period. When I know and it's appropriate to share, and when the government's intentions are known, they will be circulated.

I want to underline that the question of what we learn, what measures the government chooses to propose and what we in Parliament choose to adopt constitute a completely separate question. Just as the Government of Ontario is reconsidering some of its emergency laws — and all provinces are reconsidering them, as one must do — so, too, shall we. When the time comes and when we receive the bill in whatever form it will be, we will study it, review it, send it to committee and we will make sure it's the best bill to serve Canadians that can be.

Thank you.

Senator Batters: Senator Gold, in sections of your speech this morning, I contend that you placed too much emphasis on the word "reasonable" in the definitions you read and too little emphasis on the word "emergency." How do you contend that what we witnessed in Ottawa over these three weeks was properly considered an emergency?

Also, another requirement of the Emergencies Act is that the emergency ". . . cannot be effectively dealt with under any other law of Canada." Yet, Senator Gold, how can that possibly be the case with the Ottawa situation? Even the ringleaders here have been charged with offences under the Criminal Code of Canada, such as mischief.

Senator Gold: Again, with your permission, I'm going to simply take my cue from Senator Moncion. I have been asked that question many times. My speech addressed it and the declaration is clear. I really believe I have provided the best answers I could, senator.

My speech, *Hansard* and the declarations will have to speak for themselves.

Senator Carignan: Your Honour, I think we will need to create a new award to recognize senators for participation. We will call that a gold medal.

[Translation]

My question has to do with Ontario's Highway Traffic Act. I don't think this question has been asked. Subsection 134.1(1) gives the police the ability to remove a vehicle that is impeding the flow of traffic without even requiring a tow truck, because it gives them the power to order someone to remove the vehicle. If the person doesn't obey the order, they can be charged with obstruction under section 129 of the Criminal Code, but the police also have the authority to move the vehicle themselves.

Subsection 134.1(1) states, and I quote:

Where a police officer considers it reasonably necessary,

(a) to ensure orderly movement of traffic . . .

he or she may remove and store or order the removal and storage of a vehicle . . . that [is] directly or indirectly impeding or blocking the normal and reasonable movement of traffic on a highway . . .

Senator Gold, why confirm an emergency measures order to strengthen the enforcement of a simple provision in Ontario's Highway Traffic Act?

Senator Gold: It's true that the question hasn't been asked like that. You found a loophole in the motion that would protect me. However, I have tried to answer that question and I have answered it, so I will be brief. The existence of potential powers notwithstanding, the situation on the ground was such that it was impossible to enforce these laws. The police were not willing and did not have the resources to do so. There were so many trucks — and I am not talking about vans with air mattresses and no tires — that it was impossible for the police to deal with them. What is more, the towing companies told us they didn't want to offer to help because the protesters were their customers, their bread and butter. The government had to issue an order so that we would have the resources needed to put an end to the blockade. That is one of the many reasons that I think justify and explain the proclamation of the public order emergency.

Senator Carignan: Again, I refer you to section 129 of the Criminal Code, which would have allowed charges to be laid against the tow truck operators who were refusing to do their job. My question is on funding and the seizure of bank accounts. How did seizing bank accounts help the police remove the trucks from Wellington Street more quickly?

Senator Gold: I already answered that question, but out of respect for you, honourable colleague, I will try to provide a brief answer. I sincerely invite you to study the measures, because they were put in place not in a comprehensive way, but in a coherent way, so that each one reinforces the other. The dissuasive impact of a potential financial penalty, the very real possibility of being charged under the Criminal Code or other laws, in addition to other tools for quickly deploying enough force to counter the numbers and the determination of those who had set up camp in Ottawa: all these things gave our police officers a few days to completely change the situation in the streets. It is true, and I completely understand that people think it's important to examine certain aspects of the matter in isolation, but we have to look at the combined effect of these measures. That is how these measures were designed and deployed. I hope that provides a bit more context to an answer I already gave.

Hon. Jean-Guy Dagenais: My question is for the Leader of the Government. Leader, with respect to towing vehicles, were you aware that section 129 of the Criminal Code authorizes police officers to request the assistance of towing companies, and that a towing company has no choice but to comply with the request and move the vehicle? We don't need this legislation. I did this myself when I was a police officer. Section 129 of the Criminal Code authorizes police officers to request assistance from towing companies and they have no choice on the matter.

Senator Gold: Thank you for the question. With all due respect, I believe that's exactly the same question that our colleague Senator Carignan just asked. I have already answered and I'll leave it at that for now.

• (1550)

Senator Dagenais: I wanted to follow up on Senator Carignan's question. I found the government leader's answer unclear.

A police officer can request assistance under section 129 of the Criminal Code, so we don't need special legislation in that respect.

Senator Gold: Faced with the crisis, and given that people refused to comply with requests and refused to leave even after several weeks, the government decided, after taking all circumstances into account, to declare a state of emergency and enact temporary measures, which were necessary in order to re-establish the situation on the ground, due to the facts that occurred. The government had no choice.

Hon. Raymonde Saint-Germain: Senator Gold has never been so happy to hear my voice, even though he doesn't know what I have to say.

Senator Gold, I don't want you to consider daily question periods from now on as boring or trivial. I promise to ask you questions that will really make you think during this very short period for questions.

Esteemed colleagues, the invocation of the Emergencies Act brings up some difficult and painful feelings for me and for many of my colleagues from Quebec. These difficult and painful feelings remind us of a dark period in our shared history.

I was 19 years old in October 1970. I was a student in CEGEP, just one year away from starting university. I already had a keen interest in public affairs and democracy, as Quebec society was in turmoil at the end of the Quiet Revolution, which led to numerous reforms based on the values of equality, solidarity, economic development and openness to the world.

When I think of the 1970 October crisis, I often think of the horror I felt after those terrorist acts were committed so close to home. I am referring to the kidnapping of British diplomat James Richard Cross and then the kidnapping and tragic death of deputy premier and minister of immigration, labour and manpower, Pierre Laporte. I'll never forget that horror.

I then saw the effects of the application of the now-repealed War Measures Act. I witnessed a democratic and lawful society suspend habeas corpus and trample on human rights.

I was appalled when I saw union members, journalists, artists, including several poets, and other citizens be arbitrarily arrested, abusively detained, and denied their rights of freedom of expression and association. In total, approximately 500 people were quickly stripped of their freedom on the grounds of mere presumptions, with complete disregard for the most basic principles of justice.

I was astounded by the violence, intimidation and unforgiving harshness that the application of the War Measures Act inflicted across Quebec. This is the context in which I thought about the government's decision to invoke the Emergencies Act and in which I am rising to speak today, knowing full well that the War Measures Act was repealed in 1988 and replaced with the Emergencies Act.

I am aware of the lessons the government and the Parliament of Canada learned from these tragic events. I am also aware that the invocation of this emergency legislation, a law that must be enacted as a last resort, is a first in our country's history.

[English]

The situation now is very different from the one of October 1970. First and foremost, the current Emergencies Act, adopted in 1988, is not as drastic as its predecessor and includes more oversight measures to prevent serious abuse. The application of this act requires consultation with the provinces and territories, with which the government has proceeded. While concerning situations happened in other provinces related to what is now called the "Freedom Convoy," so far only Premier Ford, of Ontario, has publicly stated support for its use in order to resolve the situation affecting the city of Ottawa and the province of Ontario. It would not be acceptable, however, that this act be enforced on the territory of other provinces, such as the province of Quebec, without consultation and consent from the provincial and territorial governments.

In this regard, the Premier of Quebec, François Legault, has been very clear in affirming the non-necessity of the application of this act in Quebec. I quote him in French:

[Translation]

We don't think it is necessary, and we saw the proof last week, in Quebec City, where police forces and the Sûreté du Québec kept things under control. Also, I believe it's time to unite Quebecers, not divide them.

[English]

It would be unacceptable if indeed this act were to be used on Quebec territory in spite of the will of the premier and, indeed, all the members of the National Assembly. Furthermore, and unlike the revoked War Measures Act, the Emergencies Act requires parliamentary oversight. Indeed, a parliamentary review committee, composed of parliamentarians from both chambers of Parliament, will diligently review the responsibilities arising from this crisis declaration. This parliamentary committee will lead an inquiry into the circumstances that gave rise to the declaration and the measures taken to deal with the crisis.

It is our duty as senators and parliamentarians to proceed with this review with the utmost seriousness and consideration.

Additionally, the Emergencies Act also differs from its predecessor by the fact that it is subject to the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights. As such, fundamental rights should not be limited or abridged, even

in a national emergency. Any actions taken in the context of this act must be limited to these considerations as well as proportionate to the degree of urgency.

Finally, this act is subject to exhaustive debate and approbation from both chambers of Parliament, which we are doing today, as we are now demonstrating it.

The first question we must now ask ourselves is whether invoking the act was necessary to put an end to the occupation in Ottawa and blockades around the country.

Obviously, the situation had festered long enough and action was required. Even considering the recent successful police intervention, the infringement on the citizens' fundamental rights had gone on too long. In the recent weeks, we have surrendered a part of our capital city to protesters. While these protesters have the right to oppose the decisions of the Government of Canada, they do not have the right to take hostage a population, to block bridges and roads and threaten the proper functioning of a democratic country.

Even strategic access points, such as highways and airports, were targeted in total contempt of the law and of the citizens' freedom. The situation in Ottawa was illegal, highly disruptive and had its own set of security issues, which simply could not be ignored. In an extraordinary occurrence, the work of both chambers of Parliament had to be suspended because of the actions of protesters, resulting in delays in debating this crucial act. This is unacceptable.

What about the heavy economic consequences that emanated from the blockades and their inevitable impact on the Canadian economy, on local businesses and ordinary citizens? They had to be taken into consideration. Daily policing has cost at least \$2.5 million, and this is with no mention of the still-closed businesses and trade delays caused by the blockade.

• (1600)

A second essential question we must ask ourselves is: Were the extraordinary powers conferred by the Emergencies Act really essential and really unavoidable to putting an end to the threat of another illegal occupation? Those powers are truly extraordinary: the prohibition of public assembly and travel, the order of evacuation of people and private property, the use of specific property, the power to direct individuals and companies to render essential services and more.

So now that an end was put to the illegal occupation of Parliament Hill in downtown Ottawa because of the application of the act, what justifies its application for the remaining 22 days provided for in the proclamation declaring a public order emergency? This has become the key question.

We must ask ourselves if the invocation of the Emergencies Act passes the *Oakes* test. What is the *Oakes* test? In 1986, the Supreme Court in *R. v. Oakes* created this two-step balancing test to determine whether a government can justify a law which limits a Charter right.

First, the objective to be served by the measures limiting a Charter right must be sufficiently important to warrant overriding a constitutionally protected right or freedom. Second, the party invoking section 1 must show the means to be reasonable and demonstrably justified. This involves a form of proportionality test involving three important components.

To begin, the measures must be fair and not arbitrary, carefully designed to achieve the objective in question and rationally connected to that objective. In addition, the means should impair the right in question as little as possible. Lastly, there must be a proportionality between the effects of the limiting measure and the objective: The more severe the deleterious effects of a measure, the more important the objective must be.

I believe we had on our hands, with blockades to strategic bridges and the occupation of our national capital, an urgent issue that needed imminent action by the government. Up to now, the act was used cautiously, with restraint, and only in specific locations. For my part, I believe the positive impacts on ordinary citizens, the economy and businesses far outweigh the limitations imposed on protesters.

We can study the implications of this act in a philosophical way, but we also need to be pragmatic and realistic. The danger facing our country was real and action was needed. Furthermore, following the three-week occupation, in a letter dated February 19 and addressed to Marco Mendicino, Minister of Public Safety, and Bill Blair, Minister of Emergency Preparedness, the Canadian Association of Chiefs of Police stressed the ongoing necessity for those exceptional measures:

The prohibition of financial transactions to support unlawful assemblies is critical to bringing a peaceful termination of these assemblies, as well as serving as a deterrent for other pop-up illegal assemblies.

I tend to agree that while we have made tremendous progress in the last few days, we are not out of the woods yet. Extraordinary measures, such as the ability to freeze financial assets and control people travelling to strategic locations, is still very much necessary until we are confident that control is regained and that protesters have gone back to their homes.

The fact is that tensions are still running high in Ottawa. In the last few days, and particularly following the police intervention, staffers from my office, as well as, I am sure, those of many of my colleagues' offices, have been subjected to abuse and violent threats by supporters of the so-called "Freedom Convoy." Those threats came from domestic as well as foreign individuals, people calling for the government to be overthrown and sometimes, too often, for the Prime Minister and for members of the government to be executed.

In these times of high tension, we must remain vigilant to keep the peace that the police intervention allows us to enjoy here in Ottawa. I believe we must also have in mind the concept of the precautionary principle when deciding whether to extend this act for a period of 30 days. While we don't know with absolute certitude if this act is necessary to retain law and order in our country, we do know that we can't go back to illegal blockades and unlawful occupations.

That being said, I will now raise the concerns I have with further empowerment of the police with such extraordinary tools. By doing so, we need to ensure that we are not opening the door for abuses and infringement of rights. Are the checks and balances provided in the act sufficient to prevent abuses?

From what we have seen, we must congratulate our police forces for their professional and efficient way of removing children, vehicles and protesters. They have done so, for now, with tact and without serious injuries or death, despite the clear attempts at disinformation, namely false accusations of police brutality and harm to protesters.

Of course, the parliamentary review committee will be able to judge after the fact the judicious use that will have been made of these extraordinary measures allowed by the act, but this is not what we are debating today. Today we have to consider consent for the implementation of the Emergencies Act to be extended for the full 30 days, that is, an additional 22 days from today. What guarantees do we have that the intentions behind it is to ensure a return to public order and that it will not be usurped by the abuse of the extraordinary powers it once again confers on the police forces and the government?

I must also mention that although many of the protesters may have valid intentions and legitimate concerns, we cannot ignore the extremist movement being associated with the protests. We have all been shocked by the racist displays circulating freely around Parliament Hill, metres away from our highest democratic institution. It simply cannot be tolerated. This association with the extreme ends of the political spectrum is not limited to the displays we have seen. It has been well documented in the last weeks by government ministers and experts, such as David Morin, professor and co-chair of the UNESCO Chair on the Prevention of Radicalization and Violent Extremism.

The situation we found and still find ourselves in is a failure, a failure resulting from what many independent and renowned safety experts have assessed as a lack of foresight followed by initial bad management from the City of Ottawa and the Ottawa Police Service.

These questions will have to be explored by the parliamentary review committee to ensure a similar situation does not happen again. We must learn why it is that the Ottawa police authorities did not take necessary and timely precautions to prevent this illegal occupation, while other cities like Toronto, Coutts, Windsor and Québec City were able to manage in similar circumstances.

• (1610)

Invoking the Emergencies Act should never have been required, but I am now left with the unpleasant impression that this measure was and still is necessary. It is now far too late, and we cannot repair the damage that resulted from the initial ineptitude of local authorities. We can only continue to mitigate them and manage the enforcement of the act in a sound, balanced and professional manner as we have done in last few days.

Therefore, I have come to the conclusion that increased powers were needed to deal with this quagmire and are still needed to maintain order in our capital. Who here in this chamber can say with certitude that, without the invocation of the Emergencies Act, the situation would have been resolved peacefully?

However, this does not mean giving carte blanche to those increased powers. In the February 14 announcement of his decision to invoke the Emergencies Act, the Prime Minister said that the actions taken would be, “. . . reasonable and proportionate to the threats they are meant to address.” This was a strong commitment, and we could then only hope that it would prevent any form of abuse. So far it has worked, but we still can only hope, because we have no guarantees for the remaining 22 days.

This commitment still lies in the confidence and capacity of the police forces to act and to succeed without the military being called upon. The police, under the provisions of this act, are empowered to resolve the issue, and they have proven to be up to the task in the last few days. I am satisfied with the recent actions of the police. I only hope that this trend will continue and that we will not witness any kind of abuse that results in the situation worsening.

In a democracy, the right to free expression is vital if and when it is expressed peacefully. I wish for a continued and measured application of this powerful act, with respect for our Charter of Rights and Freedoms, as well as principles of justice. At this stage, when we must acknowledge the failure to maintain law and order through normal means and channels, do we have the choice to deny competent authorities the exceptional powers and measures they still deem necessary to maintain law and order? Could these measures ensure that the citizens of Ottawa maintain the freedom they have finally found after difficult weeks of occupation? Will they allow businesses and their employees to get back to business? I would not want to be guilty of having taken a risk that would deprive them once again of their precious rights and freedoms. Those people have just gotten their freedom back. We now have to act cautiously.

Colleagues, had we been discussing the enforcement of the War Measures Act — the repealed law — today, I would never have voted for it. But we are not. The courts will likely also have the responsibility of judging the constitutionality of this act and its compliance with the *Oakes* test.

For my part, given the parliamentary responsibility that we now have to fulfill, and out of precaution, given the lack of certitude, I will vote in favour of the confirmation of the application for the remaining 20 days or so of the Emergencies Act — unless the government, which still has this option, deems it appropriate to put an end to the act earlier on the advice of the relevant authorities.

I will vote in favour of the confirmation of the application of the Emergencies Act, but I do so with deep regret. I will do so trusting that these extraordinary measures will continue to be targeted and taken with discernment. I will do so with the utmost reserve and with a precautionary principle in mind once again. By refusing to confirm the implementation of these exceptional measures, I would not want to be complicit in maintaining contempt for our democracy. Thank you. *Meegwetich*.

Hon. Jane Cordy: Honourable senators, I speak to you today from the unceded territory of the Algonquin Anishinaabe peoples. I want to thank Senator Gold for the hours he spent answering questions today — maintaining his composure throughout — and, of course, to thank his team, because all of us have amazing teams behind us.

Some Hon. Senators: Hear, hear.

Senator Cordy: Honourable senators, I'm honestly disappointed to be here today debating the confirmation of a public order emergency. But colleagues, if we, as senators, are not concerned by the recent events in Ottawa, Coutts, Windsor, Surrey, Toronto and indeed many places across the country, and if we do not act, we will have failed in our service to all Canadians.

Our debate on this motion is most likely to focus on what happened here in Ottawa, as it was certainly the most egregious show of lawlessness perpetuated on city residents. Could the occupation of Ottawa have been prevented? Probably. Should the province have done more before now? We all saw the trucks driving to Ottawa. But, in the absence of any meaningful action before last week, I believe that the Emergencies Act remains the only way forward.

Let's be clear: the invocation of the Emergencies Act was the first real attempt to remedy the situation in Ottawa, and that fact does concern me. We know, for instance, that law enforcement successfully dealt with the blockade at the Ambassador Bridge without such measures and successfully deterred protesters from occupying Queen's Park, but here in Ottawa existing laws were not enforced for more than 20 days. Residents, quite rightly, felt abandoned by their municipal government and local law enforcement. I'm certain that the reviews and inquiries to come will enlighten us all as to why that was the case.

I share the belief of many of my colleagues and of Canadians from coast to coast to coast that had these protesters been Black Canadians, Indigenous peoples or homeless peoples, law enforcement would have been swift and quite possibly brutal. So let's think about that for a few minutes, honourable colleagues, or probably for longer than a few minutes.

There is no doubt that the emergency orders have made it easier for law enforcement to deal with the situation in Ottawa. The orders made possible a substantial increase in human resources from across the country. It allowed officers from outside the Ottawa Police Service to enforce existing municipal and provincial laws without the need to deputize. The emergency orders also allowed for the travel restrictions that finally prevented the influx of weekend demonstrators from overwhelming the downtown core. And the order stymied the efforts of the occupiers to resupply their fuel and other provisions. The financial measures also made a difference by cutting off funds to resupply the occupation efforts.

• (1620)

Over the course of this debate, we are going to hear about public opinion on the focus of the protest itself, as well as on the actions of the occupiers. We have heard it already in the other place as MPs engaged in vigorous debate, firmly planted along predictable lines.

It is true that the Ottawa occupation has brought together diverse groups of people with a wide variety of grievances. Not everyone involved intended to cause such significant negative impacts, nor to harm their fellow Canadians. There were, however, many in downtown Ottawa who were significantly harmed, either financially because their place of employment was closed or because they feared for their safety if they left their homes.

Mask mandates, travel restrictions and lockdowns have all been put forward as complaints, most having nothing to do with the federal government at all. In fact, if the reasons for the protest were what I just stated, they would have left when Premier Ford announced further reductions of the restrictions, because, after all, that is provincial jurisdiction.

But even if misguided, I firmly believe in the right to protest here on Parliament Hill, as so many have done over the years without incident. Before COVID, I would say there were protests every day of the week. But, honourable senators, a protest is very different than an occupation.

Make no mistake — the original purpose of this protest, though it was cloaked as a protest about trucker vaccination mandates — even though we know that 90% of truckers are vaccinated, was clearly outlined in their own memorandum of understanding. The MOU was to have the Senate of Canada and the Governor General replace the government with a committee of the occupiers' choosing. They planned to stay here in Ottawa until their demands were met.

We all know that's impossible. We all know it's a preposterous suggestion that had no chance of succeeding, but that's not the point. Intent is the point, and that should worry us all.

Honourable senators, this was not simply a protest or even civil disobedience. It was lawlessness. As Senator Saint-Germain said earlier in her speech, my staff were also harassed when they walked to the office wearing a mask or when they walked to the grocery store wearing a mask.

Much of the defence of the Ottawa occupation rests in the suggestion that it was non-violent, that it was comparable to Canada Day with inflatable hot tubs, bouncy castles and a DJ. It sounds pretty good. I'm sure that it seemed that way to some, but most Ottawa residents would heartily disagree. Just because there was no looting, smashed door fronts or widespread rioting does not mean that it was non-violent. Violence is not just physical. It can be harassment, intimidation, stalking and disturbing the peace.

I have spoken with people who live in Ottawa, and I have listened to their stories. Downtown and Centretown Ottawa are home to some 25,000 people. More than 10% of them are seniors, and in the downtown area most affected by the

occupation, more than 15% of the residents are over the age of 65. They are not "Karens," nor are they people with six-figure salaries who only work 20 hours a week. According to the 2016 census, the median household income in Centretown ranges from \$49,000 to \$61,000 before taxes, depending on the specific part of the community in which they live. It is a vibrant, bustling neighbourhood filled with shops, cafés and people of all ages. While downtown conjures images of government office buildings, it is also home to thousands of people.

Ottawa residents don't think they are better than anyone else. They don't think they are special either. But no one should have to tolerate what the people in affected Ottawa endured for 24 days: horns blowing at all hours of the day and night in front of homes, loud enough to hurt a person's ears and certainly not allowing people to sleep; fireworks set off right next to tall residential buildings housing families and seniors; homes reeking with the smell of diesel fumes; open fires and pigs on a spit in downtown streets; residents in masks being harassed and threatened, with some even being assaulted for refusing to remove their mask; attempted arson in one residential building, and mischief at the doors of another by attempting to lock the doors from the outside; power and water cut in a number of residential buildings after break-ins to their mechanical rooms; 911 phone lines being overwhelmed by calls and attempts to thwart law enforcement. That, honourable senators, is a disgrace. Journalists were harassed, spat on and physically attacked while on air. And for those who believe that the threat is over, the Rideau Centre was evacuated today due to an incident.

Businesses were swarmed by people refusing to abide by the provincial mask mandate. Businesses that have already suffered through so much of this pandemic and were looking forward to decreased restrictions after the last lockdown, including restaurants opening for indoor dining, had to close their doors because of the occupation.

The Rideau Centre, the fourth busiest shopping centre in Canada, was closed for three weeks, losing tens of millions of dollars in revenue and putting 1,500 people temporarily out of work. Of these 1,500 people, most would have been minimum wage workers living from paycheck to paycheck.

Honourable senators, that doesn't sound like a Canada Day celebration to me.

Rampant lawlessness made the downtown core a scary and dangerous place for many who live and work here, and especially for Black, Indigenous and people of colour. No matter the pride and feeling of ownership that Canadians may have in their capital, Ottawa remains the permanent home of a million people. It is their city. Downtown Ottawa is not just office buildings and Parliament Hill — real people live here. Centretown is a diverse and vibrant community — real people live there. The market, bustling and lively — real people live there. Entire neighbourhoods have been occupied, and residents just want peace and quiet. They do not want this to happen again here or anywhere else. Honourable senators, neither do I.

Ultimately, our rights, guaranteed under the Charter, come with responsibilities. Personal choices have consequences, and the rights of individuals do not supersede our communal rights. And to those who think extremist sentiment is isolated to a few occupiers in Ottawa, I would ask you to spend a few minutes on Facebook, Twitter or TikTok and examine the more extreme elements lurking there. There is no doubt that we as a nation will have to have some very serious conversations about this in the future. The very near future, I would suggest.

Honourable senators, I understand that Canadians are frustrated. I understand that their lives were upended by COVID. We all want things to return to normal. We are all tired of this pandemic. I am as tired as anyone and recognize the privilege that I do not have to worry about my job.

• (1630)

It has been two very long years, but even now Canadians are overwhelmingly not divided. Millions of Canadians have come together to do what needs to be done in the face of an unprecedented crisis: being vaccinated, following public health advice and looking after the most vulnerable among us. They are the silent majority, persevering through adversity and doing what they must for the benefit of their fellow Canadians.

Honourable senators, we must continue to work together, just as we have all along, and together I am certain that we will emerge on the other side. These emergency measures are temporary, subject to parliamentary oversight and I believe appropriate to the situation at hand. That is why I will be supporting the motion that stands before us. Thank you.

[Translation]

Senator Carignan: I rise today to oppose the motion to confirm the declaration of a public order emergency, a motion moved under section 58 of the Emergencies Act.

This legislation requires the federal government to demonstrate that there is a state of emergency that justifies recourse to the special powers set out in this legislation. Section 3 of the act lists the conditions that must be met by the government:

For the purposes of this Act, a ***national emergency*** is an urgent and critical situation of a temporary nature that

(a) seriously endangers the lives, health or safety of Canadians and —

— this is key —

— is of such proportions or nature as to exceed the capacity or authority of a province to deal with it, or

(b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada and that cannot be effectively dealt with under any other law of Canada.

In this speech I will explain that there are two key conditions in section 3 that the government is unable to demonstrate in the context of the illegal blockades in Ottawa that ended on the weekend.

First, it is unable to demonstrate that it was impossible to effectively deal with this situation under any other law of Canada. Then, it is unable to demonstrate that this crisis exceeded the capacity or authority of a province to deal with it.

Senators will recall that at first the federal government took absolutely no action to end the demonstrations, and then it did too much, too late, by deciding to resort to this act.

The truth is that before the act was invoked, the police had all the legal tools and resources they needed to manage the illegal blockades of public roads and to restore order.

I refute the argument that there were not enough police officers. I simply do not understand why the mayor of Ottawa claimed that he requested but did not obtain 1,800 additional officers to end the turmoil in Ottawa before the federal government decided to resort to the Emergencies Act. In the past, there have been other major events in Ontario and in other provinces where large numbers of police were deployed without the need to invoke this law.

Let's start with Ontario. According to the 2012 report of an investigation by the Civilian Review and Complaints Commission for the RCMP, an estimated 21,000 police officers and security personnel were deployed to the 2010 G8 and G20 summits in Ontario.

That same report provided another example of an event requiring a large contingent of police officers. In April 2001, Quebec City hosted the Summit of the Americas. In preparation for this event, a 6.1-kilometre security perimeter was constructed to keep protesters from the conference site. The report estimated that 6,000 police officers from four different agencies were deployed to police the event.

British Columbia has also hosted an event requiring the mobilization of thousands of police officers, without the need for the Emergencies Act. In 2010, during the Olympic Winter Games in Vancouver, 5,600 officers from various provinces were deployed, according to a 2010 research report commissioned by Public Safety Canada. This report also noted that an additional force of 950 police officers had to be arranged as a contingency force that could be deployed to the games within 72 hours if they were needed.

Canada is not only capable of mobilizing thousands of police officers to one location, but it also has access to legislation at all three levels of government, in addition to jurisprudence, that provide the legal tools required to maintain and restore order in the event of large protests, all without the need to invoke the Emergencies Act.

First, the Supreme Court of Canada indicated in *R. v. Dedman* that police officers have a duty to preserve the peace, protect life and property, and control traffic on roads.

These police responsibilities are recognized by the common law and are also codified in the provincial police acts. Such is the case in Ontario, for example, under section 42 of the Police Services Act, which imposes a duty on police officers to prevent criminal or regulatory offences.

In order to enable police officers to do their duty, the common law gives them the opportunity, under certain circumstances, to invoke powers not provided for in the legislation. I am talking about the ancillary powers doctrine, which I will come back to later.

Furthermore, the federal Criminal Code gives police officers a number of ways to respond to stop criminal offences or breaches of peace in the context of a protest.

I would like to quote *Fleming v. Ontario*, a recent Supreme Court Ruling in that regard. It states the following, and I quote:

The *Criminal Code* provides explicitly for a number of warrantless arrest powers In particular, under s. 31(1), a police officer can arrest anyone found committing a breach of the peace or who the officer believes is “about to join in or renew the breach of the peace”. In addition, s. 495(1)(a) provides that an officer can arrest any person “who, on reasonable grounds, he believes has committed or is about to commit an indictable offence”. This applies to all offences that may be prosecuted by indictment . . . a category that encompasses — and extends beyond — the activities which have historically been classified as breaches of the peace, such as various forms of assault . . . mischief ([under] s. 430) . . . and taking part in a riot Thus, police officers already have extensive powers to arrest, without a warrant, a person they reasonably believe is about to commit an act which would amount to a breach of the peace.

In the case of the Ottawa protests, people were arrested last weekend and charged with mischief offences under section 430 of the Criminal Code. That section sets out several examples of that offence, which is well known to the courts and to the police.

In this case, a charge of mischief can be based on the fact that protesters interfered with Ottawa residents’ lawful enjoyment of public roads and stores, and that their loud horns and illegal parties interfered with residents’ ability to sleep in their homes, not to mention the nauseating odours and pollution emitted by the heavy diesel trucks that idled non-stop for the three weeks of the protests.

From day one, the police could have arrested individuals for mischief on the same basis as those who were arrested on the weekend for this offence. Charging them also makes it possible to set release conditions that would prevent the accused from returning to the same type of protest blocking the roads. If there is a high risk of reoffending, the person could even be ordered to be held in jail until the end of their trial. Although I am neither a Crown attorney nor a police officer, I assume that the conduct of many individuals also violated the offences of unlawful assembly, attempting to disturb the peace, common nuisance, and

simple assault or assault with a weapon against police officers, which are already offences under sections 66, 175, 180, 270 and 270.01 of the Criminal Code respectively.

In criminal law, a person can be found guilty of a criminal offence if they do something that aids or abets any person in committing the offence.

• (1640)

This principle is set out in section 21 of the Criminal Code and also in the Supreme Court of Canada ruling *R. v. Briscoe*. Based on this principle, and without having recourse to the Emergencies Act, police could have arrested protesters and charged people who had financed these protesters, if these people knew the protesters intended to illegally block the streets of Ottawa with heavy vehicles. If so, these people would have been aiding or abetting mischief under section 21. That means they could be charged with that offence too, just like the truckers who blocked the streets.

In addition to the Criminal Code, various other legal tools besides the Emergencies Act were available to government authorities. When railways, roadways or factories are blocked by protests, by ordinary people, government authorities or employers can go to court to obtain an injunction. These are court orders that can restrict the illegal activities and the excessive consequences of a protest to protect the community and the economy. These injunctions authorize police to use the necessary force to enforce them, and violators can be liable for contempt of court and imprisonment.

That is how, in February 2020, the Quebec department of transportation obtained an injunction to clear a railway that was blockaded by protesters in the First Nations community of Listuguj. That same month, two other similar injunctions were sought and obtained by government authorities. First, Canadian Pacific was granted an injunction to lift a rail blockade in the Mohawk territory of Kahnawake. Then a federal port authority obtained an injunction to restore access to the Port of Vancouver, which had been blockaded to exert pressure in support of Indigenous claims.

Why didn’t the Government of Ontario or the City of Ottawa quickly seek injunctions to clear the roads in Ottawa and Windsor? In the case of the injunction to ban honking in Ottawa, it was a resident, Zexi Li, who filed the suit, while in the case of the injunction to restore traffic on the Ambassador Bridge in Windsor, the applicant was an automotive manufacturing industry association. It was not until later that the City of Ottawa finally decided to file for an injunction to ban protesters from starting campfires, setting off fireworks, making noise and blocking roads. Many people, myself included, wonder why the city, which is a government authority, didn’t go to court immediately to use injunctions to protect its residents and merchants from having their rights trampled by the protesters.

One thing is certain: The Emergencies Act did not need to be invoked, since the protesters had already been cleared from the Ambassador Bridge by police officers enforcing the injunction on February 13, before the act came into effect.

Furthermore, border control is a federal jurisdiction, so the federal government could have sought an injunction to end the blockade at the Coutts border crossing in Alberta much earlier.

On another note, I want to refute an argument put forward by the Prime Minister of Canada, as reported by CBC on February 14. I quote:

Invoking the act will also allow the government to make sure that essential services — such as towing services to remove trucks — are rendered, said Trudeau.

Again, I don't think that the act could legally be applied, since the Ontario Provincial Police had the necessary legal powers to tow the heavy trucks parked in Ottawa, without the need for this act or a court order.

Subsection 134.1(1) of Ontario's Highway Traffic Act states, and I quote:

Where a police officer considers it reasonably necessary . . . to ensure orderly movement of traffic . . . he or she may remove and store or order the removal and storage of a vehicle [or] cargo . . . that are directly or indirectly impeding or blocking the normal and reasonable movement of traffic on a highway

Section 134 of the same provincial act provides that every person must obey the directions of a police officer to ensure orderly movement of traffic. These sections of the act apply in Ottawa, as confirmed by section 91 of A by-law of the City of Ottawa regulating traffic and parking on highways.

I would add that failure to comply with a police officer's traffic direction or towing order could constitute the offence of obstructing a police officer under section 129 of the Criminal Code. I also note that, according to the CBC, a number of protesters were arrested last weekend and charged with obstruction.

Furthermore, in my view, although I don't have enough time to develop this argument, the ancillary powers doctrine would have enabled police officers to order a driver to disengage the air brakes on the tractor of a large truck and hand over the keys to facilitate towing or moving the vehicle to clear traffic. I would argue that these ancillary powers could have been lawfully invoked by the police to move the trucks. In the context of the Ottawa occupation, the use of these ancillary powers would have been justified, as they were essential to ensuring compliance with the sections of Ontario's Highway Traffic Act that I just cited, and fulfilling the police's duty to preserve the peace that I talked about earlier.

In summary, for all of these reasons, I believe that the government's motion does not meet the strict criteria for invoking the Emergencies Act, and I urge you to vote against it. The governments and police forces had all the legal tools needed to end this crisis faster in Ottawa, and they could have exceptionally deployed enough police officers well before the act came into effect.

Thank you, and I ask you to vote against this extraordinary motion, which is the equivalent of using a nuclear bomb to kill a fly.

Senator Gold: Would the senator take a question?

Senator Carignan: I'm too embarrassed to say no, so I'll say yes.

The Hon. the Speaker: Senator Carignan, are you asking for five more minutes to answer a question?

Senator Carignan: Yes. However, I would not want to violate the rule of 15 minutes without an extension, but, with leave, I would like to have five more minutes.

The Hon. the Speaker: Is leave granted?

Hon. Senators: Agreed.

Senator Gold: Senator, you mentioned that the provinces and local police forces had all of the tools needed to resolve the crisis and the ability to do so. That surprises me because, in my humble opinion, determining an inability to do something is more than just a theoretical exercise. Inability can be the result of an unwillingness to take action or a loss of control over a situation. I would ask my colleague the following question. Wouldn't you agree that the complete lack of public order in Ottawa for three weeks because of the occupation proves that there was an inability to resolve this crisis?

Senator Carignan: Thank you for your question, senator. We would have to look at where the inability and unwillingness were coming from. Were they coming from the towing companies? Both before the Emergencies Act was invoked and after, the police had all the powers necessary to force the companies to tow the vehicles and to go after or arrest anyone who refused to do so. Those people would have been charged with obstruction.

As I said when I quoted a provision of the Ontario Highway Traffic Act, the police could have simply taken the keys and moved the vehicles themselves. All they had to do was take the keys. They didn't need an emergency measure for that.

If we are talking about the police being unwilling to move them, then that is much more worrisome, because peace officers have obligations. If we consider the occupation in Ottawa to be a riot, then the police's failure to take action could even be considered an offence under section 69 of the Criminal Code, which states that a peace officer cannot refuse to intervene when there is a riot. Either way, both the police and the tow truck companies had an obligation to intervene.

• (1650)

Senator Gold: Senator Carignan, are you aware that the Alberta Minister of Municipal Affairs, Ric McIver, made a formal request for help from the federal government because he did not have the capacity to respond to the truck blockade? He said, and I quote:

[English]

Despite our best efforts to resolve this ongoing issue, the Royal Canadian Mounted Police (RCMP) have exhausted all local and regional options to alleviate the week-long service disruptions.

As this complex and dynamic situation continues to impede the free and safe movement of not only Albertans, but also of critical goods and services vital to both the Canadian and American economy, we are looking to the Government of Canada for assistance.

[Translation]

Do you agree that this is yet further proof that there is a lack of capacity to act effectively?

Senator Carignan: I find what you are telling me interesting. You agree with me because, if the Government of Alberta said that it did not have the capacity to respond and asked the government for help, Canada's laws allow the federal government to intervene and help the province. It is like the Oka crisis, which we spoke about earlier. In that case, the Government of Quebec simply asked for the army's help.

Hon. Lucie Moncion: My question is this. Violence on the part of some protesters and the brutality of police repression marked the international G20 summit that took place in Toronto on June 26 and 27, 2010. You mentioned several times today that that summit was a success. So far, last weekend marks the largest police operation and the biggest wave of arrests in Canadian history. There was a security detail of 10,000 police officers on site at the G20, and the summit organizers were prepared for it. In Ottawa, there were 1,800 police officers who did an incredible job —

The Hon. the Speaker pro tempore: Honourable senators, the time has expired.

Senator Carignan: I am raising a point of order. The senator said that I said the G20 was a success even though it involved repression and police brutality. I never said it was a success. I want to make sure that it does not say anywhere on the record that I said that the G20 was a success. I simply said that it was an example of a time when police services worked together.

Senator Moncion: I wasn't finished my question.

The Hon. the Speaker pro tempore: Okay.

Senator Moncion, time is up. Resuming debate, Senator Moodie.

[English]

Hon. Rosemary Moodie: Honourable senators, I do not think that any of us could have imagined that we would be here discussing the historic, grim moments of the past 23 days.

I know that we all feel an exceedingly heavy burden and some sadness for the events that have today brought us here that we must acknowledge, the actions that today we are tasked to take, actions that will be remembered by future generations.

On Monday, February 14, 2022, the Governor-in-Council on the advice of the Minister of Public Safety and Emergency Preparedness issued a proclamation of a public order emergency invoked for the first time in the act's 34-year history. The government took this step after multiple weeks of an occupation that revealed the limited capacity of municipal and provincial authorities to act under existing measures.

After the trucks began to arrive in Ottawa on January 29, multiple reports began to emerge about the disruptive and disturbing and sometimes violent events. We saw the displays of the symbols of hate. Let us not downplay these. We saw the desecration of the National War Memorial and the caricaturing and appropriation of Indigenous culture.

People of colour were intimidated and harassed. And unlike the experience of the esteemed senator who spoke earlier, there are senators within this chamber who experienced that intimidation and harassment. I'd like to say that the fact that those who perpetrated this behaviour felt comfortable to do so amongst this crowd of protesters, and that is somewhat telling.

The Parliamentary Black Caucus spoke about this in the statement issued on February 4, in which they described the events that unfolded as completely unacceptable, saying, "These displays of hatred and violence offend Canadians and have no place in our country."

I encourage all colleagues to take the time to read the statement of the Parliamentary Black Caucus, and take this opportunity to thank the over 170 parliamentarians who signed on in support of this call to action, that was fully endorsed by the senators of the African-Canadian group.

The statement proposed three actions: first, the prohibition of the public display of the Confederate flag and swastika, symbols of hate and terror; second, strengthening FINTRAC's ability to collect information related to donations made through public fundraising sites; and third, a call for a joint parliamentary study to review the events surrounding the so-called Freedom Convoy.

As we all know, the Emergencies Act has issued two key regulations: an economic measure, and a measure to equip police and law enforcement with additional powers.

The economic measures align with the call to action of the Parliamentary Black Caucus's request and we applaud the government for their responsiveness.

Honourable senators, the rise in use of online fundraising platforms is a reason for significant concern, primarily because they are the perfect venue for the laundering of large sums of money that can be used to fund illicit activities. We have examples. We heard many from Senator Gold. There are also jurisdictional examples in the United Kingdom where the site JustGiving was targeted by criminals for money laundering.

With the current limited mechanisms that authorities have to gain information on those who donated these funds to the protest, and with the limited accountability placed on fundraisers currently, we know little about what this money is being used for. Millions of dollars were raised for this protest, and we don't know where the money has gone or what it is being used for.

Through recent reporting according to *The Globe and Mail* who obtained information from the GiveSendGo platform site, 43% of funds donated came from the United States; 56% of the donors were American. Honourable senators, it should concern us that this could represent an unprecedented intrusion into our domestic affairs by far-right fringe elements of the United States who do not espouse Canadian values.

We must be cautious to make sure that, as Canadians, we retain sovereignty over our affairs. Importantly, the use of the emergency powers in this instance immediately allowed financial intuitions to access the tools that they need to stop the flow of money into the occupation, and to ensure that funds have not and will not be diverted for illicit purposes.

I believe the application of these economic measures was strategically effective in the short-term and, in the longer term, will inform our actions as legislators on future legislation that will ensure careful and effective oversight of public fundraising sites.

The second emergency measure that was enacted was meant to provide further authority to police to enable them to effectively break up the occupation in Ottawa and elsewhere.

There has been much concern raised about whether these measures were necessary, concerns about overreach and that these measures might limit the right of public assembly. These are measures that serve to designate and to protect certain sites as critical infrastructure, and that make it unlawful for individuals to bring minors to protests.

First, let me say, unreservedly, that I support action that makes it unlawful to expose our children to risky and potentially volatile situations and to potential harm. It is their right to be protected and it is our role to protect them. Therefore, I applaud the provision in the Emergency Measures Regulations that pertains to minors and the Government of Canada's sensitivity to this issue.

• (1700)

We know that children have been in the occupation, some of them in trucks, in the cold for weeks and breathing in polluted air from the idling engines. It was all the more concerning and disheartening to see children used as shields by protesters —

their parents. Interim Police Chief Bell said, “. . . we're seeing children put in harm's way in the middle of a demonstration where a police operation is unfolding.”

He continues:

. . . we implore all the parents who have kids in there — get kids out of there, they do not need to be in the middle of this, it is not a safe place for them.

I am glad that the police made it their priority to care for children and clearly considered how these operations would impact them.

We also know that many children living in the downtown core have been affected by protesters, unable to sleep amongst the sound of horns and cut off from access to vital services. It is my hope that additional steps to analyze this and other measures using Child Rights Impact Assessment tools will be carried out to ensure that we understand the impact on children and can act in consequence.

Further, these emergency authorities have allowed police to integrate forces from multiple jurisdictions and to retake the city of Ottawa, while maintaining their safety and avoiding significant violence.

As critical resources are shifted to Ottawa, these measures also ensure that the ongoing broader protection of regions that are left with depleted resources are protected. It should also be underscored that these security resources continue to be needed to make sure that a renewed occupation does not take place in Ottawa or anywhere else in the country. We are already hearing from the authorities about renewed attempts since the protest was disassembled this past weekend.

Again, interim Police Chief Bell stated during a press conference last Friday that the use of the emergency powers by the three levels of government created the ability for police to use new and existing powers to deal with the occupation. He said, “Without the authorities provided to us . . . we wouldn't be able to do the work we are today.”

For all of these reasons, colleagues, I believe that the government's use of the emergency powers is both warranted and needed to bring the situation to a close and to maintain peace. I also believe the circumstances are dire enough to require significant action to supplement emergency measures taken by other orders of government. I will be voting in favour of this proclamation.

Honourable senators, the events and the discourse leading up to and during this occupation has been troubling. There has been much irresponsible rhetoric. We have seen that one's political perspective has defined these events, has defined the perception of truth, has made it impossible for objective public discourse and has stood in the way of our appreciation of fact.

This is a critical time in Canada's history. As we reflect on the events that have brought us here, we must focus on the troubling fissures that have been unmasked, that threaten to weaken the union of our Confederation and that threaten our democracy. We must work together to heal these divisions that today turn

Canadians against one another. We must work to ensure that Canada remains an inclusive and united country, a country based on truth, peace, order and good governance. Thank you, *meegwetch*.

Hon. Pierre J. Dalfond: Honourable senators, I rise to explain why I will vote against the motion.

At the outset, I want to acknowledge the ordeal inflicted upon the residents and businesses of downtown Ottawa for over three weeks. I have no hesitation in saying that their nightmare has been the result of illegal acts such as a permanent occupation of downtown streets, honking day and night, keeping rig engines running, impeding access to residents and so on. Senator Cordy referred to many appalling examples. Unfortunately, those in charge of enforcing the law at the municipal and provincial levels let them down. In the circumstances, federal assistance was not only welcome, it was necessary.

This occupation of downtown Ottawa was happening at the same time as various blockades across the country. Those participating in these events all shared the conviction that the time had come for all governments to end, immediately and once and for all, all COVID measures. They had the right to express such a demand, even if ill founded.

Unfortunately, some were also led to believe that it was proper for them to call for a new system of governance to replace the recently elected MPs and the current government. Others believed that the vaccination was a way to control their brain or to reduce their lifespan.

We can now see the adverse consequences of social media promoting all kinds of conspiracy theories, rejection of professional journalism and easy access to unregulated financing, including from abroad, in the construction of an alternative reality.

It is in this context that, on February 14, the government stated that it believed that an emergency existed throughout Canada, comprised of blockades by persons and motor vehicles as well as threats to oppose measures to remove the blockades, including with force, directed at achieving a political or ideological objective. The government added that these activities were adversely affecting the Canadian economy, including by blocking international border crossings and imperiling the availability of essential goods and services.

Was such a description exact? Was it sufficient to meet the tests of the Emergencies Act? The inquiry, mandated by the act under section 63, with the benefit of additional and possibly confidential information, will most likely answer these questions.

For the time being, suffice it to say that I agree with the sponsor of the Emergencies Act in 1988, the Honourable Perrin Beatty, that the government had, on February 14, a high and stringent test to meet, defined in the act as the existence of an urgent and critical situation of a temporary nature that:

... seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it ...

and that cannot be effectively dealt with under any other law of Canada.

I add that the majority of premiers did not believe so. In a Sunday interview, the British Columbia Premier John Horgan said:

I think the premiers agreed that the events in Ottawa were just not tenable and something had to be done. But at the same time, we all expressed our concerns about the intrusion into provincial jurisdiction. We all expressed a concern that it be locally focused, geographically focused.

And he added, "I leave it to [Ottawa] to defend it."

[Translation]

In Quebec, Premier Legault opposed the use of the Emergencies Act and then, on February 15, the Quebec National Assembly unanimously adopted a motion calling on the federal government to not apply this act in Quebec, but to still "be concerned about the current disruptions" in Ottawa and at the border.

Then, two reputable organizations not known to be right-leaning, the Canadian Civil Liberties Association and the BC Civil Liberties Association, publicly stated that this declaration did not meet the test of the act. Furthermore, the CCLA has filed an application in federal court to have the February 14 declaration quashed.

• (1710)

[English]

Lawyer Paul Champ, who successfully argued for an injunction against sounding the horns in Ottawa and who has been a board member of the British Columbia Civil Liberties Association for 10 years, stated that:

... although I am acutely aware of the trauma experienced by Ottawa residents, I fully agree that the Emergencies Act is a dangerous tool that was not required.

All that said, it remains that the motion before us is to decide if the declaration shall continue to have effect or rather be terminated. This has to be decided based on the facts as they now exist, as of today. As I said a few minutes ago, the evaluation of the situation on February 14 will be the task of the inquiry as well as the Federal Court.

By now, we know that law enforcement has dismantled the occupation of downtown Ottawa and that all border crossings are fully operative. Let me take the opportunity to pay tribute to and thank all police services involved for their professionalism.

There are also indications that the emergency measures helped the police to end the occupation of downtown Ottawa by the big rigs, temporarily control entry of people to the red zone, efficiently operationalize police services from across Canada, secure equipment and create strong financial deterrents.

All that said, I am inclined to conclude that there were hard facts amounting to reasonable grounds to declare a state of emergency on February 14, but they appear to have since passed. Now we hear ministers referring to potential attempts to erect new border blockades or to occupy downtowns across Canada. These appear to be rather vague allegations. Furthermore, they are made in a context quite different, considering that the police have learned a lot from the previous incidents as we could see in the last protests in Toronto and Quebec City. I am also convinced that information collected by police and other security agencies is now processed and shared rapidly.

In my view, to adopt the motion in such a context may set the precedent for a lower threshold than the one even considered applicable on February 14.

Furthermore, if the situation deteriorates, with speculation becoming hard facts, the government will be entitled to a new declaration if, in their view, the stringent test is then met. Of course, a new parliamentary process to consider the declaration will repeat.

This brings me to my last point. In the past few days, we have heard ministers and the RCMP refer to the significant impact on truckers of the Emergency Economic Measures Order. As you know, it requires financial institutions to freeze the accounts of alleged participants in the Ottawa occupation and to stop providing them with financial services.

[Translation]

Yesterday, the RCMP released a statement on how it was planning to enforce this order. I will quote, as follows:

Under the Emergency Economic Measures Order (Emergencies Act), the list that was provided to financial institutions included identities of individuals who were influencers in the illegal protest in Ottawa, and owners and/or drivers of vehicles who did not want to leave the area impacted by the protest. At no time, did we provide a list of donors to financial institutions.

We are now working with the banks to build a process to address the accounts that were frozen.

This approach is, indeed, consistent with the order, which does not require that the people and organizations in question receive a detailed copy of the information obtained by the RCMP, and which provides for a neutral review mechanism to be put in place, with the power to order a seizure to be cancelled. Furthermore, the order does not address whether the RCMP or the financial institution can use that information in the future or whether they have an obligation to destroy the information.

[English]

In my view, this process designed to punish a person, even temporarily, by seizure of assets without any judicial oversight, is a clear violation of section 8 of the Charter, which reads: "Everyone has the right to be secure against unreasonable search or seizure."

In 1984, in *Hunter et al. v. Southam Inc.*, the Supreme Court ruled that section 8 guarantees a broad and general right to be secure from unreasonable searches and seizures which, to be properly preserved, requires that authorizations to search and seize be issued by independent judges.

I quote the court, which said that the purpose of section 8 is:

... to protect individuals from unjustified state intrusions upon their privacy. That purpose requires a means of preventing unjustified searches before they happen, not simply of determining, after the fact, whether they ought to have occurred in the first place. This, in my view, can only be accomplished by a system of prior authorization, not one of subsequent validation.

In 2003, the Supreme Court reminded us of that principle again:

Courts also ensure that the power of the state is exercised in accordance with the rule of law and the provisions of our Constitution. In this capacity, courts act as a shield against unwarranted deprivations by the state of the rights and freedoms of individuals.

The Supreme Court also stated that limits under section 8 rights are unlikely to be justified under section 1, given the overlap between the reasonableness standard under section 8 and the minimal impairment analysis under section 1 called the *Oakes* test, which is not applicable under section 8.

In my view, the Emergency Economic Measures Order as currently drafted is fatally flawed because it authorizes the seizure of assets at the instigation of the state without any form of prior judicial authorization in order to sanction the person or organization for an alleged but unproven offence.

A judge is needed to balance government interest and the rights of the individual concerns by this measure, an examination that can be done *ex parte* like most warrants. There are nearly 1,200 federally appointed judges in Canada, most of them sitting in Superior Courts, and many more provincially appointed judges. All of them have the power to issue warrants. It would have been easy to seek judicial authorizations in connection with the 76 accounts frozen by Saturday — a number that increased to 206 by yesterday.

Senators, since this order seems to be the most important new tool provided by the declaration, we should not hesitate to vote "no" and put an end to such an unconstitutional piece of overreaching regulation.

Finally, let me offer two comments. First, a negative vote in this chamber cannot be considered as a matter of confidence in the government. That can only happen in the House of Commons where elected MPs sit.

Second, if we conclude there is no necessity to continue the declaration, the regulation and the order will cease immediately to have effect for the future, but charges laid before will continue to be processed by the courts. For all these reasons, colleagues, I will vote “no” as suggested by *The Globe and Mail*, *La Presse*, many political leaders and a lot of legal experts and associations such as the Canadian Civil Liberties Association. Thank you. *Meegwetch*.

The Hon. the Speaker pro tempore: Senator LaBoucane-Benson, do you have a question? We have 40 seconds left.

Hon. Patti LaBoucane-Benson: Would you take a question?

Senator Dalphond: With pleasure.

Senator LaBoucane-Benson: You mentioned the opinion of premiers in Canada. Mike Farnworth, B.C.’s Minister of Public Safety, stated:

British Columbia’s view is that if the federal government believes that it needs emergency powers to deal with the situation that we are seeing — for example, in the capital of Ottawa and the challenges and the convoy protests that have been holding Ontario and the rest of the country to economic hostage — that we are supportive of the measures that he feels he needs to deal with the situation back east.

I wonder if that might change your perspective on the opinions of premiers, dear colleague.

• (1720)

The Hon. the Speaker pro tempore: Senator Dalphond, we have to move on to the debate.

Senator Dalphond: Five minutes, please?

The Hon. the Speaker pro tempore: Senator Dalphond is asking for five minutes. Honourable senators, if you do not agree, say “no.”

Some Hon. Senators: No.

The Hon. the Speaker pro tempore: We hear a “no.”

[*Translation*]

Senator Dagenais: Honourable senators, I want to start by saying that, like many of my colleagues, I will be voting against the invocation of the Emergencies Act, since it clearly constitutes an unjustifiable violation of fundamental rights and a shameful appropriation of power by a Prime Minister who has once again shown that he is unable to govern democratically and transparently.

[Senator Dalphond]

I am in no way saying that we should have let the protests in front of Parliament continue, but a protest that got out of hand because of the Prime Minister’s inaction and incompetence hardly qualifies as a threat to our national security.

Inappropriate signs and posts on social media cannot be the sole basis for invoking the Emergencies Act. Other evidence is required; otherwise, we would be living in a constant state of emergency.

For Prime Minister Trudeau, the protests became more of a threat to his public image and his image within his caucus.

There is no reason that justifies using this law for the first time in Canadian history. It was passed to deal with real threats to our national security and sets out clear criteria that must be met before it can be invoked, criteria that have never been met by the current government.

This legislation, made available to the Parliament of Canada in 1988, contains strict rules that were adopted to ensure that no government would repeat the abuses committed during the October crisis in 1970, when Pierre Elliott Trudeau, the father of the current Prime Minister, invoked the War Measures Act.

Among the safeguards set out in the Emergencies Act of 1988, there is the one requiring the federal government to consult the provincial governments ahead of time.

It is easy to see from the reaction of some premiers in the country, that no consultation worthy of its name was held. This lack of consultation shows us just how much the younger Prime Minister Trudeau disdains, like his father sometimes did, the rules of democracy, provincial jurisdictions and the fundamental rights of people who do not think like him.

The illegal occupation of a downtown area by truckers is not an insurrection, especially when there were no reports of violence done by those who wanted to be heard. They were just angry citizens.

The government and the Senate of Canada do not have to pass laws and use measures against them that are frankly dictatorial. If action had been taken at the right time, this siege on Parliament Hill would not have dragged on for three weeks.

Let us come back to the Emergencies Act of 1988. Colleagues, I have said it before and I will say it again, an Emergencies Act is not necessary for dismantling the barricades, arresting a few holdouts and towing away trucks. We just need a leader at the head of the country, a leader who is capable of taking responsibility at the right time to prevent the situation from deteriorating.

To invoke this special act, the government was also required to prove to us that there was no other option under the circumstances. Where was Prime Minister Trudeau during the first two weeks of the protest, and what did he do to engage with and appease the angry truckers? Nothing, absolutely nothing.

Justin Trudeau chose to hide at his cottage. Even worse, he threw fuel on the fire from afar by making provocative comments about the protesters and calling them whiners.

Unfortunately, I see, and I hope you will as well, that the leadership that a true statesman must show is just not part of Justin Trudeau's DNA. Justin Trudeau prefers to dictate rather than engage in dialogue.

Today, I am a senator, of course, but I am also a former police officer who worked on the barricades during the Oka crisis, where there was certainly more violence than on Wellington Street in Ottawa. In 1990, no one called for the use of the Emergencies Act to resolve the conflict.

It was not even needed to get the Canadian Forces to come in and support the police. The situation was de-escalated through dialogue and mediation.

In addition to the Oka crisis, in recent years, there was the Summit of the Americas in Quebec City, the G20 in Toronto and the G7 in Charlevoix, at which police were able to control professional international protesters — yes, I said professional international protesters — without the need for the Emergencies Act.

I repeat: A protest is not an insurrection.

It is a shameless lie to say today that the police needed the Emergencies Act to deal with the trucker protests.

A quick review of the police powers clearly shows that all the police forces tasked with policing the movements of truckers had all the authority required to respond and even to requisition tow trucks to seize and move the trucks that were parked on Wellington Street.

Why did they not do something right away? There must be, one day, a thorough review of the timeline of decisions that were made. That will come, I hope, once the dust has settled.

I will say it again: The necessary powers existed three weeks ago, two weeks ago and last week. They already existed in the current laws of the land, without the need for a draconian law like the Emergencies Act.

The reality is that even before the Trudeau government invoked this legislation, the police managed to clear the Ambassador Bridge, between Windsor and Detroit, and the Coutts, Alberta, border crossing, both without violence.

How and why? How? Simply by having the police enforce the laws in place. Why? Because the behind-the-scenes command of the operations at the Ambassador Bridge and at Coutts was assumed by the President of the United States, not the Prime Minister of Canada.

In short, Joe Biden's leadership was all it took for Canadian police officers to take action. I would submit that the economic stakes, which were very high for the Americans, were probably a significant factor in how quickly they sought action at the border crossings.

Here in Canada, economic issues are unfortunately too often ignored so as to make room for Liberal partisan politics. On that note, how can we forget what happened just two years ago?

In February 2020, Prime Minister Trudeau demonstrated a clear lack of concern for Canada's economy by failing to intervene when rail blockades were put in place by the Wet'suwet'en communities and their supporters in British Columbia; Belleville, Ontario; and Saint-Lambert, Quebec.

The 2020 protests had far more serious economic consequences than the Wellington Street protest. Every day, tens of thousands of citizens could not get to work, and CN had to cancel services and lay off hundreds of employees because the railways were being blocked by people protesting the construction of a pipeline.

This went on for weeks without Prime Minister Trudeau invoking the Emergencies Act, even though his Minister of Transport, Marc Garneau, told the media that this crisis would derail the country's economy.

Let's ask ourselves why. Let's also ask ourselves if there are two classes of protesters in Canada. If I recall correctly, just one week after the start of the rail blockade, Prime Minister Trudeau asked Minister Marc Miller to listen to the grievances of the Indigenous communities' representatives.

In 2020, just two years ago, the government listened, refused to use force to end the rail blockade, and instead chose to engage in dialogue with the protesters.

Did you hear anything about the government being willing to open a dialogue with the truckers who were blocking Wellington Street? I didn't, and yet that is an essential prerequisite for invoking the Emergencies Act.

Where was Justin Trudeau after the first week of the trucker protest? Where was he after the second week? Let's think about it. What kind of credibility should he be given today when he tells us that we absolutely have to invoke the act because this is an urgent situation?

Earlier, I spoke about a lack of leadership. Now, we can talk about political inconsistencies as we compare how he dealt with the 2020 blockades with what he did this year.

I'm inclined to think that Liberal MP Joël Lightbound was right when he said that his government was doing everything in its power to use the COVID-19 crisis as a tool to divide Canadians for partisan purposes. The number of people who share my opinion is growing rapidly.

I now want to talk about another argument the Trudeau government gave for invoking the Emergencies Act, and that is the protesters' secret foreign funding.

According to the government, we need to allow Canada's law enforcement agencies to crack down on the freedom convoy's foreign funding in Canada by giving them the power to freeze the organizers' bank accounts.

That is very disappointing to hear, because the government is basically stating publicly that CSIS and FINTRAC were not doing their job before the Emergencies Act was invoked.

• (1730)

Our intelligence service, which is well connected to its U.S. counterpart, received all the information it needed on a daily basis to assess the situation, but its legendary discretion with respect to its work methods means we will never know everything about the alleged financial threat that the Prime Minister exploited to invoke the Emergencies Act.

If I am wrong to say that the Canadian Security Intelligence Service is very effective, then it is high time to do something to reinforce its powers. Unfortunately for the Prime Minister, that is not what I have heard from the many witnesses who have appeared before the Standing Senate Committee on National Security and Defence in the 10 years I have been a member.

Now let's talk about the seizure of firearms by the RCMP, which is one of the government's political arguments for invoking the Emergencies Act. According to the RCMP, the weapons seized at the border were destined for truckers in Alberta. I will draw your attention to the fact that the RCMP was able to carry out this seizure without using the Emergencies Act. In fact, I would like you to note that at no time did the Trudeau government demonstrate that these weapons could be used to overthrow the government by force.

Let's think about this for a moment. The government can't allege a serious insurrection solely based on a weapons seizure at the border of a Canadian province. I suggest that the government ask law enforcement to patrol around the Akwesasne Mohawk community, where they could easily intercept trucks coming into Canada every week with illegal weapons.

None of this seems to bother Prime Minister Trudeau, even though organized criminal gangs are using these guns to murder teenagers in Montreal, Toronto and Vancouver. Where does the Prime Minister go to hide when the police ask him to pass laws on handguns, something that would at least save lives?

As a final point, let's talk about an essential aspect of implementing the Emergencies Act of 1988. Under this act, the government is required to form an independent committee of inquiry into the use of the act 60 days after its enactment. The committee must report to Parliament within 360 days. That's all well and good, but how can we trust Prime Minister Justin Trudeau when it comes to an independent and comprehensive review of decisions and actions?

Remember that it was this same Prime Minister who prorogued Parliament, in August 2020, halting the work of three House of Commons committees that were looking into the WE Charity funding controversy. That alone raises doubts in my mind.

Transparency is not a value cherished by the Liberal Party of Canada or its leader. They care so little about transparency that not one member of the government was willing to participate in a Committee of the Whole of the Senate to answer our questions. That is nothing less than a display of disrespect for this democratic exercise.

We are here to debate the utility of the Emergencies Act, an act that actually is no longer required, now that Wellington Street has been cleared. This act that we are debating symbolizes the

weakness of the current Prime Minister, who is doing everything he can to save his image, as he is seen to have dragged his feet on this matter and on other important files that land on his desk.

In case anyone thinks that I am exaggerating, here are several examples of the government's inaction: the rail blockades by members of the Wet'suwet'en community in 2020; the policy on Huawei's potential interference in national security; the creation of a tax on Google, Apple, Facebook and Amazon, the web giants also known as GAFA; the appointment of an ambassador to France; the replacement of the Canadian Armed Forces' obsolete equipment; and, finally, access to drinking water in Indigenous communities. I will stop there.

Is it any surprise that the Prime Minister is trying to shove an act reserved for exceptional situations down our throats because he once again dragged his feet? The trucker protest was certainly not an exceptional situation, since the occupation could have been shut down after just a few days without the use of any special measures.

Senators, we have a duty not to give in to the political and legislative transgressions of a Prime Minister who did not deal appropriately with a situation that required leadership, openness to discussion, and a backbone. Canada deserves better than a Prime Minister who governs the country from the comfort of his cottage.

As a senator, I do not want to go down in history for approving this act, as the NDP members in the other place did yesterday evening while holding their noses. Bear in mind that, without the repugnant complicity of the NDP, this act would not be before the Senate today. Thank you.

Some Hon. Senators: Hear, hear.

[English]

Hon. Victor Oh: Honourable senators, I rise today to oppose the recent use of the Emergencies Act. I believe that this act is a clear case of the government's overreach, serving only to divide Canadians at a time when unity is what we need most.

The question I have for you today is: What kind of country are we becoming when we allow draconian measures, like this one, to deal with lawful protests by frustrated Canadians?

This is a difficult question. It forces us to reflect about who we are as a nation, what we can expect from our elected officials and how we protect Canadians' values.

When I chose to immigrate here, Canada's respect for democracy, human rights and the rule of law were what drew me in. These are some of the most important values, but at this moment, I believe our country is crossing a dangerous line in history. For the first time, the Emergencies Act is being used not to confront a terrorist attack on Canada but instead to address a peaceful protest, a protest made up of Canadians who are exhausted and angry at being told what to put into their bodies.

Colleagues, we may disagree with this protest. Most of us will disagree with the illegal action used to communicate their message. But we must ask ourselves, is the Emergencies Act a justifiable response to what are essentially peaceful, non-violent protests?

Since the Emergencies Act was first passed over 34 years ago, there have been many blockades in Canada. Yet we have never used the Emergencies Act. I ask you, senators, why is the Emergencies Act all of a sudden required when past policing powers seemed sufficient for blockades?

It should be noted that the blockades of the Ambassador Bridge in Ontario and at the Coutts border crossing in Alberta were resolved by police. Yet the Emergencies Act was still invoked.

So I ask what is different about the protests here in Ottawa. It seems that this action is difficult to justify elsewhere in Canada, but in Ottawa, when politicians are directly affected, they are quick to use the Emergencies Act. This makes the government look self-interested and authoritarian.

We must be under no illusion that this action will weaken Canada's credibility to advocate for human rights around the world. How can our statements not be seen as hypocritical when we refuse to protect the rights of our citizens? It is no surprise that other countries have fixated on our recent actions, which clearly contradict the image of the rights and law that Canada has so carefully cultivated.

• (1740)

The truth being broadcast is that of a government that has given its security services extraordinary powers to freeze bank accounts without a warrant, the power to cancel an insurance policy without a warrant and the power to ban peaceful assembly anywhere. We must ask ourselves this: Do these actions reflect our Canadian values? We must also ask this: What is the justification for continuing the Emergencies Act now that the blockades have been lifted?

The government argues that the act is now needed to prevent future blockades and to prevent future funding for protests that are now prohibited. Senators, what we have now is a pre-emptive law in force. I feel that the current government has set a terrible precedent. There is a real risk that Canadians may lose trust in their government when it is clearly willing to extend its power over those who disagree with their policies.

When I came to Canada, I came to a united country. I'm sad to see today how much has changed. I believe this is the most divisive government that we have had.

Colleagues, there is clearly no emergency today and there is absolutely no justification in continuing with these measures. We should repeal them so we can begin to rebuild our unity.

We need a Prime Minister who is willing to talk to all Canadians. We deserve a Prime Minister who is willing to listen. He should not kneel with those he favours and scoff at those he

deems unworthy. Imagine if the Prime Minister had responded this way to Black Lives Matter or Indigenous protesters; imagine how divided and violent our country would be today.

In this chamber, we should not be voting for motions that will compound divisions. I feel that is what we'll be doing by supporting this motion. I hope all senators will join me in voting against this motion.

Thank you.

Hon. Yuen Pau Woo: Honourable senators, it is ironic that we are debating the imposition of emergency measures at what appears to be the tail end of a COVID crisis that we have been living through the last two years.

You may recall that there was much talk about invoking the public welfare criteria for emergency measures in the early days of COVID, but nothing came of it. Fast-forward 24 months and we suddenly find ourselves under the Emergencies Act, not for public welfare, which would have been appropriate for a health emergency, but for public order. This is more than a curious bookmark in our COVID saga, and I will return to it at the end of my speech.

The crux of today's debate, however, is not the criteria for the invocation of the Emergencies Act, even though I know many senators will want to focus on that important legal test. The more important underlying issue, I believe, is whether you consider the so-called "Freedom Convoy" protests — three weeks in, on the day the act was invoked, with no end in sight — to be an acceptable exercise of the protesters' rights and freedoms and, hence, be allowed to continue unabated.

I am less interested in the source or sources of the protesters' discontent than I am in the cumulative effect of their actions, since my point would apply regardless of the type of freedom espoused by the protesting group. If you believe that the Ottawa protests should have been allowed to continue for reasons to do with constitutional protections, legitimate civil disobedience or a belief that the disruptions caused by the protesters are an acceptable price to be paid in a democratic society, then your position on this motion should be very simple: You should vote against it. But if you believe that the protests — again, not protests in the abstract, but these particular protests that have been going on for three weeks and which, until a few days ago, had no end in sight — if you believe that these protests had to be stopped, then the only question remaining is how to make that happen.

I have not heard too many parliamentarians argue that the disruption caused by the Ottawa protesters is acceptable and that we should have let them continue to protest, so I am proceeding on the assumption that there is broad agreement that the protests had to end. If I am wrong in my assumption, I hope you will stand up and say very clearly that you support the right of the Ottawa protesters to continue. That will, in turn, clarify the basis on which you presumably oppose the motion. I would disagree with you, but at least we can understand each other's position and how we came to different conclusions.

Let me turn now to arguments that, on one hand, accept that it was necessary for the protests to end but, at the same time, are against the use of the Emergencies Act. One may, for example, hold the view that the federal government could have negotiated an end to the protests and thus avoided invoking emergency powers. Bear in mind, however, that the protesters were demanding, among other things, the end to all COVID mandates and the overthrow of the government, with the help of the Senate, no less; and they were insistent on not removing their trucks, trailers and trampolines until the Government of Canada revoked the entirety of COVID-related restrictions.

On what basis would a duly elected government even contemplate negotiating with a mob to, first, overturn public health measures that most Canadians support and, second, defrock itself via the decree of a self-appointed group of noisy protesters? It is one thing to acknowledge pandemic fatigue, which all of us are experiencing; it is quite another to succumb to mob rule.

For all the huffing and puffing about how the Emergencies Act subverts democracy, let's be very clear: What the protesters were calling for is the very definition of democratic subversion. To leave their demands unchallenged or, worse, to validate those demands by negotiating with them is to aid and abet the subversion and would amount to an abdication of governmental responsibilities.

A more compelling argument against the invocation of special powers is that there was no need for them in the first place. This would be the case if there are existing authorities on the part of the provincial or federal governments to effectively bring the protests to an end. But if those powers existed — for example, through the states of emergency declared by both the City of Ottawa and the Province of Ontario — why were the protests not curtailed after emergencies were declared? There are two possibilities: The first is that the powers of the province and municipality were insufficient to disperse the protesters; the second is that the leadership of those jurisdictions were unable or unwilling to exercise those powers.

The first reason amounts to a justification for the Emergencies Act. On the second point, some might argue that the unwillingness of a provincial or municipal government to exercise their powers does not justify the federal government invoking the Emergencies Act. However, the decision on whether to invoke the act is based not only on whether local authorities have the powers to respond to emergencies, but also on whether those authorities are capable of doing so and whether those capabilities are likely to be effective.

It seems reasonable to me that the federal government concluded that, after three weeks of disruption, their subnational counterparts did not have the capability to exercise whatever powers they had at their disposal. The fact that the Government of Ontario supports the Emergencies Act lends further credence to the appropriateness of its use.

One can, of course, speculate about the reasons for insufficient action on the part of the municipal and especially the provincial government, but that is beyond the scope of this motion and is ultimately a matter for the electorate to contemplate.

A third line of argument against the Emergencies Act is that even if the protests are intolerable and existing authorities are insufficient, the thresholds set out in the act have not been met, in particular, the definition of a national emergency. Under this view, the best one can hope for is the application of any existing laws against individual protesters and the use of general policing efforts to contain the protests until they, in the fullness of time, petered out. I would call this the “suck it up” school of thought, and it is, of course, exactly what Ottawa residents were asked to do for the last four weeks — suck it up.

• (1750)

And so, it boils down to whether the thresholds have been met. But who decides and how is the decision made? Here is Perrin Beatty, then Minister of Defence in the government of Brian Mulroney, testifying before Parliament 34 years ago to the day:

When the country is threatened by a serious and dangerous situation, the decision whether to invoke emergency powers is necessarily a judgement call — or more accurately — a series of judgement calls. It depends not only on an assessment of the current facts of the situation, but even more on judgements about the direction events are in danger of moving and about how quickly the situation could deteriorate. . . .

He goes on:

. . . the decision to declare an emergency is an exercise of political judgement and the Parliament of Canada is obviously an appropriate forum for questioning that judgement.

Which is where we are today, and why I believe the key question in coming to your judgment, my judgment and the judgment of this entire chamber is the question I posed at the opening of my speech: Was the “Freedom Convoy” protest and its crippling effect on residents, small enterprises, municipal services and our very system of government — three weeks in and with no end in sight — something that had to be stopped in relatively short order?

I believe the answer is yes. Here is the *Oxford English Dictionary* on the definition of “emergency”: It is, inter alia, “. . . a state of things unexpectedly arising, and urgently demanding immediate action . . .”

I think we can agree that it is an “emergency” when hundreds of vehicles descend on the nation's capital and entrench themselves on major streets in Ottawa, resulting in massive disruption and economic loss to residents of the city. But was it a “national” emergency? Well, the object of the truckers' protest was the national — i.e. federal — government, and the epicentre of the disruption was Parliament Hill, which is the seat of the national government. Even setting aside protests in other parts of the country and the real risk of further proliferation of protests, the fact that the mother of protests was in the nation's capital makes it, I believe, a national emergency.

I disagree with the Canadian Civil Liberties Association, which believes that the invocation of emergency measures was unwarranted because, to quote their Executive Director, “Disruptive protest while often unlawful . . . can be the most effective way of raising awareness.”

The CCLA opposed the Emergencies Act when it was introduced in 1988, so it is not surprising that they would oppose the first use of this bill more than 30 years later. Having reviewed their submission on what was known as Bill C-77 in 1988, I am sympathetic to some of their reservations. I appreciate the CCLA’s concern that the use of the Emergencies Act in this instance should not result in what they call the “normalization” of emergency powers.

But I put to it you, colleagues, that the greater risk today is the normalization of a style of protest that paralyzes critical infrastructure; holds siege to the nation’s capital; punishes businesses, workers and residents who live around the areas of protests; and seeks to overturn government policies by ransom.

That is what we seek to not normalize. This kind of unlawful and disruptive protest, regardless of the cause behind it, can indeed be the most effective way of “raising awareness,” as the CCLA casually asserts, but it is a dangerous road to go down.

Even if we can agree that the invocation of the act was necessary, no one should be celebrating the curtailment of civil liberties, and we should all seek to find the earliest possible time to end the emergency powers. That is the ongoing job of Parliament and one which we should turn our minds to immediately after confirmation of this motion with the formation of the parliamentary review committee.

It is also important to stress that supporting the use of the Emergencies Act in this instance does not amount to supporting the law in its entirety. In the same way that there was a vigorous public debate at the time of Bill C-77’s introduction, the invocation of this act three decades later should prompt another spirited examination of its provisions.

After all, the world in 2022 is much different from that of 1988. Think of the World Wide Web, social media, GoFundMe and its equivalents, crypto-currency as well as state and non-state foreign interference, all of which are relevant factors in the current case. Personally, I think the definition of “threats to the security of Canada,” which is taken from the CSIS Act, is too broad, but that is the subject of a different debate for a different time.

Honourable senators, I too am weary of COVID restrictions. The good news is that we seem to be coming out of the coronavirus tunnel, which means that the mandates will be progressively relaxed, perhaps to the point where the only public health mandate remaining is the one which you apply to yourself, according to your risk tolerance. But we cannot and should not lift the mandates because a noisy mob says it is time to do so.

In our yearning and haste for normalcy, we must remember that coronaviruses do not share our priorities. We do not know if another variant of COVID-19, perhaps one more virulent than Omicron and Delta, is just around the corner. And if that variant

does show up with ferocity, we cannot let our impatience with restrictions get in the way of sound public health directives, including the possibility of further lockdowns.

That is why the truckers’ protest should be seen not just in terms of public order, which was the basis of the invocation of the Emergencies Act, but also public welfare. Now, the government does not appeal to the “public welfare” criteria for its justification of emergency powers, but it is important to not lose sight of the link between public order and public welfare. The loss of one has an adverse effect on the other.

This is not the time to be cavalier about public order, especially when it is so closely connected to an issue of public welfare. Giving in to demands to disregard public health directives may be relatively benign at the tail end of the current pandemic, but it will be disastrous for the next one.

Honourable colleagues, I will vote in favour of this confirmation motion and hope that you will support it as well.

The Hon. the Speaker pro tempore: Senator Bovey, we have three minutes until the dinner break.

[Translation]

Hon. Patricia Bovey: Honourable senators, I rise today on the unceded territory of the Algonquin to voice my support for invoking the Emergencies Act, which was proclaimed on February 14, 2022.

[English]

Colleagues, this isn’t the easiest speech I have delivered in this chamber. The events which have occurred across this country of the past month have been troubling to me and, indeed, I feel, disgraceful and appalling. And I am worried about Canadians moving forward together.

I want to thank Senator Gold for his full and patient discourse today. With the arrival of the COVID-19 pandemic some two years ago, all Canadians have been living through some of the most difficult days of the last 75 years. This period has been unique. It has seen not only the spread of the virus and its variants, but it has also seen the spread of fear, loneliness and frustration, which has accompanied the virus as well.

The response to the pandemic has put an enormous strain on all of us. Day-to-day living has been complicated, travel has been non-existent for most of us and the most vulnerable in our communities have suffered disproportionately. What has grown most in Canada has been a distance and a disconnect between us. The events of the past month have not only been a result of pandemic fatigue but a growing and more organized voice whose underlying message is truly worrisome. Hardly freedom, despite the name of the convoy itself.

Senators, I believe in the right to protest. There have been many legitimate protests which have had a positive effect on the human condition. We have witnessed Indigenous peoples' protests regarding missing and murdered Indigenous women and girls and Black Lives Matter protests in Canada, which were conducted with dignity and civility, and the message has been received. While more certainly needs to be done on these issues and those resulting from other protests, action is being taken by governments and society as a whole.

• (1800)

The Hon. the Speaker pro tempore: Senator Bovey, it is six o'clock. You can resume your speech when we return. In accordance with the order, I must leave the chair for the one-hour dinner break.

We will adjourn until seven o'clock.

(The sitting of the Senate was suspended.)

(The sitting of the Senate was resumed.)

• (1900)

MOTION TO CONFIRM THE DECLARATION OF
A PUBLIC ORDER EMERGENCY—DEBATE

On the Order:

Resuming debate on the motion of the Honourable Senator Gold, P.C., seconded by the Honourable Senator LaBoucane-Benson:

That, pursuant to section 58 of the *Emergencies Act*, the Senate confirm the declaration of a public order emergency proclaimed on February 14, 2022.

Hon. Patricia Bovey: Honourable senators, as I have said, while more certainly needs to be done on issues arising out of earlier protests, action is being taken by governments and society as a whole.

This past month in Ottawa, however, has been something different, as have been the protests in Manitoba, Alberta and British Columbia, which have come with a wide range of demands, even to taking over the government. To my mind, it was not a peaceful tone and, as we know, in Coutts firearms were found.

While crowds have been dispersed from Parliament Hill and downtown Ottawa, they do continue elsewhere and we have all heard of the potential of their popping up in different locations. Indeed, at noon today we received a situation advisory about what was going on at Rideau Centre. One of our members was locked into a building in which he was visiting. An hour later, a hold-and-secure advisory was announced at 1 Wellington Street and the Senate of Canada Building.

[Senator Bovey]

The protests at the Manitoba Legislative Building in Memorial Park in downtown Winnipeg have drawn the concern of many, including our mayor. Likewise, it too is compromising the lives of those who live in that part of Winnipeg. If it was summer, with my windows open, I too would have heard the noise and the trucks.

In downtown Winnipeg, they are also unable to sleep. They have a fear of going out and have seen their neighbourhood filled with trucks. I have had many calls from my neighbours about the anxiety even their pets have. So the concerns do continue.

What we have seen transpire in Ottawa since January 28 has morphed into what I see as a very misguided use of legal right to assembly and, indeed, it has become a lawless occupation which rendered the many Ottawa citizens who live downtown and in the ByWard Market virtual prisoners in their homes. They faced incessant noise, threats, the pervading smell of diesel and a fear of going out, especially when wearing their masks.

I have heard of parents in different parts of Ottawa being in parks with their children and being harassed for wearing masks. Citizens of Ottawa missed work. Businesses were shut. Millions of dollars were lost. I could go on. We could talk about the other sites as well.

I'm sure we are all aware of the harassment of our staff, especially those of visual diversities and — as was so aptly noted by Senator Moodie — I would like to say a thank you and express a concern for those who work with us.

I have heard my colleagues' opinions on the enactment of the *Emergencies Act*. While I appreciate the concerns of my colleagues, I have concluded that, given this unique situation, the act is necessary at this time.

We have all heard the arguments regarding whether the threshold for implementing the act has been met. I believe that threshold has been met. Those arguments will be ongoing for a very long time after this situation has passed and, indeed, we all know there are many such legal arguments playing out as we speak.

My reasons for supporting the use of this instrument are not complicated. We need to uphold civic responsibilities and real freedoms fought for and died for by our parents and grandparents in the past and by our military members today. Those freedoms come with responsibilities, as Senator Cordy said earlier.

[Translation]

I think that the objectives of the *Emergencies Act* have been adapted to address the issues we are facing. I also believe the measures are justified, since they specifically target the people who were occupying our capital city and who were a threat to our international trade and our economy. I am referring to the truckers, the vast majority of whom opposed what happened.

[English]

I also do not believe we should be subject to foreign donors funding civil unrest in Canada. I, quite frankly, am upset by the number of people who were part of this occupation who have come from beyond our borders. I am very aware of the many American licence plates that were here in Ottawa and are currently in Winnipeg.

We are a sovereign nation and we should expect our government to defend that sovereignty. This, for me, is a basic concept.

The measures expire in 30 days. The act is subject to the Charter of Rights and Freedoms. Parliament will have the ultimate say in approving the implementation and repeal of the act while monitoring its use. These measures seem a reasonable response to what has become an unreasonable situation for many Canadians.

Honourable senators, the spread of disinformation amongst our population regarding public health measures during a pandemic which has taken the lives of so many is very concerning. We have all been touched by those who have died or been terribly ill with this virus, and we can't count the number of families who have had their lives changed irrevocably.

Not to be vaccinated at this point, despite the scientifically proven effectiveness of vaccines, is extremely disappointing. The anti-vaccine rhetoric, which has been shared online for any variety of unscientific reasons, has become tremendously concerning. There is no easy solution to this and it will remain an obstacle to our recovery. That is unfortunate.

This country is very close to reaching the finishing line regarding the virus. We have come to this point through following public health guidelines, getting vaccinated, staying home when requested to, missing family time, foregoing travel and sacrificing out of respect for one another's health and well-being. We have come too far to make these sacrifices not pay off for more normal times which we all want and need.

This is not the time to shut down trade, as the convoy forced. This is not the time to occupy the nation's capital, as it has. This is not the time to make life worse for everyone here, as was done, especially when we were all so close to the end game.

These actions are not helpful. They are preoccupying us all when we should be working together to restore our economy, our lives and not be divided.

[Translation]

In closing, I want to thank the vast majority of Canadians who have followed the guidelines throughout the whole pandemic. Thank you to those who made sacrifices to get us this far. Thank you to the Canadians who put their neighbours first and got vaccinated.

[English]

Thank you to all those who went to work, kept our hospitals and health systems going in the most difficult of times, those who kept food on our tables and our children learning, either at school or at home. I really want to thank our front-line workers who have cared for us through this ordeal. We are indebted to you.

• (1910)

I also want to pay a heartfelt tribute to the police who have undertaken a complex initiative these past days with care, honesty, transparency and professionalism. I applaud the many forces from various parts of the country that have joined together to make our capital ours again. While I'm sad that we need this motion, I am supporting it. Thank you.

Hon. Percy Downe: Honourable senators, as we consider the Emergencies Act currently before the Senate, it's clear that the federal government, which invoked the act, and the Parliament of Canada, which is voting on its passage or rejection, was forced into this position by the inaction of the Ottawa city council.

I had the pleasure of living in Ottawa for several years in the 1990s. We owned a house here, paid our taxes here and sent our children to school here. I can tell you that Ottawa is a lovely city. That's why what was allowed to happen here over the last few weeks is so disappointing.

I hope the citizens of Ottawa pay close attention to whom they are electing to their city council this fall. I hope they elect city councillors who have the ability to learn about the Police Services Act and who show the ability to grow into their job and the responsibility that it entails. I hope they elect individuals who are more interested in putting in the work to do the job rather than their personal popularity or their media profile. Our national capital needs a much improved and substantially more competent city council. We don't want another dysfunctional Ottawa city council putting our country in this position again.

The question before us, colleagues, is as follows: Was there a lack of proper laws resulting in the need for the Emergencies Act, or was there a lack of enforcement of existing laws? The hands-off treatment of the protesters here in Ottawa motivated others to take similar action as blockades and protests started popping up at border crossings across Canada.

After reading the act, I had a number of questions. First and foremost of which was: Is the Emergencies Act necessary, or is it an overreach? The main question and the heart of the matter is the section of the act that states that to declare an emergency requires a situation that, "... cannot be effectively dealt with under any other law of Canada."

Unfortunately, that question may be impossible to answer, at least for the time being, simply because we don't know what we don't know. What have our security and intelligence agencies discovered about who was behind these very well-organized protests? Were foreign governments involved in providing support or funding in order to generate unrest and division in our country?

When I worked in the Prime Minister's office, I spent a good deal of time working on national security issues after the September 2001 attack in the United States. We can assume the federal government assessed the threats and acted accordingly when they declared a public order emergency. And we will be able to confirm that assumption, or determine that the government made a mistake, when we review the implementation of the Emergencies Act over the next few months. However, the seizure of weapons at the Coutts border crossing in Alberta, along with the laying of charges involving uttering threats, possession of a weapon for a dangerous purpose and conspiracy to commit murder are obviously extremely serious.

Colleagues, we must remember that the people who protested for three weeks represent but a small portion of the population of Canada. The silent majority of Canadians are those who are fully vaccinated — over 85% of eligible Canadians. The silent majority of Canadians followed public health guidelines. The silent majority of Canadians worked hard to protect their fellow citizens: our seniors, children under five, those with an autoimmune disorder and those who, for whatever reason, cannot receive the vaccine. However, a small group of our fellow citizens kept asking, "What about me?" It was all about me, me, me, and to heck with everyone else.

The current and ongoing easing of public health restrictions is because so many Canadians have done and continue to do the right thing. We owe a debt of gratitude to health care workers and public health officials who have guided us through this pandemic.

As I stated, because of the failure of early, effective enforcement, the Emergencies Act became necessary to prevent a well-organized, well-funded minority from overthrowing all the efforts that the majority of Canadians have undertaken to help us get through these past two painful and difficult years of the pandemic.

I shall be voting in favour of the motion. Thank you, honourable senators.

[Translation]

Hon. Marilou McPhedran: Good evening, *tansi*.

As a senator from Manitoba, I acknowledge that I am a resident of Treaty 1 territory, the traditional territory of the Anishnaabeg, Cree, Oji-Cree, Dakota and Dene peoples, and the homeland of the Métis Nation.

I would like to share a quote from the February 19 edition of *La Presse*:

They were well within their rights to protest, but not to block the heart of the capital and threaten its democratic institutions. . . .

In an attempt to disrupt the police operation, "patriots" flooded the 911 line with non-urgent calls, endangering the lives of the people of Ottawa.

Some even had the gall to put children between the line of police and the protesters. They used their own children as human shields.

[English]

The so-called "Freedom Convoy" protests were ostensibly marked by a January 2022 regulation mandating truckers and essential workers crossing the border to provide proof of vaccination. The truth is that these protests are less a reaction to this mandate and more a reflection of the general frustration with the pandemic-related restrictions of the last couple of years.

Unfortunately, it has become increasingly apparent that these protests have been appropriated by more radical, politicized voices and elements to the disservice of the majority of protesters, and any legitimate debate has been subsumed by polemically divisive populism.

It is telling to note that with 90% of truck drivers vaccinated against COVID-19, according to the Canadian Trucking Alliance, the majority of the industry is sitting out the convoy protest. The Canadian Trucking Alliance and the Ontario Trucking Association have been vocal against the convoy actions and in favour of government intervention. What's more, even if the government were to immediately lift the federal vaccine mandate for truckers, a parallel U.S. vaccine mandate, announced last October, for foreign truckers would still keep them from crossing the border. So the cross-border vaccine mandate for essential workers is clearly symbolic rather than central to these protests. Something else is happening here.

I think we can all understand and empathize with the high frustration and uncertainty that many Canadians feel regarding the pandemic. But let us also remember the many more Canadians who have lost over 35,000 of their families and friends.

• (1920)

Restrictions have been imposed and then lifted in ways across the country by federal and provincial governments, and they haven't always been effectively communicated. A more profound impact on our lives than we could have ever imagined, but let's be clear and fair. Those same restrictions — clunky, inconvenient, and perhaps from time to time intrusive, as they have been — have helped keep our country's COVID death rate at about one-third proportional to the United States. Frustration is real, but so too is science, and the health policy and legislating for the common good has been relatively successful.

As many have voiced already, Canadians have the privilege and right to protest and demonstrate. We see this all the time. Some are small; some are large and organized. Most of us have participated in demonstrations from time to time. I certainly know my kids grew up, from the time they were in strollers, being wheeled into demonstrations, and those demonstrations were peaceful. Those demonstrations did not block anybody's right to their life or to health care or to services that are essential.

However, jurisprudence has clarified that section 2(c) guarantees the right to peaceful assembly. It does not protect riots or gatherings that seriously disturb the peace. Furthermore,

it has been stated that the right to freedom of assembly, along with freedom of expression, does not include the right to physically impede or blockade lawful activities.

We recognize and accept the necessity to balance our rights and freedoms with the rule of law in our democracy. That is the essence of section 1 of the Canadian Charter of Rights and Freedoms, reasonable limits placed by a democratic process.

The protests, convoys and occupations manifested across the country with the underlying issue, supposedly the coronavirus. There's a global pandemic that has today resulted in the deaths of more than 5.9 million people. In a Canadian context, 45,000 Canadians died in World War II, and more than 35,000 Canadians have died in this pandemic so far, with more dying every day.

This is an issue of public health and common good. This is an issue of peace, order and good government, as is set out in our Constitution.

Yes, there have been limits placed on Canadians, from the mandatory use of masks to limiting group sizes to limits on mobility, and even on business and school closures, but that has been to reduce the spread, not eradicate the virus, because we know that isn't possible. It's been done for the common good. It's been done so that health workers can do their work for people among us who need health care.

We have seen incontrovertible evidence that a combination of medical and technical interventions, and equally imperative individual conscious behavioural changes, are required to effectively counter this or, indeed, any pandemic. The imposition of COVID-related restrictions and health regulations is intended to minimize illness and death in the maximum number of Canadians, and that's exactly what vaccinations have done.

But none of us has the right to behave as though it isn't important for someone else to protect their health. This is a balancing of rights and privileges, and a weighing of responsible and proportionate measures to respond to this crisis. In my opinion, the declaration on February 14 fit within the criteria necessary under the Emergencies Act.

When Alberta dropped virtually all health restrictions on July 1, 2021, the cases skyrocketed. Albertans were dying from COVID-19 at more than three times the Canadian average. The province was in crisis because the provincial government did not maintain health restrictions that could have kept its citizens safe. This is an issue that is at the core of what we are struggling with here in this debate.

Much of the power that has been objected to by many of the protesters actually has little to do with the federal government because of our Constitution, because of the division of powers between the provinces and the federal government.

This is really an analogue to this current debate; whether the invocation of the Emergencies Act is another form of unreasonable and, therefore, unjustified imposition of limits on our Charter of Rights and Freedoms. Yes, in my opinion, it does meet that test for proportionality and reasonableness as set out so clearly in the *Oakes* test by the Supreme Court of Canada.

Specific to the invocation of the Emergencies Act, I am convinced by the evidence that these protests moved beyond peaceful assembly, and the open demonstrations of citizens has been, unfortunately, hijacked by radical elements that have been using and continue to use these demonstrations to foment the movement to ferment, infiltrate, spread and move into areas that are potentially far more sinister.

To extrapolate out words from what we have seen in these past weeks, by which I refer to the border blockades and deliberate crippling of infrastructure; to weapon seizures and the charges of conspiracy to commit murder in Coutts, Alberta; to the occupation and siege of Ottawa; the documented organizational involvement of active and former military police, as well as individuals known to have deep connections to extremist groups publicly proclaiming that they want a racial war, publicly proclaiming that if there isn't this kind of insurrection, then we will all soon be forced to speak Hebrew.

The intelligence assessments prepared by Canada's Integrated Terrorism Assessment Centre are pertinent to this discussion. They warned in late January that it was likely that extremists were involved, and they said that the scale of the protests could yet pose a "trigger point and opportunity for potential lone actor attackers to conduct a terrorism attack."

I remind you that according to section 83.01(1)(b)(i)(B) of the Criminal Code, terrorism is an act that is committed:

in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act . . .

We could think, for a moment, about the entire closure of the Rideau Centre in downtown Ottawa as just one example.

It is understood that demonstrations always tend to attract some extreme individuals and groups, but the apparent level of coordination and integration, as reported by ITAC and observed by other policing and security agencies, indicates clearly that this occupation has moved far from the original intentions of many of its participants. Extremist attitudes have instead infiltrated, derailed and co-opted the original voice and intent of the majority of the protesters. This irreparably changed the convoy from a peaceful assembly to something calculated and dangerous.

I want to focus my remaining remarks on some oversight and control measures provided for in the act, in particular section 59, which provides for only 20 members of Parliament and 10 senators to come together for an early end to the use of the declaration under the Emergencies Act, and section 62, which mandates the parliamentary review process.

On section 62, I wish to highlight a number of facts that are troubling and which I hope we will ensure that the parliamentary inquiry will study.

• (1930)

One, the presence and apparent organizing leadership of active and former Canadian Armed Forces members, as well as active and former police. Two, the presence, positioning and safety of children within the protest and how this affected policing decisions and actions. Three, the double standard in how the police have responded to the actions of this group compared to a very different use of force and arrests at some Indigenous and climate justice protests or, indeed, has been mentioned at the Toronto G20 summit. Lastly, the legitimacy, efficacy and precision of employing financial seizures as a reasonable alternative to violence or more aggressive coercive police action.

Honourable senators, many people have commented on the fact of the rather astonishing degree of peaceful dismantling of this siege, and I think we need to pay close attention to the use of the financial leverage in this way and the likelihood that this contributed to the relatively peaceful process that we saw happen in the last number of days.

With grave concern about extension of the extraordinary powers, I note that the Emergencies Act does not suspend civil liberties or Charter rights. It ensures that the Prime Minister and cabinet are not allowed to dictate without parliamentary oversight. Honourable senators, that's why we're here. The act requires that the declaration must be tabled in Parliament within seven sitting days of cabinet issuing its declaration.

In closing, may I just say that I will vote in favour of the declaration under the Emergencies Act, and I will also work with anyone who wishes, across all boundaries, to gather together the twenty members of Parliament and the ten senators to begin the process of ending these extraordinary powers. Thank you so much.

Hon. Denise Batters: Honourable senators, I rise to speak to this Emergencies Act motion. What a sad day it is, honourable senators, that it has come to this, that this Trudeau government has invoked and employed the Emergencies Act on Canadian citizens before it could even be voted on in Parliament. Tear gas and batons and lines of police to shove back protesters chanting for freedom. Truck windows smashed, bank accounts frozen, promises to hunt down even those who chose to leave the protest voluntarily. Even now, with the bridge blockades and Ottawa's protest cleared, the Prime Minister can't tell us when the Emergencies Act and its extensive government powers will be lifted, only that his government plans to make some of the features of those extensive powers permanent.

The incredible division among Canadians in this moment is largely of Prime Minister Trudeau's own making. He and his government have divided Canadians among themselves, vaccinated and unvaccinated, and through his incendiary language turned them on one another. From the time of the election onwards, Prime Minister Trudeau has used this public health emergency as a political wedge issue, without regard for the Canadians in the middle who have become collateral damage.

He has called them extremists, racists and says they are misogynists. Prime Minister Trudeau preaches tolerance, but says those who choose not to be vaccinated against COVID-19 "take up room" and questions, "Do we tolerate these people?" And

when these Canadians — in many cases being people who have lost much or everything as a result of COVID-19 mandates — land on Parliament's doorstep to have their voices heard, what does the Prime Minister do? Instead of hearing them out or empathizing with the frustration they are feeling, he doubles down and called them a "fringe minority with unacceptable views." So each side dug in and we wound up with a three-week protest in front of Parliament and the unnecessary overreach of the Emergencies Act by this government.

Let us not forget it was Prime Minister Trudeau who counselled Indian Prime Minister Modi to engage in dialogue when 50,000 farmers blockaded the roads to New Delhi in 2020, a protest that went on for a year. Prime Minister Trudeau boasted, "Canada will always be there to defend the right of peaceful protest." Yet he has refused from the get-go to engage in dialogue with the blue-collar people who were demonstrating right here on Wellington Street.

Honourable senators, throughout this pandemic, we have been fortunate to still collect our paycheques, to maintain access to our health plans and other benefits and to be able to work remotely from the comfort of our homes when necessary. Many of the people living downtown in this public service city have also been fortunate. But there are other Canadians who have had a very different experience during this pandemic. Many have lost their jobs, their businesses and their livelihoods, some as the result of circumstances, others due to vaccine mandates. The financial loss, social isolation and vilification promoted by the government have all resulted in a growing frustration that has culminated in the trucker convoy and blockades we've seen across the country.

In Saskatchewan and Alberta where many of these truckers came from, people were already suffering economic devastation prior to this pandemic because of the anti-energy policies of the Trudeau government. The ever-ballooning carbon tax is a further burden. Meanwhile, the oil and gas industry has been vilified in this country. Only last week in B.C. we saw protesters violently attack the Coastal GasLink pipeline work camp with axes and terrorize workers, and certainly with no discussion of invoking the Emergencies Act in response from the government.

While this movement started from a place of resistance to vaccine mandates, it quickly expanded to become about freedom more generally. The more the government and the Prime Minister in Ottawa spoke divisively against the protesters, demonizing them and refusing to listen, the wider and more expansive the movement became.

Before I go too much further, let me be clear. I empathize with the residents of downtown Ottawa who have been most acutely affected by the protest here. They have had their lives and livelihoods disrupted. Understandably, they wanted it to end. This intrusion into their lives came at the tail end of having suffered through this pandemic, perhaps the most stressful and traumatic two years of many of our lives. And then to have to deal with this? The blaring horns at all hours of the day and night, the obstruction — who among us wouldn't be saying enough is enough?

My office faces right onto Wellington Street, and I had a front-row seat to this convoy for the past few weeks. I can tell you that what I witnessed of the protesters was peaceful, organized and non-threatening. I do not tolerate harassment, intimidation or destruction ever, but I can honestly say that I personally did not see any of that behaviour exhibited by the protesters. I have been here in Ottawa during all three weeks of the protest, and I can say that in the last two years, I never felt safer walking home from my office at night. The protesters I met very much reminded me of the people I know in Saskatchewan — friendly, hard-working, patriotic Canadians. But I sensed in the discussions about the protesters in the media and among the privileged, chattering classes on Parliament Hill almost a fear of these working-class people who had invaded the city. Ottawa's mayor called them yahoos and idiots. Others online maligned them as Nazis and terrorists. Everyone had an opinion about them, but certainly no one was talking with them.

It was widely reported that I posed in a photograph at the protest alongside my MP caucus colleagues from Saskatchewan during the protest's first week. There were no protesters in the photo. There was an empty truck in the background with Saskatchewan flags on it. Certainly, nothing offensive. But in the Ottawa media this was considered controversial. We went to talk to some of the Saskatchewan truckers who congregated on Kent Street from towns like Stoughton, Southey, Carievale, Carnduff and Birch Hills. These truckers are our constituents, and it is our job as parliamentarians to hear them out, to engage with those we represent and to listen to their concerns. They drove all the way to Ottawa from those Saskatchewan towns — Birch Hills is almost 3,000 kilometres, or a 32-hour drive, away — to simply have a conversation. Like Prime Minister Trudeau will advise other world leaders to do, but which he obstinately refused to do himself when faced with the same situation here in Canada's capital, like so many other situations, what this Prime Minister sanctimoniously prescribes for others he refuses to apply for himself.

To be sure, the Emergencies Act is intense legislation for a government to invoke. It should only be used as a last resort when no other laws can deal with a national security-threatening issue effectively. I submit that this Ottawa convoy falls well short of that bar. In the past, when this act — or more accurately, its precursor, the War Measures Act — was invoked, it was in relation to World War I, World War II and the FLQ crisis, which involved the murder and kidnapping of public officials and ongoing terrorist activities. These are the only times similar legislation was employed in the past. What is the national emergency this time? Dance parties and loud horns? Horns that, by the way, had long since stopped honking by the time this act was invoked due to a court injunction that the truckers complied with.

Honourable senators, just remember that when this government is long gone and another takes its place of a stripe you may not agree with. The Trudeau government has now set this as the precedent for invoking the Emergencies Act. Bouncy castles,

loud horns, raucous partying and illegal parking in a four-block radius of downtown Ottawa. It's annoying, to be sure. But is this a national emergency?

• (1940)

The federal government made no moves to resolve the Ottawa protest for three weeks, while the protesters were mere feet from the front doors of the West Block. If the situation were truly such a grave threat to national security that it rose to the level of employing the Emergencies Act, one would expect the federal government would have acted in some way — any way — to resolve it. But they did not. Prime Minister Trudeau simply refused to meet with protesters, then brought in the Emergencies Act as a first, not a last, resort.

When Deputy Prime Minister Freeland spoke on the issue, she said that the government used all the tools it had prior to the invocation of the act. What tools? Name calling? The Prime Minister disappearing for days on end? More name calling? What tools? The same tools they used for the railway blockades in 2020 that went on for 19 days, and for which the government still never invoked the Emergencies Act?

When the Prime Minister announced that he was engaging the Emergencies Act, he told Canadians it would be in a geographically targeted way, applicable only to those within the zones specified. Yet, we see in reality the federal government's massive overreach in the proclamation declaring a public order emergency, which states that the public order emergency will apply "throughout Canada."

Several of the premiers oppose the use of the Emergencies Act to deal with this situation, including the Premier Scott Moe of my home province of Saskatchewan.

Many legal experts agree this situation fails to meet the threshold for exercising the Emergencies Act. Among them are constitutional law Professor Dwight Newman, Advocates for the Rule of Law, Amnesty International, the Canadian Civil Liberties Association, the BC Civil Liberties Association, and even Paul Champ, the lawyer for those who successfully sought the court injunction against the horn honking of the Ottawa protest. They all agree this situation didn't require the Emergencies Act.

Last week, the Canadian Civil Liberties Association announced that it is taking the government of Canada to court over the invocation of this act. The CCLA's Executive Director Noa Mendelsohn Aviv called the use of the Emergencies Act in this unprecedented situation and a serious infringement of the Charter rights of Canadians. She stated that, by invoking the Emergencies Act, the government would be giving itself "... enormous powers to bypass the ordinary, accountable democratic process." Mendelsohn went on to call "peaceful assembly," which by any measure this protest has been, "a critical democratic tool."

The BC Civil Liberties Association has further pointed out that the Emergencies Act should not be a stopgap measure to address the inaction of municipal police forces and provincial authorities. To be clear, they stated, governments have ample legal authorities without using the Emergencies Act.

Even Paul Champ, the Ottawa lawyer who went to court to put a halt to the incessant honking of horns by the truckers, agrees that the use of the Emergencies Act in this situation was government overreach.

... although I am acutely aware of the trauma experienced by Ottawa residents, I fully agree that the Emergencies Act is a dangerous tool that was not required.

Many legal experts shared a concern that by invoking the Emergencies Act for the Ottawa protest, the Trudeau government is normalizing the extraordinary law's usage.

The BCCLA warns that the invocation of the act in this instance sets a dangerous precedent if our elected officials become comfortable with using excessive powers to target dissent in Canada. It becomes easier to use again, they argue, to stifle other movements such as Black Lives Matter or Indigenous land and water defenders.

Advocates for the Rule of Law, or ARL, agree that this situation sets a dangerous precedent:

... normalizing the declaration of emergencies, especially before other less intrusive (but still significant) measures have been attempted, threatens to render hollow the rights and freedoms guaranteed to all Canadians; it risks a gradual erosion of Parliament's role in favour of executive power; and it amounts to a damning admission of a failure of state capacity.

But there is some evidence that normalizing emergencies may be the Trudeau government's intention. Deputy Prime Minister Freeland has recently spoken of making some tools in the act permanent. We should all be worried about that, honourable senators.

For all its raucousness and disruption of traffic in downtown Ottawa, can anyone seriously believe this protest was a threat to Canada's national security? Some will say that it spawned blockades at the Ambassador Bridge, disrupting one of our main trade routes with the United States. But that blockade and, similarly, the one in Alberta, were dispersed peacefully and nonviolently. And most importantly, without recourse to the Emergencies Act.

Meanwhile, both houses of Parliament were able to meet for weeks, mere steps away from the protesters. Prime Minister Trudeau and his senior cabinet ministers attended several Question Periods and House of Commons sittings in the West Block in person. If there was a true public order emergency, surely none of that would have been allowed to have occurred.

Honourable senators, consider all the moments of crisis in Canada since 1988 — and yet, the Emergencies Act was not invoked for any of those occasions; not for the standoff at Oka, not for 9/11 in which 25 Canadians were killed and not even during the October 2014 Parliament Hill shooting — and I remember that well, because I was locked in a caucus room for 10 hours with my colleagues throughout. None of those situations required the use of the Emergencies Act.

I fear that with this invocation, we are embarking on a slippery slope away from what Canada is famous for: its unwavering adherence to the principles of freedom and justice. These principles are why immigrants from around the world long to come to Canada. That is the reason so many of our ancestors came here, to escape tyranny. That is why my grandparents came to Canada from Ukraine 100 years ago. This country, this parliamentary system — the Westminster System — was founded out of the rejection of tyranny. The Fathers of Confederation feared not just the tyranny of the monarch but the tyranny of the majority, and we in the Senate are a key part of that system to stand up for the minority, to be their voice.

It has not been lost on me, nor should it be on any of you, that this building, now the Senate of Canada Building, where I deliver this speech today, is the very building where your Charter of Rights and Freedoms was negotiated. Think of that history, honourable senators, when you consider whether to allow this federal government to trample all over that Charter.

People on both sides of the political spectrum have expressed the view that the Trudeau government's invocation of the Emergencies Act in this situation is considerable government overreach, and at this time I am reminded of the words of William F. Buckley Jr., who said, "The best defence against usurpatory government is an assertive citizenry."

We need to assert ourselves, honourable senators, and reject this unprecedented authoritarian overreach by this federal government. Please join me in voting no to this Emergencies Act motion. Thank you.

Hon. Peter M. Boehm: Honourable senators, I rise to speak in favour of the motion before us today. It is my view that our country is dealing with a public order emergency that unfortunately requires the use of extraordinary and temporary measures.

What Ottawa, and indeed Canada, has been through the past month is unprecedented in our history. The combination of border blockades, the illegal occupation of a city — let alone our capital — the harassment and threats of violence against residents and journalists and the damage to businesses and our economic security — to say nothing of the explicit end goal of some of toppling our duly elected government — is not normal.

Protests and even riots are not abnormal in Canada. Quite the opposite: There were riots during the conscription crises in both world wars; the Winnipeg General Strike of 1919; the On to Ottawa Trek of 1935 and the subsequent Regina Riot. Montreal even saw riots in 1885 over, you guessed it, vaccines — smallpox at the time.

And, of course, there was the October Crisis of 1970 and Oka 20 years later. More recently there have been protests and blockades which have sometimes turned violent against pipelines and other projects. Some have been associated with major world events that Canada was hosting. I dealt with examples of this in my previous career, beginning with the Summit of the Americas in Quebec City in April 2001.

Protest is a fundamental element of any functional democracy, Canada included. It is a right we all hold dear and one that must be protected. Here's the problem, though: What happened in Ottawa was no mere protest. It was an occupation, and it certainly was not peaceful. I realize this is where opinion becomes sharply divided, but the absence of outright physical violence is not peace.

Particularly over the weekend during law enforcement operations in downtown Ottawa, we heard and read striking terms, including "front line," "occupied territory," and "gaining and losing ground." This is usually reserved for dispatches from war zones. It is not how actions to disperse legitimately peaceful protests are described. This leads me to the War Measures Act used in October 1970. Then, as now, parliamentarians decried the perceived government overreach. This is much the same situation the current government faced in making what was no doubt a very difficult decision.

However, a major difference today is that unlike in 1970, the federal government does not have unlimited powers to restore order, and the Canadian military has not been deployed to city streets, something that shocked all Canadians, especially residents of Quebec over 51 years ago. As we all know, the War Measures Act was later repealed and, in 1988, was replaced by the current Emergencies Act by the government of Brian Mulroney at the time.

• (1950)

I wish to justify my support for this motion by addressing three areas: the applicability of the act, my personal understanding of freedom and my views as an Ottawa resident.

First, I accept that the threshold for the invocation of the act has been met. If what we are dealing with is not a public order emergency, I don't know what is.

The blockades at international bridges caused tremendous and perhaps long-lasting damage not only to our economy in pure numbers but also to Canada's reputation as a safe, engaged trading partner and investment destination.

Jobs are at stake. What the blockades in Windsor, Ontario, Coutts, Alberta, Emerson, Manitoba, and South Surrey, British Columbia had in common, on the surface, was an opposition to vaccine mandates ostensibly for truckers — that very small percentage that believes vaccine mandates impinge on their freedom.

The same goes for Ottawa. What the blockades and the occupation of Ottawa demonstrate is that the sentiments expressed suggest a national problem, not one confined to a specific region or city.

The blockades and occupation of Ottawa, however, are not just about vaccine mandates, if that was ever really the point.

Groups with deeper grievances, ranging from dissatisfaction with governments generally — particularly at the federal level — an unwillingness to accept the results of the last federal election,

a general frustration with how two years of pandemic and health control measures have impacted their lives and, quite frankly, a wish to raise a little hell.

Mis- and even disinformation, particularly on social media, has added fuel to the fire and some of it has been spread by malign actors. This is to say nothing of crowdfunding, much of it foreign, a phenomenon we have not before seen in Canada at this level.

Further, some protesters were prepared to engage in violence. This was particularly clear in Coutts, where RCMP uncovered a disturbing plot to kill officers along with a cache of weapons.

As I have said, protest is normal in this country and it is an important part of a healthy democracy. What is not normal is the blocking of critical infrastructure and holding a city and its residents hostage for several weeks.

Based on their analysis, the Ottawa Police Service and the Ontario Provincial Police concluded they could not bring the occupation to a safe and effective end with their own resources and under their municipal and provincial mandates.

The immediate situation in Ottawa was largely resolved, according to our police forces, due to the invocation of the act because it allows for greater police cooperation across the country without swearing-in procedures and the time-consuming establishment of other protocols.

For me, the sobering thought is that such blockades, occupations and demonstrations could recur at any time. Just because the streets of downtown Ottawa are now largely clear of demonstrators and trucks does not mean the danger is over.

The use of the Emergencies Act, while I support it in this instance, is a Band-Aid, not a cure. We must remember that, colleagues.

This legislation was designed with full deference to the Canadian Charter of Rights and Freedoms as a last resort to deal with different types of emergencies.

I will not delve into the detail that others have already offered except to say that there are serious checks and balances. They are meant to ensure that the government is held accountable by Parliament and the public and can neither maintain the declaration of emergency indefinitely nor for its own purposes.

I would further point out that it would be quite challenging for a minority government to veer into authoritarianism despite what we have heard from so many critics.

Colleagues, like all of you, I heard and read what demonstrators in Ottawa had to say. They said they wanted freedom or they wanted it back or they were fighting for bodily autonomy. Their list of complaints was long and many of their slogans were American imports — for example, "Don't tread on me" and "Live free or die." Others would not exactly fall under parliamentary language as we know it.

Even some of the flags were imported from other places and times. It is upsetting to have to say that Confederate and Nazi flags have no place in Canada. In my view, neither do upside-down Canadian flags at our cenotaph, which is what I saw outside my office window.

Demonstrators made their points. They complained very loudly and were heard. It was impossible not to hear them. These people, despite their assertions that they have unified the country as never before, are not the majority they claim to be.

Over 80% of Canadians have complied with mandates, have been vaccinated and have learned about QR codes knowing they were doing this for their health and safety and for the common good of all citizens.

Surely, in this great country we have learned throughout our history that our social contract means we sometimes must make sacrifices to safeguard our society and protect each other. This is why we have laws and public health measures and why we pay taxes. The social contract we all sign on to by virtue of citizenship and residence in Canada is not rendered void because some people do not like it.

That is also why we have the Charter of Rights and Freedoms, an important document that more Canadians should read. I must point out here that it is the Charter by which we abide in Canada, not the United States Constitution.

Colleagues, Canada has come through this latest pandemic with one of the highest vaccination rates in the world and one of the lowest COVID-related death rates. Why? Because Canadians and our federal, provincial and municipal governments all worked together. Yes, there were some coordination issues, especially in the first dark days, but they were largely overcome. And those who did not and still do not wish to be vaccinated made their choice.

In Canada, our mission since 1867 has been peace, order and good government. For the most part, we have fulfilled the goals of that ongoing project. It is part of what Canada is known for in the international community.

In my previous career, it was part of my job in the service of both Conservative and Liberal governments to promote and defend human rights and freedom in various parts of the world. I have many stories; I'll give you one short one.

While a junior diplomat stationed in Central America, I recall arriving late one evening at the airport in El Salvador while that country was engaged in civil war. I took a taxi down the deserted highway to the capital, San Salvador, and was soon pulled over by a military platoon asking for my credentials.

Surprise was expressed that I did not have a security detail — I am a Canadian after all — but then the commanding officer said that everyone liked Canadians because they stood for freedom. "By the way," he told me, "my sister lives in Toronto."

I was warned to be careful because there were reports of a unit of the Farabundo Martí National Liberation Front, or FMLN in Spanish, a few kilometres up the road. Sure enough, members of the guerilla group intercepted me and my now nervous taxi driver

some time later. Credentials were again shown, this time to the self-described freedom fighters. I was asked to pose for a photo with the group, which the leader said he would send to his sister who was living in freedom in Vancouver. He then said we should be very careful because there was an army column nearby. The driver and I just looked at each other.

Colleagues, people all over the world have come to Canada to find and live in freedom, my own parents and some members of the Senate included. This will continue despite the concerted efforts of many to besmirch, denigrate, fundraise or even derive partisan political gain from the word "freedom."

Colleagues, I'm a resident of Ottawa and for the past few weeks I've walked to work every day. It was the easiest way for me to get to my office in the Chambers building. From the moment I would open my front door at home to arriving at my office some 40 minutes later, I heard the truck horns, usually in one continuous blast. I walked past shuttered businesses, past the closed Rideau Centre, the sixth-largest mall in Canada, I believe, and through the fumes emanating from illegally parked, idling trucks downtown and in the Parliamentary Precinct.

I spoke with protesters. I spoke with their children. It is not the only example of this, but I personally saw from a distance demonstrators carry out a racist and deeply offensive parody of an Indigenous ceremony.

Other senators and I have received countless emails and phone calls from Canadians, and from some Americans too, asking us to vote against this motion and also asking us, in many instances, to bring down the government.

I have received many communications as well from residents of this city who are simply trying to live their lives in peace. They were scared and they were, and are, angry. I am too on my own and on their behalf.

Residents have been harassed for wearing masks. They have been subjected to racist and misogynistic comments — and no amount of "but that's just a few bad apples" makes this less unacceptable.

Seniors and people with disabilities who rely on meal deliveries, such as Meals on Wheels, have been impacted by blocked streets. People have worried, with good reason, about their residences being attacked. There was public urination and defecation even on the sacred ground of the National War Memorial.

There was a sense, again with very good reason, that the rules did not apply to the occupiers — and worse, they believed it as well. There was a loss of public trust, no small matter in municipal authorities, including the Ottawa Police Service, beleaguered as they were. There was a decrease in mental and physical health as a result of this occupation, and a deep concern of the impact of all of this on children and even on pets.

• (2000)

All of this leads me to have great concern for members of our dedicated Senate staff, as other senators have mentioned — those in our offices and in the Senate Administration — who live downtown and in Centretown. Check in with them, colleagues. See if they're okay.

Colleagues, no matter how many inquiries are undertaken under whatever levels of government, this event has marked the lives of Ottawans forever. In fact, it is one that impacts all Canadians, even those who live nowhere near here.

The use of the federal Emergencies Act and the long-term implications of doing so on our national psyche make that clear. We know there are people across the country who see Ottawans as entitled and who did not want the convoy to leave the city, people who were happy to show their explicit support for the demonstrators and their goals. They will need to reflect on comments made and actions taken.

It is not just the supporters of the demonstrations in Ottawa and the blockades across the country who need to reflect. Every single Canadian must. How we respond in this moment will have effects not just now but into the future. This is not just a debate on the use of the Emergencies Act in this specific situation. It is a debate on what we want this great country of ours to stand for. Thank you.

Hon. Frances Lankin: Senator Boehm, I don't know if you'll have a chance to answer this, but your role in the Summit of the Americas as well as your knowledge of the G20 and G7 meetings have been referenced as examples where we were able to coordinate police resources. How many months of planning went into that? How much time was there to actually deputize police?

Senator Boehm: It took one year.

Hon. Kim Pate: Honourable senators, I also rise as someone who has the privilege and responsibility of living and working in the unceded, unsundered territory of the Algonquin Anishinaabe.

Colleagues, all indication is that the urgent situation of the past weeks could have been prevented. The occupation of the streets of Ottawa did not begin as an emergency. It became one because of inaction and intransigence by all levels of government and was shaped, in particular, by systemic racism, misogyny and bias in state attitudes, including among law enforcement, as well as apparent feelings of overdue reckoning and unification of people who have long been left behind, many of whom have experienced victimization, criminalization and institutionalization by those same state authorities.

While many of us were stopped and questioned on the road, trucks were permitted to roll in and lay siege to the nation's capital. This, even though public authorities had advance intelligence of the involvement of violent extremists. It is clear White supremacist, populist, racist, xenophobic discriminatory objectives filled the hearts and minds of key organizers and those who bankrolled and emboldened them to promote hatred.

What is also clear is that many ordinary people, whose needs and interests have been intentionally ignored by successive governments, were engaged by calls for freedom and an end to autocratic, unfair and unaccountable decision making.

I am beyond heartbroken that communities and families are being pitted against each other, that people I know and love are among those here, across the country and in other nations who, after decades of disenfranchisement and abandonment by health, economic and social systems, think they have found common cause.

These emergency measures may end the blockades and occupations, but they will not redress the inequalities, disenfranchisement and divisions that these actions reinforced and exacerbated. If we actually hope to end and prevent such insurrection, we must, crucially, work to ensure that the most dispossessed and marginalized are no longer left behind. We must prioritize equality, dignity, fairness and justice for all.

Years before Parliament Hill became my workplace, on the Centre Block protest grounds and beyond, I organized and participated in countless demonstrations and protests aimed to disrupt and raise concerns about inequities and grievances from anti-poverty to anti-war, pro-choice, anti-racism, anti-violence against women, support for missing and murdered Indigenous women, anti-heterosexist, anti-fascist, anti-capitalist, environmental, women, Indigenous, Black Lives Matter actions. The list goes on.

The purpose of protest is to disrupt and get change. The purpose is to create action, unlike this occupation. Prior to the wielding of the legal sledgehammer of the Emergencies Act, the full force of the law was often swiftly employed to subdue, suppress and squash lawful and peaceful protest. It certainly was not the norm to have law enforcement and conservative interests joining, posing for group photos, or urging us on and partying with us.

As the convoy arrived in Ottawa, police were already present on the roads. Driving to my office on January 28 and beyond, I was stopped, questioned and urged not to proceed, only to then watch trucks being waved through as they drove onto Parliament Hill.

We now know that Canada's Integrated Terrorism Assessment Centre warned the federal government days before the siege that violent extremist groups were deeply involved and that the scale of the protests would be a "trigger point and opportunity for potential lone actor attackers to conduct a terrorism attack." Why did authorities not take this threat seriously?

Homeless people trying to survive in encampments, Indigenous peoples protecting their lands and waters, Black Lives Matter protesters, women, environmentalists, striking workers and countless others have too often faced state use of force and even brutality and violence when exercising their rights to peaceful assembly. I cannot imagine any of these groups being permitted by law enforcement to drive multiple vehicles, much less 18-wheelers, onto Parliament Hill.

By contrast, those occupying Ottawa were granted incredible leeway to move flammable liquids and heavy vehicles through heavily populated areas and to harass, bully and threaten people, including front-line workers, health and retail workers, service providers, residents and homeless folks.

Police claim that they have received few official complaints — this after advising Ottawa residents seeking assistance that they could not intervene, that people should shelter at home, remove their masks when challenged by occupiers, or consider temporarily leaving their homes in the downtown area. Counter-protesters who confronted trucks reported being approached by police to negotiate safe passage of the convoy, including being asked, “If you don’t move, how does this end?”

All of this reflects the racism, misogyny and bias long identified in policing, corrections, the military and, in some respects, the government, whereby some are privileged with protection and others are at best abandoned and at worst allowed to be brutalized. In a context where every state authority is being investigated for failure to address class, race and gender bias, the reluctance of individuals to report such actions is not only understandable but should be expected.

Honourable senators, how comfortable would you be pushing authorities, some of whom you see posing for selfies and otherwise endorsing the individuals you fear? How do you know which officers are the ones who will act professionally and fairly versus those who may not? The sense that police have stood by, condoned or even supported the occupation is, unfortunately, reinforced by the presence of former police, military and national security personnel among the organizers, funders and occupation participants.

Meanwhile, people living on the streets, people living below the poverty line, women, Indigenous peoples, African Canadians and other racialized people, those living with disabilities and members of the 2SLGBTQ community have disproportionately borne the consequences of the occupation, while simultaneously seeing that little has been done to address the root issues of the inequalities they endure.

At the same time, those experiencing financial, social and health insecurity have also been disproportionately drawn into the anti-government protests. Many joined the occupation because of distrust of the government and concerns about vaccines or COVID health measure mandates.

Decades of evisceration of our health care systems meant that governments turned to mandates to flatten the curve of demand for urgent health care. Small government focus on shrinking social, economic and health supports has resulted in massive

inequalities. Canadians below the poverty line are twice as likely as more well-off Canadians to die of this virus. Pandemic policies have left the most marginalized behind.

• (2010)

The focus on health mandates has overshadowed the collective dimensions of health and reinforced individualistic responsibility for public health, rather than emphasizing collective obligations and the importance of government and business ensuring safe living and workplaces, paid sick days or equitable availability of health supplies and emergency supports.

Too many in Canada experience economic deprivation, uncertain if they will have the means to care for, feed and shelter themselves and their families. Across Canada, the number of visitors to one in every four food banks doubled last year during COVID.

Current policies leave those in the most precarious positions to fend for themselves, which is contributing to many being drawn to the populist messages.

These feelings of deprivation and abandonment were further intensified by the government refusal to dialogue, much less acknowledge, and attempt to understand the feelings and real concerns expressed by many ordinary people from across the country who are struggling to get by.

The government knew that protesters were coming to Ottawa, yet no attempt was made to intercept or address the issues being raised. While we certainly saw instances of extremism, racism, anti-Semitism and misogyny here on the Hill, should we really be calling all who oppose vaccine mandates racist and misogynists instead of trying to meaningfully understand and address underlying fears, anxiety and frustration?

CBC recently reported the story of a man from Saskatchewan, a farmer and father of two, who took part in a blockade of his provincial legislature. A volunteer firefighter, his mental health suffered after being a first responder to the bus crash that claimed the lives of members of the Humboldt Broncos hockey team. When a Workers’ Compensation Board denied him income supports, he reported that he really quit trusting other people to make decisions on his behalf. During the pandemic, he opted not to vaccinate himself or his two children.

He decided to join the protests, looking for “a sense of belonging” after witnessing the hurt experienced by his 12-year-old when their family was not allowed to go into a ski chalet to eat because they were unvaccinated. The man said he felt like they had been treated as if they were “dirty.” He acknowledged that some involved in the protests were “extremists,” but many were “ordinary, hard-working” people. He has heard reports of occupiers in Ottawa harassing a homeless shelter and displaying Confederate flags and swastikas but doesn’t trust the media and believes such stories were fabricated.

As highlighted by the work of the African-Canadian senators group and the Parliamentary Black Caucus and our Indigenous colleagues, despite frequent references to truckers and vaccine mandates, the organizers of the occupation are not tied to the trucking industry. They are linked to organizations espousing extremism, anti-democratic values, violence and White supremacy. They hope to benefit from the attention, recruit others to their cause and try to normalize hateful symbols and messages.

The emergency measures we are debating will not end people's sense of disenfranchisement, distrust and anger. Indeed, they run the risk of further eroding trust in government by stigmatizing and further isolating those on the margins.

Responding meaningfully to this occupation means taking action against the hate speech that it has emboldened and which can prevent women, racialized people and many others from exercising their rights and participating in their communities. In the short term, the government could, for instance, reintroduce legislation from last Parliament to re-enact former section 13 of the Canadian Human Rights Act. This measure would allow advocates to file complaints about hate propaganda targeting specific communities that is likely to do significant harm.

Also, as human rights advocates like Monia Mazigh remind us:

Anti-terrorism legislation is not only unconstitutional it is useless in protecting public safety. It is time to repeal these laws and hold a public debate about the meaning of freedom. Instead of laws that curtail our civil liberties, we should reflect on the importance of respecting our human rights to ensure both our safety and our security.

Finally, on an urgent basis, we must also ensure that social, health and economic policies address the inequities that rig systems and abandon people in vital need of support to situations of crisis and vulnerability.

COVID-19 reminds us that none of us will be okay until all of us are okay. Safeguarding our health and well-being in this pandemic and beyond is necessarily a collective and inclusive, not an individual, endeavour. We cannot hope to protect ourselves from the effects of COVID if those around us lack the financial means and supports to similarly ensure their safety and well-being. Likewise, we cannot hope to counter disenfranchisement and division without plans for income, health and social equality that cease to leave people behind.

The protesting man from Saskatchewan, despite his distrust of the media, shared his story with CBC saying that, "... he believes more communication and understanding are needed" and he wants "us all to be friends after this (pandemic) is said and done."

This is a goal I believe most Canadians share. We absolutely need to come together to address inequality and work to build an inclusive future. We need to build an inclusive Canada. Thank you, colleagues. *Meegwetch, merci.*

Hon. Brent Cotter: Honourable senators, I want to begin by thanking colleagues for their deep and thoughtful remarks in this debate, even when we disagree.

I'm going to be speaking in support of the declaration, and I want to speak to three aspects of the issues. The first is personal, the second I would call decisional and the third institutional.

The personal. In the fall of 1970, I was in my final year of business school in Saskatoon. On a Saturday evening in late October, I attended a party at somebody's house. As I arrived at the party, there was a group of six or eight young men, nearly all of them business school classmates, engaged in a heated discussion with one other person. The business school group was supporting the imposition of the War Measures Act in Quebec, the need to get lawlessness under control, and if a few rights got trampled in the process, a small price to pay.

The one other person was a law student. He patiently made his case to the effect that people were more than the sum of their economic parts, that they are sentient beings with rights and obligations that are the essence of who we are as humans.

I stood at the edge of this debate and listened. To be honest, I hadn't thought much about these issues and human values. It was, for me, a life-changing moment. That eye-opening discussion was the single-most important influence in my decision to go to law school and begin a career in law. Rights and laws and the rule of law have come to matter a lot to me.

In a remarkable way, that moment and the influence of that law student, Henry Kloppenburg, now a brilliant, principled, courageous and somewhat eccentric Saskatoon lawyer, set me on a career path that brings me to this moment and probably the most important decision today that I will make in my professional life.

Now to what I will call the decisional. I won't speak about Charter of Rights issues, but I would associate myself with the remarks of others, including Senator McPhedran, on this point. On the decisional, I think it is important to remove from consideration in our discussion and decision the argument that if something had been done earlier and better, we wouldn't be in this fix. And therefore, we are entitled to withhold approbation of the emergency declaration. I agree that various actions by various actors could have been averted and moderated this crisis, but that is not the test today. It is, having gotten to where we are, is this declaration a reasonable course to be taken?

Here is another way of looking at it. Many have written that wiser decisions taken in 1919 or 1935 or early in 1939 might have averted World War II. Well, tragically they weren't. But can you imagine if we were exercising this emergency power in 1939, we would have said that because somebody else did a lousy job averting war earlier, we would not join the war effort in 1939? To ask the question is to answer it.

On the question of a threshold for deciding, I've read widely the case of those who assert the threshold has not been met and the case of those, including the cabinet, who assert that it has. I have some background on these questions, but to be better informed I retained a distinguished constitutional law expert, Professor Wayne MacKay, to advise me. He's a professor emeritus at the Schulich School of Law at Dalhousie in Halifax. In so doing, he identified 12 features, features of concern, that take us into the realm of national emergency. Virtually every single one of them has been mentioned in the debate today.

Nearly all of these are related to unlawful conduct. Some of this conduct could unquestionably have been addressed using existing powers, but much of it, particularly in Ottawa, could not have been achieved, certainly not without much more serious adverse consequences than actually occurred, and that's important.

• (2020)

I want to focus primarily on the situation in the nation's capital. I'm deeply troubled by this. We have seen protests in Ottawa before. They have been, for me, a sign of the health of our democracy. We have to get back to that state as soon as we possibly can. And I'm fine with people coming to Ottawa to protest in favour of courses of action that are unrealistic or legally impossible — say the removal of the Prime Minister by the Governor General and the Senate. But I've never seen protests of the like that we've seen over the last month where protesters transitioned their protests into an occupation of the centre of our nation's capital and sought to leverage this illegal occupation to advance their various grievances but also, within some corners of that protest, some dark corners, to actually leverage the removal of the government by other than legal and constitutional means.

And exactly where was this illegal occupation occurring? Within metres of the beating heart of our national democracy and within metres of the office of the Prime Minister of our country.

Equally compelling for me in this argument is what happened when the emergency orders were exercised. One was the designation of the area around Parliament as essentially a no-go zone. Given where things had evolved to earlier last week, gaining control of this part of Ottawa effectively and with as little conflict as possible could only have occurred through the special powers conveyed by the regulations.

Second was the pressure put on the physical assets of protesters that coerced many to withdraw from the no-go zone, either with or without their trucks and other property.

Third was the use of the special authority to block a number of protesters' access to funds which would otherwise have prolonged the occupation.

Lastly, I do not discount the benefit of expediting police actions, particularly in the rapid development of strategies that were exceptionally effective, professional and respectful of the rights of even the most difficult citizens, as Senator Plett and others have observed.

I've been involved in police oversight for nearly a decade. I have never seen such disciplined and effective policing in my life. I would add that there's lots of blame to go around in this crisis, and public confidence is rightly shaken, but one upside is that the public confidence and pride in our law enforcement brothers and sisters has been greatly enhanced in this country.

I note that the police and police leaders, whom we have rightly praised in this chamber, have virtually universally stated that the authorities conferred by the declaration were necessary to resolve the crisis. In that respect, it seems unfair on the one hand to

praise them and their efforts and then, on the other hand, to disregard their heartfelt and professional judgments of what these authorities needed.

Here is what is most compelling to me. These powers made it possible for the law enforcement officers to gain control and resolve this crisis in the safest and most honourable way possible, using these tools they said they needed and then used to do their jobs in ways that made all of us proud.

When all of this is added together, it satisfies me that the case has been made for the invocation of the emergency declaration.

Now to the institutional question, essentially how we should look at, how we should think about, our authority if we are to exercise it honourably. I want to make five points.

The first is about the Emergencies Act itself. Unlike the War Measures Act, it is a product of extremely careful modern thought — not perfect, as people have noted, but infinitely superior to its predecessor. I observed the work of the Mulroney government in 1988, and special credit goes to the Justice minister of the time, then Justice minister Ramon Hnatyshyn, a decent, fair-minded, much admired, even revered, son of Saskatchewan. The government put in place remarkable safeguards that were previously non-existent. I won't repeat them here; I think you've come to know them well. They are remarkable, powerful, though imperfect, accountabilities.

My second point is that when we apply our minds to the use of this authority, I think the question for us is this: Was the decision of the cabinet a reasonable one, not necessarily the correct or even the best one but one of a reasonable range of decisions in the circumstances?

My third point in support of this is that the test for reasonableness seems to me to be a compelling one. We are essentially reviewing an administrative decision taken by the cabinet of our country. When this is done, provided the basic tests are met, the circumstances usually call for a significant degree of deference owed to the decision-making body. A common one to justify that is that the decision maker has special expertise. In our situation, I would not go so far as to say that a cabinet, any cabinet, has special expertise, but it often has more information available to it than we do. Here I think I am inclined to join the discussion of a couple of senators earlier on this question. Senator Lankin raised this question earlier as well.

Some of that information is not available to us and probably, in this context, should not be. To my mind, this has a certain equivalence to special expertise that is owed deference.

Here I'm not saying anything about this particular cabinet. It is a point regarding the institution of cabinet. Indeed, I would have made some decisions differently if it had been me, but the entity of the cabinet, any cabinet, is entitled to this deference, which in decisional terms means that we should support a decision that is in the range of reasonable decisions, of which I think this was one.

The fourth point relates to who we are. We are, by section 58(7) of the Emergencies Act, given co-equal authority with regard to the review of the emergency declaration, which we are doing now. This is a great power. The greater the power, the greater the responsibility we have to exercise it in a principled way. In this context, I want to make a few short points.

First, we are exercising a democratically granted authority. Secondly, a significant majority of the people in this country who are part of that democracy support the issuance of this declaration. This is not always determinative. We have duties that often cause us not to be bent by the will of the majority, but it is noteworthy in democracy terms. Third, a majority of the elected representatives in that other place have voted to support the declaration. This does not require us to do so as well, but it does encourage deference to the country's democratic values, which we hold dear.

If we reach a different decision and revoke this declaration, we must be very clear in our minds. We must be convinced not only that the issuance of the declaration was incorrect, but that it was not even within a range of reasonable decisions this government could have made. Anything less is a failure of sober second thought, essentially a usurpation of democratic decision making.

That is related to my fifth and final point, what I would call consequential. I think we are all agreed, whether there is or is not sympathy for protesting occupiers, that much of their actions were illegal, and in some quarters the goal was to displace the sitting government through other than democratic means.

Many have observed within this chamber and in the other place and elsewhere that a vote on this emergency declaration is the equivalent of a confidence vote. I recognize Senator Dalphond's observations, but I think we can say that this is an unbelievably serious decision for us to be taking. I don't think we're in the business, in this house, of confidence votes, but if we vote to revoke the declaration, it will have virtually the same effect or message. We, as a non-elected body, may well be creating the conditions that bring an end to this government. By doing so, we may well then achieve for the most seditious of the occupiers, exactly what, through their illegal occupation of our country's capital, they most devoutly sought.

If you are inclined to revoke the emergency declaration, I urge you to give all of these implications very serious thought.

I would go further. It will invite questions in many quarters, perhaps more so than have ever occurred, regarding the legitimacy of this very institution. If we take this path, people are sure to begin asking of us not just who we are, but who do we think we are. Thank you.

Hon. Paula Simons: Honourable senators, last week, RCMP arrested 13 members of a blockade who had helped to paralyze the Coutts border crossing, the main point of entry from the United States to my province of Alberta. Those blockades were devastating for ordinary citizens held captive for days, unable to get to the hospital or to the grocery store; for local farming and ranching communities who depend on that border crossing every single day; for the real professional truck drivers, many of them Sikh Canadians, effectively held hostage at the border by those who claim to speak for them. Those blockades cost the Alberta economy an estimated \$864 million.

• (2030)

The situation was so dire that by February 5, Alberta sent an urgent request for assistance to the federal government, saying police had exhausted all options and needed emergency federal assistance to "mitigate risks of potential conflict."

And those risks were real enough. RCMP also found three trailers filled with weapons: handguns; a machete; 13 long guns — not just your typical farm rifles but semi-automatic military-style rifles — multiple sets of body armour; a large cache of ammunition along with high-capacity magazines; and, amongst it all, the insignia of Diabolon, a so-called "accelerationist" group that aims to accelerate racial conflict to lead to the eventual creation of a White ethnostate.

Of the 13 people arrested last week, 4 are charged with conspiracy to commit murder.

Politicians and pundits expressed shock and surprise. I was not surprised. This is not my first rodeo. I cut my teeth as a journalist covering White supremacists in the late 1980s back when Terry Long and Aryan Nations were burning crosses in Provost and when the Ku Klux Klan tried to blow up the Jewish Community Centre in Calgary.

Much more recently, I covered the death of Daniel Woodall, a brave officer with the Edmonton police hate crime unit, murdered by an anti-Semitic hate-monger linked to the Freemen on the Land movement.

Last week's arrests shouldn't have shocked anyone, at least not anyone who had been paying attention. Far-right hate groups have been on the rise in Canada since 2016, first turbo charged by imported American right-wing rhetoric, incited further by the delusional paranoia of the QAnon conspiracy. In Canada, these groups fed on xenophobia in general and Islamophobia in particular.

Now, once upon a time, small groups of angry malcontents might have blown off steam with a few buddies in the bar. Today, the angry and the alienated are radicalized online by social media platforms — Twitter, Facebook, YouTube, 4chan, Telegram — where people can connect and form virtual communities, where they can marinate in a lethal cocktail of disinformation, bravado and paranoia; where they can cross-pollinate their various obsessions and hobby horses and weave together their conspiracy narratives of choice.

Media platforms as diverse as FOX News, InfoWars, Breitbart, Rebel News and RT allow people to inhabit a parallel world — not just a world of alternate facts but of alternate realities. In this shadow world, lone wolves find their packs.

For the last five or six years, brave journalists, including Mack Lamoureux, Justin Ling, Caroline Orr and Evan Balford have been reporting on extremist groups such as the Proud Boys, Sons of Odin, the Three Percenters, the Freemen on the Land, the Yellow Vesters and Diagonol.

Watchdogs like the Canadian Anti-Hate Network and the Institute for Strategic Dialogue have tracked their activities. But not everyone has paid attention. The evidence of the last three weeks suggests Canadian policing and intelligence services may also have underestimated the risks of domestic terrorism and the likelihood and probability of foreign interference.

Well before COVID-19 arrived in Canada, far-right actors were actively preying on people's frustrations and fears. In 2019, the United We Roll Yellow Vester convoy, organized by many of the same people who organized this one, took over the streets of Ottawa, mixing pro-pipeline slogans with an ugly blend of anti-Semitism, anti-Muslim rhetoric and propaganda attacks on Indigenous Canadians. It was not a good-faith demonstration in support of Alberta's vital oil and gas sector. It was a travelling hate circus. And United We Roll was just a dress rehearsal for what we've seen in Ottawa and across the country these last few weeks.

This event was not infiltrated or appropriated by racists. It was organized by them. Those bouncy castles, barbecues and hot tubs — those were stunts designed to distract, delude and troll us. This was not a street party nor a festival; it was not Canada Day — people waving Confederate flags, symbols of slavery and racist oppression, all the while mouthing slogans about freedom; people screaming about free speech while they attacked journalists in the street over and over again; anti-Semites with the grotesque audacity to desecrate our Canadian flag with swastikas and to then pin yellow stars to their chests and equate the inconvenience of wearing a mask with the horrors of the Holocaust; homophobes and transphobes waving nasty signs, vandalizing in the most grotesque ways homes that dared to display pride flags; thugs and drunks stealing food from the homeless, attacking and harassing women and people of colour on the street.

It was a veritable carnival of hate, endorsed and condoned and even cheered on by some Canadian politicians, craven cowards, people who knew better but chose to exploit this volatile and dangerous moment for their strategic advantage and to exploit these damaged and deluded people for petty personal political gain and, almost as disappointing, the naïveté and willful blindness of those who minimize this ugly campaign of intimidation as though it were some sort of authentic expression of working-class Canadian angst.

Some of the people at Coutts and Windsor and Ottawa were ordinary, ordinarily decent Canadians, many of them, it must be said, seduced and hoodwinked by those who manipulated their genuine frustrations and fears. And how many Canadians have a family member or friend broken by these last few years, someone who has fallen down the rabbit hole or sucked into a cult-like

vortex of misinformation and paranoid fantasy? Perhaps you, too, know that sick feeling of watching someone you care about suddenly start posting conspiracy theories online, wild, sometimes delusional accusations that have become completely unmoored from reality — accusations, for example, that the COVID vaccine causes AIDS or that the Prime Minister has been replaced with a look-alike. And this isn't a far-right phenomenon. It's happening right across the socio-economic and political spectrum.

This is a scary, lonely time, and I understand it's tempting to believe in a big, bad conspiracy, to believe that some mysterious cabal controls the world rather than to accept the random horror of COVID, a virus that continues to kill hundreds of Canadians every month and mutates into new varieties we cannot predict.

In the beginning, though, we pulled together. We helped our neighbours, felt a sense of community, solidarity and purpose, banged pots for our health workers instead of assaulting and threatening them. We praised our teachers instead of invading their schools in angry mobs.

But I think Omicron shattered something. We believed that if we got vaccinated, we would get our lives back. But the coronavirus did not get that memo. It evolved. And when our vaccines no longer seemed to work very well, the case to get everyone vaccinated seemed a lot less persuasive.

No wonder, then, that thousands of Canadians were vulnerable to the lure of extremist groups and flim-flam artists who preyed on their fears and mental exhaustion and offered them the deceptively simple dream that if they just got rid of the Prime Minister all of their problems would evaporate. Because let it be said that not everybody behind this slow-motion coup was motivated by ideology. Some of them were also seen to be motivated by good, old-fashioned greed. This has also been an organized grift, a giant con, a way to shake down people who were already desperate, to give them some sense of divine mission, all the while picking their pockets.

When the time comes, we must also investigate the role of foreign interference in all of this, the role of foreign funders, foreign actors and foreign governments who were all too happy to pour gasoline on this fire, all too gleeful to see Canadian democracy destabilized. We must especially investigate the way international agitators and con artists in countries such as Romania, Bulgaria, Vietnam and Bangladesh created a phalanx of fake Facebook pages, the better to create the illusion of widespread support for this toxic crusade.

That said, do we need the Emergencies Act to deal with this disgrace? Is the risk of invoking it one worth taking?

The convoy organizers were perfectly plain. They boasted of their plans on social media, live-streamed their dollar-store revolution in real time, shared out their seditious manifesto with pride.

I still cannot believe our capital was caught so flat-footed, especially after the Yellow Vest protest of 2019 and the attack on Parliament in 2014.

Where was the threat assessment, the strategic response? How and why were the people of Ottawa abandoned for so long? We should count ourselves blessed that most of these would-be rebels were, in the end, so disorganized and confused. The fact that their plot didn't work says more about their incompetence than about our capacity to defend ourselves and our values. The next time we may not be so lucky.

It's easy to write off alt-right hate groups as bullies who talk a big game but don't carry through as cosplaying revolutionaries. Therefore, don't look at Ottawa. Look at Coutts. Look how close we came to a massacre. We have to stop thinking it couldn't happen here, because it almost did. Yes, the RCMP in Coutts made their arrests before the Emergencies Act came into place. However, the blockade itself didn't fizzle out until the spectre of the act was in the air.

• (2040)

While the Emergencies Act has worked in the short term, I'm deeply troubled by the precedent. I worry about a future government that might weaponize these powers against environmental protesters, Indigenous activists or strikers. More philosophically, I worry about an erosion not just of our civil liberties but of our social contract. Because when Ottawa's block party from hell is finally over and cleaned up, how many Canadians will have lost faith in their police, government, democracy and — worst of all — each other?

Lies are already spreading. Fox News, for one example, repeatedly reported that a female protester had been trampled to death by a horse. Even after Fox News retracted its outrageous story, it kept metastasizing online. So many people have embraced the false narrative that we have enacted martial law, robbed them of their civil liberties, frozen the bank accounts of people who bought T-shirts and upended democracy. I now fear confirmation of the act may poison our politics even further. If we deem its confirmation is now a necessary evil, let's think hard about all the failures of public policy and political leadership that have led us to this place.

My friends, I want to live again in a country where we treat doctors, nurses, teachers, journalists and scientists like the champions they are. I want to live again in a country where we don't make folk heroes out of people who throw rocks at ambulances or go to schoolyards in the Okanagan to scream racist abuse at schoolchildren. I want to live again in a country where we work together to fight this deadly pandemic, which is not over and that continues to kill Canadians — especially vulnerable Canadians — at an alarming rate — and to kill so many that we now seem to be numb to the rising death toll even as a new, more contagious and perhaps — I hate to say it — more dangerous variant, BA.2, starts to infect our nation.

My friends, are we really going to allow ourselves to be manipulated by hate-mongers, confidence tricksters, trolls and foreign actors into tearing our Canada apart? Or, instead, are we

as senators going to help lead Canada back from the brink? We must do better and we must be better. We must be the Canada we want to see in the world. Thank you and *hiy hiy*.

Hon. Yvonne Boyer: Honourable senators, I rise today during this historic debate. As I begin my speech, I would like to acknowledge that I'm speaking to you from the traditional and unceded territories of the Anishinaabe, Mississauga and Algonquin nations. The people of these nations are the original stewards of the land, and it is important to show our respect for their stewardship by acknowledging them every time and every day.

We are gathered here today to carry out what is at the core of our responsibility as senators: to act as a chamber of sober second thought and to bring the voices of those who are not heard or represented in government decision making to the forefront.

I support the government's decision to take these unprecedented steps and implement the Emergencies Act. We are in an unprecedented situation, and action must be swift and ongoing to restore order and end the violence and unlawful blockades across Canada.

While I support this decision, I also support the great hesitation that was shown before enacting these powers. In that light, I caution this government and future governments about potential use of this act in the years to come. Invoking these powers was held to be a last resort by the government, and it must always be that way. Freedom of speech and freedom of assembly are critical rights. They must always be upheld and defended in this country. However, what we have seen over the last weeks is not this, and these actions must come to a complete stop.

Honourable senators, I would be remiss if I did not take this opportunity to acknowledge and shine a light on what is an undisputed fact in this country and across the world: the fact that Indigenous, Black, other people of colour and 2SLGBTQ+ peoples are disproportionately targeted by law. They are also significantly more likely to have negative interactions with law enforcement, likely involving violence and — in the most tragic circumstances — death. These are cold, hard truths.

It is critical that any time we have discussions around law enforcement matters we must take the time to bring these perspectives into the conversation. There must be strong oversight to ensure a clear and concise anti-bias approach is considered and implemented during the use of these powers.

As we move forward, we must have a profound discussion on human rights and peaceful protests, the theft and destruction of lands, the poisoning of waters and the environment and how these peaceful protests by Indigenous peoples have been managed and contrasted in light of the three weeks of violence, destruction and damage from the recent occupations and blockades.

The blatant difference is horrifying and shocking.

Within the Emergencies Act exists the provision for the parliamentary review committee, which will examine the use of these powers after the fact. I not only believe it is critical that this committee examine the impact this invocation has had on Indigenous, Black, other people of colour and 2SLGBTQ+ peoples, but it must also examine the oversight that was provided during these times so that these acts do not occur in the first place. I know that this parliamentary review committee will have a monumental task ahead of it, but it is critical that these perspectives are not left to the side and ignored, as they so often have been. The composition of this committee must be diverse and include those who are able to bring perspectives of Indigenous peoples, persons of colour and 2SLGBTQ+ people to the deliberations.

After the Emergencies Act was enacted in 1988, it took over three decades for it to be invoked. I truly hope, as I'm sure all senators do, that it will be the last time it is ever used. Let us use this experience we are witnessing to come together to build a fairer and more just Canada for everyone. Thank you, *marsee, meegwetch*.

Hon. Patrick Brazeau: Honourable senators, at the age of 15 I got my first summer job. It was for the National Capital Commission. I was hired to pick up garbage with a pick and a garbage bag, and I took care of the flower beds on Parliament Hill and the surrounding areas. Every day I got to come to work that summer, I felt privileged to work on Parliament Hill because I was in awe of the structure and what went on within those walls.

It was also the summer of 1990 when we witnessed another crisis, the Oka Crisis, where we had non-Indigenous men — investors — wanting to build a golf course on a traditional Mohawk burial site. This crisis of 1990 forced the Conservative government of the day to send in the military after a request from the Quebec provincial government. I have seen and participated in many peaceful protests and have witnessed many different protests in front of Parliament Hill over the years from people across the political spectrum. However, what we have witnessed in the past weeks is anything but a protest. What seemed like a protest quickly became an occupation, which quickly became an illegal occupation.

Paralyzing the city of Ottawa and its residents is something we have not seen before — not in Canada. We saw individuals posing as Indigenous peoples, including several organizers. I do not know for a fact if these people are Indigenous or not, but what I do know is that many Indigenous peoples and organizations across the country have denounced the cultural appropriation being exercised by some of these individuals.

We saw how reporters were harassed and in some cases not able to do their jobs. We saw people chanting “fake news” toward reporters who are part and parcel of our democracy. We saw reporters being spat on. We have witnessed more interest in U.S. media, making absolute false statements about what is really happening in Canada. The amount of misinformation is pervasive because it affects us all.

Other high-profile individuals throughout the world have associated Canada's Prime Minister to Hitler. How infantile can grown men be? This is where we are, and it's very scary. Are we moving forward or taking a few steps back? Time will tell.

• (2050)

We have also witnessed the partisanship between different levels of government and the leaders of every political party throughout the country. We have witnessed jurisdictional wrangling between the federal, provincial and municipal governments and law enforcement. As an Indigenous person, I have — and I'm certain most Canadians have — witnessed the complete and differential treatment of lawful, peaceful Indigenous protests versus what we have seen this past month in Ottawa and other parts of the country. What message does this send? How do you think 1.5 million Indigenous people feel in this country after watching this unfold — after watching RCMP officers shake hands with and hug the non-Indigenous protesters?

I have never seen that happen to any Indigenous person in Canada. And it's shameful.

There were individuals with racist behaviours, people spitting on reporters, anarchists, truckers and people who simply participated with the thought that they were taking part in history. I never thought I would see White nationalists and supremacists anywhere in the streets of Canada. I thought these were American problems.

The United States has their share of problems and seems to want to permeate our country with them. I don't know about you, colleagues, but I have never seen so much U.S. traffic, correspondence, emails and phone messages. In fact, I've seen more U.S.-related correspondence in one week than I have in the last 13 years here, and I find that concerning.

Finally, we have witnessed politicians support this occupation. “Support the truckers” is what was said. We all know that they were more than truckers, more than vaccine mandates and more than people unhappy with the current government that was at play. It was an attempt to overthrow the government. It should not matter what government is in power. When there is an attempt to overthrow the government, we should join together and put democracy in action. No Liberal, Conservative, New Democratic Party, Green or independent MP should ever wish for this to occur in their country, regardless of who is in power, because Canadians choose our leaders by way of elections. We just had one four months ago. Canadians spoke.

Unfortunately, the Emergencies Act has been invoked for the first time. The House of Commons and the Senate of Canada are asked to vote on whether the invocation of the act was justified. It is difficult to know with certainty if this was necessary at this point. The fact is, no one knows exactly what happened because we do not have the facts before us. Was there foreign interference, financial or otherwise? What were the purposes of the occupation? Was there involvement by political parties? Was the Ottawa police perhaps compromised? After all, the Ottawa police chief had to step down as a consequence of the illegal occupation in Ottawa. We are not aware of the potential jurisdictional issues that may have hampered quicker action.

With all these unanswered questions, one thing is certain, however. Under the act, there will be answers to many questions Canadians have with respect to why this occupation occurred and why it lasted so long. Until then, perhaps we should all stop trying to be experts by delving into the hypotheticals of why and how this occurred.

I have faith in my country, and I have faith that we will all get the answers. Ultimately, as is always the case, it will be Canadians who will learn the facts and decide for themselves if this invocation of the act was necessary for our collective security or if it was done as a partisan abuse of power.

Until we have all the facts, I invite you to take stock of what happened and to respect another aspect of our democracy, which is due process. Rather than creating further divides, let us take a step back and let justice do its work. Under the act, if passed, an investigation or inquiry must be undertaken to seek all the facts and will have to report back to Canadians in about a year.

Colleagues, that's why I will be supporting the act, but I wish we were not at this point. The House adopted the act by a vote of 185 in favour versus 151 against. We are not here to rubber-stamp anything, but I will be supporting the act because by doing so, it will bring the checks and balances needed to try to get to the bottom of what occurred. Speaking for myself, justice, due process and patience will shed light on facts in a non-partisan way.

Partisanship is partisanship, but continuing to play partisan games at this time is not helpful for anyone. Let's come together as Canadians to support and defend our democracy. Even with all its failures and inaction by the federal government, and, in particular, its treatment of Indigenous peoples throughout history, Canada is still the best country in the world.

Respect is clearly lacking in today's politics. Perhaps social media is partly to blame, but politics are becoming very divisive and full of smears. As parliamentarians, it is our job right now to put that partisanship aside and fight against any type of hate. Canadians have every right to see us working cooperatively to get facts, not hearsay. This is not time to take cheap shots or settle political scores. This is the time for this chamber to rise above petty political tricks and consider only the needs of Canadians, without regard to political stripe.

Honourable senators, I want to remind Canadians of who we are, and of our collective values and convictions. We are a peaceful, strong, generous people. We work through our problems together, in good faith and with good will.

Life can be short, colleagues. We have one life to live. Perhaps our time would be more usefully spent trying to get along rather than in creating divide.

Those who have fuelled, supported, participated in or used this as a political tool will not be on the right side of history. Choices in life come with consequences, and freedom always comes with a price.

It is alarming but not surprising how some people support illegal occupations but quickly condemn legal, peaceful and rightful protests that have occurred in Canada. So I would like to take the time to thank all of those involved who made Ottawa boring again and who have given the citizens of Ottawa their city back. Ottawa is also my home and the home of the Algonquin nation.

In the end, I offer this to you, colleagues: The most powerful freedom fighter is democracy. Everyone has a job to do, so let's get to work and do our part. All my relations, *meegwetch*.

The Hon. the Speaker pro tempore: Senator Arnot, we have three minutes left if you want to start your speech, or you can continue tomorrow morning.

Hon. David Arnot: Honourable senators, I speak to you today from Saskatoon in the heart of Treaty 6 territory and the traditional homeland of the Métis. I speak in favour of the motion. Today, I'll speak about the rule of law, Canada's strong democratic institutions and the role of education in maintaining and protecting our democracy.

For more than two years, Canadians have faced a public health crisis that is unprecedented in living memory. Lives have been lost, and families, jobs and futures have been altered, often with great personal, emotional and financial cost. The cost of COVID-19 to individuals and to this country is staggering. It will require analysis and inquiry.

The majority of Canadians have done their part. They have followed public health orders and understood the responsibility to keep others safe. It is important to bring some balance to this debate. I'd like to say that, as I understand it, approximately 90% of Canadian truck drivers have followed the public health orders and have understood their responsibility to keep others safe. They stood with the majority of Canadians.

Indeed, truck transport is a major component of the Canadian economy. There are approximately 225,000 truck drivers in Canada who generate \$40 billion in revenue. They provide tremendous service to the people of Canada. Trucking works best when the flow of goods is predictable and consistent, and due to COVID-19, that has not been the way over the last two years. The industry has been stretched by supply chain inconsistencies, illness and burnout.

I say this to make sure that truck drivers and the trucking industry in general are recognized for the critical role they play in our country's economy.

• (2100)

In the last three weeks, however, Canada has faced another extraordinary threat — in this case, a most serious challenge to the rule of law. The rule of law binds us all. It supports our rights, our freedoms and, critically, the rule of law applies to

everyone, equally enforced and independently adjudicated. No person is above the law. Canadians have the right to protest, that is true —

The Hon. the Speaker pro tempore: Senator Arnot, I'm very sorry that I have to interrupt you.

(At 9 p.m., pursuant to the order adopted by the Senate on February 21, 2022, the Senate adjourned until 9 a.m., tomorrow.)

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