



Interview Summary: The Honorable David Lametti, Minister of Justice and Attorney General of Canada

Background

The **Honorable David Lametti** serves as both the Minister of Justice and the Attorney General of Canada and was appointed to those roles on January 14, 2019. The two roles have been combined in Canada and have been occupied by one Cabinet minister since the founding of the Department of Justice (**DoJ**) in 1868. The roles and responsibilities of each office are set out in the *Department of Justice Act*, though in practice the roles can intersect.

Minister Lametti was interviewed by Shantona Chaudhury, Gordon Cameron, Yves Côté and Nusra Khan on September 6, 2022. Questions about this summary should be directed to Mr. Cameron.

This summary should be read in conjunction with the Institutional Report prepared by the Department of Justice. This preamble and the text contained within square brackets consist of explanatory notes provided by Commission Counsel for the assistance of the reader. Not all documents referred to in the footnotes were referred to during the interview. Some documents are cited to assist the reader.

The Attorney General of Canada (**AGC**) is responsible for providing legal advice to government and for conducting litigation on behalf of the government. The Public Prosecution Service of Canada (PPSC) is responsible for the prosecution of federal offences, and the DoJ for the conduct of civil litigation. In conducting litigation on behalf of the Crown, the AGC is required to act according to the law and the broader public interest, and not according to partisan interests.

Conversely, the Minister of Justice (**MoJ**) is the chief legal advisor to the Governor General under section 4 of the *Department of Justice Act*. In practice, this means that the MoJ is the chief legal advisor to Cabinet. In addition, the MoJ is responsible for the development of justice policy and oversees the DoJ as well as several independent officers and justice-related agencies, such as the Canadian Human Rights Commission.

The DoJ supports the dual roles of the Minister of Justice and the Attorney General of Canada. It is responsible for justice policy development, drafting laws and regulations, conducting litigation, providing legal advice to other departments and to Cabinet, and international issues such as extradition and international legal assistance. Minister Lametti is principally supported by the Deputy Minister of Justice and Deputy Attorney General of Canada, A. François Daigle (**DM Daigle**), in carrying out his mandate. He is also supported by the political staff who work in his office.



Involvement in the Government's Response to the Events

Minister Lametti's involvement in the federal government's response to the protests was primarily through providing legal advice and information. He would occasionally weigh in during government discussions with policy advice. He added that he felt the impact of the protests outside of the deliberations of government. He received many messages from concerned constituents in his riding and elsewhere about the legitimacy of the protest in Ottawa. He also felt a direct, personal impact of the protest as a part-time resident of Ottawa.

Minister Lametti noted that DoJ and he began preparing for the possibility of invocation of the *Emergencies Act* (EA) once it became apparent that the protest in Ottawa had become entrenched, after the first weekend of protests over January 29th-30th.

He explained that Cabinet considered the possibility of invoking the EA around the same period, as an option of last resort. [He could not recall the date on which it was first discussed by Cabinet.] There was a need to identify the precise forms of federal intervention given the fluidity of the situation, the potential for unpredictable outcomes, and the intensity and frequency of interaction with provincial governments.

Minster Lametti was asked about the text messages he exchanged with Deputy Prime Minister and Minister of Finance Chrystia Freeland on February 7, 2022. He explained that they discussed the possibility of financial measures to interrupt the fundraising and crowdfunding aspects of the protests.¹ They did not discuss using the EA to enact such measures.

He reflected that the EA itself requires that the federal government explore, consider and exhaust all options before resorting to a declaration of emergency.

Role at Cabinet Meetings

Minister Lametti explained there were a series of meetings at which Cabinet considered the invocation of the EA. There were the meetings of the Cabinet Committee on Safety, Security, and Emergencies (SSE) in early February which were eventually replaced by the Incident Response Group (IRG). [The SSE Committee met on February 3, 6, and 8. The IRG met on February 10, 12, 13, and daily from February 16 to 23. Minister Lametti attended the February 6 and 8 SSE meetings and every meeting of the IRG.] He mentioned that he also attended the full Cabinet meetings on February 13 and 15, 2022.

Throughout these meetings, Minister Lametti distilled the legal advice received from the DoJ, explained legislation and procedure, and provided legal advice to his colleagues. This was partly the result of his prior involvement in the government's consideration of the EA to respond to the COVID-19 pandemic in 2020. He provided legal advice on the

¹ SSM.CAN.00004119_REL, SSM.CAN.00004121_REL.



scope of the EA at the First Ministers' Meeting (**FMM**) in March 2020. Both the Prime Minister and other ministers would turn to him for legal advice in Cabinet meetings.

Legal Opinions to Cabinet

Minister Lametti explained that the DoJ routinely receives requests for legal advice from Cabinet. Requests may be formal or informal. They often include requests for constitutional analysis, including compliance with the *Charter*. The DoJ has lawyers embedded in federal agencies and departments across Canada, who relay these requests to DoJ headquarters in Ottawa. The DoJ is responsible for preparing legal assessments to Cabinet. [For further information on the organizational structure, consult the DoJ Institutional Report.]

Most requests to the DoJ for legal advice come from the officials' level directly to the DoJ and the DoJ's advice is then provided through the Minister's office. The Minister's political staff can also request legal advice from the DoJ in support of his roles as legal advisor to Cabinet/government.

Minister Lametti will sometimes receive a request for legal advice directly. In those circumstances, he will generally relay the request to his Chief of Staff and/or DM Daigle, who coordinate with the DoJ to produce a formal legal opinion. The DoJ ensures that the request is directed to the division with the appropriate expertise and that it undergoes the appropriate review. The Minister conveys legal advice to Cabinet orally, or by sharing written advice prepared by DoJ officials.

Thresholds for Invocation

Threat to the National Security of Canada

[The EA Proclamation declared the existence of a public order emergency pursuant to section 17 of the EA. Section 16 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”. It states that “threats to the security of Canada” has “the meaning assigned by section 2 of the [CSIS Act]”.]

Minister Lametti was asked what information led Cabinet to draw the conclusion that there existed a threat to the national security of Canada. He agreed that, substantively, the government needs to conclude that there is a threat to the security of Canada under section 3 of the EA, which has the meaning assigned by section 2(c) of the *CSIS Act*. He explained that Cabinet determined that the standard in section 16 of the EA (that there is a threat to the security of Canada) had been met.

For reasons of solicitor-client privilege, Minister Lametti could not describe the various kinds of legal analysis relied upon by Cabinet. The Minister noted that although the term “threats to the security of Canada” in the EA has the meaning assigned by section 2 of the *CSIS Act*, the EA does not require CSIS to verify or confirm the existence of a threat



to national security in order for the Governor-in-Council to reach a conclusion that such a threat exists under the EA. In his view, the two statutes do not interact in such a way as to, effectively, provide a single national security agency with a veto on the decision to invoke a public order emergency. He explained that Cabinet received a large number of factual and situational inputs, including from other agencies, which led it to its ultimate conclusion. He gave the example of RCMP reports, reports from other intelligence organizations, and open-source information. He emphasized that Cabinet was working with imperfect information, with threats that may or may not have materialized, and that it had a responsibility to factor-in these gaps in information.

Minister Lametti concluded that it was the Government's responsibility to determine whether a threat to the security of Canada existed. He emphasized his view that Cabinet made the right decision.

Existence of a National Emergency

Minister Lametti was asked from where he and the DoJ received information on the effectiveness or non-effectiveness of existing laws [which is one element of the definition of national emergency under section 3 of the EA]. In response, the Minister said that all Ministers were asked to look at what options were available under their respective authorities. He said that he and the DoJ received information from interactions its officials had with others across the country, and from political conversations between Ministers and their counterparts. The DoJ received continual reports from the various committees engaged on the protests. [DM Daigle attended special meetings of the Deputy Ministers Operations Committee (**DMOC**) convened by the Privy Council Office.²] He recalled that RCMP Commissioner Lucki and the National Security Advisor (NSIA) provided inputs to the DoJ at these meetings.

Minister Lametti could not specify particular reports or inputs received by the DoJ regarding the effectiveness of other laws to deal with the protests and blockades. He explained that the DOJ is simply too large and receives a high volume of information from various sources for him to recall particular kinds of inputs received. There were also a number of consultations occurring at the Deputy Minister and Minister levels.

Minister Lametti further explained that the determination as to the existence of a national emergency was a political one. It was formed on the basis of factual inputs from implicated government departments including PCO and legal opinions provided by the DoJ. The decision was made by the Governor in Council and Ministers will take full responsibility for this decision. He concluded that the decision was the right one and, in his view, that it was responsive to the information that was available at the time.

² SSM.NSC.CAN.000000212_REL. This document was not referred to during the interview.



Sufficiency of Existing Laws

Minister Lametti was asked whether, for the purposes of section 3 of the EA, there was a difference between the existence of effective laws and the effective application of existing laws.

He responded that, in his view, failure to effectively apply existing laws was one of many factors that could give rise to the existence of a national emergency. The use or non-use of existing legislation by provincial governments was one of the many factors that informed Cabinet's decision to invoke the EA.

Section 58 Explanation

Minster Lametti noted the government's explanation of the circumstances leading to the invocation of an emergency—including the inputs it received and the conclusion it reached—is set out in the Section 58 Explanation. [Section 58 of the EA requires a minister to table a motion for confirmation of a declaration of emergency before each House of Parliament, together with an explanation of the reasons for the declaration and a report on any consultation with the provinces. The government tabled both this motion and the Section 58 Explanation on February 16, 2022.] The facts and circumstances described in the Section 58 Explanation reflect the volatile and potentially violent situations that were occurring in various places at the time. It was the totality of these circumstances set out in this document which formed the basis of the government's determination.

Minister Lametti noted the Section 58 Explanation included inputs from the implicated government departments as well as the Privy Council Office (**PCO**). The Minister could not speak to the specific authorship of the Section 58 Explanation, but he did note that the DoJ provided legal analysis and input.

Effectiveness of Emergency Measures

Minister Lametti expressed the view that the *Emergencies Act* measures were very effective in targeting the financing of the Convoy, as well as the protests both at border crossings and in Ottawa. Minister Lametti explained that in order to be effective, the emergency measures needed to be used in a pan-Canadian method. Cabinet's objective was to enhance the powers of the police so that they could work with provincial and municipal agencies to clear the protests in Ottawa, to clear the trucks parked at various locations, and to interrupt and prevent the financing of the protests across the country.

He further explained that the *Emergency Measures Regulations* were drafted to have uniform application across the country and to avoid encroaching on the authorities of the provinces. He recalled that there was significant anecdotal evidence about the deterrent effect of the measures. The day the invocation of the Act was announced, trucks began to leave downtown Ottawa.



Provincial Engagement

Minister Lametti was not generally involved in consultation with provincial or territorial officials. He recalled that he communicated once (by text) with the Attorney General of Ontario to ask that he raise the issue of the Ottawa protest with the Solicitor General of Ontario.³ Minister Lametti noted that there was a sense amongst Cabinet that the provincial government was not taking sufficient action, particularly with respect to the protest in Ottawa, in the first weeks of the protests.

Minister Lametti also spoke with the Minister of Justice of Quebec after the First Ministers' Meeting on February 14, 2022. The purpose of this conversation was to explain the operation of the *Emergency Measures Regulations*.

First Ministers' Meeting

Minister Lametti attended the First Ministers' Meeting (FMM) on February 14, 2022. He provided remarks after the Prime Minister.⁴ These consisted of an explanation of the important statutory requirements under the EA.

Minister Lametti was asked whether he discussed with the Premiers the precondition under the EA that there exist a threat to the security of Canada. He explained that he did not make specific reference to the section 2(c) definition of the *CSIS Act*, but that he conveyed the seriousness of the situation in the affected provinces and territories.

With respect to his speaking notes for the FMM, Minister Lametti explained that he did not deliver the remarks exactly as written, as they were too long.⁵ He distilled his messages down to important statutory requirements, an explanation of the national emergency, and the measures that could be taken.

The tenor of the discussion was about serious threats to the security of Canada. Minister Lametti believes the *CSIS Act* definition was either discussed expressly or otherwise understood in the discussion with the First Ministers. He added that at this stage, a determination of whether the invocation of the EA was necessary had not yet been made. Indeed, the purpose of the FMM was to solicit input and information from the senior most officials of all of the provinces and territories.

³ This communication is referenced in SSM.NSC.CAN.00000293_REL. This document was not referred to during the interview.

⁴ See also, SSM.NSC.CAN.00000625_REL. This document was not referred to during the interview.

⁵ SSM.CAN.00000099_REL.



Minister Lametti stated that one of the most challenging parts of discussions about the EA was explaining its differences from its predecessor legislation, the *War Measures Act*.

Technical Briefings

Minister Lametti was asked about a document titled “Department Technical Briefing”.⁶ Minister Lametti did not have a specific recollection of the document but noted that it may be document prepared for him in advance of a presentation to Cabinet or to Members of Parliament. He noted the Department would have prepared similar documents for departmentally led briefings to Members of Parliament, including members of the opposition, as well as Senators.

Lessons Learned

Minister Lametti identified two areas in which the legislative and policy reform was required. The first was legislative amendments to the EA itself to make it more responsive to pandemics and health emergencies. There is also a need to modernize the language of the Act to address online harms such as violent online rhetoric and financing. He noted that, while he believed that the EA allowed for the consideration of economic harm, greater precision in the language of the Act to include economic security under the scope of threats to national security would be useful.

The second area for legislative and policy reform is improving the management of areas falling under multiple layers of jurisdiction. He noted that it would help immensely to have integrated National Capital Commission territory on both sides of the Ottawa River (i.e. encompassing areas in both Ottawa and Gatineau) and is directly accountable to the federal government and has policing responsibility. Similarly, the blockade of the Ambassador Bridge was difficult to resolve because the blockade was not on the federally regulated bridge, but on municipal roads leading to the bridge; it engaged municipal, provincial, and federal authorities. An integrated approach to federal management of border crossings, both at the Ambassador Bridge and elsewhere, could prevent such challenges in the future.

⁶ SSM.CAN.00004414_REL and SSM.CAN.00004415_REL.