

**IN THE MATTER OF THE PUBLIC ORDER EMERGENCY COMMISSION**

**CLOSING SUBMISSIONS – POLICY PHASE  
THE CORPORATION OF THE CITY OF WINDSOR**

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## THE CITY OF WINDSOR CLOSING SUBMISSIONS – POLICY

### I. Introduction

1. As detailed in the City of Windsor’s closing submissions with respect to the Commission’s factual phase (“**Windsor Factual Submissions**”), the Ambassador Bridge blockade represented an unprecedented challenge; and one which revealed the importance of swift, effective communication and cooperation within and between all levels of government to support police operations.
2. Notwithstanding the successes of the response to the blockade in the City of Windsor (“**Windsor**”), this situation provides the opportunity to how to (1) improve responses to future public order emergencies and (2) how to avoid threats to critical infrastructure in the future.
3. Windsor makes eighteen (18) recommendations<sup>1</sup> to advance the urgent and critical need for advance planning, addressing jurisdictional issues, management and protection of critical infrastructure, and modernizing the *Emergencies Act*.
4. These submissions should be read together with the Joint Policy Recommendations advanced by the City of Ottawa, Windsor, Ottawa Police Service, Ontario Provincial Police, Windsor Police Service and the National Police Federation.<sup>2</sup>
5. There is a critical, urgent need to establish a framework that will ensure the security of Windsor’s international crossings and the local community. As a municipal government, Windsor has the duty to represent the residents and businesses of the City who stand to be impacted by threats to (and interference with) the international crossings in Windsor. Those threats did not disappear with the departure of protesters in February, 2022.
6. Local concerns must be at the forefront. Windsor is not a case-study – it is a community. Its citizens live, work, and learn in the shadow of the Bridge and along its main access road. The Commission heard that the day after the blockade was cleared, Windsor City Council directed City Administration to partner with the federal and provincial governments on a long-term sustainable model to secure and protect Windsor’s international crossings. In February and March 2022, Windsor reached out to provincial and federal leaders – leaders who had just been seriously concerned about the blockade and its national economic impacts. Windsor proposed that all three levels of government meet and

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<sup>1</sup> Further to the Commissioner’s mandate at paragraph (a)(iii) of Order in Council P.C. 2022-392

<sup>2</sup> Windsor indicates where its recommendations overlap with the Joint Recommendations.

collaboratively study and develop a long-term, sustainable strategy to protect critical border infrastructure from all hazards. It received no response. Almost ten months after the Blockade, there is no clarity as to which federal ministry is responsible to drive this planning forward or whether this collaboration will take place.

7. Windsor is justifiably concerned that the “tyranny of the urgent” means that other levels of government have moved on the next crisis without engaging with the City’s requests or with local concerns.<sup>3</sup>

## II. Recommendations

8. Windsor’s primary and overriding recommendation is that all levels of government must urgently work collectively to ensure our institutions are prepared, and solutions are established to prevent unlawful protest activity from ever again threatening the safety and security of Windsor residents and the national economy. The solutions must address the division of responsibilities at all orders of government, the available tools and authorities at all levels, and ensure resources are available when and were required.

9. Windsor submits that the Commissioner should include the following recommendations:

- 1) All levels of government (federal, provincial/territorial, Indigenous, municipal) must urgently coordinate and agree on an inter-jurisdictional framework for protection of critical infrastructure. This framework should:
  - a. Include consideration of prevention, mitigation, preparedness, response and recovery, and not be limited to response alone;
  - b. clarify the definition of “critical infrastructure”, building on the 10 sectors of critical infrastructure listed in the National Strategy for Critical Infrastructure (for example, confirm that international border crossings and the Parliamentary Precinct are critical infrastructure);
  - c. ensure a clear command and control structure;
  - d. establish or link to multi-jurisdictional and multi-agency structures to share information nationally about upcoming potential threats and lessons learned for response;
  - e. include event planning and execution including assignment of responsibilities;
  - f. build in constitutional protection considerations into the emergency response to avoid overreach in an emergency;

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<sup>3</sup> Note: Windsor notes that the Federal Emergency Response Plan (POE.WIN00000003), a 2011 document, recognized that critical infrastructure dependencies and interdependencies are a risk factor that increases the potential for hazards to transcend geographical or jurisdictional boundaries and to challenge the capacity of FPT governments to manage emergencies. The framework Windsor is requesting is long overdue.

- g. provide for resources required to support the framework, including to build local resilience and to respond to all-hazards; and
- h. provide an appropriate and transparent allocation of responsibility for costs.

A federal ministry – such as Public Safety Canada or Emergency Preparedness – drive the inter-jurisdictional and multi-agency work required to develop and implement this framework.<sup>4</sup>

- 2) Recommendation #1 may be implemented through updates to the *Emergency Management Framework for Canada* and *National Strategy for Critical Infrastructure*. These documents are outdated and must be updated and modernized, and must include municipalities, police, fire and paramedics at the table at every stage of study, planning and implementation.<sup>5</sup>
- 3) Municipalities, Indigenous groups, police, fire and paramedics must be included in developing the recommended framework for protecting critical infrastructure, and local interests must be prioritized to ensure the resulting framework:
  - a. Prioritizes local and community concerns (even when it requires more resources and costs), including safety and security of residents and transportation and access for residents and local businesses;
  - b. Provides sufficient resources and tools for municipalities to build community resilience;
  - c. Responds to all hazards that may threaten critical infrastructure; and
  - d. Provides for clear two way communication and downloading of information from the provincial and federal governments to municipal authorities on the front lines.
- 4) Until a comprehensive inter-jurisdictional framework for the protection of all types of critical infrastructure is developed, establish customized frameworks for nationally important transportation assets including the Ambassador Bridge. This should immediately be established, and take into account the infrastructure’s unique jurisdictional characteristics.
 

Windsor recommends that a joint municipal, provincial and federal table be established to develop such a site-specific framework for the Ambassador Bridge. This would serve to flatten order of operations to ensure no delay as different levels of government wrangle over responsibility for critical national and international infrastructure, and ensure efficient allocation of resources across jurisdictions in an emergency.
- 5) Emergency management and response should consider coordination across border crossings, as the blockades in January and February 2022 revealed how integrated border crossings are across Canada.
- 6) Municipalities including Windsor bear a disproportionate share of the costs of protecting a federally-controlled critical infrastructure that has provincial and national benefits. It is unreasonable to expect municipal taxpayers to bear the financial brunt of responding to emergencies that have provincial and national implications. The costs of protecting of national critical infrastructure should be borne by the federal and provincial governments rather than municipal taxpayers.

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<sup>4</sup> Joint Recommendation #1

<sup>5</sup> The current framework and strategy are limited as municipalities and first responders including police, fire and ambulance were not involved in their development. Windsor reiterates its position that frameworks for protection of critical infrastructure must involve all orders of government and first responders.

- 7) Structures should be in place to share intelligence and information across the country about upcoming potential threats and lessons learned for response.<sup>6</sup>
- 8) That the existing legislative framework for policing be amended to extend full policing authority to RCMP officers across all Canadian jurisdictions for the purposes of a municipal, provincial, or federal declared emergency.<sup>7</sup>
- 9) Governments and legislative bodies should analyze and consider whether existing laws are sufficiently responsive to modern protests and provide the appropriate balance between the exercise of Charter rights, public safety and other interests.<sup>8</sup>
- 10) The Federal government should, with local municipal and policing input, enter into a standing agreement with the U.S. to assist in the event of a border crossing emergency.
- 11) Further study and consideration of the use of tools such as bylaws and municipal injunctions versus physical hardening (permanent vs quickly deployable resources such as jersey barriers).
- 12) The Commission did not hear evidence or consider solutions to permanently harden critical infrastructure and should not offer specific recommendations on this topic. Hardening of infrastructure requires careful study and consideration of competing interests. Windsor recommends that any Commission recommendation with respect to hardening of infrastructure should be limited to recommendations for future study, with a requirement that municipal and policing interests be at the table and be prioritized, to develop solutions that maintain the operation of the infrastructure in a manner that is not detrimental to residents and communities, and prioritizes local interests and considers funding.<sup>9</sup>

The *Emergencies Act* should be updated and modernized as follows:

- 13) Mechanisms either in the *Emergencies Act* or as part of the framework recommended at 1) above, should be developed to ensure gaps in resources are addressed quickly before a decision is made to invoke the *Emergencies Act*. Gaps in resources at the local level (i.e. policing and other human resources as well as physical resources such as jersey barriers and tow trucks) influences speed and capacity of emergency response.
- 14) Mechanisms should be developed to ensure there are no gaps in federal decision-makers' understanding of information from relevant first responders including police and fire, and impacted municipalities regarding required resources and legal tools to respond to an emergency.

Communication with municipalities and local policing agencies should be two-way to ensure first responders are aware of tools and resources being deployed by other jurisdictions.<sup>10</sup>

- 15) The *Emergencies Act* should be amended to include an appropriate mechanism for consultation by the federal government with municipalities and local police authorities regarding the declaration of a public order emergency and the measures for dealing with the emergency.
- 16) The timeline for delivery of a report of an inquiry under section 63(2) of the *Emergencies Act* should be meaningfully extended. The *Emergencies Act* should be amended to explicitly

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<sup>6</sup> Joint Recommendation #2

<sup>7</sup> Joint Recommendation #3

<sup>8</sup> Joint Recommendation #4

<sup>9</sup> Joint Recommendation #6

<sup>10</sup> Joint Recommendation #7

require that the inquiry consider lessons learned and make recommendations, and provide a longer timeline for this policy phase after the delivery of a report on the factual phase.<sup>11</sup>

17) Parties necessary for the work of an *Emergencies Act* inquiry should receive reasonable funding from the federal government to participate in the inquiry.

18) The *Emergencies Act* should be revised to reduce or eliminate the overlap between the mandate of an inquiry under section 63(2) of the Act and the parliamentary review prescribed by section 62(1) of the Act.<sup>12</sup>

### III. The urgent and critical need for advance planning

#### a) *Planning must happen in advance, not during the emergency response*

10. The experts participating in the Commission's policy roundtables consistently supported advance planning and coordination involving all levels of government.

11. Prof. Stacey, moderator of the Commission's Roundtable "Interjurisdictional Responses to Protests and Emergencies" ("**Interjurisdictional Roundtable**"), remarked on the consistency within the panelists' views about the "importance of communication, entering into agreements and protocols, training, and resourcing, and so in some way it's really no mystery, right? These things all have to happen outside of the actual emergency response."<sup>13</sup>

12. As Interjurisdictional Roundtable panelist President Judith Sayers succinctly stated: "I think that we need to act sooner than later in putting in place protocols and working together, roles, responsibilities. Let's be clear that so we're not fooling around at some time and trying to decide if it's a provincial jurisdiction or federal jurisdiction or a First Nation jurisdiction."<sup>14</sup>

13. This was echoed by panelist Prof. Dwight Newman, who stated: "I agree entirely with the notion that there ought to be discussions well in advance of any particular emergency arising, and that the opportunities for coordination between governments start well in advance of the need for emergencies legislation years in advance, as has been suggested."<sup>15</sup>

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<sup>11</sup> Joint Recommendation #8

<sup>12</sup> Joint Recommendation #9

<sup>13</sup> Roundtable on Interjurisdictional Responses to Protests and Emergencies, Transcript, vol. 35, p. 124 lines 16-21, TRN00000035.

<sup>14</sup> Roundtable on Interjurisdictional Responses to Protests and Emergencies, Transcript, vol. 35, p. 158 lines 17-24, TRN00000035.

<sup>15</sup> Roundtable on Interjurisdictional Responses to Protests and Emergencies, Transcript, vol. 35, p. 148 lines 17-21, TRN00000035.

14. Interjurisdictional Roundtable Panelist Cal Corley also described the value of having an effective framework and planning in avoiding emergencies escalating to the point where emergency response measures must be invoked: “In essence, if at the federal -- at the FPT, Indigenous, and municipal levels, there’s intentional proactive measures that support the development of a highly functional and effective national framework that addresses public order protests and emergencies, that is properly executed and properly implemented, it should, in most cases and circumstances, establish conditions that negate the need for governments to even consider invoking the Federal Emergency Act part 2, as it is today.”<sup>16</sup>

***b) The framework must be comprehensive, not focussed on response only***

15. Emergency management requires more than just emergency response: it involves prevention, mitigation, preparedness, response and recovery. This was the prevailing view of the policy roundtable participants. Interjurisdictional Roundtable Panelist Prof. Jack Lindsay pointed out that current emergency management legislation does not emphasize the aspects of emergency management outside of response: “We have legislation that has very strong powers to use in response, very few obligations to reduce risk or to prepare our communities or to have proper recovery.”<sup>17</sup>

16. Recovery, in particular, is an important yet overlooked aspect of emergency management. After the acute response has passed, there nevertheless remains a community of people who will live with the aftermath of an emergency. Plans and resources for recovery, rebuilding, and preventing a recurrence need to be put in place.

17. As Interjurisdictional Roundtable panelist President Judith Sayers pointed out: “I think a financial aid is also something that can be negotiated, what happens after a national disaster, how do we rebuild and replace what was destroyed or damaged. One of our communities that was in a fire that was destroyed still hasn’t been rebuilt.”<sup>18</sup>

***c) Resourcing is critical***

18. An emergency management policy cannot be effective without the resources to deploy it. Emergencies often demand more resources than are available to the local jurisdictions where they occur. Emergencies of the type that prompted the public order emergency declaration do not engage purely

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<sup>16</sup> Roundtable on Interjurisdictional Responses to Protests and Emergencies, Transcript, vol. 35, p. 157 lines 7-15, TRN00000035.

<sup>17</sup> T Roundtable on Interjurisdictional Responses to Protests and Emergencies, Transcript, vol. 35, p. 160 lines 21-24, TRN00000035.

<sup>18</sup> Roundtable on Interjurisdictional Responses to Protests and Emergencies, Transcript, Vol. 35, p. 123 lines 6-10, TRN00000035.



local interests, and so the response should not be constrained by limitations of local resources. Nor should municipal taxpayers or the local community be forced to bear the financial burden of a provincial or national emergency.

19. Interjurisdictional Roundtable panelist Ryan Teschner observed “where we're going to mobilize local resources, we need to ensure that there's a framework in place so that everybody knows their responsibilities, their obligations, and who's in charge, and who picks up the tab...”<sup>19</sup>

20. During his testimony, Mr. Jeffery Hutchinson, senior advisor in the Emergency Preparedness and COVID Recovery Secretariat, testified that communities and municipalities tend to be the first responders, and “we have to have the systems of support” in place. He went on to say that “the lines of support, the lines of communication, the shared planning where necessary, the collaborative planning, those would all support each level or order of government being able to fulfil its function to the fullest.”<sup>20</sup>

***d) The emergency framework must allow for swift response to a threat***

21. An emergency response framework must be quickly deployable; “off the shelf,” as Mayor Dilkens put it. Emergencies by their nature arise quickly and require prompt and decisive action. Response to an emergency cannot be impaired by uncertainty over who to involve or what to do: doubt begets delay. Resources must also be rapidly available to support a rapid response. The inevitable result of a delayed response, particularly in a public order emergency, is that the emergency escalates.

22. As Prof. Stacey discusses in her paper, the implicit purpose of emergency management legislation is “to enable rapid, coordinated government responses that minimize the impacts on people and property of a serious and urgent event.”<sup>21</sup>

23. However, as detailed in the Windsor Factual Submissions, there was confusion during the blockade between the provincial and federal governments regarding jurisdiction. Further, it was not clear to Windsor at the outset which ministries to contact with respect to the ongoing blockade.

24. Planning in advance is also in the interests of protecting *Charter* rights and fundamental freedoms. As Prof. Diab points out in his paper,

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<sup>19</sup> Roundtable on Interjurisdictional Responses to Protests and Emergencies, Transcript, vol. 35, p. 159 lines 22-25, TRN00000035.

<sup>20</sup> Testimony of Jeffery Hutchinson and Deputy Secretary Bogden, Transcript, vol. 26, p. 81 line 6 - p. 82 line 10, TRN00000026.

<sup>21</sup> POEC Commissioned Paper: “Governing Emergencies in an Interjurisdictional Context”, Jocelyn Stacey, p. 5.

[a] legislative framework would also be a more effective means of protecting Charter rights. It would reflect the idea that Justice Dickson, as he then was, articulated in *Hunter v Southam Inc* that Charter rights are more effectively protected by measures designed to avoid a breach rather than having courts referee police conduct after the fact. Legislation would also be preferable to temporary or emergency law, or to court injunctions. Federal and provincial lawmakers would have the benefit of careful deliberation, informed debate, research, and consultation. Public Order Policing Acts could be comprehensive, general, and indefinite in nature rather than temporary or issue specific.<sup>22</sup>

#### IV. Jurisdictional Issues

##### ***a) Municipalities are on the front lines and must be at the table for all emergency planning***

25. The Commission has heard that emergency response is bottom-up, with municipalities and local authorities serving as first responders when emergencies arise. A challenge with emergencies like the February blockade is that they occur locally but have wider impacts and involve multiple jurisdictions. Windsor was challenged in terms of its capacity (human resources and hard assets) to respond to this incident.

26. The study of emergency management by the Commission and any recommendations must involve municipalities and prioritize local communities. Local authorities including municipalities are the operational arm of emergency management. It is local communities who must live with the solution long term. emergency legislation and frameworks must ensure local authorities have sufficient tools, authority and, importantly, resources. Policy recommendations should ensure the federal government contributes its resources and support in a way that enhances, not hampers, the on the ground local emergency management and response.

27. This was described by Prof. Stacey in her paper as a “pyramidal” approach in her Commissioned paper at page 25:

In order to understand interjurisdictional coordination, it is important to note the scalar or “pyramidal” approach to emergency management in Canada. The working assumption is that emergencies will be addressed by the most immediate authority – initially the individual or household (hence the recommendation for each household to have a 72-hour emergency kit) -- and then the local authority. Regional bodies, provinces, territories and the

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<sup>22</sup> POEC Commissioned Paper: “The Policing of Large-Scale Protests in Canada: Why Canada Needs a Public Order Police Act”, Robert Diab, p. 35.

federal government will only step in once local capacity has been exceeded.<sup>23</sup>

28. Also on page 25, Prof. Stacey explained that

researchers estimate that 80% of emergencies are handled solely at the local level. ...Local authorities and Indigenous governing bodies thus play a central role in emergency management: when the focus is on emergency response, they are first responders.<sup>24</sup>

29. As Interjurisdictional Roundtable panelist Ryan Teschner observed, “regardless of who makes [a] declaration [of emergency], the policing that needs to be responsive to that emergency, generally speaking, happens locally.”<sup>25</sup>

***b) Planning Needs to Be Integrated, Not Hierarchical***

30. An effective emergency management framework must recognize municipalities’ and local authorities’ contribution and agency in an emergency. They are the eyes on the ground during an emergency and have local knowledge. As Interjurisdictional Roundtable panelist Cal Corley observed,

local agencies also, beyond just specific local contextual knowledge, they also bring tremendous value in terms of complementary capabilities and know-how that can be beneficial to the investigation, hence, the greater good.”<sup>26</sup>

31. As Professor Stacey points out in her Commissioned Paper, with reference to the federal-provincial-territorial coordination “coordination on the ground is in fact hampered by the absence of municipalities and indigenous governing bodies in these arrangements.”<sup>27</sup>

32. Deputy Minister Stewart (then with Public Safety) agreed at the hearing that Canada’s Emergency Management Framework lays out an approach that requires excellent multi-level coordination, and that there is a high degree of virtue in interoperability and interconnectedness across all first responders.<sup>28</sup>

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<sup>23</sup> POEC Commissioned Paper: “Governing Emergencies in an Interjurisdictional Context”, Jocelyn Stacey, p. 25.  
<sup>24</sup> POEC Commissioned Paper: “Governing Emergencies in an Interjurisdictional Context”, Jocelyn Stacey, p. 25.  
<sup>25</sup> Roundtable on Interjurisdictional Responses to Protests and Emergencies, Transcript, vol. 35, p.101 lines 14-16, TRN00000035.  
<sup>26</sup> Roundtable on Interjurisdictional Responses to Protests and Emergencies, Transcript, vol. 35, p.118 line 23 - p. 119 line 2, TRN00000035.  
<sup>27</sup> POEC Commissioned Paper: “Governing Emergencies in an Interjurisdictional Context”, Jocelyn Stacey, p. 26.  
<sup>28</sup> Testimony of Deputy Minister Stewart and Assistant Deputy Minister Rochon, Transcript, vol. 22 p. 188 line 11 – p. 192 line 23, TRN00000022.

33. From a municipal perspective, emergency management within the province, including the role of municipalities, is well understood. More information and clarity about the role of the federal government is required. This includes more information and clarity as to how municipalities can quickly access federal assistance where necessary.

34. Former CBSA President Ossowski agreed that a specific plan should be developed by all three levels of government for international border crossings, including disentangling how police of jurisdiction choose to respond.<sup>29</sup>

35. Speaking to the context of national security, Mr. Richard Fadden, a participant in the Commission's Roundtable "National Security and Public Order Emergencies" ("**National Security Roundtable**"), commented that "national security is no longer national,"<sup>30</sup> pointing out that "[c]ivil society entities, provinces and municipalities are much closer to the people of this country than, generally speaking, is the federal government."<sup>31</sup>

36. Policy recommendations should, therefore, ensure the federal government contributes its resources and support in a way that enhances, not hampers, local emergency management and response.

37. Windsor agrees with Interjurisdictional Roundtable panelist Ryan Teschner that a modernized emergency governance structure should have as a basic premise, an interjurisdictional coordinating group, or superstructure. Mr. Teschner suggested five key components, the first of which

"is an understood structure ... with a sufficient role for, ..., the local level, and ... the First Nations and Indigenous Communities that are impacted by that particular emergency. Clear roles, clear responsibilities, a clear mission statement, as part of that structure. Each organization or entity would be represented and would retain their own command authority but would exercise control over their own operations in a coordinated and facilitated fashion and could rely on discussion and consensus, for the most part, and it would allow for a common operational picture, and more efficient response in deployment when you have multiple levels or orders of government involved. It would promote a full information exchange between the partners, where no local entity that is impacted is placed at a disadvantage. And of course, it would help ensure interoperability..."

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<sup>29</sup> Testimony of John Ossowski, Transcript, vol. 24 p. 79 line 16-p. 80 line 19, TRN00000024.

<sup>30</sup> Roundtable on National Security and Public Order Emergencies, Transcript, vol. 34, p. 30 line 23, TRN00000034.

<sup>31</sup> Roundtable on National Security and Public Order Emergencies, Transcript, vol. 34, p. 31 line 2-4, TRN00000034.

38. The importance of other levels of government adequately supporting municipalities in emergency response was a theme in the Elliot Lake Inquiry. Justice Bélanger’s recommendations are credited with prompting positive and important changes in emergency management and IMS systems.

39. An emergency management policy that is “horizontal” rather than “hierarchical” facilitates collaboration between all levels of government. Prof. Stacey speaks to this at page 27 of her Commissioned paper:

“It is possible to imagine different—more horizontal arrangements—for emergency management, whereby emergencies trigger all governments to come to the table and work collaboratively in an emergency response. While these arrangements have been proposed and advocated for in the law reform process, the hierarchical and formal authority model baked into Canadian federalism is what continues to be reflected in legislative definitions of roles and responsibilities.”<sup>32</sup>

### ***c) Emergency Management Benefits From Local and Municipal Consultation***

40. Winsor agrees with those panelists whose opinions support greater consultation with municipalities and local authorities by provinces and the federal government. Interjurisdictional Roundtable panelist Ryan Teschner commented “presumably when a province or a territory or a First Nation is consulted in the context of a discussion with the Federal Government on emergencies, they should be informed by what is happening locally on the ground at a municipal level.”<sup>33</sup>

41. Interjurisdictional Roundtable panelist Mr. Cal Corley echoed this point, pointing out the importance of instituting and implementing a framework that allows for consultation, even within a short time frame:

“it strikes me that key stakeholder groups will expect, and should be consulted with, even in the shortest of time frames, but that by instituting and implementing a framework such as has been described, ... would really lay the foundation for trustful relationships as pertaining to emergencies and public order protests. So when we get to the time where there is a very short order, that sets the foundation for even in a very short order of time that’s available for consultation to be more meaningful.”<sup>34</sup>

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<sup>32</sup> POEC Commissioned Paper: “Governing Emergencies in an Interjurisdictional Context”, Jocelyn Stacey, p. 27.

<sup>33</sup> Roundtable on Interjurisdictional Responses to Protests and Emergencies, Transcript, vol. 35, p.147 lines 13-16, TRN00000035.

<sup>34</sup> Roundtable on Interjurisdictional Responses to Protests and Emergencies, Transcript, vol. 35, p.173 line 26 – p. 174 line 8, TRN00000035.

42. Windsor submits that there is no constitutional barrier to the federal government consulting with municipalities as a key partner in emergency management and the protection of nationally important infrastructure in their borders. Any concerns about interjurisdictional delicacies can be addressed and planned in advance together with provincial and territorial partners. Interjurisdictional Roundtable panelist Prof. Dwight Newman recognized that

[a]t the same time the Federal Government certainly wants to be informed by what's occurring in municipalities at a local level where that knowledge is held. And it might be appropriate to include language in the Act that at least permits the Federal Government to consult municipalities.<sup>35</sup>

43. Two way communication between government is essential. Interjurisdictional Roundtable panelist Ryan Teschner recognized this, noting that:

“municipalities are not always going to necessarily know what the threat picture looks like, and so promoting information-sharing, threat risk assessments that might be conducted by provinces, might be conducted by the Federal Government, and ensuring that municipalities impacted or likely impacted have access to that information so that they can properly and in an informed way make a determination about what their capacity actually is or isn't, I think is vital.”<sup>36</sup>

44. Similarly, National Security Roundtable panelist Richard Fadden favoured a national coordinating capacity, “not an exclusively federal one, would encourage Provinces, Municipalities, and even some parts of civil society to share information.”<sup>37</sup> Panelist Ward Elcock was in agreement: “I would share the view that a greater degree of sharing of information between the federal government and -- between federal government agencies and provincial agencies, and municipal police forces and so on, is important.”<sup>38</sup>

## V. Critical Infrastructure

45. The evidence before the Commission highlighted gaps in emergency planning, management and response to protect critical infrastructure. It also revealed the importance of the federal government

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<sup>35</sup> Roundtable on Interjurisdictional Responses to Protests and Emergencies, Transcript, vol. 35, p.150, ln 23-27, TRN00000035.

<sup>36</sup> Roundtable on Interjurisdictional Responses to Protests and Emergencies, Transcript, vol. 35, p. 147 lines 19-27, TRN00000035.

<sup>37</sup> Roundtable on Misinformation, Disinformation and the Role of Social Media, Transcript, vol. 33, p. 45 lines 20-23, TRN00000033.

<sup>38</sup> Roundtable on Misinformation, Disinformation and the Role of Social Media, Transcript, vol. 33, p. 49 lines 5-9, TRN00000033.

engaging directly with the municipalities that host infrastructure critical to the nation, and ensuring that municipalities have the support they need to protect this infrastructure.

46. Deputy Minister Keenan testified before the Commission that a national legislative regime that can be used to protect critical trade and transportation infrastructure on an ongoing basis may be desirable. He elaborated that there is an authorities gap that bears some analysis and resolution. The Deputy Minister agreed that there is a need for better plans that include all levels of government, and that this planning has to include collaboration with the local governments and authorities who are also protecting the community around that infrastructure.<sup>39</sup>

47. Mr. Hutchinson pointed out gaps in the *Emergencies Act* legislation and agreed that critical infrastructure protection legislation will require collaboration across federal, provincial, municipal, and private sectors. He elaborated that if we could strengthen the tools and frameworks around protecting critical infrastructure, we would be protecting the space for legal and safe demonstration in our democracy because the rules would be clearer and the protection from impacts would be in place. He commented that municipalities and communities tend to be the first responders to emergencies, and that support, communication, and shared or collaborative planning should be in place to help each order of government fulfil its function to the fullest.<sup>40</sup>

48. The Delorme & Ouellet paper set out in detail both the importance and the vulnerability of Canada's supply chains, which are dependent upon critical infrastructure like the Ambassador Bridge. Among Prof. Delorme's summarized observations include:

- Road transportation is the dominant mode of transportation in Canadian international trade, particularly in manufacturing sector industries and especially in the automotive industry. Ontario occupies an important place in the automotive industry, which employs many people in Ontario, especially in Windsor and the surrounding area
- Trade in Canada and Ontario is very vulnerable to supply change disruptions related to road transportation. Exports are even more vulnerable than imports.
- The manufacturing sector, especially the transportation and electrical equipment and machinery industries, is highly dependent

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<sup>39</sup> Testimony of Deputy Minister Keenan and Christian Dea, Transcript, vol. 24, p. 231 line 7 – p. 233 line 6, TRN0000024.

<sup>40</sup> Testimony of Deputy Secretary Bogden and Jeffery Hutchinson, Transcript, vol. 26, p. 80 line 9–p. 82 line 10, TRN0000026.

on road transportation and shows a marked preference for the Ambassador Bridge.

- The Ontario manufacturing sector, particularly the automotive industry, is highly concentrated in the Windsor region, which is served by the Ambassador Bridge. A significant share of Ontario's food supply also passes over the Ambassador Bridge. This makes it a vulnerable nerve center for the economies of Ontario and Canada, as well as for many jobs in Ontario.
- Industries in sectors most reliant on the Ambassador Bridge account for about 1.8% of jobs in Canada and about 4.4% of jobs in Ontario, in other words, a total of 339,275 jobs.<sup>41</sup>

49. As Critical Infrastructure Roundtable panelist Prof. Ambarish Chandra noted: “there's really just four bridges, all of which are in southern Ontario, that carry the vast majority of our trade. And so our critical infrastructure is dependent on these bridges. ... the Ambassador Bridge is easily the most important of these bridges, getting 30 percent of our trade.”<sup>42</sup>

50. Prof. Chandra also pointed out the particular vulnerability of Canada's international bridges:

“for most of the border, if one of these road crossings is blocked or blockaded or just not available, traffic can be diverted fairly easily to nearby border crossing. That's not true in the case of the bridges ... we've concentrated so much traffic into this one small area and there's really no redundancy built into the system so when something goes wrong, as it did in February, there's really no good solution.”<sup>43</sup>

51. The role of municipalities in managing threats to critical infrastructure is not limited to the Ambassador Bridge. One of the participants in the Commission's Roundtable “The Protection of Flows of Essential Goods and Services, Critical Infrastructure and Trade Corridors” (“**Critical Infrastructure Roundtable**”), Professor Boyle explained, of the critical infrastructure that is publicly owned, the vast majority (an estimated 80%) is owned or regulated by municipalities. As such, “they really need to be at the table as well for those discussions.”<sup>44</sup>

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<sup>41</sup> POEC Commissioned Paper: “The Vulnerability of Canada and Ontario to International Supply Chain Disruptions in Light of the Events of February 2022”, François Delorme and Florence Ouellet, p. 2.

<sup>42</sup> Roundtable on The Protection of Flows of Essential Goods and Services, Critical Infrastructure and Trade Corridors, Transcript, vol. 33, p. 96 line 24 – p. 97 line 2, TRN00000033.

<sup>43</sup> Roundtable on The Protection of Flows of Essential Goods and Services, Critical Infrastructure and Trade Corridors, Transcript, vol. 33, p. 103 lines 9-16, TRN00000033.

<sup>44</sup> Roundtable on The Protection of Flows of Essential Goods and Services, Critical Infrastructure and Trade Corridors, Transcript, vol. 33, p. 134 lines 24-28, TRN00000033.



52. Unfortunately there is currently no clear framework for addressing threats to critical infrastructure; or even identifying jurisdiction. As Critical Infrastructure Roundtable panelist Prof. Phil Boyle explained:

“So on the question of who’s in charge, then, of critical infrastructure, the answer is, it depends. It depends on the statutory and jurisdictional context in which an accident, a crisis, in which something happens or, to put it roughly, what happened and what was affected will determine who is responsible after the fact.”<sup>45</sup>

53. The Commissioner asked the Critical Infrastructure Roundtable participants to comment on the protection of the Ambassador Bridge. He noted that protecting Windsor and the Ambassador Bridge involves the federal government which controls the border crossing and international bridge, the access road that is controlled by the City of Windsor, which connects to the 401 main highway which is in the purview of the province.

54. The Commissioner noted that there is no organization or plan involving all 3 jurisdictions to protect the Bridge.<sup>46</sup> In response, Panelist Prof. Ambarish Chandra agreed that, given the importance of the Bridge, it is also important to have a unified framework to deal with all points of access to infrastructure of that nature.<sup>47</sup> Panelist Prof. François Delorme also agreed, citing the example of repairs to pont Champlain in Montréal, which also came under multiple jurisdictions. Prof. Delorme identified a need to identify and define critical infrastructure and have agreements between federal and provincial authorities:

« il y aurait un besoin de définir ce que c’est une infrastructure critique ou un corridor commercial international dans ce contexte-là et ça ferait du sens d’avoir des accords entre fédéraux ou fédéral- provinciaux qui pourraient préciser ce genre de corridor international. Là, je pense que c’est important. »<sup>48</sup>

55. During the Critical Infrastructure roundtable, the Commission heard that Public Safety Canada is currently responsible for enhancing Canada’s critical infrastructure resilience, implemented through the National Strategy for Critical Infrastructure.<sup>49</sup> However, there are significant limitations to the NSCI. As

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<sup>45</sup> Roundtable on The Protection of Flows of Essential Goods and Services, Critical Infrastructure and Trade Corridors, Transcript, vol. 33, p. 105 lines 2-7, TRN00000033.

<sup>46</sup> Roundtable on The Protection of Flows of Essential Goods and Services, Critical Infrastructure and Trade Corridors, Transcript, vol. 33, p. 156 line 25 – p. 157 line 14, TRN00000033.

<sup>47</sup> Roundtable on The Protection of Flows of Essential Goods and Services, Critical Infrastructure and Trade Corridors, Transcript, vol. 33, p. 158 lines 2-11, TRN00000033.

<sup>48</sup> Roundtable on The Protection of Flows of Essential Goods and Services, Critical Infrastructure and Trade Corridors, Transcript, vol. 33, p. 159 lines 13-18, TRN00000033.

<sup>49</sup> Roundtable on The Protection of Flows of Essential Goods and Services, Critical Infrastructure and Trade Corridors, Transcript, vol. 33, p. 105 lines 13-16, TRN00000033.

panelist Prof. Phil Boyle observed, Public Safety Canada lacks “any distinct powers to instruct or compel other levels of government or private sector owner/operators to undertake specific CI related obligations within the National Strategy.”<sup>50</sup> As well, while the National Strategy for Critical Infrastructure “enables federal, provincial, and territorial governments to work together with the private sector,” “Indigenous groups and municipalities are not included in that framework.”<sup>51</sup> Prof. Boyle specifically suggested that the NSCI could be improved “to include municipalities and Indigenous groups as stakeholders under the National Strategy.”<sup>52</sup>

56. Prof Wark, in the conclusion to his policy paper, observed that in the events leading to the POE declaration “[t]hreat reporting in general missed the significance of critical infrastructure vulnerabilities, especially at the border, and the prospect of significant supply chain disruptions.”<sup>53</sup>

57. Prof. Delorme in his policy paper described the staggering economic consequences of the Blockade, measured in hundreds of millions of dollars per day:

Losses from the blockade of the Ambassador Bridge in February 2022 are estimated at between 150 and 400 million dollars per day, for six days, or equivalent to approximately 0.1% to 0.2% of the Canadian GDP.<sup>54</sup>

58. In his comments to the Critical Infrastructure Roundtable, Prof. Delorme expanded upon the comments in his policy paper, describing the ripple effect that disruptions in one sector have for other areas of the economy: “Évidemment, ce travailleur-là de l’automobile, il a une maison, il fait son épicerie, il contracte des polices d’assurance, donc cet emploi-là déclenche ou est responsable de plusieurs autres emplois dans l’économie.”<sup>55</sup> Panelist Prof. Florence Ouellet described the even more far-reaching economic consequences of supply-chain interruptions to the supply chains that rely on critical infrastructure:

Aussi, peut-être que le camionnage est une partie de la chaîne d’approvisionnement entre le Canada puis les États-Unis qui est moins

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<sup>50</sup> Roundtable on The Protection of Flows of Essential Goods and Services, Critical Infrastructure and Trade Corridors, Transcript, vol. 33, p. 105 lines 18-21, TRN00000033.

<sup>51</sup> Roundtable on The Protection of Flows of Essential Goods and Services, Critical Infrastructure and Trade Corridors, Transcript, vol. 33, p. 106 lines 3-7, TRN00000033.

<sup>52</sup> Roundtable on The Protection of Flows of Essential Goods and Services, Critical Infrastructure and Trade Corridors, Transcript, vol. 33, p. 106 lines 10-12, TRN00000033.

<sup>53</sup> POEC Commissioned Paper: “The Role of Intelligence in Public Order Emergencies”, Wesley Wark, p. 60.

<sup>54</sup> POEC Commissioned Paper: “The Vulnerability of Canada and Ontario to International Supply Chain Disruptions in Light of the Events of February 2022”, François Delorme and Florence Ouellet, p. 3.

<sup>55</sup> Roundtable on The Protection of Flows of Essential Goods and Services, Critical Infrastructure and Trade Corridors, Transcript, vol. 33, p. 94 lines 3-6, TRN00000033.

concentré; par contre, il y a certaines industries, comme l'industrie manufacturière, qui sont pourtant très concentrées du point de vue des fournisseurs. Donc ça, ça veut dire que si, par exemple, il y a un fournisseur aux États- Unis qui ne peut plus accomplir son travail pour un partenaire canadien pour x raisons, bien, il n'y a pas vraiment d'alternatives ou les alternatives qu'il y a sont pas fantastiques.<sup>56</sup>

59. These comments highlight the serious risks of failing to adequately manage threats to critical infrastructure.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 9<sup>th</sup> day of December, 2022.



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<sup>56</sup> Roundtable on The Protection of Flows of Essential Goods and Services, Critical Infrastructure and Trade Corridors, Transcript, vol. 33, p. 115 lines 2-11, TRN00000033.