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COMMISSION**

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SUR L'ÉTAT
D'URGENCE**

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The Honourable / L'honorable
Paul S. Rouleau**

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Union of British Columbia Indian Chiefs

Ms. Cheyenne Arnold-Cunningham

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National Crowdfunding & Fintech
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V

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Ottawa, Ontario

--- Upon commencing on Tuesday, November 29, 2022 at 9:32 a.m.

THE REGISTRAR: Order. À l'ordre.

The Public Order Emergency Commission is now in session. La Commission sur l'état d'urgence est maintenant ouverte.

COMMISSIONER ROULEAU: Okay. Well, welcome to -- everyone, to day two of the policy sessions. And today we're going to move to -- well, I was going to give you a false statement to show we're dealing with misinformation, but I will give the right answer: We're dealing this morning with misinformation, disinformation, and the role of social media.

So with no further ado, avec aucune autre introduction, je vais donner la parole à Wayne MacKay, professeur MacKay, pour... qui va présider à cette session.

Professeur.

MR. WAYNE MacKAY: Merci beaucoup.

--- ROUNDTABLE DISCUSSION: MISINFORMATION, DISINFORMATION AND THE ROLE OF SOCIAL MEDIA

MR. WAYNE MacKAY: Bonjour et bienvenue. My name is, as the Commissioner just pointed out, is Wayne MacKay, and I'm the Moderator for your session, and have the unenviable task of keeping people in -- within limits, in spite of all the good things you have to say.

So the panel will address the roles played by three different things in the course of this: Social media in its various forms, which we'll address first; mis- and disinformation, and I think malinformation is another term

1 they've used; and thirdly, ideologically motivated violent
2 extremism, and in particular, how all of these relate to the
3 context of protest generally, and somewhat more specifically in
4 the issues here.

5 The diverse and impressive panel members to my
6 left are -- I'll just identify them and give them a very brief
7 introduction:

8 Dax D'Orazio, immediate left, the Skelton-Clark
9 Postdoctoral Fellow, Department of Political Science, Queen's
10 University, and Research Affiliate Centre for Constitutional
11 Studies, University of Alberta.

12 And then next to him, Jon Penny, Associate
13 Professor, Osgoode Hall Law School, York University, and
14 Research Fellow with the Citizen's Lab at the University of
15 Toronto.

16 And then Emily Laidlaw, Canada Research Chair in
17 Cybersecurity Law, and Associate Professor, University of
18 Calgary Law School.

19 And next to her, David Morin, UNESCO co-Chair in
20 Prevention of Radicalization and Violent Extremism, and full
21 Professor in the Faculty of Arts and Humanities at the
22 University of Sherbrooke.

23 And last but not least, Vivek Venkatesh, UNESCO
24 co-Chair in Prevention of Radicalism and Violent Extremism, who
25 is also a full Professor at the Faculty of Fine Arts at
26 Concordia University.

27 So that is our impressive expert panel.

28 Just very quickly, I'm just going to say a couple

1 of words about process. Our objective as a panel is to explore
2 these complex issues in a way that hopefully assists the
3 Commission and the Commissioner, but also informs the broader
4 public. And to pursue this, I will raise some general questions
5 to explore, and then call upon either specific panel members or
6 sometimes open it up to the panel.

7 For the benefit of translators and the record,
8 each member should identify themselves, or actually mostly I
9 will do that; I will call on you and do my best to remember to
10 identify your names so you're on the record.

11 We're also reminded of the competing needs to be
12 succinct and fall within our time limits, but on the other hand,
13 speak slowly, in terms of kindness to the translators and the
14 public record. And speaking for myself, that's something we all
15 have to focus on.

16 I will be -- as Moderator, occasionally intervene
17 if I feel we've gone beyond the proposed times.

18 So with those relatively minimal introductions,
19 I'm ready to start off, unless anybody has any questions.

20 All right. So the first topic is social media;
21 and, in particular, its impact on protests and those kinds of
22 things, and the kinds of broad questions that I have in mind to
23 be addressed on that topic is; how has social media changed the
24 public discourse, stated very briefly; how has it impacted
25 activism and protest; how has it impacted protest like the ones
26 relevant to this Commission, and perhaps one that not -- hadn't
27 given a lot of thought to, but does it matter who is protesting
28 in terms of what kind of social media they're listening to.

1 So with those very board questions, and lots of
2 other things, I'll turn it over to Professor D'Orazio to start
3 us off.

4 **DR. DAX D'ORAZIO:** Thank you very much, Wayne,
5 and pleasure to be here with you all for a very exciting
6 conversation.

7 **--- PRESENTATION BY DR. DAX D'ORAZIO:**

8 **DR. DAX D'ORAZIO:** I want to get the conversation
9 kicked off by speaking specifically about three major
10 consequences of the advent of social media for public discourse,
11 understood in a very broad sense; and also for possibilities for
12 debate, dissent, and activism.

13 So the first major consequence, I think, is it's
14 fair to say the traditional gatekeepers of information can be
15 bypassed. If we're understanding social media and communication
16 historically for a moment, traditionally information was
17 filtered through very few hands. And every time we see a
18 revolution in communication technology, we see some commensurate
19 friction related to who controls the flow and circulation of
20 information and also meaning.

21 At the same time that we see the advent of social
22 media, we also see some almost mutually reinforcing trends in
23 the field of journalism, and some of that traditional
24 circulation of information. I think it's fair to say that there
25 is a crisis in journalism, not just in North America but also
26 around the world, where traditional outlets of information are
27 struggling to keep the doors open, and there is also a waning of
28 traditional forms of journalistic content.

1 We also see a fracturing of audiences that
2 consume information as well. And so the advent of social media
3 doesn't take place in isolation from these other political,
4 economic changes in journalistic field.

5 There are costs and benefits with this advent of
6 social media, and a huge one on this front, as it relates to
7 traditional gatekeepers, is that we have potentially more access
8 to accurate and also more valued information.

9 That said, we also see potentialities for a
10 greater influence of things like conspiracy, rumour, hate, and
11 also propaganda.

12 The second major consequence of social media is
13 that the delivery and circulation of our messages is both
14 instantaneous and global. I'm thinking historically again. Our
15 means of communication was traditionally conditioned by
16 proximity to others with which to communicate and also the type
17 of technology that we would be able to use.

18 Social media has completely shattered those --
19 that conditioning, and we're able to, at the touch of our
20 fingertips, communicate with literally the whole world and also
21 instantaneously.

22 That led to what we might call techno-optimism,
23 which was we could communicate with others across difference,
24 and that would be a net positive for global society. We now,
25 unfortunately, speak of digital detoxes, having a healthy
26 distance between ourselves and digital spaces, about echo
27 chambers being mostly privy to communication that confirms our
28 own biases or beliefs, and so the friction or the cost and

1 benefits on this front are that we have access to drastically
2 more information, but that there are increased technological
3 technical means of limiting and correcting falsehoods. They
4 often spread much faster than truth might spread.

5 Lastly, social media means that public discourse
6 has arguably become more democratic and also accessible.
7 Although we have these really lofty goals for what we could call
8 the marketplace of ideas, it's typically the case that those
9 with the deepest pockets have historically had the loudest
10 voices, and social media allows average people to contribute
11 very substantially to public discourse to see themselves seen in
12 public discourse and also register contributions and also
13 complaints.

14 Our public discourse as well is already saturated
15 with information that is persuasive in one way or another or has
16 some goal or idea already attached to it, and so social media
17 has allowed individuals to eschew some of that purposeful
18 information that's in the public sphere and also create greater
19 opportunities for dissent.

20 The cost and benefit here is that social media
21 often can lead to greater surveillance in a sense it's been a
22 godsend for the state security apparatus in some ways. It also
23 can increase to -- or sorry, lead to increases in social
24 conformity and also social control. And so we see a tension
25 between making public discourse more accessible while also
26 having some pitfalls associated with that, including
27 surveillance and control.

28 Speaking very specifically about how and why

1 social media was impactful in the convoy, we -- Emily very
2 helpfully mentioned in her paper that social media was the
3 central nervous system of the convoy. I would definitely
4 reiterate that. That's a nice way of describing how social
5 media was integral.

6 Social media's a way of creating and circulating
7 meaning, and so before the convoy protest, some of the same
8 messaging garnered momentum and public attention because of
9 social media. It was a way of creating meaning, finding
10 community and building eventually momentum for social and a
11 political movement.

12 It was also integral in mobilizing and organizing
13 specific meetings and events, so it's a way of people finding
14 themselves together in something very, very specific and
15 tangible.

16 It's also a way to publicize and, in another
17 sense, memorialize specific events. It's a way of capturing
18 reality and signalling solidarity by consuming meaning together.

19 It's also a way to contest what you might
20 describe as official sources and accounts and also to shape
21 public perception, so sometimes it's a way to go around what's
22 considered the mainstream or the dominant forms of information
23 in society.

24 It was also integral to fundraising activities,
25 so it wasn't passing around envelopes or hats to collect money.
26 It left open fundraising to a large swath of individuals, even
27 all over the world.

28 It's also a way to monitor opposition, to do

1 something akin to counter-intelligence, and sometimes even
2 target opponents. Not speaking specifically of the convoy
3 protest, although that could also be the case, but social
4 media's a way to monitor those who might be in opposition to a
5 specific movement or a specific idea.

6 And lastly, we see social media used for real-
7 time communication for coordination, so social media sites have
8 communication modes often attached to them that are
9 instantaneous, so people can text and coordinate with each
10 other. They can also use encrypted radio chats as well, so
11 social media's also impactful in real-time communication.

12 I'll leave it there as an opener. I look forward
13 to more discussion. Thank you.

14 **MR. WAYNE MacKAY:** First of all, congratulations
15 for coming in under time. I appreciate that.

16 And I just had one additional though just in the
17 minutes or so you have left.

18 **DR. DAX D'ORAZIO:** Sure.

19 **MR. WAYNE MacKAY:** The question of who is in the
20 protest, does that change what kind of social media they would
21 have access to? Because it strikes me that many protests,
22 including the convoy one, would have a variety of people,
23 truckers, perhaps extremist groups, others, and does it make a
24 difference who makes up the protest in terms of what kind of
25 social media they're likely to use?

26 That's a big question, so if you want to pass
27 other panelists at some point, you're welcome to do that, too.

28 **DR. DAX D'ORAZIO:** Sure. I can be very brief and

1 then we can pass it along.

2 I think perhaps a way to understand it is to
3 think about it as layers. So some social media sites are more
4 public facing than others. For instance, a Twitter or a
5 Facebook or an Instagram, it is very public facing and is about
6 publicizing very broadly a specific message or an idea or a
7 concept or an argument, but there are other layers of
8 communication within different social media sites where you
9 might have different levels of encryption so that monitoring or
10 surveilling is a bit more difficult. Only the participants see
11 the end-to-end of that communication method.

12 And so that more not necessarily surreptitious,
13 but closely guarded form of communication or information
14 sharing, I think, forms different layers. You have a more
15 public-facing layer, which is garnering support in
16 memorializing, in conveying details that are comfortable to be
17 shared publicly, and then you have more subsequent layers that
18 are perhaps more closely guarded for the insiders of the
19 movement, let's say.

20 **MR. WAYNE MacKAY:** Okay. Thank you very much.

21 So moving to the next sub-issue here, the
22 existing regulation of social media or lack thereof, perhaps in
23 some cases, and one perhaps bit more focused question, the
24 possible impact of increased restrictions on protest or
25 particularly disadvantaged or marginalized groups in society
26 such as indigenous people as kind of a flip side of that.

27 So with that, I'll turn that over to Professor
28 Penny to take the floor.

1 --- PRESENTATION BY DR. JONATHON PENNY:

2 DR. JONATHON PENNY: Thanks very much, Professor
3 MacKay.

4 And I just wanted to say I'd like to thank
5 Commissioner Rouleau and -- for the invitation to be a part of
6 this conversation and join this distinguished panel as well.

7 Thank you for the questions, Professor MacKay. I
8 think those are two really important questions in light of the
9 issues before the Commission.

10 So I'll speak of two sort of general categories
11 of regulatory framework, the first being law and statutory forms
12 of regulation and, within that broader category, I'll speak to
13 some additional sub-categories of different kinds of laws that
14 apply to social media content. And I'll speak to, also, social
15 media-based regulation, kinds of measures and techniques and
16 tactics that social media companies themselves employ to deal
17 with challenges when it comes to social media content.

18 So speaking first to law and statutory
19 regulation, I would say -- so this would cover any statutes and
20 laws that govern social media content and related activity, so
21 behaviour and actors that are related to the generation of
22 content and its moderation and editing and regulation on social
23 media platforms and services, for example.

24 I would say that the single-most defining element
25 of social media legal and regulatory frameworks in Canada is
26 that there's no single general law or regulation that covers
27 social media content in Canada. Instead, it really is a
28 patchwork of different laws and regulations that apply to and

1 regulate different aspects of social media content.

2 So within that broader framework and that key
3 defining feature of law and regulatory frameworks in Canada,
4 I'll start with one sort of said category, that being
5 intermediary laws.

6 Now, why do we refer to these laws as
7 "intermediary laws"? Well, the idea here is that social media
8 companies are intermediaries, that is, they are links and
9 connectors between users and -- who generate content, post and
10 express on social media services, and the platforms or the
11 services of the social media companies connect them with the
12 audience, those who consume the content itself. So, generally,
13 we talk to laws that create legal rules and duties in respect of
14 content that's generated by users, and how that is fed and
15 conveyed to audiences and other users as well.

16 Those are intermediary laws and rules and a few
17 examples of those in Canada, we have certain specific laws that
18 cover, for example, copyrighted material, where they're very
19 specific legal duties that social media platforms -- and that's
20 another term that I'll use during my remarks before the
21 Commission.

22 The idea -- the concept of a platform of
23 something that today scholars and experts typically use to refer
24 to more -- larger, more influential social media companies;
25 Google, Twitter, Facebook, and others. And I think the term
26 itself, you can think of it as conveying the fact that these
27 platforms provide an amplification of certain voices, the same
28 way a stage or a platform in a town square allowed someone to

1 speak to a broader audience and for their voice to be heard.
2 That's, in a way, how we can think of these social media
3 companies or social media platforms. They platform; they
4 provide a way of amplifying voices in content generation.

5 So there are copyright laws, as one example of
6 intermediary laws and liability, and with intermediary laws that
7 create liabilities, potentially, for these social media
8 companies and platforms, but they can, at times, avoid liability
9 so long as they meet their duties. Copyright laws is one
10 example. Quebec also has a specific law that creates a safe
11 harbour, or legal *protecture* from liability for social media
12 platforms if they remove illegal or unlawful content once they
13 have notice of it.

14 When we move beyond these defined intermediary
15 laws, they're also what I call sort of general statutory laws
16 and rules that aren't specifically designed for social media
17 platforms or intermediaries but have implications for them, and
18 indirectly create legal duties that social media companies and
19 platforms have to abide by.

20 I think a great example of this would be
21 defamation law, right? So if a social media platform becomes
22 aware of defamatory content that's been posted, they have notice
23 of it, they -- to avoid liability, then they have to remove that
24 content.

25 Another example is criminal law. So certain
26 criminal law provisions; for example, if a Court Order is put in
27 place where social media companies may have to remove certain
28 kinds of unlawful content, be it child pornography; non-

1 consensual intimate media that's been posted there without the
2 consent of the victim; terrorist or hateful propaganda, those
3 are other examples of how criminal laws can apply to these
4 platforms creating similar legal duties.

5 And then the third sort of category of laws in
6 this context that impact, maybe not social media content
7 directly, but the activities around social media content but
8 also impacts the broader ecosphere. So user information and
9 user data is critical, it fuels the business model that a lot of
10 these social media platforms make money, and they monetize user
11 content.

12 So privacy laws, data protection laws, these are
13 another subcategory of laws and regulations and statutes that
14 impact on content production, to the extent that they create
15 legal rules and duties around how people's information and data
16 that are collected on these platforms can be used and shared and
17 distributed.

18 When there's restrictions on that data, then
19 presumptively it would make use of that information more
20 difficult to target users. So, typically, social media
21 platforms will use information around user data, user
22 information, for targeted advertising to monetize people's
23 activities and social media platforms, but when we look at
24 disinformation/misinformation, user information and user data is
25 also used to target particular users or influence in social --
26 in disinformation campaigns online and offline.

27 So in Canada we have a few examples of such laws,
28 like the *Personal Information Electronic Documents Act*, PIPEDA,

1 which creates rules around the collection, use, and sharing of
2 personal information by organizations in Canada.

3 Interestingly, however, you know, there are
4 loopholes in PIPEDA; for example, political parties are not
5 constrained by it. And that's, I think, an important hole that
6 needs to be addressed.

7 And last, of course, but not least, there are
8 social media-based regulations. And I use regulation in sort of
9 the broader sense here. In this case, I'm referring to the
10 rules and policies as social media platforms and companies
11 themselves develop to deal with content and other issues on the
12 platforms themselves, that can include content moderation
13 policies; that can include privacy policies. And typically
14 these kinds of measures are implemented through policies that
15 are conveyed to users, but they're often enforced through the
16 actual design and features of the platforms themselves.

17 There can be human-based forms of social media
18 content, regulation, and moderation but, typically, one that
19 we'll be talking a lot at our comments today are algorithmic.
20 So algorithms and technology are critical to help larger social
21 media platforms deal with content, and deal with offensive
22 content.

23 Typically in these cases a lot of these measures
24 are voluntary. As I said, there are not a lot of specific laws
25 that create duties and obligations on behalf of these platforms
26 to engage in social media content regulation and moderation, but
27 they do so, often for business reasons. And because they do so
28 for business reasons, when their business interests don't align

1 with certain content moderation, often measures that they take
2 can be seen as ineffective.

3 So that's a broader look at the landscape. I'll
4 come to the final question that Professor MacKay offered there,
5 and I think it's an important one.

6 There are, of course, many impacts of these kinds
7 of increased regulation, and one impact in particular that my
8 research has focused on in recent years is this notion of
9 chilling effects.

10 The idea that increased regulation but also
11 surveillance, both by government, law enforcement, and security
12 agencies, but also by the platforms themselves, right? In my
13 research I found that this kind -- when users become aware of
14 increase surveillance and data collection and data tracking it
15 can have a chilling effect; that is, a chill meaning it can have
16 a deterrent effect on people's willingness to speak, engage, and
17 share, both online and offline. And when it comes to more
18 marginalized populations, my research has found that those
19 groups are disproportionately impacted.

20 And there's a number of reasons for that I can
21 get into later, but as these groups, who are already facing
22 important barriers to participation in society; discrimination,
23 racism, when you add on top of that concerns about targeted
24 surveillance, targeted law enforcement action, you end up with a
25 situation that groups who are already marginalized from the
26 public, critical public and democratic discussion, are further
27 marginalized by these kinds of measures.

28 At the same time, I should say, it's not a

1 entirely simplistic view either; that is to say, increased
2 regulation means a chilling effect. What I've also found in my
3 research is that with carefully tailored laws, you can have laws
4 that also facilitate greater participation and speech. Laws
5 don't just deter behaviour with threats of law, they also have
6 expressive power; that is, laws convey values, they convey
7 messages as to what a society views as valuable. And when a law
8 is taken or enacted, it can send a message to certain
9 marginalized groups that their speech and contributions are
10 valued, and that can help facilitate speech.

11 So I'll leave my comments there, thank you.

12 **MR. WAYNE MacKAY:** Thank you very much.

13 And the next issue we're going to -- the last in
14 the social media part, is what changes or improvements are
15 perhaps under exploration and maybe about to happen to improve
16 some of the gaps in the existing structure that Professor Penny
17 just talked about. And Professor Laidlaw is going to take the
18 lead on that.

19 **DR. EMILY LAIDLAW:** Yeah, thank you Professor
20 MacKay, and thank you for having me.

21 Good morning, Commissioner Rouleau.

22 **--- PRESENTATION BY DR. EMILY LAIDLAW:**

23 **DR. EMILY LAIDLAW:** Commissioner Rouleau, I -- so
24 I co-chaired the expert panel with Pierre Trudeau that -- for
25 Heritage Canada back in the spring, and our mandate was to --
26 not to come to some sort of consensus, but to have a
27 conversation about what really should be the responsibilities of
28 social media. And I had the pleasure of sitting on the panel

1 with Deputy Morin, with -- who is with us today. And so we were
2 not looking at what I would call the primary wrongdoers, which
3 would be the individuals that are perhaps posting certain
4 content online. We were more specifically looking at, okay,
5 what are the roles of these platforms, or what John was just
6 talking about is intermediary liability.

7 And I think one of the most interesting things
8 about our panel was despite not having a mandate to reach
9 consensus, we circled around and agreed on some of the -- what I
10 would call the core building blocks of what a law should look
11 like for Canada. And I think that the first point I want to
12 make is that we all concluded, I would say, that social media,
13 or platforms should have what I would call a duty to act
14 responsibly. Now, this was something that came out of the work
15 of the Commission on democratic expression, and this is
16 something that has been explored in other countries. We're
17 seeing it with online safety bill in the UK, with their duty of
18 care. It could be talked about as a due diligence model in the
19 EU with the new *Digital Services Act*. It's a risk management
20 obligations.

21 And a duty to act responsibly, the way that kind
22 of we were talking about it and the way that I think about it is
23 that, you know, it's almost product safety that social media and
24 other platforms should take care in the design of their spaces
25 to be responsible, to protect their users from harm. It's not
26 about perfection, but it's about turning their minds to how do
27 their, your know, recommender systems work. What content
28 moderation policies do they have in place? What might be the

1 unintended impact on this in particular groups. But it's not
2 just about protection from harm. It also should be about
3 protection of human rights, about the right to freedom of
4 expression, about the right to privacy, to equality.

5 One of the fears about imposing too strong or
6 stringent obligations on social media is that it might
7 incentivize them to put in place kind of just blunt tools;
8 right? An automated tool that is going to remove any sort of
9 content that might have the whiff of hate speech or any sort of
10 extremism. But often, hate speech is quite -- you know, the
11 line between that and some more political views, what we would
12 call expression that's core to democracy, that line between the
13 two can be somewhat fine. So blunt automated tools are poor
14 solutions.

15 So if there's an obligation then to have a
16 commitment to and realize the right of freedom of expression,
17 then social media will have to think through, okay, what do we
18 want to put in place that addresses maybe some of the risks of
19 harm, maybe we have a lot of children that use this space, but
20 also, what kind of tools do we put in place that maybe aren't
21 going to have an unintended impact on freedom of expression, or
22 end up being a system of surveillance.

23 The other aspect that was key that we discussed
24 was transparency. You know, one of the issues that we have is
25 that we -- it's not easy to lift the lid to know how the
26 algorithms work and how the decision making works for the
27 various platforms on which we rely for discourse. And so almost
28 kind of radical transparency is necessary and that includes

1 access by researchers and other civil society groups to how
2 these companies kind of operate and the algorithms is a form of
3 accountability. This is something that's been implemented in
4 the EU with the new *Digital Services Act*.

5 The other thing that we circled around is the
6 idea that we need a regulator. I mean, it is not realistic that
7 we go to courts to address many of these issues. Often these
8 are high volume. They are low value. And the court process is
9 really just too slow and inappropriate to be dealing with many
10 of these issues. What we need is a regulator like a Privacy
11 Commissioner, but with the power to impose fines, that can audit
12 the systems of these companies. It's about the systemic risk of
13 the various social media. So they can investigate the
14 companies, they can audit their behaviour, they can help develop
15 codes of practice working with civil society, working with
16 industry, and they can play an education role with the public.

17 Now for some of the tougher issues. I think
18 that, you know, one of the challenges that Heritage Canada
19 faces, and I am sitting here just as interested as everyone else
20 about what they're going to propose, would be scope, what's in
21 and what's out. I mean, if we're realistically looking at
22 creating a regulator, we can't impose all sorts of content and
23 toxicity of everything that's out there on a regulator to
24 investigate. Previously, they kept the scope quite narrow:
25 terrorist propaganda, hate propaganda, violent expression,
26 intimate image abuse, child sexual abuse and so on. And I think
27 people quite rightly, including myself, said but there's so much
28 other types of toxicity out there that's unlawful that should be

1 addressed.

2 And but the issue is, is that the regulator has
3 to start somewhere. So at least I've landed that there is real
4 justification, I think, for a regulator to maybe be more
5 narrowly scoped at the beginning, and then it can build its
6 capacity from there.

7 Some of the other issues would be should this
8 cover -- you know, what platforms should we cover. I've been
9 using quite loose language here saying social media and
10 platforms, but we often talk about it as the internet stack.
11 Are we just talking about social media, the top layer? Are we
12 going down a level and we're looking at domain name registrars?
13 Are we looking at internet service providers? Are we looking
14 at, you know, companies like Cloudflare that provide cyber
15 security protection and so on?

16 I think this is quite a controversial area, but
17 when we're thinking about it in terms of corporate
18 responsibility, maybe their obligations should be different but
19 maybe there should be some responsibility there through
20 legislation.

21 The other is then, mis, dis and malinformation.
22 It is one I guess the existential threats that we face. And
23 there is a real concern though in legislation that this could
24 become almost the poison pill. Because as I get into -- you
25 know, in the next section, we're going to talk a bit more about
26 some of the legal issues, but I'll just, you know, drop one
27 point right now, which is there's a quite a bit of content of
28 mis and disinformation that is lawful, or it's that lawful but

1 awful. So for the government to create legislation that targets
2 lawful expression likely won't survive constitutional scrutiny.
3 But it's a very different thing to say, look, a company needs to
4 be responsible, much like, you know, safe cars, about, you know,
5 putting in place certain systems to manage risks. That has much
6 clearer sense of I guess constitutionality than saying I, you
7 know, want social media to target lawful expression and take it
8 down. That would not survive constitutional scrutiny.

9 And I think the last point that I'll make now,
10 well, I guess two points, would be one is a controversial point
11 was recourse. You know, the groups that are impacted by this
12 need access to some form of remediation. And sometimes they get
13 it through social media and sometimes they don't. And even if
14 content moderation is in place, it doesn't always work very
15 well. But the idea that every complaint about content could
16 somehow be, you know, pushed to some sort of recourse body, it's
17 just not practical. It won't work. But victims need access to
18 something. And so what that should look like, should it just be
19 for intimate image abuse, child sexual abuse images? You know,
20 what should they have access to and what's realistic is a key
21 point to discuss.

22 And the last is size, and I think that what we
23 saw with the convoy movement is that, you know, organizers and
24 followers were all using all kinds of different social media.
25 Some of them major social media, what we'd say is quite
26 entrenched such as Twitter and Facebook and YouTube and Tik Tok,
27 but also some smaller alternative social media like I'd say
28 ButChute, Rumble. Of course, there were conversations about

1 Zello and Telegram, et cetera. So the EU has looked at --
2 they've created risk management obligations just for very large
3 platforms, and so that would be an obligation for companies to
4 think through how does my recommender system work, and is it
5 actually having an impact that could, you know, in a sense
6 undermine democracy? That sort of obligation would end up in
7 Canada, if we put something in place, only targeting the
8 YouTubes of the world or the Facebooks of the world, but similar
9 obligations would not exist for some of the smaller platforms.

10 And that's not going to work, because as we see
11 most of, you know, the users of social media use all kinds of
12 different social media and are using some of these smaller
13 platforms in social media to engage in these types of movements.
14 So we have to think through with a type of law like this that,
15 hey, targeting, you know, very large platforms is perhaps
16 misguided, but how do we then deal with the smaller and medium
17 size companies that perhaps do not have the resources in place
18 to deal with some of these issues.

19 **MR. WAYNE MacKAY:** I think that's a good point.
20 Perhaps -- and I'm just realising I haven't followed me rule of
21 whether I should introduce -- say Wayne MacKay every time I do
22 this. But anyway, Wayne MacKay, Moderator.

23 Can we switch topics, staying with
24 Professor Laidlaw, but move to the topic she's already touched
25 on of misinformation and disinformation, with two fairly
26 targeted kind of roles, before we'll open it up to the panel for
27 a broader discussion on this area, and that is the definition of
28 the terms; and secondly, although you've touched on some of

1 that, the regulations. So if you could start us off briefly on
2 that, and then I'll open it up to the panel for the rest of this
3 issue.

4 **DR. EMILY LAIDLAW:** Yeah, thank you, Professor.

5 So I'm going to give the definition that UNESCO
6 uses for mis, dis and malinformation, but I do want to note
7 upfront that there is quite a bit of debate about what these
8 terms means, in particular, for malinformation.

9 So disinformation is the intentional spread of
10 false information. So if you think a government-sponsored
11 disinformation campaign.

12 Misinformation is a bit different. So it is
13 where information is intentionally spread, and it's false
14 information, but the person believes it to be true. And I think
15 a large swathe of what we see on social media, at least from
16 individual users, is misinformation. So even if, say, a
17 government launches a disinformation campaign it eventually
18 seeds to people who then believe it to be true and then spread
19 it from there.

20 The last would be malinformation, and this is the
21 one where there's not a lot of consensus on what it means. I
22 rely on UNESCO that defines it as information that's based on
23 reality, but that's distorted, you know, it has that kernel of
24 truth to it, but it does include that everything else bucket.
25 And it can include, potentially, hate speech, harassment,
26 trolling, doxing where private information is shared publicly,
27 other forms of violent and extremist content.

28 And you know, one of the questions I was asked to

1 think about to open up this discussion is what is this in law?
2 What laws regulate mis and disinformation, and what is the
3 tension there with the right to freedom of expression?

4 So I was just talking about laws that, you know,
5 that are being explored to target social media, but the laws
6 that target mis and disinformation would be targeting the
7 individual users that are posting the particular information.
8 And we do have a variety of laws that target false information,
9 but we do not have any law in Canada that broadly addresses or
10 targets mis and disinformation, at least in the way that we're
11 contemplating here.

12 So we have a crime of spreading false news, but
13 that was held to be unconstitutional in the case of *Zundel*, and
14 other crimes that target false information would be crimes of
15 hate propaganda, counselling terrorism, fraud, and in civil law,
16 and Jonathan touched on a few of these, defamation. Defamation
17 is where, you know, someone sues another individual or entity
18 for spreading false information that impacts their reputation.
19 And perhaps also I would put in here the tort of false light, so
20 that has just been introduced or adopted in Ontario. So it's
21 just sort of a hodgepodge mix of different laws that apply to
22 some aspects of mis and disinformation.

23 One of the issues is that a great swathe of this
24 is what I call lawful but awful expression. It's hateful, but
25 not hate speech; it's extremist content, but it is not
26 counselling terrorism. So it's not unlawful in the traditional
27 sense. And also, as we were just talking about, with the role
28 of social media, and pushing, you know, through advertising and

1 recommender systems, it might be that lawful but hateful content
2 ends up being pushed to users over and over.

3 So in law, these are difficult areas to deal
4 with. In -- you know, under constitutional law, we have the
5 right to freedom of expression. It is a broad right. It
6 includes the right to seek, receive, and impart information and
7 ideas. It includes the right to shock, offend, and disturb, and
8 it also values false expression, in particular, if it's
9 information that's of public interest. So restrictions of it
10 are supposed to be narrowly construed.

11 And we face a hurdle in this area because what is
12 truth; right? What is the perception of truth in one particular
13 scenario? And I've listed a few laws where courts have
14 willingly, you know, addressed what would be false information,
15 and consequences might flow from that, but much of what we're
16 talking about on social media might be, you know, deeply held
17 beliefs that are harmful but it's difficult to pin down truth or
18 not truth of it.

19 Also, much of the dis and misinformation that's
20 spread, when we can identify what's false there's a lot more
21 clarity to it, but some of it exploits what I would call the
22 strategic ambiguity of it. They use humour, they use kind of
23 the short, emotional memes, with visuals or short videos, that
24 are known to be highly effective and impactful on users and play
25 on jokes and say, "Well this is just a joke. This is just the
26 grey area." This is really hard for law to address.

27 And when disinformation has been criminalised in
28 some countries, it has been used to target political opponents,

1 dissidents, and so it's difficult to put in place these types of
2 laws, and generally don't comply with international human
3 rights.

4 So the last point I want to make here before we
5 open it up is the other side of this. As much as I have
6 mentioned the breadth and depth of the right to freedom of
7 expression, I always think of the comment by the Supreme Court
8 that freedom of expression is freedom governed by law. There
9 are laws that constrain it, and rightfully so.

10 And I think John made a key point that, you know,
11 laws help the right to freedom of expression of particular
12 groups, marginalised and racialized groups, that are impacted by
13 what happens online. People are driven from participating
14 online, they are dehumanised by these experiences online, and
15 therefore, they don't get to enjoy the right to freedom of
16 expression.

17 There is also a growing body of work in the area
18 of the right to freedom of opinion, and that the recommender
19 systems and the advertising push to users is in fact infringing
20 on the right to form an opinion free from manipulation. And
21 this is something that is developing in international human
22 rights and needs to be contended with here.

23 I'd say that there is two things I want us to
24 think about as we have a discussion here, is one would be what
25 are the laws that apply to individuals, the ones that are
26 posting the particular information and engaging in certain
27 conduct that may or may not be lawful or falls into the category
28 of the lawful but awful? And the other would be what are the

1 laws that then target social media and their responsibilities,
2 whether it's through managing their advertising ecosystem,
3 managing their recommender systems, you know, algorithmic
4 accountability, or their systems of content moderation?

5 **MR. WAYNE MacKAY:** Okay, thank you very much. So
6 we'll now open it up to the panel in a moment.

7 Professor Laidlaw has already raised a couple of questions.
8 There's a couple I will add among those that you can discuss.

9 One is the scale of the problem or how much harm
10 is caused by misinformation and disinformation, is a broad
11 question. And a second, which was actually submitted, is the
12 question of whether the definitions on misinformation,
13 disinformation apply to the government as individuals and, if
14 so, in what way?

15 So with those kind of broad questions, I'll open
16 it up to the panel and if somebody just gives me a signal, I'll
17 recognize you.

18 Professor Morin.

19 **--- PRESENTATION BY DR. DAVID MORIN:**

20 **DR. DAVID MORIN:** Oui, merci beaucoup, Wayne et
21 Monsieur le Commissaire.

22 L'intervention de mes collègues m'amène à faire
23 deux commentaires sur la relation complexe entre l'utilisation
24 des réseaux sociaux et les événements d'Ottawa. En termes de
25 gestion de crise – certains diront une crise de sécurité
26 publique, d'autres diront une crise de sécurité nationale, je
27 pense que ç'a été largement débattu à savoir si on est devant
28 une crise de sécurité nationale ou non –, je dirais que cette

1 relation-là, elle est extrêmement complexe, et le collègue
2 D'Orazio décrivait bien un petit peu les impacts, si vous
3 voulez, des réseaux sociaux sur l'environnement d'une crise
4 comme celle qu'Ottawa a connue, et je dirais qu'il y a ici un
5 paradoxe.

6 Les réseaux sociaux, par exemple, vont nous
7 permettre de collecter beaucoup d'informations en amont du
8 mouvement de protestation sur les objectifs, elles vont nous
9 permettre de voir si, effectivement, un certain nombre de
10 groupes extrémistes parlent, par exemple, de recréer un
11 6 janvier, comme on l'a vu à l'assaut du Capitole, à Ottawa;
12 elles vont nous permettre de voir si on est plutôt sur une
13 contestation de l'obligation pour les camionneurs de se vacciner
14 ou si on a aussi des éléments plus séditionnaires qui disent que ce
15 qu'on fait, c'est bloquer Ottawa, c'est faire tomber le
16 gouvernement en place, et cetera.

17 Donc, paradoxalement, les réseaux sociaux nous
18 donnent une certaine visibilité sur les causes du mouvement. Si
19 le renseignement est bien collecté et si le renseignement est
20 bien analysé.

21 Maintenant, dans le contexte du mouvement lui-
22 même, les réseaux sociaux créent quand même une certaine
23 volatilité. Et vous posiez la question tout à l'heure, Wayne, ce
24 qu'on a vu à Ottawa, c'est finalement beaucoup de gens
25 d'horizons politiques très différents venir participer à cette
26 manifestation-là. Il y avait des gens avec leurs enfants, des
27 familles qui vraiment contestaient les mesures sanitaires,
28 d'autres qui avaient des agendas politiques beaucoup plus

1 extrémistes et les réseaux sociaux permettent ça.

2 Pour répondre à la question que vous posiez tout
3 à l'heure, les réseaux sociaux sont comme un menu au restaurant.
4 Ils déposent toutes sortes d'idées en ligne puis après les
5 individus s'approprient certaines idées, se font eux-mêmes leur
6 propre menu, et participent au nom d'une cause commune en
7 fonction de toutes ces idéologies-là qu'ils récupèrent. Donc là,
8 il y a quand même, en termes de gestion de crise de sécurité,
9 une volatilité associée aux réseaux sociaux, ne serait-ce que
10 parce que, par exemple, si les réseaux sociaux disent « on est
11 100 000 personnes à Ottawa...

12 **COMMISSAIRE ROULEAU:** Ralentir.

13 **DR. DAVID MORIN:** C'est vrai, je vais ralentir,
14 alors.

15 Si on est 100 000 personnes à Ottawa, c'est sûr
16 que ça peut créer un effet boule de neige. Donc, la
17 désinformation peut effectivement avoir des impacts, Dax le
18 décrivait tout à l'heure, sur le plan opérationnel aussi, on
19 peut s'écrire sur les messageries cryptées en disant on se
20 retrouve à 1 kilomètre d'ici, et cetera. Donc, elle crée, de mon
21 point de vue, effectivement, une difficulté supplémentaire en
22 termes de gestion de crise. Ça, c'est mon premier aspect et je
23 pense que c'est important de le souligner de nouveau.

24 Le deuxième élément, c'est sur la question de la
25 régulation, et je laisserais mes collègues, comme ils l'ont très
26 bien fait, s'exprimer là-dessus. Il y a quand même un élément,
27 moi, qui me frappe, c'est que lorsque la *Loi sur les mesures*
28 *d'urgence* a été créée il y a plus de 30 ans, les réseaux sociaux

1 n'existaient pas. Donc, on a quand même ici une loi qui nous
2 parle de mesures d'urgence dans un contexte sécuritaire où les
3 réseaux sociaux n'existaient pas. Et quand je dis ça, je dis ça
4 pourquoi? C'est parce que dans une manifestation où il pourrait
5 y avoir des éléments de violence, le gouvernement – et là, je
6 fais attention à ne pas dépasser l'objectif qui m'est fixé de
7 venir commenter ici –, mais dans un contexte de Loi sur les
8 mesures d'urgence, si on est dans un environnement volatil,
9 instable, on peut parfois se servir d'une loi sur les mesures
10 d'urgence de manière préventive, c'est-à-dire, quand une
11 province, et cetera – et je vais faire un parallèle face à un
12 événement climatique extrême – met en place des mesures
13 d'urgence, parfois c'est pour obliger les gens à sortir de chez
14 eux, donc avant même que la tempête ne soit arrivée, on prend
15 les devants. Donc, cette Loi nous sert à prendre des mesures
16 préventives.

17 Dans un contexte volatil de contestation où
18 effectivement on voit qu'on a toutes sortes d'individus qui
19 participent à un mouvement où les réseaux sociaux accélèrent ce
20 mouvement-là, effectivement, il peut y avoir ici des enjeux
21 particuliers.

22 Donc, mon deuxième point – et je m'arrêterai ici
23 – était ce commentaire à l'effet que vraiment, pour moi, un des
24 manques probablement de cette question, de cette *Loi sur les*
25 *mesures d'urgence*, c'est le fait que ces fameux réseaux sociaux,
26 ben, n'étaient pas considérés à l'origine et qu'ils
27 complexifient – je dis bien « complexifier » – parce qu'ils ne
28 créent pas la problématique. Ça, c'est important. Que ce soit la

1 propagande, l'extrémisme violent ou les protestations sociales,
2 elles n'ont pas attendu les réseaux sociaux pour exister. Dans
3 un certain nombre de cas d'ailleurs, les réseaux sociaux sont
4 positifs aussi, ils permettent du progrès social. Enfin, je ne
5 vais pas revenir sur les exemples du Printemps arabe, du
6 mouvement #MeToo, et cetera, mais mon point était celui-là,
7 vraiment sur la gestion, sur la question aussi de la prise en
8 compte de ces réseaux sociaux là dans la gestion d'une crise de
9 sécurité nationale au regard de la Loi qui est actuellement en
10 vigueur.

11 Merci beaucoup.

12 **MR. WAYNE MacKAY:** Professor Venkatesh?

13 **--- PRESENTATION BY DR. VIVEK VENKATESH:**

14 **DR. VIVEK VENKATESH:** Thank you, Professor
15 MacKay, for the opportunity to intervene, and thanks also to the
16 Commission and Commissioner Rouleau for this invitation.

17 As a humanist, as a pedagogue and also a multi-
18 media artist who leverages various data points in social media
19 to create different kinds of installations, I'm going to
20 approach this question that's being asked from two perspectives.

21 One is that I think we need to acknowledge that
22 social media allows for pluralism and that pluralism is
23 essentially in, at least, our determination of liberal
24 democracy. What we're seeing, though, is a certain
25 dehumanization of those who express what is commonly known as
26 populist rhetoric and that's, I think, a pity in the way we've
27 observed the characterization of those who have been
28 participating in the convoy.

1 Populism in and of itself is an important
2 expression of liberal democracy. I think it's important for us
3 to recognize that those who feel disenfranchised and those who
4 feels that a hegemony of sorts in their definition is imposing
5 restriction on liberties or on certain equalities that they
6 expect from their liberal democracies, those two major pillars,
7 that they should be allowed to protest that particular
8 imposition.

9 Where social media, I think, has to be viewed
10 beyond just the regulatory, beyond just the legal standpoint and
11 in collaboration, especially, with big data companies is in how
12 conversations, discussions, dissensions, consensus building,
13 however we want to see these, how those are manipulated through
14 the software and through the algorithms that are being employed,
15 developed and, in a certain sense, imposed on its users.

16 I'll give you a specific example of this, and
17 this is coming from a journal. And I printed out the abstract
18 and the recommendations.

19 The September 2022 issue of "Decision Support
20 Systems", which speaks to this notion of coordinated,
21 inauthentic behaviour. And this is particular important because
22 through the use of chats and bots and various other software,
23 we're seeing a version of what Shoshana Zuboff has called
24 "surveillance capitalism" take on a much larger -- a much larger
25 space in social media.

26 What coordinated in authentic behaviour does is
27 it takes on certain views -- viewpoints. It assigns those
28 viewpoints to what is known as either unexpected, suspicious or

1 exceptional similarity that you see amongst users, which
2 basically means that you can create users that are not real,
3 right, that are particularly virtual, and then you're able to
4 create an outreach to a population that is subscribing to the
5 echo chambers that Professor D'Orazio spoke about, thereby
6 spreading a certain mis or disinformation or malinformation as
7 Professor Laidlaw defined for us.

8 So in that particular case, there have been
9 several reports by companies such as Meta, who are the parent
10 organization of Facebook and Instagram.

11 I believe Alphabet as well has released reports
12 on how they've managed to curtail what they're calling
13 coordinated inauthentic behaviour. The Rohingya -- the tragedy
14 in Rohingya, the Stop the Steal Campaign, various smaller but
15 highly impactful antisemitic and racist discourses that have
16 been propelled by such kind of software have actually been
17 curtailed by tech companies. So one thing to think about is how
18 can we learn from the ways in which technology companies are
19 imposing regulation and how can we also render those as
20 transparent as possible.

21 I'll stop there perhaps, so that those who are
22 dealing with this from a legal standpoint can debate this. But
23 as a humanist, I think we are coming to a point where if we
24 can't listen to one another without necessarily dehumanizing
25 them, then we are at a threshold of being unable to deal with
26 dissention.

27 **MR. WAYNE MacKAY:** Wayne MacKay, moderator. Just
28 before we move to somebody else, I was struck by your term about

1 coordinated inauthentic behaviour. How do you describe
2 inauthentic? It's kind of like that line between normal and
3 abnormal. What's authentic and what's inauthentic?

4 **DR. VIVEK VENKATESH:** Yeah, this is actually
5 being debated in fact as we speak about the liminal space in
6 which those terms lie. I think the inauthenticity is reflecting
7 specifically the fact that humans aren't propagating the
8 information online, that these are being propagated by machines
9 and machine algorithms.

10 **MR. WAYNE MacKAY:** Okay. Great.

11 All right. Moderator MacKay again. I open it up
12 to any other comments. We have about five minutes or so left
13 before we move to the next topic.

14 Yes, Professor Laidlaw.

15 **--- OPEN DISCUSSION:**

16 **DR. EMILY LAIDLAW:** Yeah, thank you so much.

17 And, Vivek, I'm just thinking a bit about what
18 you had to say, and it brought home I think one of the key
19 aspects of, you know, what we're struggling with right now with
20 freedom of expression, which is, you know, social media, as Dax
21 was saying, has opened up such huge opportunities for discourse
22 and for everybody. And so we almost need to break down what the
23 problem area is that should be regulated through law, what sort
24 of we're okay with leaving alone; right? And some of this is
25 this commitment to the messiness of freedom of expression to be
26 able to discover and figure out who you are and hear other
27 ideas.

28 The struggle that we're having now is that

1 because of the sheer volume and the kind of equitable access on
2 social media is that the opportunities to dehumanize and harm
3 other individuals is made that much easier. So on a practical
4 level, it's easier to cause harm and it creates a regulatory
5 issue. But in thinking through what the role of the law is
6 here, we also have to think of what other things regulate. And
7 so Twitter is a great example here because at the moment, if we
8 had a law in Canada, would it make a difference right now?
9 Perhaps. In my ideal world, it would set the standards of what
10 we expect for corporate responsibility here, that Twitter has
11 certain standards in place to deal with inauthentic behaviour,
12 to address content moderation, access to remedy for individuals.
13 So that is where I think a law could help.

14 But it's not as though Twitter, as I think Elon
15 Musk has discovered, is somehow operating in a regulation-free
16 zone, because, what, the marketers don't want to have to
17 advertise on that platform. Ah, well, then they're going to
18 regulate a particular way. Do you know who else doesn't want
19 it? Users. So users leave the platforms when they don't want
20 this particular space. But also, others further down, for
21 example, the digital storefronts, the app stores right now are
22 imposing conditions on Twitter to continue to carry the Twitter
23 app. So there's all kinds of different mechanisms that are
24 often at play when we talk about what regulates expression and
25 what regulates what we say and do on social media.

26 **MR. WAYNE MacKAY:** Professor D'Orazio?

27 **DR. DAX D'ORAZIO:** I'd like to pick up on some of
28 the insightful comments from my colleagues and speak

1 specifically for a moment about some of the practical and also
2 moral tensions in drawing the lines of free expression in online
3 spaces and specifically on social media. So the first one is
4 practical, and that is built on millennia of histories of
5 censorship. Censorship or content moderation, however you'd
6 like to describe it, has several millennia of history and
7 there's always a tension between having restrictions or content
8 moderation that is either too broad or too narrow. If
9 restrictions are too broad, we can get chilling, for example.
10 We constrict public discourse in ways that are unmerited, and
11 that is a problem, not just for self-realization or the pursuit
12 of truth, but democracy itself, us being able to have something
13 akin to a marketplace of ideas is a pillar of liberal democracy.

14 On the other side, if our content moderation, if
15 our restrictions are too narrow, they might be ineffective.
16 They might only capture, for example, the outer margins of
17 expression. And so the problem there is that they're not
18 actually making our online spaces safe and accessible for
19 everyone. And so that tension between regulations being either
20 too broad or too narrow is seen throughout the history of
21 censorship and also freedom of expression.

22 The other thing or the other tension is
23 practical, but also in a sense moral, and it is presently,
24 because social media platforms for the most part are considered
25 intermediaries or platforms rather than publishers, there's a
26 disjuncture between the protections for expression citizens have
27 in the public sphere, understood in a very big and broad sense,
28 and the protections for expression that they have in online

1 spaces. And so if we believe in free expression, if we think
2 that it is the lifeblood of democracy, it may be the case that
3 it is a problem that citizens have less protections for their
4 expression on private platforms that are nonetheless have become
5 the default public sphere.

6 I think it's -- it is the case that people
7 increasingly, if they want to be apprised of current or public
8 affairs, are opening Facebook or Instagram rather than opening a
9 newspaper or reading a periodical. And so that distinction
10 between public and private on these platforms is really
11 important and lurking below the surface of how we devise
12 meaningful regulations related to content restrictions or
13 potential conflict restrictions.

14 **MR. WAYNE MacKAY:** Okay. Professor Penny, we've
15 got about two minutes left.

16 **DR. JONATHON PENNY:** Sure. Sure, thanks. And I
17 thought I'd pick up on a few nice comments from my colleagues
18 here. You know, when we talk about freedom of expression, you
19 know, speaking as a scholar, you know, there are certain
20 assumptions when we speak of freedom of expression as to why we
21 see it as a key value, why we want to protect it and cultivate
22 it in a democratic and free and democratic society. And, you
23 know, one of the assumptions of freedom of expression the
24 lawyers often talk about is the idea of a marketplace of ideas;
25 right? If you allow for people to engage with each other that
26 the best ideas in the end will rise to the top and win the day.

27 But I think when we move to the new digital
28 public sphere, as Professor D'Orazio has spoken quite eloquently

1 on, the reality is, is that some -- a lot of those assumptions
2 that we have about debate in the public sphere, debates that we
3 would have in the town square, discussions in broader society,
4 when we move to an online context, it's quite clear that with
5 platforms they have their thumb on the scale; that is, platforms
6 are designed to favour certain kinds of speech, behaviour and
7 activities. And often it's the kinds of activities and speech
8 behaviour that they can monetize. And one of the unfortunate
9 realities of the social media landscape is that often more
10 harassing, polarizing, tribalistic, hateful engagement leads to
11 additional polarization amongst different groups. It's that
12 kind of engagement that these platforms often favour at the
13 expense of more civil discussion and discourse.

14 And so then I think that leads us also to the
15 point that was also raised by Vivek earlier on, is this notion
16 of surveillance capitalism. What are the business models that
17 encourage and incentivize this kind of behaviour, where this
18 kind of activity and expression is favoured, which drives, as
19 Professor Laidlaw set out quite eloquently earlier, drives
20 certain marginalized groups; women, visible minorities, more
21 often targeted by this more antisocial behaviour on platforms,
22 which additionally skews the marketplace of ideas that we
23 lawyers love to talk about.

24 **MR. WAYNE MacKAY:** Moderator MacKay again.

25 Excellent panel and discussion on this; it could
26 go on much longer, but I want to move on to our next interesting
27 topic, and pretty well on time at this point, which is the topic
28 of ideologically motivated violent extremism; and, in

1 particular, the role that that plays in society generally and in
2 particular in relation to protest. And just some of the broad
3 questions to consider when Professor Morin kicks us off on this
4 in a moment, is the source of that term, "Ideologically
5 motivated violent extremism," some examples, perhaps; and, in
6 particular, its relevance to the issues at hand.

7 So that with in mind, Professor Morin, the floor
8 is yours.

9 **DR. DAVID MORIN:** Merci beaucoup, Wayne.

10 Oui, j'aimerais prendre quelques minutes pour, en
11 fait, tenter de resituer les événements d'Ottawa dans
12 l'évolution ou le contexte plus large finalement de l'évolution
13 de l'extrémisme violent à caractère idéologique, si vous me le
14 permettez.

15 Avec, comme propos préliminaires, le fait que
16 s'il est assez singulier dans sa forme et dans son ampleur, ce
17 qui s'est passé à Ottawa n'est pas un événement isolé, d'une
18 part, on a vu des choses similaires au cours de la dernière
19 décennie, et il n'est pas non plus seulement dû à la pandémie
20 même si la pandémie a été un accélérateur de détresse
21 psychologique probablement, mais également de contestation
22 antigouvernementale et que la pandémie a aussi finalement été
23 instrumentalisée par d'autres agendas politiques.

24 Pour faire cette brève démonstration-là, je
25 reviendrais sur trois points principaux sur l'évolution de
26 l'extrémisme violent que je vais relier aux événements d'Ottawa.

27 Le premier, c'est l'émergence, si vous voulez,
28 d'une forme de convergence des luttes sur le plan idéologique.

1 Certaines disent convergence, d'autres vont dire confusion, un
2 peu, idéologique, je vais revenir là-dessus tout de suite.

3 L'élément ici, c'est d'essayer de dessiner un
4 écosystème radical extrémiste et, dans cet écosystème, d'y
5 mettre un certain nombre d'idéologies. Donc, on a, par exemple,
6 l'extrême droite; on a les mouvements antigouvernementaux; on a
7 l'extrême gauche; on a dans une certaine mesure, même si on ne
8 le relie évidemment pas à la question idéologique, mais plus à
9 la question religieuse, le djihadisme, que j'élimine de la
10 conversation ici; on va avoir l'extrémisme plus religieux;
11 l'extrémisme motivé par la haine des femmes qui, je le rappelle,
12 au Canada, est ce qui a fait le plus de victimes en termes
13 d'actes terroristes – si on prend le temps long entre l'attentat
14 de la Polytechnique il y a une trentaine d'années, hein, à
15 Montréal et l'attentat de Toronto, en fait les attentats de
16 Toronto puisqu'il y en a eu deux, donc c'est le nombre de morts
17 le plus élevé au Canada.

18 Donc, dessiner cet écosystème-là, et c'est ce que
19 je disais tout à l'heure, dans cet écosystème finalement, les
20 gens vont choisir un certain nombre d'éléments et se construire
21 un petit peu leur propre menu radical, donc ça crée de la
22 difficulté évidemment pour nous en tant que chercheurs, mais
23 également pour les milieux de pratique pour collecter
24 l'information, collecter le renseignement, et puis essayer
25 d'avoir finalement des cases beaucoup plus claires.

26 Donc, c'est dans cet écosystème-là que se situent
27 un peu les événements d'Ottawa avec quand même – et ça,
28 j'insiste là-dessus – une domination de ce qu'on va appeler la

1 droite radicale. Quand je parle de droite radicale, on peut
2 parler des idéologies classiques comme le néonazisme, comme le
3 néofascisme, l'extrême droite, le suprémacisme blanc, le
4 nationalisme blanc, donc on a quand même – et puis Vivek parlait
5 du populisme – la montée en Occident du populisme de droite. Et
6 donc, ça, on a vu très, très clairement, une réappropriation de
7 cette... de la part de cette droite radicale du mouvement de
8 contestation.

9 Notre équipe de recherche a observé pendant
10 18 mois une cinquantaine de leaders complotistes, et sur ces
11 50 leaders complotistes – 45, en fait, pour être exact –, la
12 moitié appartenait à la droite ou à... en fait, à l'extrême droite
13 canadienne et québécoise, 20 % appartenait au mouvement plutôt
14 anti-autorité, et 25 % à l'alterscience qui, elle, a été le
15 nouveau dans le portrait à la faveur de la pandémie.

16 Donc, mon premier point, c'est ça, c'est dessiner
17 ce nouvel environnement et cette multiplicité des idéologies,
18 mais elle est évidemment très, très importante et elle précédait
19 la pandémie. Je vais y revenir tout de suite sur cette question
20 de l'extrémisme de droite qui précédait la pandémie.

21 Mon deuxième point, c'est, et il illustre ça, le
22 fait que le défi aujourd'hui, c'est que, oui, il y a des groupes
23 organisés, mais il y a beaucoup d'individus, d'acteurs
24 solitaires, je parle bien d'acteurs solitaires, pas de loups
25 solitaires parce que les loups ne sont pas solitaires, d'une
26 part, et d'autre part, parce que les acteurs solitaires ne sont
27 pas tout à fait solitaires, on parle des réseaux sociaux depuis
28 tout à l'heure, et ils sont capables évidemment d'échanger sur

1 les réseaux sociaux, ils sont capables de s'abreuver des réseaux
2 sociaux pour passer à l'acte violent.

3 Enfin, je vais vous citer un chiffre de la *Global*
4 *Terrorism Database*, qui est une référence en la matière, qui
5 explique qu'au cours des dernières années, près de 60 % des
6 actes terroristes ont été commis par des acteurs solitaires
7 versus des organisations clairement identifiées. Ça, c'est
8 extrêmement important parce que dans le contexte d'un évènement
9 comme Ottawa, une des craintes était évidemment beaucoup plus
10 l'acteur solitaire qui s'abreuverait de discours en ligne ou pas
11 pour passer à l'acte violent. Donc là, on est sur une tendance
12 très lourde en termes d'extrémisme violent.

13 Et mon troisième point, les formes de
14 l'extrémisme violent, et c'est là évidemment où je vais vous
15 donner trois chiffres qui sont fondamentaux et qui expliquent
16 pourquoi aujourd'hui on parle plus d'extrémisme violent que
17 seulement de terrorisme, et cetera.

18 Le premier élément, la première forme de
19 violence, ce sont les crimes haineux. On a eu ici à Ottawa, et
20 là, je vais vous donner des statistiques qui sont des
21 statistiques publiées par le gouvernement du Canada. En 2016,
22 les corps de police déclaraient 1 400 crimes haineux; en 2020,
23 ils ont déclaré près de 2 700. On a donc une augmentation
24 tendancielle de crimes haineux déclarés par la police. Alors,
25 c'est des statistiques qu'il faut prendre avec des pincettes, il
26 peut y avoir plus de corps de police qui déclarent, ce ne sont
27 que des crimes déclarés, il n'en reste pas moins que c'est une
28 augmentation tendancielle considérable.

1 Quels sont les trois principaux types de crimes
2 haineux? La race ou l'origine ethnique, la religion et
3 l'orientation sexuelle. Ces trois catégories-là me laissent
4 penser que, sans être le monopole de l'extrémisme de droite, on
5 peut évidemment les relier à des formes d'extrémisme de droite.

6 Ma deuxième forme ou mon deuxième type de
7 violence : les actes terroristes. Là, je vous cite encore le
8 *Global Terrorism Database*. Entre 2014 et 2019, donc avant la
9 pandémie, on avait une augmentation de 250 % – je répète, 250 %
10 –, des incidents terroristes liés à l'extrême droite en
11 Occident. Donc, les attentats d'Utøya au début 2010 en Norvège
12 commis par Anders Breivik ont ouvert une décennie d'actes
13 terroristes liés à l'extrême droite. Ça n'a pas fait disparaître
14 la menace djihadiste en Occident, loin s'en faut, mais ça a créé
15 réellement une nouvelle... enfin, « une nouvelle »... en fait, la
16 résurrection d'une forme d'extrémisme qui est l'extrémisme de
17 droite. Donc, c'est dans cette cour-là qu'on joue, et, au
18 Canada, l'attentat de la Mosquée de Québec, l'attentat de
19 London, Ontario, sont les preuves que le Canada est lui aussi
20 impacté par cette montée des incidents terroristes d'extrême
21 droite.

22 Et mon dernier point, la dernière forme de
23 violence – et vous allez voir pourquoi je la cite – concerne les
24 manifestations violentes. Là aussi, je vous cite le *Global*
25 *Terrorism Database* : entre 2011 et 2019 – et c'est intéressant
26 d'arrêter ces statistiques juste avant la pandémie parce
27 qu'elles montrent qu'il y avait déjà des tendances lourdes qui
28 ont été finalement accélérées par la pandémie –, donc, entre

1 2011 et 2019 on a une augmentation de 278 % des manifestations
2 violentes en Occident. Vous pouvez penser, par exemple, aux
3 gilets jaunes en France qui sont une espèce de cocktail bizarre
4 entre l'extrême gauche, l'extrême droite, et d'autres formes de
5 violence urbaine. Nous avons, évidemment, l'assaut du 6 janvier
6 aux États-Unis, qui a été probablement le summum d'une
7 manifestation violente, et je le répète, qui est très documenté
8 aujourd'hui, l'assaut du 6 janvier, on le voit clairement que,
9 oui, si ce sont tous des sympathisants de Trump, on a quand même
10 des groupes extrémistes reliés à ces incidents, que ce soit des
11 gens qui appartiennent au mouvement QANON ou que ce soit des
12 gens qui appartiennent directement à des groupes comme les Three
13 Percenters, les Proud Boys, autant de groupes qui sont
14 considérés par certains comme des organisations terroristes,
15 finalement pour arriver évidemment aux incidents d'Ottawa.

16 Donc, ce que je voulais introduire ici, c'est le
17 fait que les événements d'Ottawa, et je fais attention aux
18 comparaisons, il faut pas évidemment comparer les événements
19 d'Ottawa aux événements du 6 janvier et de l'assaut du Capitole,
20 ça n'a rien à voir, OK? Mais l'idée ici étant de dire que ce
21 type de manifestations violentes avec des groupes extrémistes
22 violents et des idéologies violentes sous-jacentes existaient
23 bien avant la pandémie. La pandémie a probablement servi de
24 catalyseur ou d'accélérateur d'une tendance lourde qui était la
25 montée de l'extrémisme de droite en Occident.

26 Donc, ça me paraît vraiment important de rappeler
27 ça et ce sera mon dernier point dans cette conclusion. Je
28 regarde Wayne, il ne m'a pas encore fait un regard terrible pour

1 me couper.

2 **MR. WAYNE MacKAY:** Getting close.

3 **DR. DAVID MORIN:** Oui, c'est ça, c'est ça.

4 C'est que le Canada, même si, au Canada, cette
5 menace est probablement moins importante qu'elle nous l'est, par
6 exemple, qu'en Amérique, les chiffres, les rapports de
7 renseignements successifs montrent qu'elle est bien présente. La
8 question est de savoir si elle est bien évaluée par les acteurs
9 de la sécurité dans notre pays, si elle est évaluée à la hauteur
10 de ce qu'elle est, de ce qu'elle représente, et des risques à la
11 sécurité nationale qu'elle soulève.

12 Merci beaucoup.

13 **MR. WAYNE MacKAY:** Thank you.

14 But I'm just going to ask one question and either
15 -- I'm going to turn over to Professor Venkatesh after that.
16 Either one of you or both of you might be able to answer this.

17 As you probably noticed lawyers are a bit
18 obsessed with definitions, and one of the questions I have in
19 the term itself, how do you -- how does one define ideological,
20 in terms of the, you know, ideologically motivated violent
21 extremism, or even violence? Although I know that could be a
22 whole thing on that, so maybe I'll throw that out generally to
23 both of you to comment on briefly.

24 But Professor Morin, if you want to start off on
25 that?

26 **DR. DAVID MORIN:** Oui. En fait, il n'y a pas
27 vraiment de consensus sur la façon dont on le définit, mais
28 l'extrémisme violent, il y a deux éléments ici. Le premier

1 élément, c'est qu'il y a une catégorie d'analyse assez large qui
2 nous permet, par exemple, d'englober deux types de crimes
3 reconnus dans le *Code criminel*. Ça va être les crimes haineux,
4 d'une part, et le terrorisme, d'autre part, parce que souvent
5 avant, on se focussait simplement sur le terrorisme, et donc, on
6 disait... on liait l'extrémisme violent au terrorisme; or,
7 aujourd'hui, on voit – et puis c'est ce que je vous décrivais
8 tout à l'heure – un spectre beaucoup plus large de types de
9 formes de violence, que ça soit les crimes haineux, le
10 terrorisme ou des manifestations violentes. Donc ça, nous, du
11 point de vu de l'analyse, en tant que chercheurs ou pour les
12 agences de sécurité, ça leur permet d'avoir un plus large
13 spectre.

14 Ensuite, la question de l'idéologie, écoutez, là,
15 je vous dirais que ça ne fait pas consensus et puis je ne veux
16 pas rentrer dans un débat infini, mais les agences de sécurité
17 au Canada prennent l'idéologie de manière assez restrictive pour
18 finalement avoir des distinctions, donc là, on va reposer
19 davantage la réflexion sur les dimensions plus politiques de
20 l'extrémisme violent et, par exemple, on va distinguer les
21 catégories idéologiques de celles plus politico-religieuses et
22 éventuellement de celles qui constituent plutôt juste une cause
23 unique. Donc, on va faire ces distinctions-là, si vous voulez,
24 ce sont des distinctions qui, à mon avis, sont analytiques, mais
25 avec le type d'environnement que je vous décrivais tout à
26 l'heure, je pense qu'on se situe souvent dans des zones beaucoup
27 plus grises.

28 Donc là, actuellement, ce qui permet au système

1 de justice de sanctionner l'extrémisme violent, ce sont
2 notamment les questions des crimes haineux et du terrorisme. Sur
3 la question de l'apologie du génocide, et cetera, c'est beaucoup
4 plus complexe là, vraiment, c'est très contraignant sur le plan
5 juridique, alors je ne suis pas juriste, donc je fais attention
6 à ce que je dis, surtout s'il y en a beaucoup dans la salle.

7 Mais donc, en gros... en gros, c'est ça.

8 **MR. WAYNE MacKAY:** And we appreciate that.

9 **DR. DAVID MORIN:** Surtout que je sais que je suis
10 enregistré. Voilà.

11 **MR. WAYNE MacKAY:** Okay.

12 Professor Venkatesh, on that or a much broader
13 intervention.

14 **DR. VIVEK VENKATESH:** Thank you. Yes, so this is
15 Vivek Venkatesh here.

16 I just want to build on what my colleague,
17 Professor Morin, pointed out as the Government of Canada's
18 distinction between ideologically motivated violent extremism
19 and those that are religiously motivated, and also politically
20 motivated. But they also point out that it's very difficult to
21 distinguish whether and how the three different types of violent
22 extremism that have been defined interact and influence one
23 another. And I think that's important to take into account
24 whenever one creates policies, whenever one is debating laws
25 that are being put in place in order to prevent this work.

26 But my sense as a humanist, again, would be to
27 decry the fact that the original meaning of ideology; which, if
28 I'm not mistaken, is the science of ideas, has been reduced to

1 one that describes perhaps fringe thoughts, fringe movements,
2 fringe collections that have come together which are destructive
3 in orientation. And I think that that needs to be brought back
4 to bear on how we name, so the nomenclature itself is important,
5 but also how we treat this notion of ideologies.

6 I'd like to just also build on some of the work
7 that my team has conducted, and I want to acknowledge the work
8 of my colleague and my former Postdoctoral Fellow, Ryan
9 Scrivens, who conceived a really interesting study where he
10 gained access to 10 former Canadian right-wing extremists. So
11 these were in various Neo-Nazi movements from anywhere from six
12 months to more than 20 years, and over the course of 18 months
13 he and our team at Concordia University conducted life course
14 narratives with these eight men and two women.

15 And I'd like to focus specifically on the role of
16 the internet in facilitating right-wing extremism, specifically.
17 And what we found is not very dissimilar from what has already
18 been described in other literature from the West, specifically
19 in the United States, in that falling into the trap of Neo-
20 Nazism and right-wing extremism happens very much on a face-to-
21 face basis; it goes through underground meetings; it goes
22 through being groomed to a certain extent, when you are young
23 and feeling disenfranchised. And these are analyses that -- and
24 themes that have come to bear with the interviews that we have
25 looked at.

26 But, importantly, the internet was seen as a
27 facilitator for entrenching these values and this was done
28 through forums; this was done through what Professor D'Orazio

1 rightly labelled as siloes or echo chambers, where you get
2 patted on the back for points of view that resonate within a
3 small, and sometimes much larger, circle of people who share a
4 specific opinion of yours.

5 But if you come back to my contention and the
6 contention of big tech companies that coordinated inauthentic
7 behaviours, and in fact magnify these narratives to an
8 exponential scale, and you can imagine how easy it is for
9 someone who's falling into the extremist movements to be
10 influenced very, very heavily by a narrative that is repeated
11 over and over again.

12 And the danger, I guess, that we face when we
13 look at the specific events in Ottawa is if there are certain
14 so-called fringe elements within the convoy, and they are
15 working the data that they are receiving on social media, the
16 information they're receiving on social media, and some of which
17 may be coordinated and inauthentic in its orientation, then
18 there's a likelihood that they will want to act on the specific
19 information, misinformation, disinformation that they're
20 receiving.

21 So the internet, in and of itself, plays what
22 we're calling a secondary role. You do need a community, very
23 often in right-wing extremist movements, to build a camaraderie,
24 build a sense of belonging, build an identity with which you
25 feel comfortable, and then you can find solace and find ways in
26 which you can describe your own dehumanizing rhetoric towards
27 the other. And then, unfortunately, act it out, right, through
28 violent means.

1 So I wanted to make this point particularly
2 because this work has been -- is quite instrumental in the way
3 that we are describing prevention programs that can help us to
4 bring some of these former extremists or these extremists out of
5 these movements.

6 **MR. WAYNE MacKAY:** Thank you very much and,
7 Professor Laidlaw.

8 **DR. EMILY LAIDLAW:** Yeah, thank you. I want to
9 build on what Vivek is saying and maybe add a point about social
10 media content moderation because when we talk about violent
11 extremism, I mean, we have particular laws that address, you
12 know, counselling terrorism and hate propaganda, et cetera, but
13 there isn't a law against extremism. And so we're often -- you
14 know, we are turning to social media right now to set down
15 through content moderation, through self regulation what kind of
16 expression they're willing to host or not. And so when we talk
17 about some of the fringe platforms or social media, we're
18 usually talking about social media that do not proactively
19 monitor content to action and that just rely on legal
20 definitions of -- and only remove content that is unlawful. And
21 so we're actually dependent on social media to proactively take
22 some steps to address the forms of extremism that Vivek was
23 talking about is -- you know, sort of entrenching different
24 views.

25 So let me give an example of how difficult this
26 can be right now. I mean, one example I gave is just the use of
27 jokes, but the other is that often groups talk in code. So
28 let's imagine a video that is posted on Tik Tok and someone is

1 saying some just, you know, antigovernment-type message, which
2 in and of itself is, I mean, there's nothing wrong with having
3 that view and wanting to express it, but behind them are guns,
4 for example, on the bed. And this is an example that's been
5 given to me previously. What is social media supposed to do
6 about that? Some of this is that kind of the slow violence of
7 just normalizing certain rhetoric and sometimes coded messages
8 in the background, and social media's having to grapple right
9 now with how to address this. This is lawful expression, but it
10 might not be expression that they want to host in their space.
11 But if we're talking about the, you know, private spaces as
12 becoming the new public sphere, which is something that Dax was
13 talking about, then they have to take seriously freedom of
14 expression, but they are setting their own limits to address
15 what is lawful, but extremism.

16 **MR. WAYNE MacKAY:** Moderator MacKay. Professor
17 D'Orazio, over to you.

18 **DR. DAX D'ORAZIO:** Thank you. Hopefully just two
19 quick points. I think it's vitally important to build upon
20 what's already been said to take a peek behind the curtains and
21 actually look at what motivates social media companies, so what
22 the algorithms look like and what the infrastructure of those
23 companies actually look like.

24 The algorithm itself or the architecture itself
25 essentially has two impulses. One impulse is to maximize
26 engagement, and that is just keeping eyeballs on the apps, on
27 the devices as much as possible, using any means necessary. In
28 that broad sense, the content itself is a derivative problem of

1 a much larger algorithmic problem which is engagement is
2 strategized at any cost, and sometimes to the detriment of the
3 wellbeing of the actual users themselves.

4 We're only now catching up to in the public
5 sphere having an important conversation about the social,
6 political and psychological effects of social media engagement.
7 We've talked at length about the positives and also some of the
8 negatives, and so getting that balance right is very important.

9 The business model too of some of big data is to
10 ask for forgiveness rather than permission. And so they're
11 often engaging in grand social experiments in commodifying the
12 human experience and our own personal and private data for their
13 own self interests, sometimes completely surreptitiously, or at
14 least on, you know, a contractual basis that can easily be
15 questioned. Eventually, we have a very large public scandal
16 that gives us a peek behind the curtains like a Cambridge
17 Analytica, like an Edward Snowden. But for the most part,
18 people are blissfully unaware of the way that their experiences
19 are commodified, repackaged and sold when they engage on social
20 media sites.

21 The other thing that I'd like to mention is that
22 when we're trying to understand the problem and the risks of
23 extremism that's specifically online in the sense that it comes
24 about and it's nourished in online spaces, I think we need to
25 make a really important distinction between the people that we
26 might say are the useful ignorance, who as a result of the
27 pandemic especially might be incredibly isolated, incredibly
28 lonely. It's been a time in which we've had some social

1 isolation and detachment. It's also true that in the last few
2 decades we could say that most people consume the mental
3 equivalent of junk food. And so our informational literacy is
4 not -- doesn't conform to some of these big, lofty goals that we
5 have for the citizen in the theory of liberal democracy. So we
6 need to make a distinction between those who get swept up in
7 these movements, these ideas, these arguments online and those
8 who actually pose some real legitimate danger to the public
9 sphere, those that are explicit manipulators, those that are
10 motivated by sometimes very dangerous ideologies, and also those
11 that are just shameless entrepreneurs at the end of the day.

12 So again, making a distinction between those who
13 might harbour some good faith and engage in online content,
14 sometimes extremist content, say, unknowingly, in a sense, or at
15 least out of a desire for creating meaning and also creating
16 community and those who are the propagators explicitly of
17 misleading information for profit and also for ideology.

18 **MR. WAYNE MacKAY:** Moderator MacKay again.
19 Professor D'Orazio was just talking earlier about the echo-
20 chamber effect and then I think Professor Venkatesh mentioned
21 the sort of what I would call maybe fractured communities that
22 are out there and people who get reinforced in their beliefs.
23 And, Professor Penny, you haven't had a chance to intervene yet,
24 so I'll throw those two in your direction and either of the
25 other two can elaborate if we have moments to do that so.

26 **DR. JONATHON PENNY:** Sure, thank you, Professor
27 MacKay. Professor Penny.

28 I'm not sure if this is -- these comments are

1 directly responsive to that question, maybe in part. And, I
2 mean, some of this comes back to the broader regulatory
3 challenges on these questions as well.

4 Back in 2019, I was a visiting researcher at the
5 Technology and Social Change Project at Harvard Kennedy School's
6 Shorenstein Centre. We looked at what we called disinformation
7 and media manipulation campaigns. The reason why we used the
8 specific term campaign was these were examples of coordinated
9 efforts to manipulate media and to spread disinformation. And
10 in particular, we included -- we looked at a number of case
11 studies including some case studies of disinformation and media
12 manipulation campaigns during the 2019 Canadian election.

13 And peeling off a point that Professor Laidlaw
14 made earlier, one of the challenges here is, you know, we talked
15 about surveillance capitalism, we talked about business models
16 and the challenges with these platforms, and the business model
17 that monetizes antisocial behaviour, and that includes
18 disinformation and misinformation, for example. But at the same
19 time, the disinformation campaigns that we studied in 2019, a
20 lot of the most successful ones were ones that had been seated
21 many years prior to 2019. These were stories and ideas, and
22 false stories, false rumours that percolated in far-right social
23 media groups, whether we're talking on the chance, 4Chan,
24 others, far right nationalist groups on Reddit, for example,
25 where they had been certain rumours and false stories were
26 percolating for years. But once the election comes around, we
27 have greater media coverage. There was a coordinated effort to
28 use tactics what we call working these false rumours up the

1 chain, trying to get larger, influential accounts, larger social
2 media platforms to share this kind of information. And, of
3 course, there were even some successful disinformation coming
4 through. We had mainstream journalists asking questions of
5 politicians about these rumours that had been already
6 discredited, debunked by other journalists. But the point, the
7 broader point that I'm getting at here is that when we're
8 thinking about how to deal with this from a legal, regulatory,
9 even societal perspective, we can talk about the large platforms
10 and that's really important and the business models and I've
11 been also been banging the table on that count, but we -- also,
12 if we're going to be thinking through new ways or new regulatory
13 frameworks, we also have to think about these more extreme
14 marginal communities where a lot of these hateful content,
15 disinformation campaigns are planned, coordinated and conceived,
16 and then later spread in critical moments like during elections,
17 which mislead voters and have impacts.

18 **MR. WAYNE MacKAY:** Right. I think we're almost
19 at the end, but I'll -- Mr. Morin, I'll take one final
20 intervention here and then we'll move on to the final stage.

21 **MR. DAVID MORIN:** Oui, merci beaucoup.

22 Deux courts commentaires. Un des défis majeurs,
23 en fait, qu'on a face à cette question, je pense, de
24 l'extrémisme, c'est d'arriver à tracer la ligne entre ce qui est
25 acceptable en termes de discours extrémiste et ce qui ne l'est
26 plus en termes de violence politique. Et donc, la plupart des
27 gens s'entendent pour dire qu'il faut être beaucoup plus
28 rigoureux sur la question de l'apologie de la violence, de

1 l'apologie du terrorisme, des crimes haineux, et cetera, mais
2 Émilie, ma coprésidente en est témoin, c'est beaucoup plus
3 difficile quand on parle de désinformation.

4 Et donc, quand on parle des idées extrémistes qui
5 sous-tendent finalement la violence, si vous prenez la théorie
6 du grand remplacement qui postule l'idée selon laquelle, par
7 exemple, nos gouvernements cherchent à remplacer les populations
8 d'origine dans les sociétés occidentales par des populations
9 immigrantes, on comprend tout le potentiel nocif, toxique et
10 violent que recèle une telle théorie, mais qu'est-ce qu'on fait
11 avec cette théorie-là sur les réseaux sociaux, qui est de la
12 désinformation claire, qui est une forme de discours extrémiste,
13 qu'est-ce qu'on en fait? Et là, ça, c'est extrêmement difficile
14 de tracer cette ligne-là.

15 Pour nous, la question de la désinformation l'est
16 aussi, alors on pourrait peut-être s'attaquer aux campagnes
17 massives de désinformation, #StopTheSteal, Vivek en parlait tout
18 à l'heure, qui est un bon exemple à mon avis, qu'est-ce que là
19 on fait par rapport à ça.

20 Donc ça, c'est mon premier point sur la question
21 du défi finalement, est-ce qu'on accepte collectivement les
22 extrémistes, mais ce qu'on n'accepte pas, c'est la violence au
23 nom de l'extrémisme. Même ça, c'est difficile, hein, à accepter
24 que dans une société pluraliste que décrivait Vivek,
25 démocratique, on l'accepte, et en même temps on sait pas quoi
26 faire avec ça parce que c'est pas parce qu'une idée n'est pas
27 violente et qu'elle n'appelle pas directement à la violence
28 qu'elle ne recèle pas une violence symbolique majeure dans le

1 discours, et les minorités racisées en sont témoins
2 malheureusement dans notre société.

3 Et mon deuxième très court commentaire concerne
4 beaucoup plus la question de la régulation. Ce qu'on observe
5 beaucoup, c'est que le point commun entre tous ces mouvements
6 extrémistes, c'est la perte de confiance dans nos institutions –
7 pas seulement ça, mais beaucoup ça – et que le risque ici est de
8 surréagir. Dans un pays comme le Canada, l'extrémisme est encore
9 à un niveau – entre guillemets – « acceptable » si on compare
10 par exemple avec ce qu'il est aux États-Unis, et je pense que le
11 fait de surréagir pourrait devenir là aussi largement contre-
12 productif, en fait.

13 Et donc, si on se dote dans nos sociétés
14 d'instruments juridiques qui sont très, très contraignants, on
15 va aussi renforcer finalement le discours et le narratif des
16 extrémistes, et ça, je pense que c'est un autre défi qu'on a
17 vraiment en tant que société pour savoir où on tire la ligne.
18 Y'a pas de recette magique, enfin, y'a pas de mode d'emploi,
19 mais on sait que dans les sociétés, on a tendance à être trop
20 punitif. La réponse sécuritaire finalement, c'est un pis-aller,
21 ça ne fonctionne pas sur le moyen et sur le long terme, et je
22 pense que ça aussi, il faut collectivement qu'on questionne, et
23 puis je pense que c'est le sens aussi d'une partie des propos de
24 Vivek, quand on écoute les extrémistes, il faut écouter les
25 griefs aussi qui sont adressés par les extrémistes à notre
26 société, que ce soit la justice sociale, le manque de confiance
27 dans les institutions, et cetera, et cetera.

28 Je m'excuse, je suis sorti un petit peu de la

1 question juste des réseaux sociaux, mais je souhaitais apporter
2 ces deux éléments-là additionnels.

3 Merci.

4 **MR. WAYNE MacKAY:** Thank you very much, and it
5 was very interesting and important, so I'm not concerned about
6 that. I guess and we now are about to move -- Moderator MacKay
7 here -- to the final stage of this, which is an opportunity
8 without interruption, unless you want interruption, to give your
9 sort of thoughts and reflections on the complex issues presented
10 to this panel, and then any advice or ideas that you might wish
11 to suggest to the Commission or to the public more generally on
12 these complicated issues. And maybe just in case we do run out
13 of time, I want to say for myself personally I thought it was an
14 extremely interesting and diverse conversation on extremely
15 important topic, so I complement you all on that, and
16 outstanding efforts to stay within the timeline, so I appreciate
17 that.

18 So what I will now suggest, and we'll just go
19 around the table, I guess, in the order -- maybe the same as we
20 started with Professor D'Orazio first, just to your overall
21 thoughts, reflections, conclusions on these complex topics and
22 any advice or suggestions that you might have. So over to
23 Professor D'Orazio to start us off.

24 **DR. DAX D'ORAZIO:** Thank you. Yes, indeed, a lot
25 of generative conversations, so thanks to all my interlocutors.

26 I want to pick up on something that was just
27 mentioned by David that we hadn't quite mentioned yet, and that
28 is that policy responses are always laden with unintended

1 consequences. And if we're thinking about free expression
2 specifically, that is definitely the case as well.

3 One of the things that's notable with online
4 extremism is that even though we might develop meaningful
5 regulations, the speed and the pace of technological innovation
6 means that policy and government in a sense is always sprinting
7 to try to catch up. Extremists often get ditched from one
8 platform and pop up on another, and it is definitely the case
9 that we've not yet seen the full, broad scale of what social
10 media will actually look like. We will actually probably see
11 within the next decade another complete rehauling or evolution
12 in communication technology that facilitates new forms of
13 engagements in meaning making and also extremism. Getting that
14 balance right and speaking again of those unintended
15 consequences, we want to make sure that we are not completely
16 driving extremism underground.

17 There's also a case to be made that we want
18 extremists out in the open, that it's much easier to context
19 extremism when it's out in the open and not lurking in the dark
20 corners of the internet. We also want to be mindful that part
21 of the impetus and the personal and also collective identity
22 making that happens in extremist movements is based on this idea
23 of being antithetical to the mainstream of the dominance of the
24 normal. And so in a sense, being pushed to the margins is
25 almost worn as a badge. It's a way to symbol authenticity and
26 belonging. And I think the policy also needs to grapple with
27 that paradox, that if one's identity creation is based in
28 opposition to the mainstream, policy shouldn't further that

1 division. We need to think about shoring up trust in public
2 institutions and also the public sphere. So again, a very
3 difficult balance to be had.

4 Speaking specifically and very quickly about
5 social media regulations, I really think what needs to happen
6 among policy makers and public intellectuals, among journalists,
7 et cetera, is to think about social media in the framework of
8 consumer protection. As I mentioned before, we're just now
9 catching up to some of those ramifications, some of which are
10 deeply personal, about how social media is changing our social
11 and political world. It's not the case that social media needs
12 to be a punitive and venomous hellscape. It is possible to make
13 the online space safe and accessible for everyone to expand the
14 public sphere, to improve it, to increase public participation
15 and debate and deliberation at a time when trust and confidence
16 in public institutions -- trust in public institutions is
17 waning, sometimes precipitously, or at least it seems. And so
18 getting that balance just right is just important, and I
19 appreciate conversations to that effect.

20 **MR. WAYNE MacKAY:** Okay. Moderator MacKay here,
21 and it's over to Professor Penny.

22 **DR. JONATHON PENNY:** Great. And yeah, I'd like
23 to again just say it's been great to be part of this
24 conversation with this excellent panel.

25 Evelyn Dewick is a professor at Stanford, and she
26 has a line that she often uses in writing about content
27 moderation. She says, "Everything is a content moderation
28 problem".

1 In way, when you're thinking about misinformation
2 and disinformation, I'm almost the opposite of thinking, that is
3 to say, I think some things are a content moderation problem.
4 When it comes to this particular challenge, disinformation and
5 misinformation is a human behavioural problem.

6 We've talked in this panel about coordinated
7 inauthentic behaviour, which is a critical important -- that is
8 certainly a key factor in this problem. Algorithms a key part
9 of this problem.

10 But the reason why we keep seeing these
11 disinformation campaigns and media manipulation and
12 misinformation being shared at scale is that it works. People
13 are fooled. People have psychological biases.

14 Professor Laidlaw nicely lays out in her paper
15 the psychological -- some of the psychological foundations to
16 the disinformation problem, that is, people have a confirmation
17 bias, they look for information that confirmed their own
18 personal world view. They have an identity-affirming bias,
19 looking for information and stories that they'd like to share
20 with others that affirm their own cultural biases and world
21 view.

22 And then on top of that is social psychology, the
23 reality that we can speak as a society and how we want to
24 promote freedom of expression and pluralism and these key
25 broader mainstream values, but there are also these groups,
26 extremist groups, ideological groups that exist on mainstream
27 social media platforms that have an entirely different set of
28 social norms where trolling, harassment, spreading false stories

1 and rumours about people is celebrated and encouraged rather
2 than discouraged the way we would see in broader society.

3 So there's a human behavioural side to this, and
4 I think if you go back to, you know, the definitions that
5 Professor Laidlaw set out nicely in the beginning, you can see
6 the real challenge if we are to draft specific laws to deal with
7 content because when it comes to distinguishing between
8 disinformation and misinformation, it's a question of intent, a
9 person knowing is spreading false content as opposed to someone
10 who's innocently doing so in good faith but are doing so because
11 they like the story and it confirms their prior assumptions
12 about the target of the story, for example.

13 And so you see the challenge from a regulatory
14 and legal perspective of tailoring very specific laws deals with
15 specific content, which is why I would join in Professor
16 Laidlaw's recommendation. I agree.

17 I like the idea of a more generalized duty, a
18 duty of these platforms and intermediaries to act responsibly.
19 In the UK context, it's been proposed and described as a duty --
20 generalized duty of care.

21 Why do I prefer that rather than having more
22 specific laws on this count or that specifically target certain
23 kinds of content, although in some cases that will be necessary
24 as well, because it closes gaps, it can encourage platforms to
25 deal with more than just the bare minimum of lawful or offensive
26 content, maybe dealing with some content that drives certain
27 users from platforms, marginalized groups, visible minorities,
28 women who are disproportionately targeted by abuse online. You

1 can have that kind of a generalized duty that can also get these
2 platforms to deal with misinformation, disinformation as well.

3 A generalized duty also means that we don't
4 tailor laws. Earlier I talked about more obscure places online
5 where more extremist communities percolate and seed false
6 rumours and stories that later get picked up by broader actors
7 and larger platforms and, in some cases, mainstream media.

8 The rules that you would tailor for those kinds
9 of online contexts would be far different from the legal rules
10 you would tailor for social media platforms.

11 But if you have a more generalized duty that can
12 be defined through -- over time with certain regulations over
13 time, more specific applications over time by courts, you can
14 see how that can be applied both to the large-scale platforms
15 but also to those more obscure places online as well.

16 **MR. WAYNE MacKAY:** We perhaps should move on.
17 We're going to run out of time, but thank you.

18 Professor Laidlaw?

19 **DR. EMILY LAIDLAW:** Thank you, Professor MacKay.

20 You know, I'm sitting here listening to my
21 colleagues, and there are just so many different angles to this.
22 And I think one of the oft-repeated solution, which is -- you
23 know, causes some to roll their eyes but is -- because we all
24 know it to be true, is that it's a multi-faceted solution. If
25 we really want to target the problems of dis, mis and
26 malinformation, we are looking at, you know, education, we're
27 looking at underlying social and economic factors. We're
28 looking at improving laws in the area of social media

1 regulation, which we've talked about a lot today, but it also
2 might be in areas such as funding of media.

3 And of course, we have a Bill on the table
4 examining that right now.

5 I have been advocating strongly for a law
6 specifically to address the responsibilities of platforms and
7 social media specifically and it's this, you know, duty to act
8 responsibly.

9 We need this law, but it's not a solution to
10 everything. It is -- it would be one piece of the pie.

11 And I think one thing I want to emphasize with
12 the few minutes I have here is that it's not a perfect solution
13 and it should not be a perfect solution. Working at its best,
14 it's really about kind of lifting the game, in a sense, to just
15 work in the direction of a healthier ecosystem.

16 My fear is to be careful what you wish for
17 aspect of this, and I think this is something that Vivek and
18 David have been warning about, is the risks of over-regulation
19 and kind of, you know, I guess too much intervention in some of
20 these spaces.

21 So it's really a question of how do we make this
22 healthier, how do we make sure that everyone is welcome to
23 participate in these spaces and that social media are taking
24 care to think through the impact of the design of their spaces,
25 of the content moderation systems that they do or do not set in
26 place and the impact on users and on society.

27 The well, it's not going to be a perfect solution
28 to that, if it is operating appropriately there is an error

1 rate, right. But the assessment needs to be what, then, would
2 be the bottom line of the expectation of these companies.

3 One would be to have in place certain content
4 moderation systems. One is algorithmic accountability. And I
5 say that with some hesitation, and that would be to the extent
6 that there is access to be able to review and hold them
7 accountable for their algorithmic impact.

8 And by accountability, I don't mean that it's
9 outcome based. Rather, what I would say is can they then
10 explain and justify the approach that they are taking to work
11 towards a healthier ecosystem.

12 And I think I might leave it there and pass it on
13 to my colleagues and just say that, you know, it's time, I
14 think, as a solution that Canada introduces some sort of
15 regulation here to start addressing some of the underlying
16 issues.

17 **MR. WAYNE MacKAY:** Moderator MacKay, over to
18 Professor Morin.

19 **DR. DAVID MORIN :** Oui, merci.

20 Quel regard poser, avec un peu de recul, sur les
21 événements d'Ottawa? De mon point de vue, le principal
22 enseignement, dans ma perspective, c'est le fait que notre
23 démocratie est forte et fragile à la fois. Elle est fragile
24 parce que, à partir du moment où une partie de nos concitoyens
25 ne croient plus dans les institutions démocratiques, qu'elles
26 soient politiques, juridiques, médiatiques, scientifiques, alors
27 les règles du jeu changent. Dans un contexte actuel marqué, mes
28 collègues l'ont bien décrit, par des polarisations sociales

1 fortes, je pense que ça nous montre quand même comment on a
2 tendance à prendre les démocraties pour acquises et à sous-
3 estimer finalement leur fragilité.

4 Dans le même temps, je dirais que les
5 démocraties... la démocratie canadienne reste forte, et c'est un
6 peu le message que j'aimerais envoyer aussi aux gens qui ont
7 manifesté à Ottawa, la Commission Rouleau est un puissant
8 exercice démocratique. Dans quel régime autoritaire on verrait
9 75 témoins défiler devant une Commission pour parler de ce
10 qu'ils ont fait, pour revenir finalement sur une décision
11 politique qui est celle de la mise en place d'une *Loi sur les*
12 *mesures d'urgence*? Quelle que soit l'issue finalement de cette
13 Commission, quelles que soient les conclusions qu'elle tire,
14 l'exercice lui-même devrait nous convaincre du fait que nos
15 institutions fonctionnent quand même plutôt bien, de manière
16 transparente, et cetera. Donc, peu importe, en fait, la
17 conclusion, pour moi, c'est l'élément de force ici.

18 Et le deuxième aspect de ma conclusion ici ne se
19 situe plus dans les institutions, elle se situe sur la
20 conversation sociale. Comment est-ce que l'on peut à la fois
21 doter nos institutions démocratiques des outils suffisamment
22 puissants pour se protéger et comment, de l'autre, on peut
23 essayer de renforcer le lien social, de renforcer le dialogue
24 social, et je pense que ça, ça n'appartient plus aux gens qui
25 sont autour de cette table, ça nous appartient tous
26 individuellement – puis probablement que c'est l'humanisme de
27 mon collègue qui me teinte ici quand je dis ça, ça fait ça à
28 force de travailler longtemps avec des gens –, et c'est vraiment

1 l'idée selon laquelle, et je ne me permettrai pas de faire une
2 recommandation à la Commission, mais comment examiner finalement
3 ces événements-là avec une certaine empathie, une certaine
4 bienveillance pour à la fois réfléchir aux victimes, et puis on
5 a quand même pas tant parlé que ça des victimes, notamment à
6 Ottawa, y'en a quand même eu beaucoup, mais à la fois aussi des
7 griefs qui sont adressés par les gens qui venaient manifester.

8 Donc, je m'excuse, c'est plus... ici, ça relève
9 plus de la philosophie politique que de recommandations
10 concrètes, mais je pense que c'est important de conserver ça en
11 tête parce que cette Commission – encore une fois, je le répète
12 –, pour moi, d'un point de vue de chercheur, d'un point de vue
13 de quelqu'un qui travaille sur les questions de sécurité et de
14 quelqu'un d'humaniste démocratique, est quand même un exercice
15 fascinant et incroyable qui, à mon avis, nourrit aussi ou peut
16 contribuer dans une certaine mesure à renforcer la confiance
17 d'une partie de la population dans nos institutions.

18 Merci.

19 **MR. WAYNE MacKAY:** First of all, before I turn it
20 over to Dr. Venkatesh to get the last word on this part, I just
21 want to comment that I think that's a really important --
22 they're all important points, but your point about the
23 Commission and the hearings themselves are a reaffirmation of
24 democracy in Canada and the fact that this kind of hearing is
25 statutorily imposed in the *Emergencies Act* itself I think is
26 something we should take some pride in, so I like that.

27 So Professor Venkatesh, last word on this part.

28 **DR. VIVEK VENKATESH:** Merci.

1 Alors, je vais juste prendre le relais et de la
2 part de madame Laidlaw et de la part de monsieur Morin parce que
3 c'est important, je trouve, pour moi, de porter mon chapeau
4 comme pédagogue.

5 S'il y a des suggestions, je dirais, à offrir,
6 pas nécessairement des recommandations, mais des suggestions à
7 offrir à des compagnies, des médias sociaux, à des personnes
8 dans le monde politique qui nous aident à instancier, à
9 réédifier notre démocratie libérale, je pense qu'il faut prôner
10 une forme de pédagogie qui est beaucoup plus sociale que quelque
11 chose qui reste dans les cultures, qui reste dans les écoles,
12 qui reste dans nos institutions postsecondaires. Et par ça, je
13 veux dire qu'on a besoin de promouvoir une réflexivité, une
14 réflexivité qui nous aide à humaniser – pour reprendre les
15 paroles de monsieur Morin –, à humaniser l'autre, et ça, c'est
16 quelque chose qu'on ne voit pas assez souvent dans nos
17 discussions en ligne autant que dans nos discussions face à
18 face. Les discussions deviennent houleuses très, très souvent
19 trop rapidement.

20 Alors, comment est-ce qu'on peut développer des
21 cadres pour poursuivre des discussions où on peut percer nos
22 propres silos, nos propres chambres d'écho, pour qu'on puisse
23 être à l'écoute de l'autre sans nécessairement réagir dans une
24 façon où on commence à critiquer la personne au lieu de
25 critiquer ou de proposer des idées sur le phénomène qui est
26 devant nous?

27 Je vais citer alors peut-être deux personnes qui
28 m'ont beaucoup influencé avec leurs écritures. Il y a la grande

1 politologue Chantal Mouffe, elle est belge d'origine, elle
2 travaille maintenant en Angleterre, mais elle parle surtout
3 d'une façon de développer un pluralisme qui est agoniste et pas
4 nécessairement antagoniste. Comment est-ce qu'on peut être
5 confortable dans la dissension. Ça, c'est quelque chose que
6 j'essaie de développer moi-même, mais aussi avec les politiques
7 qu'on développe autour des médias sociaux et la régulation, mais
8 aussi nos comportements dans les médias sociaux.

9 Et une deuxième chose que je vais mentionner ici,
10 c'est comment est-ce qu'on peut développer une insécurité
11 intellectuelle dans nos conversations, et ça, c'est Eamonn
12 Callan de l'Université Stanford qui propose des cadres pour
13 développer une insécurité intellectuelle pour qu'on puisse se
14 questionner à tout moment, pour qu'on puisse être en dialogue
15 civil en prenant la « franchise » et aussi une charité
16 interprétative, et cette charité, c'est important parce que, dès
17 qu'on est en désaccord avec quelqu'un, on a besoin de donner un
18 peu de temps et pour nous de réfléchir, mais aussi de
19 questionner cette personne pour voir d'où elle vient, c'est quoi
20 les épistémologies, c'est quoi les origines de vos
21 connaissances, comment est-ce que vous, vous avez développé
22 cette opinion. Et avec cette charité interprétative, je pense
23 qu'on peut développer des cadres beaucoup plus pluralistes où on
24 pourrait être à l'écoute, on pourrait être en dissension plutôt
25 que développer des modes de consensus en tous moments.

26 Je vais arrêter là et merci beaucoup pour cette
27 occasion de partager avec vous.

28 **MR. WAYNE MacKAY:** Thank you very much for all of

1 that.

2 Just on a last point, if I could ask one final
3 question, a definition question, big surprise, which is
4 "agonistic" as opposed to "antagonistic".

5 I think I know what that means and I quite like
6 it, but I wondered if you'd just take a second to -- Professor
7 Venkatesh, just to give me a short statement of what that means.

8 **DR. VIVEK VENKATESH:** I try and read Chantal
9 Mouffe every week as much as possible just to remember to listen
10 before reacting, but I think their conception of agonism
11 revolves around allowing for the possibility that you do not
12 have to arrive at a consensus at every point in time and an
13 agreement because of the dilution of the issue at stake.

14 So an agonism will allow you to be very, very
15 fiercely protective of your opinion, very fiercely protective of
16 the rationale behind your opinion, but also at a certain point
17 in time think, okay, there are different ways in which this
18 particular issue is being proffered or offered to me because of
19 the perspective of the other.

20 That's how I see it.

21 **MR. WAYNE MacKAY:** Thank you very much.

22 Now, my understanding, and the Commissioner can
23 correct me, we now take a break to solicit whatever questions
24 may be submitted and we'll return with some questions from
25 Commission counsel, if I understand that correctly, to the
26 panel. And of course, the Commissioner can ask questions at any
27 time.

28 I don't know if you have any questions at this

1 point, or...?

2 **COMMISSIONER ROULEAU:** Not at this point. Thank
3 you.

4 **MR. WAYNE MacKAY:** Thanks.

5 So I think I'm right, we're adjourned for now.

6 **COMMISSIONER ROULEAU:** Yes.

7 **MR. WAYNE MacKAY:** Thank you.

8 **COMMISSIONER ROULEAU:** We'll come back at noon.

9 **THE REGISTRAR:** The Commission is in recess for
10 30 minutes. La Commission est levée pour 30 minutes.

11 --- Upon recessing at 11:37 a.m.

12 --- Upon resuming at 12:00 p.m.

13 **THE REGISTRAR:** The Commission is reconvened. La
14 Commission reprend.

15 **MR. WAYNE MacKAY:** Welcome back. And just to
16 clarify, I have not been appointed Commission counsel in that
17 short time, but I have been asked to answer the -- to pose the
18 question, so I think that's maybe a vote of confidence. I hope
19 so, anyway.

20 We have six potential questions, so I will -- and
21 I have a tight time because my understanding is that the
22 translators leave at a certain point here, so we'll have to be
23 as concise as we can.

24 So with that preamble, and maybe the only other
25 thing I should add; as you probably know some of these
26 questions, at least the core, came from participants, others are
27 added in other ways.

28 So first question and maybe I'll reverse my order

1 here and go to Professor Venkatesh first on this one.

2 The role of labelling, and labelling in an
3 antagonistic rather than, perhaps, agonistic way in society
4 generally, but maybe particularly in the media; is that a
5 problem and one that can be addressed? And I guess maybe put
6 that a bit more clearly; that the media in particular is tending
7 towards finding conflict, not binding agreement, and is that in
8 the mainstream media a big problem? And maybe one shouldn't
9 blame it all on social media and those kinds of things. So if I
10 -- if you can get a clear question out of that, and give me a
11 short answer, I'd appreciate that.

12 **DR. VIVEK VENKATESH:** Yeah. Thank you.

13 **MR. WAYNE MacKAY:** And that's Professor
14 Venkatesh.

15 **DR. VIVEK VENKATESH:** Thank you. Yeah, this is
16 Vivek Venkatesh here.

17 Yeah, this is a good question, and the sign of a
18 good question is the hesitation that I have in responding to it.

19 Where I think I will lead off, and perhaps invite
20 more reflection, is to think carefully about the role of
21 journalism, specifically in promoting pluralistic forms of
22 discussion. And so to what extent are we asking for journalists
23 to create spaces for pluralism; whether those spaces are
24 inhabited by antagonistic forms of discussion versus more
25 agonistic forms I think is a question of education, and also of
26 intent, right, to a certain extent. What do I intend to do
27 here? Do I intend to rile the person speaking on the other side
28 of the issue, or do I intend to think more carefully about,

1 okay, do I -- am I learning something about the issue? Am I
2 going to provide a specific perspective because someone thinks
3 differently about this? And I don't think that we should be
4 demonizing either form of those, right? I think that antagonism
5 is necessary when injustices, inequalities are consistently
6 meted out on marginalized groups of people.

7 And so part of this comes with, not with looking
8 specifically at one media outlet and saying we need to encourage
9 pluralism in that media outlet. The question is; does the media
10 environment allow for a fair representation of multiple
11 viewpoints. So to what extent are we, in fact, encouraging
12 multiple viewpoints to emanate from various media outlets?

13 The second question, which is related to it is;
14 what tools are available for the public? Whether those tools
15 are pedagogical, whether they are political, whether they are
16 legal; what tools are available for the public to be able to
17 enact some form of fact-checking, some form of figuring out the
18 veracity of what they're listening to?

19 So part of that responsibility lies in
20 regulations, lies in policies, part of it also lies in our
21 education system.

22 So it's a very short way of saying the answer is
23 very complicated. But I am thankful, though, to be a citizen
24 of, and to be living in, a country where I know that I can find
25 divergent opinions on a topic. But I also rely on my ability to
26 make certain critical decisions about which opinions am I going
27 to side with, based on the veracity of what's being presented.

28 **MR. WAYNE MacKAY:** Okay. Thank you very much.

1 Moderator MacKay here again. A follow-up is,
2 again, as briefly as possible, a sort of subset of that; in
3 particular, what's the role of the mainstream media in
4 labelling, for example, extremist groups, as being right-wing or
5 left-wing, or a particular extremist group?

6 And anyone who wants to volunteer on that, I'll
7 just -- you can take that one on briefly.

8 David, do you want to -- Mr. Morin?

9 **DR. DAVID MORIN:** Yes. Oui, merci beaucoup.

10 Permettez-moi de faire un bref retour sur la
11 question précédente pour donner un exemple à la Commission.
12 Depuis deux ans en temps de pandémie, on a notamment, par
13 exemple, beaucoup utilisé le terme « complotistes » pour
14 désigner une partie des gens qui appartenaient de contestation
15 des mesures sanitaires; parfois, ce terme-là a été utilisé à bon
16 escient, mais il l'a également été à mauvais escient pour
17 essayer finalement de disqualifier toute contestation des
18 mesures sanitaires. On a vu aussi beaucoup dans les médias
19 utiliser des termes comme – au Québec par exemple –
20 « covidiot », « turistata », « coucou », et cetera, pour là
21 aussi désigner une catégorie de la population.

22 Donc, j'ai deux commentaires à ce sujet-là. Le
23 premier, c'est que les données scientifiques qu'on a montrent
24 que parmi les facteurs d'adhésion au complotisme et aux
25 mouvements extrémistes, il y a aussi l'idée qu'on est
26 stigmatisé, la perception qu'on est discriminé. Donc, en fait,
27 plus on utilise ce type de vocabulaire qui étiquette, qui
28 stigmatise, plus finalement on renforce l'adhésion à une forme

1 de radicalité politique.

2 Le deuxième élément que je voulais dire, c'est
3 que – et là aussi, c'est pour rappeler que les institutions
4 fonctionnent –, le Conseil de presse au Québec a blâmé certains
5 médias pour avoir utilisé ces termes-là. Donc, ça, souvent on en
6 parle assez peu, mais c'est aussi une preuve que le système
7 fonctionne.

8 Je voulais juste ajouter ça sur le deuxième... la
9 seconde question, ça va être très, très bref. Ce dont on
10 s'aperçoit finalement, c'est que de plus en plus les groupes
11 extrémistes utilisent en fait finalement ce qu'on appelle les
12 médias alternatifs. Donc, mes collègues parlaient des réseaux
13 sociaux, et cetera, mais en fait on a de plus en plus la
14 création de médias qui sont alternatifs – je ne citerai pas de
15 nom ici pour faire de publicité à personne – et on les a vus
16 extrêmement présents pendant le convoi à Ottawa. On a vu des
17 journalistes – en fait, d'ailleurs, c'est un problème, qui est
18 un journaliste et qui ne l'est pas, maintenant n'importe qui
19 peut dire qu'il est journaliste –, et donc, avoir effectivement
20 des... ce qu'on appelle de la « réinformation » ou d'autres types
21 d'informations alternatives sur les événements, et cetera. C'est
22 ceux qui disaient qu'il y avait 100 000 personnes à Ottawa alors
23 que, vous avez lu les rapports de police comme moi, les grosses
24 journées, on parlait plutôt de 10 000. C'est ceux qui
25 effectivement répandaient toutes sortes d'informations.

26 Donc, on voit de plus en plus, en raison de la
27 méfiance vis-à-vis des médias *mainstream*... d'ailleurs, la
28 méfiance vis-à-vis des médias *mainstream*, elle ne concerne pas

1 juste des extrémistes, hein, c'est très répandu malheureusement
2 dans la population en général, mais on a vu se constituer
3 effectivement des médias alternatifs, et certains qui sont très,
4 très, très suivis, c'est-à-dire par des centaines de milliers de
5 personnes, sur les réseaux sociaux avec finalement toutes les
6 apparences de vrais médias, des reporters sur le terrain, et
7 cetera, et cetera.

8 Donc, je pense que là aussi, effectivement, il y
9 a une espèce de... pas de guerre, le mot est trop fort, mais en
10 tout cas de concurrence importante de la part de nouveaux
11 médias, et là, la question du financement est évidemment très,
12 très, très, très importante parce que pour que ces médias
13 fonctionnent, ils ont besoin de financement.

14 Voilà. Merci.

15 **MR. WAYNE MacKAY:** Okay. Another question, on a
16 somewhat different slant, is the -- should there be part of the
17 recommendations from this Commission include suggested changes
18 to the *Emergencies Act*? And I guess, ideally, time and ability
19 to do this, any suggestions would be welcome. So I sort of
20 throw that out; I mean, Emily or John or David, or any number of
21 you, but a number of people, that's an open question.

22 David, if you want?

23 **DR. DAVID MORIN:** La question la plus glissante de
24 la matinée, n'est-ce pas?

25 **MR. WAYNE MacKAY:** I was I was surprised you took
26 it on but...

27 **DR. DAVID MORIN:** Ben, y'a deux éléments pour moi
28 importants dans ce que je comprends de ce qu'est la *Loi sur les*

1 *mesures d'urgence*, mais évidemment vous la maîtrisez mieux que
2 moi.

3 La première, comme on le disait tout à l'heure,
4 je pense que toute la notion de réseaux sociaux est finalement
5 pas tellement prise en compte, et je le rappelle, ce que je
6 disais tout à l'heure sur la question de volatilité finalement
7 de la gestion de crise, ça me semble quand même important de
8 voir comment elle peut être mise à jour là-dessus.

9 Le deuxième volet, de ce que je comprends, et là
10 je mets plus mon chapeau de chercheur en sécurité nationale,
11 c'est peut-être de donner une vision un peu plus large de la
12 sécurité nationale que celle qui est comprise dans la *Loi sur le*
13 *SCRS* qui elle-même, à mon avis, est assez datée, la *Loi sur le*
14 *SCRS*, je sais que c'est un autre débat, mais qui mériterait
15 probablement d'être un petit peu dépoussiérée, si vous voulez
16 mon bien humble avis.

17 Donc, je pense que... et là, on l'a vu, est-ce que
18 la question, par exemple, de la sécurité économique, et on a vu
19 l'importance de certains 11 stratégies au Canada, et cetera,,
20 certaines frontières, et cetera, est-ce qu'on devrait englober
21 ça? Je pense que oui. Je pense qu'il y a la question aussi de la
22 sécurité climatique qui devient un vrai enjeu sur certains
23 éléments de la sécurité nationale, donc je pense qu'on pourrait
24 avoir une vision un peu plus large de ce qu'est la sécurité
25 nationale.

26 Donc, c'est vraiment pour moi les deux éléments
27 importants du point de vue de la Loi elle-même.

28 **MR. WAYNE MacKAY:** Okay. A different -- somewhat

1 different angle and maybe Professor Laidlaw will be a logical
2 one for this one. What's the role of political actors within
3 the definition of misinformation and malinformation and so on,
4 and to what extent should regulation capture those players as
5 well as others?

6 **DR. EMILY LAIDLAW:** That's a great question, and
7 there's no easy answer. I would say that any actor can
8 contribute to misinformation and disinformation. So often, if
9 we look at, say, a disinformation campaign, so one that's
10 intentionally launched, they -- let's say it's state based, so
11 that would be government, that would be political actors in
12 power that have made that decision, but then they will often
13 then target key influencers because they have a large following,
14 and it might be media, or it might be certain political actors,
15 it might be other types of influencers, and then that then
16 spreads from there to individuals who consume it, and maybe
17 believe it, and things go viral.

18 So political actors absolutely can play a key
19 role in spreading both dis and misinformation, and I would also
20 say malinformation in the way that they might label and
21 perpetuate whether it's stereotypes or other forms of hate;
22 right? So they're like anybody else in that system, they just
23 have power and influence.

24 **MR. WAYNE MacKAY:** Another question, and in fact,
25 I was going to send it in your direction, but do a quick -- well,
26 maybe I can ask my question and you can add that and then do the
27 other one? The second question beyond that one is the role of
28 anonymity in social media in terms of explaining the impact and

1 the hurtfulness of that, and from my days in dealing with
2 cyberbullying, I thought of you on that. So, first of all, add
3 on this one I just -- and then address that as quickly as you
4 can.

5 **DR. JONATHON PENNY:** For sure. So just ---

6 **MR. WAYNE MacKAY:** And that's Professor Penny.

7 **DR. JONATHON PENNY:** Yeah, just very quickly,
8 yeah, Professor Penny speaking. Just very quickly to add to my
9 colleague, Professor Laidlaw's comments here on the role of
10 political actors. Something I mentioned earlier which I think
11 really needs to be fixed in Canada is the glaring hole in our
12 privacy and data protection laws which presently do not cover
13 political parties. We have documented cases both in Canada and
14 abroad where, like, for example, the Cambridge Analytical
15 scandal is a great example of where you have misappropriated
16 personal information, user data that was then used for targeted
17 influence operations, disinformation, misinformation, all of
18 that. And if you have political actors that have access to
19 people's personal information and there's no constraints on it,
20 that's a real problem for the challenge that this Commission
21 needs to be addressing. So that's one.

22 To come to the second point, again, this is a
23 really hard problem, because anonymity really is important to
24 broader democratic discussion; right? There are certain things
25 that one might be more willing to say when those comments are
26 not necessarily tied to one's professional standing, or to their
27 identities, or would not say it because they might risk their
28 job. So anonymity provides some protections to have broader and

1 more robust democratic debates, but there, of course, is a
2 darker side to anonymity on social media platforms. It's often
3 used as cover to allow more abusive behaviour, and that goes --
4 includes intentional spread of false information. It gets into
5 some of the other more abusive behaviour that we have talked
6 about, harassment, intimate privacy violations, harassment,
7 online abuse, all of that. And so there are different balances
8 that different platforms have come to. Some platforms have real
9 name and sort of a non-anonymity policy. Some, for example,
10 like Twitter, promote anonymity and are fine with it as a
11 policy, though that may change under the new ownership, it's
12 unclear.

13 So I think that if there are going to be laws
14 that would address anonymity, we have to be really careful
15 because while you do have those concerns about abuse, you also
16 don't want to undercut the ability of anonymous users to
17 participate in robust democratic discussion they wouldn't
18 otherwise without that protection of anonymity.

19 Maybe one balance that you see in some platforms
20 where you have internal identity verification but public facing
21 anonymity, and that is going to avoid more bots and trolls that
22 want to hide their actual identity and persona is engaged in
23 more abusive behaviour.

24 **MR. WAYNE MacKAY:** Final question to Professor
25 D'Orazio, very large one, and you can add on that as well. I'll
26 do as I did with Professor Penny, but the question is what kinds
27 of mental health and other wellbeing impacts come from social
28 media and misinformation, malinformation? That's a very large

1 question, so first of all ---

2 **DR. DAX D'ORAZIO:** M'hm.

3 **MR. WAYNE MacKAY:** --- add on the second one and
4 then address that one.

5 **DR. DAX D'ORAZIO:** Okay. I actually want to
6 rewind, if I may, to make some really quick points for the ---

7 **MR. WAYNE MacKAY:** Yeah, and it's Mr. D'Orazio
8 speaking.

9 **DR. DAX D'ORAZIO:** Thank you. Parallel to the
10 rise of social media, we've seen a really intense fragmentation
11 within the field of journalism, and so what that means and why
12 it's consequential for our discussion today is that journalistic
13 information is increasingly tailored for specific audiences
14 rather than a big and a broad audience. And so the consequences
15 of that are that there are declining incentives for journalistic
16 curiosity for intellectual humility, for example. And one of
17 the things that's notable in the contemporary period is that the
18 was often an anxiety or a hesitance to provide a platform or
19 legitimacy to ideas that are quite easily discredited, but it's
20 still important for the public to be able to understand why
21 specific ideas come to the floor, and also why people might
22 attach themselves to a specific movement, even if we might
23 intersubjectively agree that it has some harmful elements
24 attached to it. And so there needs to be an explicit
25 understanding that trying to understand one's motivations,
26 whether that's on an individual basis or a collective basis, is
27 not the same as providing unearned legitimacy. And so the role
28 of the media is really crucial in trying to explain to a broad

1 public why somebody might come to a specific position, even if
2 we might in the aggregate disagree with it.

3 On the point about anonymity, I'd echo what
4 Jonathon mentioned already. It essentially is a double-edged
5 sword. If we want to expand the ambit of public discourse to
6 make it more accessible, to improve democracy, we need to have
7 opportunities for people to blow the whistle, and anonymity is a
8 huge shield for whistleblowers who often have not a great
9 experience in blowing the whistle, be able to do so anonymously.
10 And so if platforms increasingly make requirements that your
11 identity is tethered to your profile or your engagement, for
12 example, there needs to be some commensurate thinking about what
13 the disclosure of wrongdoing can look like that still remains
14 anonymous because that is definitely one of the positive impacts
15 of social media, if we're thinking about the broad contours of
16 democratic participation.

17 To circle back around to the psychological, the
18 sociological effects of social media, we now have a relatively
19 substantial and growing by the day, body of literature that's
20 interdisciplinary, that's showing that perhaps left to its own
21 devices, social media has in a way surreptitiously confirming
22 our own biases, leading to negative personal habits and traits,
23 and essentially allowing individuals and groups to lean into
24 some of their most unsavoury predilections. We're now starting
25 to think about social media engagement as an addiction, for
26 example. We're talking about having a digital detox. And so
27 the conversation that desperately needs to be had is how to
28 salvage and repair some of the positive elements of social

1 media, while thinking comprehensively through some of the
2 negative externalities of engagement online, which we've
3 discussed relatively at length today.

4 **MR. WAYNE MacKAY:** Okay. Well, I'll just say a
5 quick word and then turn it over to the Commissioner to have the
6 final word here. But I thank you all very much for outstanding
7 contribution, and you know, very much for respecting the time
8 and doing things in a very helpful way. And I think maybe I'll
9 ask the Vic over there whether we were agonistic, but think we
10 were pretty close to agonistic if not antagonistic as a group,
11 and I think that's a good thing.

12 So anyway, thank you very much for doing that,
13 and I'll turn it back to the Commissioner to end things off
14 anyway he wishes.

15 **COMMISSIONER ROULEAU:** Well, I haven't got much
16 to add to the very nice comments that Professor MacKay made that
17 this is a very interesting panel. It was obviously thoughtful
18 and helpful.

19 I want to give you a couple of minutes if you
20 want to do a wrap-up as to what it is you think would be, I
21 mean, based either on the questions or whatever that you think I
22 should know or might help me in the working I'm doing.

23 Si vous avez des commentaires ou des suggestions
24 à ajouter aux réponses qui ont été avancées, aux questions qui
25 ont été avancées, ça me serait utile, mais franchement, ç'a été
26 un panel et une présentation réfléchis et intéressants.

27 So any sort of last minute contributions you want
28 to make, or comments? I think, if not, I'll thank you, but I

1 did want to give you that opportunity.

2 **MR. WAYNE MacKAY:** This is your big opportunity.

3 **COMMISSIONER ROULEAU:** It's not a big -- c'mon,
4 let's not overstate things here.

5 **MR. WAYNE MacKAY:** Bigger than talking to me.

6 **COMMISSIONER ROULEAU:** I'm not sure about that.
7 I don't have any doctorates or anything, I'm just a -- just
8 trying to learn the area.

9 Okay. Well, thank you very much, and once again,
10 un grand remerciement.

11 **THE REGISTRAR:** The Commission is in recess until
12 2:00 p.m. La Commission est levée jusqu'à 14h.

13 --- Upon recessing at 12:24 p.m.

14 --- Upon resuming at 1:59 p.m.

15 **THE REGISTRAR:** The Commission is reconvened. La
16 Commission reprend.

17 **COMMISSIONER ROULEAU:** Okay. Well, welcome to
18 our second session for today, and we have a new panel to deal
19 with the protection of flows of essential goods and services,
20 critical infrastructure, and trade corridors.

21 Alors, bonjour et bienvenue. Nous avons un
22 nouveau panel qui va nous instruire sur des... un nouveau sujet.
23 Alors, je demanderais à la modératrice, Vanessa MacDonnell...

24 Professeur?

25 **DR. VANESSA MacDONNELL:** Oui.

26 **COMMISSAIRE ROULEAU:** ...la professeure MacDonnell
27 de prendre la parole et nous présenter les différents
28 conférenciers.

1 --- ROUNDTABLE DISCUSSION: THE PROTECTION OF FLOWS OF ESSENTIAL
2 GOODS AND SERVICES, CRITICAL INFRASTRUCTURE AND TRADE CORRIDORS

3 DR. VANESSA MacDONNELL: Merci, beaucoup.

4 Good afternoon, Commissioner. Bonjour tout le
5 monde. I'm Professor Vanessa MacDonnell from the University of
6 Ottawa, Faculty of Law, where I am an Associate Professor and
7 Co-Director of the U Ottawa Public Law Centre.

8 I am moderating this afternoon's roundtable, and
9 we have five experts joining us this afternoon.

10 In person, we have Dr. Ambarish Chandra,
11 Associate Professor of Economics, University of Toronto;
12 Dr. Philip Boyle, Associate Professor in Sociology and Legal
13 Studies, University of Waterloo.

14 Puis en ligne, nous avons Florence Ouellet,
15 économiste junior pour François Delorme Consultation, étudiante
16 en économie, cheminement économie politique, à l'Université de
17 Sherbrooke; François Delorme, professeur adjoint au Département
18 des sciences économiques à l'Université de Sherbrooke et PDG de
19 François Delorme Consultation.

20 We also have Professor Kevin Quigley joining us,
21 who is Scholarly Director of the MacEachen Institute for Public
22 Policy and Governance, and Faculty Member at the School of
23 Public Administration at Dalhousie University. And I hope I've
24 just established my Maritime credentials by pronouncing
25 MacEachen properly.

26 Cette table ronde porte sur les infrastructures
27 essentielles, les corridors commerciaux et la circulation des
28 biens et services essentiels au Canada.

1 The experts will discuss today questions around
2 what critical infrastructure and trade corridors are, their
3 risks and vulnerabilities, who is responsible for managing these
4 risks, and what gaps and tensions arise in the governance of
5 critical infrastructure and trade.

6 So because we have a group that is, you know,
7 partly in person and partly online, I am going to do my best to
8 make sure that we're all actively engaged in the presentation,
9 but I do ask your indulgence if it turns out that, you know,
10 working between these two mediums, media proves a tiny bit
11 challenging.

12 Okay. So we are going to begin this morning by
13 talking a little bit about the basics, some definitional
14 questions, and we're going to start with the question of what
15 critical infrastructure is, and on this question I will begin
16 with your, Professor Boyle.

17 **--- PRESENTATION BY DR. PHIL BOYLE:**

18 **DR. PHIL BOYLE:** Thank you, and thank you to the
19 Commissioner for this opportunity to be here today.

20 In general, critical infrastructure refers to the
21 physical systems and networks that are essential for the
22 functioning of our social, political, and economic activities of
23 a country. In the federal National Strategy for Critical
24 Infrastructure, critical infrastructure is defined as:

25 "...processes, systems, facilities,
26 technologies, networks, assets and
27 services essential to the health,
28 safety, security or economic well-being

1 of Canadians and the effective
2 functioning of government."

3 The National Strategy further subdivides critical
4 infrastructure into ten sectors:

5 "Energy and utilities; finance; food;
6 transportation; government; information
7 and communication technology; health;
8 water; safety; and manufacturing."

9 Each of these sectors have lead federal
10 departments that are responsible for CI related activities
11 specific to that sector and for liaising with provincial,
12 territorial and private sector partners with shared
13 responsibility for critical infrastructure.

14 Government concern for critical infrastructure
15 really emerged or catalysed since roughly the Year 2000. So
16 events such as the Y2K computer changeover problem, 9/11, the
17 2003 blackout focussed concern that our collective reliance on
18 complex and large scale systems introduce new vulnerabilities in
19 which localised crises would cascade into widespread or to have
20 widespread detrimental effects for society.

21 It is precisely this concern that led, during the
22 COVID lockdowns, to having certain areas of the workforce
23 declared to be essential, so that basic government and economic
24 functions could continue during those lockdowns.

25 It was also during the -- or it was the same
26 concern that arose during the Rogers telecommunications
27 disruption earlier this year, in which some public services,
28 including police and other emergency services, were disrupted

1 when they relied on Rogers for telecommunication services.

2 And what all these events highlight is that our
3 social, political, and economic functioning of the society
4 depend on large-scale, complex, and in some cases highly tenuous
5 networks, and the people who operate those networks, the human
6 resources that make these networks run, and that these networks,
7 because of their complexity and interconnected nature, are
8 vulnerable to all kinds of failures and disruptions that are
9 difficult to predict, yet can have widespread societal
10 disruptions or consequences.

11 **DR. VANESSA MacDONNELL:** Thank you, Professor
12 Boyle.

13 So we're hearing that here are a wide range of
14 sectors that are considered to have critical infrastructure.

15 Going to you, Professor Quigley, can you perhaps
16 elaborate on some of these threats to critical infrastructure
17 that Professor Boyle has identified?

18 **--- PRESENTATION BY DR. KEVIN QUIGLEY:**

19 **DR. KEVIN QUIGLEY:** Sure thing. I want to start
20 off by just saying thanks so much for having me at the panel
21 discussion, and also thank you, Professor MacDonnell for your
22 pronunciation of "MacEachen" which is spot on, so you have
23 established your credentials, your Maritime credentials.

24 So threats to critical infrastructure come in
25 different shapes and sizes. The climate change and natural
26 disasters are the ones that get a lot of attention these days.
27 They include floods, wildfires, hurricanes, earthquakes, and ice
28 storms. There can be terrorist plots like the Toronto 18;

1 terrorist attacks like 9/11; labour unrest like the strike
2 action; environmental protest at seaports; cyberattacks like the
3 one we saw in Estonia in 2007 which disabled part of its banking
4 infrastructure; industrial failures, which can be sometimes
5 accidents that result in bridge collapses, train derailments;
6 there are nuclear examples like Chernobyl, for example; water
7 contamination like Walkerton; contamination of food supply, an
8 example like a foot and mouth disease spread.

9 So threat level can be understood in terms of
10 risk, and I note there's been quite a few references to risk in
11 some of these panels' discussions, so risk is perhaps a little
12 bit worth unpacking at this point.

13 Risk is generally understood as a function of
14 probability and consequence. So on the consequence side, all of
15 these events are consequential when they occur, judging by
16 dollars lost, property or reputational damage, or body count in
17 the case of death. By taking a step back, some can be more
18 consequential than others, and these consequences are not
19 necessarily viewed or shared equally.

20 On the probability side, some of these events
21 occur more often than others. So when we think of 9/11, it's
22 likely a once-in-a-lifetime event; we hope. When we think about
23 wildfires and hurricanes, they occur from time to time, and in
24 the same regions from time to time. So I'll note Halifax, for
25 instance, we're on a hurricane path so every few years we have a
26 pretty devastating hurricane that blows through the region.

27 Another distinguishing feature is the presence of
28 a malicious actor. When nature disasters occur, we can build up

1 infrastructure to protect ourselves; dykes, for example, to
2 protect against flooding in flood-prone areas.

3 When you have a malicious actor, you have an
4 adaptive agent so protecting airports might result in a
5 malicious actor targeting trains. So when you're trying to
6 protect yourself against those who would do your harm, you have
7 to take a holistic view, otherwise you're building half a fence.
8 And as they say, building half a fence is no fence at all.

9 Finally, I'll just underscore that the importance
10 of access to predictive data is an important consideration when
11 examining risk problems. The number of car accidents is
12 actually very predictable every year; year-in and year-out it's
13 pretty stable. The number of terrorist attacks or bridge
14 collapses is not. This necessitates a different approach, which
15 I think we'll explore in more detail during the discussion.

16 I'll stop there.

17 **DR. VANESSA MacDONNELL:** Thank you, Professor
18 Quigley.

19 At this time, would any of the panellists like to
20 provide additional remarks on this first theme?

21 Okay. So -- and I believe we're going to come
22 back to this discussion of risk as we get further into the
23 discussion and talk a bit more about how risk is evaluated, and
24 how that needs to factor into the policy response to these
25 threats to critical infrastructure.

26 D'accord, maintenant on va... j'ai une question
27 pour monsieur Delorme et madame Ouellet sur la question de
28 qu'est-ce que c'est qu'un corridor commercial, et peut-être je

1 commencerai avec monsieur Delorme.

2 **M. FRANÇOIS DELORME:** Est-ce que vous m'entendez?

3 **DR. VANESSA MacDONNELL:** Oui, on vous entend
4 maintenant. Merci.

5 **--- PRÉSENTATION PAR M. FRANÇOIS DELORME:**

6 **M. FRANÇOIS DELORME:** Parfait. Merci beaucoup.

7 Alors, merci beaucoup de l'invitation à venir
8 témoigner à cette Commission. Je laisserai monsieur Chandra
9 préciser plus en détail qu'est-ce que c'est techniquement un
10 corridor et un corridor commercial. Florence Ouellet et moi, ce
11 que nous voulions faire aujourd'hui en premier lieu, c'est
12 d'établir la question de, un corridor commercial, en quoi est-il
13 vulnérable, en quoi est-ce que la façon dont nous transportons,
14 nous échangeons nos marchandises entre le Canada et les États-
15 Unis, par exemple, peut être qualifiée d'un segment ou d'une
16 façon de transporter les choses de façon vulnérable ou pas.

17 Alors, je vais laisser Florence nous parler un
18 peu de la position du Canada vis-à-vis les États-Unis et vis-à-
19 vis le portrait commercial au niveau des exportations et des
20 importations, et ensuite je continuerai sur comment est-ce que
21 tous ces effets-là ont des impacts sur l'emploi, mais aussi un
22 impact sur les emplois indirects, et je donnerai peut-être un
23 exemple pour illustrer un peu comment est-ce que ça fonctionne.

24 Alors, Florence, peut-être, est-ce que tu peux
25 nous donner un premier état de la situation en ce qui a trait au
26 commerce avec les États-Unis. Merci.

27 **Mme FLORENCE OUELLET:** Oui, certainement.

28 Est-ce que vous m'entendez?

1 **COMMISSAIRE ROULEAU:** Oui.

2 **Mme FLORENCE OUELLET:** Oui? Parfait.

3 **--- PRÉSENTATION PAR Mme FLORENCE OUELLET:**

4 **Mme FLORENCE OUELLET:** Bonjour, je m'appelle
5 Florence Ouellet. Merci pour l'opportunité de participer à cette
6 table ronde.

7 Alors, pour ce qui est des corridors commerciaux,
8 premièrement, il y a certainement un élément géographique à la
9 notion de corridor commercial parce que ça permet le transport
10 de biens et services entre certaines régions qui sont parfois
11 deux pays distincts.

12 Dans le cas du Canada, certains corridors
13 commerciaux, en particulier entre le Canada et les États-Unis,
14 peuvent être des éléments très névralgiques pour l'économie
15 canadienne. Un exemple, on considère le Canada comme étant une
16 petite économie ouverte parce qu'elle transige une part
17 relativement grande de ce que l'économie canadienne produit dans
18 une année avec l'étranger, et puis la grande majorité de cette
19 production-là est échangée avec les États-Unis.

20 Comme on le mentionne dans le document fourni à
21 la Commission par monsieur Delorme et moi, environ 62 % du
22 commerce total canadien se fait avec les États-Unis. Pour donner
23 un ordre de grandeur, par exemple, le deuxième plus grand
24 partenaire commercial du Canada, selon ce qu'on a trouvé dans la
25 rédaction de ce papier-là, c'est la Chine, puis la proportion
26 tourne plutôt autour de 9 % du commerce international canadien.
27 Ensuite, l'Ontario suit exactement la tendance canadienne dans
28 le sens de l'ouverture de l'économie puis de la dépendance avec

1 les États-Unis pour le commerce international, et puis le
2 commerce de marchandises représente une part encore plus
3 importante du commerce entre les États-Unis et le Canada et
4 l'Ontario, sans surprise puisque, ben, on partage une frontière
5 terrestre avec l'Ontario et le... pas avec l'Ontario, pardon, avec
6 les États-Unis.

7 La grande part de ce commerce-là se fait par
8 transport routier, donc par camions, ce qui explique qu'il y a
9 plusieurs infrastructures critiques, comme l'expliquaient les
10 professeurs Boyle et Quigley, qui font partie des corridors
11 commerciaux et qui peuvent être très vulnérables à certaines
12 perturbations de l'ordre de la manifestation du convoi des
13 camionneurs qui a bloqué le pont Ambassador, par exemple en
14 février dernier.

15 Je vais laisser monsieur Delorme compléter
16 l'explication sur les corridors commerciaux.

17 **--- PRÉSENTATION PAR M. FRANÇOIS DELORME (suite):**

18 **M. FRANÇOIS DELORME:** Donc, ce qui est important
19 de comprendre de ce qu'a expliqué Florence, c'est que,
20 évidemment, on l'a entendu avec le sous-ministre des Finances la
21 semaine dernière, Michael Sabia, on l'a tendu avec la ministre
22 Freeland aussi lorsqu'elle a témoigné, le Canada est fortement
23 tributaire du commerce routier par camions qui passent par le
24 pont Ambassador avec les États-Unis. Ça, c'est un premier effet.

25 Le deuxième effet aussi qui est important, c'est
26 que, évidemment, chaque emploi, par exemple, dans le secteur
27 automobile, prenons l'exemple du secteur automobile en Ontario,
28 c'est pas seulement l'emploi dans le secteur manufacturier dans

1 le secteur de l'automobile qui est à risque lorsqu'il y a des
2 perturbations du pont Ambassador ou du trafic routier.
3 Évidemment, ce travailleur-là de l'automobile, il a une maison,
4 il fait son épicerie, il contracte des polices d'assurance, donc
5 cet emploi-là déclenche ou est responsable de plusieurs autres
6 emplois dans l'économie.

7 Certaines études montrent que le multi... ce qu'on
8 appelle un multiplicateur, ça veut dire que cet emploi-là, il
9 est responsable de combien d'autres emplois indirects, ça peut
10 aller jusqu'à huit emplois dans le secteur manufacturier
11 automobile.

12 Donc, c'est la raison pour laquelle, quand il y a
13 des perturbations au niveau du transport routier dans le pont
14 Ambassador, qui est un... comme Florence l'a expliqué, une veine
15 névralgique au niveau du secteur automobile ontarien, eh ben,
16 c'est beaucoup d'autres emplois qui sont périphériques au
17 secteur automobile qui doivent être tenus en compte. C'est pas
18 seulement le secteur automobile qui est à risque, c'est tout ce
19 qui gravite autour du secteur automobile.

20 Et quand on... et je vais terminer là-dessus, quand
21 on fait des calculs pour essayer de voir quels sont le nombre
22 d'emplois qui sont à risque, qui dépendent directement du pont
23 Ambassador, on est arrivé autour de 350 000 emplois qui
24 dépendent du commerce qui transite par le pont Ambassador, donc
25 c'est autour de, en gros, 4,5 % des emplois en Ontario et autour
26 de 2 % des emplois au Canada. Ça peut sembler faible, mais si
27 ces emplois-là sont perdus de façon permanente, si les
28 perturbations s'étaient prolongées, on peut penser que la perte

1 d'emplois temporaires et les couts économiques auraient été
2 beaucoup plus élevés et peut-être que certaines pertes d'emploi
3 auraient été permanentes.

4 Alors, merci beaucoup.

5 **DR. VANESSA MacDONNELL:** Merci, Monsieur Delorme.

6 Professor Chandra, there are two issues that were
7 raised that I'm hoping you might be ale to elaborate on here a
8 little bit. The first is how trade corridors in Canada are
9 defined by trade networks with the U.S., and then the importance
10 of truck trade was also mentioned, and I'm hoping you might be
11 able to speak to that as well.

12 **--- PRESENTATION BY DR. AMBARISH CHANDRA:**

13 **DR. AMBARISH CHANDRA:** Yeah, thank you, Professor
14 MacDonnell.

15 So, you know, if you could look at most
16 international trade around the world, the two most common modes
17 by which goods are sent to and from or between countries is by
18 air and by sea, but that's actually not true in the case of
19 Canada and the United States. We have -- you know, the vast
20 majority of our goods are actually transported over land, mainly
21 by truck, although they do a slightly smaller extent by pipeline
22 or by rail. And, you know, and not only are Canada and the U.S.
23 each other's largest trading partners, we're also the single
24 biggest trading relationship in the world. So we're quite
25 unusual in that sense that we -- our trade is mainly over land
26 because that's an outlier by world standards,

27 But, yeah, the vast majority of our land-based
28 trade is by truck. Something like 63 percent of all goods that

1 are imported and exported between Canada and the United States
2 travel across the land border by truck. And there are thousands
3 of these trucks that enter Canada every day. There's -- you
4 know, on an average day, there's something like 14,000 trucks
5 enter Canada from the United States. And so when we think about
6 our trade corridors, we really should be envisioning our land-
7 based trade corridors with the United States because that's
8 really most of what we trade.

9 And specifically, when we think about our
10 critical infrastructure, there's roadways, there's highways, but
11 really, most importantly, there are bridges. And the reason for
12 that is that, as we just heard, you know, Ontario is the sort of
13 centre point of trade with the United States. In fact, it's
14 disproportionately the case that Ontario trades with the U.S.
15 Ontario has 38 percent of Canada's population, but it receives
16 63 percent of incoming trucks, so it really -- you know, by
17 contrast, Quebec has 24 percent of Canada's population but only
18 gets 11 percent of trucks. So trade is disproportionately
19 concentrated in Ontario.

20 And what's striking about Ontario is that the
21 province is entirely separated from the United States by water
22 bodies, by either the Great Lakes or by rivers. So that means
23 as to enter Ontario, you have to cross a water body, which means
24 you have to cross a bridge. And so there's really just four
25 bridges, all of which are in southern Ontario, that carry the
26 vast majority of our trade. And so our critical infrastructure
27 is dependent on these bridges. We can talk more about it I
28 think as the conversation proceeds, but just as a single point,

1 the Ambassador Bridge is easily the most important of these
2 bridges, getting 30 percent of our trade. But, yeah, these four
3 bridges constitute our critical infrastructure.

4 **DR. VANESSA MacDONNELL:** Thank you. So I'm going
5 to push you a little further into the conversation here,
6 Professor Chandra, because the Ambassador Bridge is critical to
7 the discussion here at the Commission, obviously played an
8 important role in the events that gave rise to this Commission,
9 and we know that the bridge was blocked for a period during the
10 events that took place.

11 So I'm wondering here if you can, you know, tell
12 us a bit more of the backstory, you know, how is it that Canada
13 and Ontario became so dependent on the Ambassador Bridge as a
14 trade corridor?

15 **DR. AMBARISH CHANDRA:** So in -- as best as I can
16 tell based on my research, a lot of this has to do with what I
17 would call historical accident and then mass dependence. So the
18 Ambassador Bridge was built almost a century ago. It was
19 completed in 1929. It was built to facilitate trade across the
20 Detroit River between Michigan and Ontario. And once it was
21 completed, it was used heavily by the auto industry because Ford
22 and General Motors and other car manufacturers had plants in
23 both Michigan and Ontario, and so they relied on the bridge
24 extensively, going back to the 1930s and since then. And the
25 trade over the bridge became so important commercially,
26 economically that we saw a lot of investment made to support the
27 bridge.

28 Investments were made both by the private sector

1 as well as by government. So the private sector, you know, the
2 firms that traded invested by building, you know, warehouses,
3 sorting facilities, loading docks in order to, you know, quickly
4 and efficiently transport goods that were coming on and off the
5 bridge. Governments invested by, you know, building highway on
6 ramps and off ramps, there's Ontario 401, Interstate 75 and 96
7 in the U.S., all of these Interstates point directly at the
8 Ambassador Bridge. Governments also invested by allocating
9 custom's agents, building custom's inspection facilities and so
10 on.

11 And so the more investment that the bridge
12 attracted, the more efficient it became to process the vehicles,
13 and so the more traffic it actually attracted, including by non-
14 auto industry actors. And so we sort of got into this cycle,
15 which you can think of as, you know, virtuous or a vicious cycle
16 by which, you know, it attracted more traffic, so we, you know,
17 threw more infrastructure investment at the bridge and so on.
18 And so now the Ambassador Bridge is, you know, absolutely vital
19 to Canada/U.S. trade getting 30 percent of our trade, and it's
20 not as though it's all the auto industry.

21 If you -- so like I said, Ontario gets about 63
22 percent of trade with the U.S. You might think that that's
23 dominated by the auto industry, but it's actually not. But by
24 my calculations, even the non-auto industry, so everything other
25 than automobiles, is still heavily concentrated in Ontario, a
26 little bit less, more like 55 percent, but, you know, that just
27 goes to show you how even other industries became reliant on the
28 Ambassador Bridge over time.

1 **DR. VANESSA MacDONNELL:** Okay. Thank you,
2 Professor Chandra.

3 I'd like to invite those who are on the screen
4 with us to contribute to this discussion. Monsieur Delorme,
5 Madame Ouellet, Professor Quigley, would you like to add
6 anything at this moment about the significance of the Ambassador
7 Bridge as a trade corridor?

8 **--- OPEN DISCUSSION:**

9 **M. FRANÇOIS DELORME:** Ben, la seule chose que... ah,
10 je vais laisser Florence intervenir.

11 **DR. VANESSA MacDONNELL:** Okay.
12 Madame Ouellet?

13 **Mme FLORENCE OUELLET:** Oui. Merci.

14 En fait, si je peux employer une illustration
15 pour faire une somme de ce qui a été dit jusqu'à maintenant, ce
16 que mes collègues avons expliqué jusqu'ici, ça prend vraiment
17 une forme d'entonnoir, si vous voulez, pour placer comme il faut
18 le pont Ambassador dans son contexte puis son importance, en
19 fait, pour l'économie canadienne, donc la dépendance du Canada,
20 et en particulier de l'Ontario, au commerce avec les États-Unis,
21 l'importance de l'industrie manufacturière, le secteur
22 automobile et autres, comme Professeur Chandra vient de
23 l'expliquer, mais il faut aussi se rappeler que cet entonnoir
24 prend ensuite la forme d'un sablier, si je peux me permettre
25 cette image-là, parce qu'ensuite il y a plusieurs répercussions
26 sur... qui sont beaucoup plus vastes et qui deviennent indirectes,
27 mais qui sont néanmoins très importantes, comme l'a expliqué mon
28 collègue monsieur Delorme, avec l'analyse des multiplicateurs

1 pour, par exemple, les emplois générés ou perdus par millions de
2 dollars de production perdus ou ajoutés selon ce qui peut
3 arriver au pays avec le pont Ambassador.

4 **DR. VANESSA MacDONNELL:** Monsieur Ouellet (sic),
5 est-ce que vous voulez ajouter quelque chose?

6 **M. FRANÇOIS DELORME:** Moi, c'est monsieur Delorme,
7 mais...

8 **DR. VANESSA MacDONNELL:** Ah, pardon! Pardon.

9 **M. FRANÇOIS DELORME:** C'est parfait. C'est
10 parfait.

11 Mais simplement pour dire que, quand on compte et
12 on résume en dollars ce que vient d'expliquer de façon très
13 pédagogique madame Ouellet, c'est autour de 150 à 400 millions
14 par jour que s'évaluaient les couts des perturbations sur le
15 pont Ambassador. Donc, on voit que c'est extrêmement important
16 en termes de conséquences économiques du côté canadien.

17 Alors, merci beaucoup, Madame MacDonnell.

18 **DR. VANESSA MacDONNELL:** Merci.

19 Professor Quigley, I see that your hand is up.
20 Would you like to add something here?

21 **DR. KEVIN QUIGLEY:** Sure. I'll just add a couple
22 of terms I think that are useful in terms of thinking about risk
23 problems that can maybe complicate or simplify things for us a
24 little bit.

25 I think one is we often talk about resilience in
26 this field. The term gets used a lot. I feel like it's
27 probably losing a little bit of traction just because it gets
28 used all the time to describe a whole bunch of different things,

1 and I think it has many, many definitions. But usually, when we
2 talk about resilience, we're talking about some sort of adaptive
3 capacity or flexibility or some capacity to bounce back after a
4 failure. That's really important, the capacity to bounce back,
5 either through some sort of technical means or organic means.

6 But I'm not really sure that fully satisfies the
7 discussion today, so there are a couple other terms that I think
8 are worth thinking about.

9 One is the concept of redundancy, so when we're
10 thinking about managing risk, the question is, do we have
11 redundant systems in place. So we might think about multiple
12 bridges rather than one bridge, so if we're thinking that --
13 when we think about redundant systems, it's the concept of
14 having another system in place that can help us to achieve the
15 same goal if the first system fails.

16 Now, that's an expensive way to manage risk, but
17 nevertheless, that can be important if you have a critical
18 system in place, so do we have some redundancy in place that can
19 manage to step in, let's say, if the first system fails.

20 And the second concept is the concept of
21 robustness in our infrastructure. And so when we're thinking
22 about robustness, and I'm referring particularly to the
23 International Risk Governance Council framework, when they talk
24 about robustness, they're talking about systems for which there
25 isn't necessarily redundancy, for which there isn't necessarily
26 resilience. And therefore, we have to make a special effort to
27 protect that infrastructure or to make that infrastructure
28 strong because if it fails, there will be massive consequences,

1 cascading effects to the failure.

2 So I think this concept of redundancy and
3 robustness can be helpful for us today.

4 **DR. VANESSA MacDONNELL:** Great.

5 I might come back to Professor Chandra to ask you
6 just a bit about how these concepts are relevant in the context
7 of the trucking industry and in relation to the Ambassador
8 Bridge and the situation in Ontario generally.

9 **DR. AMBARISH CHANDRA:** Yeah. I think as
10 Professor Quigley said, these are all concepts that I think an
11 efficient system would exhibit or features that a good system
12 would exhibit, but in the case of trucking, I'd say that
13 redundancy is actually something that's lacking and, again,
14 redundancy in the sense, as Professor Quigley said, of a
15 component that isn't critical on its own but that can function
16 in the case of failure of another component.

17 But if you think about trucking, cross-border
18 trucking and the fact that we're so reliant on these bridges in
19 southern Ontario, there's actually -- if one of these bridges
20 fails and, you know, we saw a six-day failure or a blockade in
21 February of this year, but there could be others kinds of
22 failure. There could be infrastructure failure, there could be
23 earthquakes, natural disasters, terrorist attacks and so on.

24 If one of these bridges fails, the next best
25 alternative, really, isn't a very good substitute. When the
26 Ambassador Bridge was blockaded, some trucks were diverted to
27 the Bluewater Bridge a couple of hours north, but that's time
28 consuming, it's costly, plus there's -- it's -- you know, for

1 technical reasons, paperwork has already been filed, it's not
2 easy to just divert traffic or, for that matter, all the way
3 around Lake Erie to the Peace Bridge between Buffalo and Ontario
4 on the eastern side.

5 By contrast, the infrastructure we have over
6 roadways does exhibit redundancy in a more robust way so, for
7 example, if you think about all of the -- there's about 107
8 ports of entry in the land border between Canada and the United
9 States. And for most of the border, if one of these road
10 crossings is blocked or blockaded or just not available, traffic
11 can be diverted fairly easily to nearby border crossing. That's
12 not true in the case of the bridges, which is another concern
13 because, you know, we've concentrated so much traffic into this
14 one small area and there's really no redundancy built into the
15 system so when something goes wrong, as it did in February,
16 there's really no good solution.

17 **DR. VANESSA MacDONNELL:** Right. Okay. Thank
18 you.

19 So we're going to move now into what I might call
20 the kind of policy side of our discussion where we're going to
21 go a little bit deeper on the tools that currently exist to
22 protect Canada's critical infrastructure, trade corridors and
23 the flow of essential goods and services, but also to sort of
24 examine those existing tools with a critical eye and to ask
25 whether there are governance gaps and challenges that need to be
26 addressed.

27 So I think I'll start with you, Professor Boyle.
28 Do you want to talk a little bit about the existing tools that

1 are in place?

2 **DR. PHIL BOYLE:** Yeah, thank you.

3 Maybe the first thing to say is that the *Criminal*
4 *Code* makes it an offence to detonate an explosive device in
5 public infrastructure, so that is a crime defined in law.
6 Beyond that, I think it's fair to say that responsibility and
7 authority for critical infrastructure protection or security or
8 resilience is diffuse, at best.

9 And by that, I mean I'm not aware of a single
10 legislated point of authority or responsibility for critical
11 infrastructure in all its permutations. Rather, it seems that
12 overall responsibility for critical infrastructure is implicit
13 to the statutory responsibilities of the lead federal
14 departments that lead the 10 different infrastructure sectors as
15 well as the residual emergency management responsibilities of
16 the federal government.

17 Most of those responsibilities are shared with
18 provincial and territorial governments as well, so on the
19 government side, responsibility for critical infrastructure is a
20 shared enterprise between federal, provincial and territorial
21 governments.

22 Then we have to acknowledge that most critical
23 infrastructure is privately owned and there's different numbers
24 that are pegged to this, 80 percent, 85 percent, 90 percent.
25 Fair to say a vast majority of critical infrastructure is
26 privately owned, so that means responsibility for critical
27 infrastructure is shared not only vertically amongst different
28 levels of government, but horizontally with private sector

1 owners and operators of critical infrastructure.

2 So on the question of who's in charge, then, of
3 critical infrastructure, the answer is, it depends. It depends
4 on the statutory and jurisdictional context in which an
5 accident, a crisis, in which something happens or, to put it
6 roughly, what happened and what was affected will determine who
7 is responsible after the fact.

8 In the early 2000s, the federal government was
9 prompted to take more of a proactive role to try to coordinate
10 these various government and private sector actors towards a
11 common aim of enhancing Canada's critical infrastructure
12 resilience.

13 Public Safety Canada is currently responsible for
14 that role, and the main policy framework or instrument for
15 making that happen is the National Strategy for Critical
16 Infrastructure, which was adopted in 2009.

17 My understanding is that Public Safety Canada
18 doesn't have any distinct powers to instruct or compel other
19 levels of government or private sector owner/operators to
20 undertake specific CI related obligations within the National
21 Strategy.

22 So one way to -- that his might change would be
23 to empower Public Safety Canada to be able to mandate minimum
24 service requirements or standards that could be tailored for
25 particular sectors, and think this might work in sectors where
26 there's a small number of fairly powerful companies, such as
27 communications or energy.

28 Another limitation of the National Strategy is

1 that as it was formulated in 2009, it does not include
2 Indigenous groups or municipalities as stakeholders as they are
3 defined in the National Strategy. The National Strategy is a
4 policy framework that enables federal, provincial, and
5 territorial governments to work together with the private
6 sector. Indigenous groups and municipalities are not included
7 in that framework.

8 So another broad, you know, high level limitation
9 to our governing strategies for critical infrastructure in
10 Canada is this omission, and one way that could be improved
11 going forward is to include municipalities and Indigenous groups
12 as stakeholders under the National Strategy. And actually, I
13 know this is a known issue for Public Safety Canada, and it was
14 identified in a recent review of the National Strategy for
15 critical infrastructure by Public Safety Canada. So this is
16 already very much on their radar.

17 It's also worth noting some newer developments in
18 the field of critical infrastructure protection that have
19 happened over the last couple of years. In the summer of this
20 year, the Province of Ontario joined Alberta and Manitoba as
21 provinces that have introduced provincial legislation that
22 create punishable offences, punishable by fines or by jail time,
23 having to do with interfering with critical or essential
24 infrastructure. So for the record, this legislation is in
25 Alberta, the *Critical Infrastructure Defence Act* of 2020; in
26 Manitoba, the *Protection of Critical Infrastructure Act, 2001*;
27 and in Ontario, the *Keeping Ontario Open for Business Act, 2002*.

28 The details of these provincial level laws are

1 different, they define critical infrastructure in slightly
2 different ways or they might refer to essential rather than
3 critical infrastructure, but they all make it an offence to
4 interfere, either to enter or to interfere with the operations
5 of critical infrastructure, as they are designated in law.

6 And I think there's reasonable concerns here
7 about the extent to which these provincial level initiatives
8 might encroach on freedoms to assembly and the freedom to
9 protest in Canada, which is an issue that I'd be happy to return
10 to later in our discussion.

11 **DR. VANESSA MacDONNELL:** Thank you,
12 Professor Boyle. So you've introduced two themes here that
13 we're going to take up in a little bit more detail, and the
14 first is the sort of multi-level governance issues or the
15 federalism challenges that are associated with protecting
16 critical infrastructure. And I know that there is a separate
17 discussion, separate panel which is going to be devoted to some
18 of the federalism issues, but we will expand on those a bit
19 today. And the second issue is the public/private divide and
20 the fact that a great deal of critical infrastructure is
21 actually in private hands.

22 And in fact, in the discussion that we were
23 having leading up to this panel, I think one of the things that
24 was suggested in the discussion was that sometimes when it comes
25 to, you know, a single piece of infrastructure there may be
26 aspects of that infrastructure that are public and aspects which
27 are private. So sometimes the sort of ownership of the
28 infrastructure is complicated, or once you layer on the

1 regulation there is sort of a complex picture of public and
2 private.

3 So I'd like to next go to Professor Quigley, and
4 I'm hoping that you might elaborate a little bit on the
5 significance of the fact that so much critical infrastructure is
6 in private hands.

7 **DR. KEVIN QUIGLEY:** Sure. So I would like to
8 maybe unpack a little bit of the complexity that Professor Boyle
9 has articulated about on the sort of owner/operator relationship
10 of critical infrastructure.

11 So as noted, there's lots of private sector
12 ownership, and the number of 70, 80, 90 percent gets kicked
13 around, as Professor Boyle suggested. I'm not really sure how
14 you would measure that, but the number gets used. It's
15 certainly said frequently that the Federal Government does not
16 much own much of the critical infrastructure. Most of it in
17 government hands is with the province or municipalities, but not
18 actually a lot with the Federal Government.

19 What we can say, however, is that telecoms, power
20 supply, and banking, which are often referred to as the iron
21 triangle of critical infrastructure, for those inside the club,
22 these are largely privately owned. Sometimes infrastructure is
23 publicly owned but privately managed, like airports.

24 In short, the private sector plays a significant
25 role in most of the critical assets on which we rely every day.
26 I think this is actually a very important theme when we return
27 to Professor Boyle's or we recall Professor Boyle's definition
28 of what critical infrastructure is, these are assets we rely on

1 entirely on as a country every day. They are largely in private
2 hands.

3 Public Safety Canada often plays a coordination
4 role between these owners and operators, and absolutely it has
5 taken on -- it took on new interest in the sort of post 9/11
6 world and the post Y2K phenomenon, as Professor Boyle has
7 mentioned. Public Safety Canada encourages relationship-
8 building and information-sharing, but it is a fairly light touch
9 regulation.

10 There are a number of reasons why private
11 companies, and public too, it's fair to say, but private
12 companies don't wish to disclose information about
13 vulnerabilities in their infrastructure. At a minimum, their
14 share value would be at risk if they disclosed the
15 vulnerabilities that they were carrying.

16 On another point, if you consider the list of 10
17 critical sectors that Professor Boyle articulated at the outset,
18 they are very different in terms of governance. There's a
19 number of factors that work against a standardised approach.
20 Some are regulated by the Federal Government, where some are
21 regulated by the provincial and municipal government. Some are
22 monopolies, some are oligopolies. Those two in particular have
23 particular concerns from a risk of point of view, we have to
24 make sure they don't fail because they're monopoly service
25 providing a critical service, so there's usually great concern
26 for government to work with and protect those monopolies and
27 oligopolies. Other sectors, though, are highly competitive
28 markets for which individual failures would not be that

1 consequential at a macro level.

2 So I'll just maybe underscore this point about
3 trucking, and may Professor Chandra has a follow-on comment to
4 make about this. But it seems to me when we think about
5 trucking, there are so many service providers. I mean, the
6 bridge itself is a single point of failure, looking at the
7 Ambassador Bridge, about which we have to be concerned, and I
8 know there has been concern about, you know, dropping the number
9 of truckers, et cetera. But nevertheless, there are a number of
10 trucks and some number of trucks could fail and it wouldn't
11 really be that consequential at a macro level, unlike say a bank
12 failing, which would be very, very consequential. So the way we
13 manage the risks in the sector can be quite different because
14 the characteristics of the sector are very, very different.

15 I think I'll also just mention that some failures
16 can impact individual communities. So again, going back to
17 something like Walkerton water contamination, obviously a huge
18 impact on Walkerton. The failure of a particular hospital can
19 have a consequence for a rural community. But again, these are
20 not issues that will necessarily raise questions about national
21 stability, whereas a bank or an airline failing could actually
22 have a much greater impact nationally in terms of national
23 stability.

24 So those are some of the characteristics I would
25 say that make the space very complicated in terms of having some
26 standardised approach. I think we've defaulted into, as I've
27 mentioned, and I think Professor Boyle has noted, a kind of
28 coordination role that Public Safety Canada plays, but perhaps

1 an absence of strong standards.

2 I'll pause there.

3 **DR. VANESSA MacDONNELL:** Thank you,
4 Professor Quigley. I think this is a bit of a theme of these
5 policy discussions that it's complicated, and I think you very
6 usefully started to deconstruct the private sector a bit for us
7 and to point out that, you know, the private sector contains a
8 number of different entities, including, you know, from the
9 large telecom company, for example, to the small trucking
10 company or perhaps even the individual truck driver. I think
11 that takes us back quite naturally, then, to the question -- the
12 specific questions around the Ambassador Bridge. And I'm
13 wondering, Professor Chandra, if you want to talk a bit about
14 perhaps the regulatory challenges that the kind of fractured
15 nature of the trucking industry poses. But then I guess the
16 flip side that Professor Quigley has also identified is that
17 fractured nature of the industry might also decrease the risk
18 that in an emergency there's going to be a widescale disruption
19 in the industry.

20 **DR. AMBARISH CHANDRA:** Yeah, I'm happy to.

21 It's actually useful to think of some examples,
22 so where Professors Boyle and Quigley mentioned the 70 to 90
23 percent figure for private infrastructure, private ownership of
24 infrastructure, in some sectors it's 100 percent. So in
25 pipelines and railroads, both the operators and the
26 infrastructure itself is entirely privately held. And another
27 example that seems small but is actually very important is
28 network cables. So the data that we transmit to and from other

1 countries; basically, intercontinental transmission to Europe
2 and to Asia, all of that happens over undersea network cables.
3 And for the most part, in fact -- well, Canada mostly piggybacks
4 off of United States, in terms of their network of cables, but
5 those cables are entirely privately owned. They're owned by
6 technology giants; governments don't own them. And so we're
7 entirely dependent on the private sector in those cases.

8 But coming back to trucking, actually in the case
9 of trucking, a lot of the infrastructure is not privately owned,
10 it's publicly owned, whether it's federal or provincial, but,
11 you know, the roadways and highways and most of the bridges that
12 connect US-Canada are, in fact, publicly owned. The one glaring
13 example is actually the Ambassador Bridge itself.

14 So the biggest bridge by far is actually in
15 private hands, and has been, you know, for decades. In fact, it
16 was -- it's in family hands, belonging -- owned by a family, a
17 Detroit-based family, and the patriarch of that family, who
18 passed away a couple of years ago, was particularly, I would
19 say, antagonistic towards Canada. Frequently blocking Canada,
20 Canada's government's attempts to build rival bridges; taking
21 Canada's government to court on multiple occasions, and
22 essentially leveraging his position and the influence and the
23 importance of his bridge to demand and extract concessions from
24 the Government of Michigan, the Government of Canada, and so on.

25 So that's a situation where, you know, private
26 ownership is actually very striking, but that's not the case for
27 the other bridges.

28 And so that's one example I'd give about private

1 ownership, and across different sectors, but the other thing
2 that's striking about trucking is that, again, the actual
3 individual players are also private, so the individual truck
4 drivers, the trucks they own or they drive. There's about
5 160,000 truck drivers that ferry goods back and forth between
6 Canada and the US, mostly based in Canada but about a quarter
7 are based in the US.

8 They're mostly -- some of them are loosely
9 affiliated with large organizations but for the most part,
10 they're independent contractors; they choose their hours, they
11 choose which jobs to take on. And, you know, for the most part,
12 the system actually works remarkably well; we don't even have to
13 think about it. But -- and as Professor Quigley mentioned, if
14 -- you know, a failure for a small part of that network, it
15 doesn't really matter. You know, by contrast, airlines and
16 railroads are very concentrated; there's just six or seven big
17 commercial players. So they're also easier to regulate; the
18 government can require them to, you know, have certain
19 standards, which is harder to do in the case of trucking because
20 there's just so many, they're so diffuse, and the entire network
21 is so decentralized. It's more difficult, much more challenging
22 to regulate or require the trucking industry to do certain
23 things.

24 Like I said, it's often a feature that in the
25 industry actually works very well the vast majority of the time,
26 but sometimes it comes with costs.

27 **DR. VANESSA MacDONNELL:** Okay, thank you.

28 I'm wondering if any of the other panel members

1 would like to offer a comment before I see Madame Ouellet.

2 **Mme FLORENCE OUELLET:** Oui. Merci.

3 En fait, j'amènerais peut-être une petite nuance
4 du point de vue de la résilience puis la robustesse des
5 corridors commerciaux en ce qui a trait au camionnage, comme les
6 professeurs Chandra et Quigley l'expliquaient. Une particularité
7 qu'il faut noter à propos du commerce entre le Canada et les
8 États-Unis, c'est, entre autres, les chaînes d'approvisionnement
9 transfrontalières intégrées. Ça, ça veut dire que, par exemple,
10 un produit comme une automobile va traverser en totalité ou en
11 partie plusieurs fois la frontière avant d'être complètement
12 fabriqué. Donc, par exemple, les pièces vont arriver des États-
13 Unis, puis là y'a une partie de la voiture qui va être assemblée
14 au Canada avant de retourner aux États-Unis, et cetera, pour
15 finir par être vendue d'un des deux côtés de la frontière.

16 Donc, oui, ça, les impacts de quelques ou... du
17 camionnage qui est perturbé d'une manière ou d'une autre n'aura
18 pas l'impact immédiat de l'échec ou d'une ruée bancaire (phon.),
19 par exemple, mais ça peut quand même être le premier domino de
20 quelque chose qui finit par être assez significatif. Un exemple
21 de ça, ce serait, par exemple, les États-Unis qui remettent en
22 question la fiabilité du Canada à l'égard de certains accords
23 commerciaux.

24 Par exemple, la ministre Freeland en parlait
25 justement à la Commission récemment dans son témoignage que ça
26 s'est retrouvé sur son bureau même si, par exemple, le pont
27 Ambassador est une propriété privée, de certains partenaires
28 américains qui trouvaient que le Canada était moins fiable

1 qu'ils pensaient avant d'un point de vue commercial.

2 Aussi, peut-être que le camionnage est une partie
3 de la chaîne d'approvisionnement entre le Canada puis les États-
4 Unis qui est moins concentré; par contre, il y a certaines
5 industries, comme l'industrie manufacturière, qui sont pourtant
6 très concentrées du point de vue des fournisseurs. Donc ça, ça
7 veut dire que si, par exemple, il y a un fournisseur aux États-
8 Unis qui ne peut plus accomplir son travail pour un partenaire
9 canadien pour x raisons, bien, il n'y a pas vraiment
10 d'alternatives ou les alternatives qu'il y a sont pas
11 fantastiques.

12 Donc, je crois que c'est une nuance à laquelle il
13 faut penser quand on envisage les infrastructures puis les
14 corridors commerciaux comme le pont Ambassador et le
15 camionnage.

16 **DR. VANESSA MacDONNELL:** Merci.

17 Monsieur Delorme?

18 **M. FRANÇOIS DELORME:** [...]

19 **DR. VANESSA MacDONNELL:** On ne vous entend pas.
20 Pardon.

21 **M. FRANÇOIS DELORME:** C'est parfait. Je m'excuse.

22 Le point que vient de faire madame Ouellet est
23 extrêmement important. Je prendrais l'image d'un Lego ou d'une
24 construction en Lego, oui, peut-être qu'on n'a pas un gros
25 morceau de Lego comme un avion ou une banque, mais chaque
26 morceau de Lego dans ce qui a trait au transport ou aux chaînes
27 d'approvisionnement intégrées joue un rôle critique pour la
28 solidité de l'ensemble des Lego. Donc, c'est... même si le petit

1 Lego n'est pas important, il est tellement important dans la
2 chaîne et dans la séquence de la chaîne de production que la
3 défaillance d'un petit morceau pourrait causer des... avoir des
4 conséquences extrêmement importantes même si le morceau comme
5 tel est très petit.

6 **DR. VANESSA MacDONNELL:** Merci.

7 So Professor Boyle has given us a sense of the
8 existing tools that Canada has to protect its critical
9 infrastructure, and we've also talked a bit about the challenges
10 that exist or some of the gaps in governance of critical
11 infrastructure and trade corridors. Now we're going to move to
12 perhaps another tension that exists, or another challenge, which
13 is the protection of critical infrastructure in circumstances or
14 in ways that are also respectful of individual rights and
15 freedoms.

16 And so Professor Boyle, I'm wondering; you
17 touched on the possibility of a tension between robust
18 regulation of critical infrastructure and freedom of expression,
19 freedom of peaceful assembly. So I'm hoping now that maybe you
20 can flesh that out a little bit.

21 **DR. PHIL BOYLE:** Yeah, thank you.

22 And I'm happy to have this opportunity to weigh
23 in on this question in this venue.

24 My concern at this point is that the events of
25 February of this year, and the subsequent invocation of the
26 *Emergencies Act* will intensify government concern around the
27 problem of critical infrastructure protection, which is a valid
28 concern. But it will intensify concern in such a way that will

1 lead to enhanced police powers that will pose a threat to
2 freedom of assembly and protest.

3 The protection of critical infrastructure is
4 already part of a justification to strategically suppress
5 protest groups in Canada through pre-emptive intelligence
6 gathering and the strategic incapacitation of protests on the
7 ground.

8 Indeed, this is the default experience of many
9 Indigenous protest groups and environmental movements in Canada
10 who challenge traditional -- or excuse me; who challenge
11 infrastructure projects on traditional Indigenous lands.

12 And I think it's entirely reasonable to think
13 that the new provincial offences related to interfering with
14 critical infrastructure that I mentioned a few minutes ago, will
15 become part of this toolkit, insofar as they provide a legal
16 authorization to stifle and police protests in the vicinity of
17 designated critical infrastructure, just like how the *Public*
18 *Works Protections Act* was used during the G20 in 2010 to effect
19 arrests around the protected Convention Centre in downtown
20 Toronto.

21 Now we heard yesterday at one of the round tables
22 that the freedom of assembly, unlike the freedom of expression -
23 - I hope I'm getting this right -- is intrinsically tied to
24 space and occupying space, by being present in space and taking
25 up space. And I think these provincial laws, if they are
26 broadly construed, might make it practically impossible to
27 occupy space in that very important way in any meaningful or
28 visible way in dense urban centres where multiple protected

1 zones might overlap and where arrests might be authorized by the
2 ambiguous offence of interfering with designated critical
3 infrastructure.

4 So I think there's a very real concern in this
5 moment, in this historical moment that the events of February
6 will lead to the introduction of new or revitalized or enhanced
7 police powers to protect critical infrastructure that will have
8 a dampening effect on freedom of assembly, which as we heard
9 yesterday, is intrinsically tied to taking up space, occupying
10 space. This concern I think is already playing out at the
11 provincial level, and so I'm concerned that the events of
12 February of this year might refocus federal energies and federal
13 attention on protecting critical infrastructure in a way that
14 was much like how the FLQ crisis focussed federal attention and
15 energy on what was known at that time as vital points in Canada.

16 So one of the -- or on the question of the
17 tension between critical infrastructure protection and freedom
18 of assembly, my hope is that one outcome of this Commission
19 might be to amplify to all audiences, all levels of government
20 that new measures to protect critical infrastructure cannot be
21 broad and sweeping, and cannot come at the expense of freedom of
22 assembly and protest in Canada. Thank you.

23 **DR. VANESSA MacDONNELL:** Thank you. So I think
24 you're echoing some of the discussion yesterday in underlining
25 the importance of the right to peaceful assembly in a democratic
26 society and the importance of safeguarding that right. And I
27 think as we discussed yesterday, you know, one of the challenges
28 that exists is, of course, how we ensure robust protection of

1 these rights while also addressing situations where the exercise
2 of those rights runs up against other compelling state
3 objectives or the rights of others. And so thank you for
4 introducing the way that critical infrastructure is related in
5 important ways to this conversation.

6 Professor Quigley, on the theme of it's
7 complicated, I'm wondering if you might weigh in here a little
8 bit to talk about how different types of critical infrastructure
9 might present sort of different challenges in terms of
10 regulating in ways that are protecting of *Charter* rights and,
11 you know, free expression and the right to peaceful assembly in
12 particular.

13 **DR. KEVIN QUIGLEY:** Sure, so I think there are a
14 couple of ways I would think about this. One is the category of
15 infrastructure itself and then I'd like to talk separately about
16 how these risks are socially constructed, which is a little
17 maybe closer to my research area. I think that on the question
18 of the category of risk itself, it's worth remembering that
19 government is a category on that list of 10. And so if we were
20 to identify government as a place that had to be protected and
21 couldn't be a target of protest, then that would mean, say, for
22 example, no more protests in front of the Ontario legislature.
23 And I can tell you my whole life I've seen protests in front of
24 the Ontario legislature for a number of different reasons, and I
25 can't imagine us saying that you can't protest there anymore.
26 So there would be one element of almost the absurd.

27 I will say though that there might -- where I
28 think it might get a little trickier, and I've mentioned this to

1 Professor Boyle, if you think about something like nuclear
2 technology that's been a kind of a flashpoint for protests for
3 decades, there may be some genuine concerns about safety and
4 security in protesting around that environment, so there's
5 tension there, I think. Obviously, it's an area where there
6 have been a lot of concerns though about the use of technology,
7 nuclear technology and protests. You also have some disasters
8 and crises. So I think there's -- that tension has to be
9 managed there I think with some of these areas where there could
10 be some serious concerns about safety.

11 But I want to just shift a little and talk about
12 social construction of risk and how threats and events happen in
13 a particular context, that the concerns are amplified and shaped
14 in the moment and will influence the tools that are invoked.

15 So natural disasters are frequently referred to
16 as acts of God. Traditionally, they're seen as nobody's fault,
17 although I think that's changing a bit more with a lot of the
18 climate discussion. But traditionally, they're seen as nobody's
19 fault, and that makes it harder to hold people to account. So,
20 for example, decisions to build infrastructure in flood-prone
21 areas, you know, who made those decisions, when did they make
22 them, why did they make them, and can we hold those people to
23 account afterwards when there's some flooding. That's harder if
24 we think of acts of God as nobody's fault. So where we build
25 infrastructure can put people in harm's way in natural disasters
26 and we need to think about that.

27 In contrast with industrial failures like bridge
28 collapses and train derailments, accountability can be actually

1 rather narrow and ruthless, and I'm talking about the sort of
2 popular media context. It can often neglect the broader context
3 in which risks are managed in industrial settings. So, for
4 example, not just the owner of the infrastructure, but also the
5 inspections that occurred, the training culture that exists, the
6 safety culture that exists, and I would point to Lac-Mégantic as
7 providing some examples on this front that the accountability
8 was rather narrow, and in fact, there were a number of different
9 organizations that shared some responsibility for the rail
10 derailment -- for the train derailment, pardon me, on Lac-
11 Mégantic.

12 So in the particular context of the protests in
13 February, popular media plays an important role in amplifying
14 and also in attenuating risks. So here I'm referring to
15 mainstream media, not the discussion we had earlier today that
16 focussed largely on social media, although mainstream media have
17 social media outlets, of course. So between January and March
18 2022, according to our research, there have been nearly 600
19 articles published across the Toronto Star, the National Post
20 and the CBC News on the Freedom Convoy. In contrast, cyber
21 threats normally get very little coverage, partly due to the
22 complexity of the issue, partly because companies don't want to
23 disclose their cyber failures when they occur, and partly due to
24 the absence of a central figure in the narrative. We often
25 don't know who is responsible for cyber attacks. There is no
26 "bad guy" to frame the story. So while these events can be
27 highly consequential, they don't get nearly as much attention
28 and certainly not as much media attention.

1 I'll just put the little caveat, that if you can
2 get a bad guy or some sort of famous celebrity associated with
3 the technology, you get a lot more media coverage. But if it's
4 a hack for which no one knows who's responsible, it gets a lot
5 less attention, but it may be very, very consequential. And
6 then you contrast that with a protest where you had 600 articles
7 in 3 main media outlets in Canada over 1 month. That's a lot of
8 media attention.

9 I'll also point out there's ambiguity in the
10 polling data and public sentiment that occurred in February. A
11 February poll by Angus Reid indicated that 70 percent of
12 Canadians opposed the protesters approach and behaviour. A
13 separate poll reported by the Economist noted that 46 percent of
14 Canadians believed the protesters frustration was legitimate and
15 worthy of some sympathy. So you have this sort of highly fluid
16 popular context where you're not -- people seem to be opposed to
17 the method but sympathetic to the cause, so it's maybe a little
18 bit difficult to interpret where popular opinion landed. This,
19 of course, matters to politicians and policy makers where public
20 opinion stands at a particular moment in time in the middle of
21 these crises.

22 And finally, there's the capacity -- and I want
23 to go back to this notion of private ownership and highly
24 concentrated power. There's the capacity of powerful actors in
25 society to shape views. Larger, better funded companies have
26 stronger lobbying capacity, and typically have better access to
27 decision-makers. They are better able to shape and influence
28 the manner in which governments understand the problem.

1 So comparing major banks' or airlines' ability to
2 influence decision-makers, to the individual truckers that
3 Professor Chandra referred to, for example, would suggest that
4 there -- that some have better access and influence than others.
5 I note that the last week, that Minister Freeland referred it --
6 to the Commission, she referred to discussions she had with the
7 CEOs of banks during the protests.

8 This is not unusual in these kinds of events.
9 I've studied many of these events before, and it's not unusual
10 for CEOs to engage with Ministers in different countries, during
11 these crises. I'm not suggesting it's wrong, but it seems to be
12 the case that powerful interests have ready access to
13 governments during these events. Less organized, less well-
14 funded organizations have less access. I'll pause there.

15 **DR. VANESSA MacDONNELL:** Thank you, Professor
16 Quigley.

17 I'm now going to bring Madame Ouellet into the
18 conversation to help us understand what is, perhaps, the sort of
19 other side of the coin. So we've talked about the importance of
20 robust protection of rights; rights to protest, rights of free
21 expression, and now I'd like to take us to a discussion of the
22 types of public interest that might justify the limitation on
23 rights, and how we might evaluate those public purposes.

24 And where I'm going here, Madame Ouellet, is that
25 earlier you introduced this concept of supply chains, or the
26 kind of -- the complex interrelationship between aspects of the
27 supply chain. And this suggests that a disruption to one part
28 of the supply chain can cause this chain reaction sort of across

1 the supply chain, in terms of disruption and the like.

2 So I'm just wondering if you might be able to
3 talk a little bit about, you know, what those effects can be,
4 where you have a piece of critical infrastructure that is shut
5 down, for example, by a public protest.

6 **Mme FLORENCE OUELLET:** Oui, merci.

7 Donc, d'un côté, oui, certainement, il faut
8 absolument considérer, comme l'expliquaient mes collègues, la
9 liberté d'expression, la liberté d'assemblée, tout ce dont on
10 vient de parler, mais aussi on peut considérer d'un autre côté
11 que ces manifestations-là, comme on a vu en février dernier,
12 peuvent enfreindre ou empiéter sur certains droits et libertés
13 de gens qui, en théorie, n'ont pas grand-chose à voir dans le
14 conflit entre les manifestants et ce contre quoi ils
15 manifestent.

16 Par exemple, dans le cas des chaînes
17 d'approvisionnement, on peut penser aux gens qui perdent du
18 travail à cause du blocage de certains corridors commerciaux
19 comme le pont Ambassador. Il faut un moyen de quantifier ça.
20 Comment on arrive à le faire, c'est avec les multiplicateurs.
21 Donc, le nombre d'emplois dans une industrie dépend en partie de
22 la demande pour les produits de cette industrie-là. Par exemple,
23 si l'industrie automobile reçoit un million de dollars de plus
24 de demandes, ben, l'industrie automobile va devoir engager x
25 nombre d'employés de plus ou créer l'équivalent de x emplois à
26 temps plein de plus pour répondre à cette demande-là.

27 Inversement, si, par exemple, l'industrie
28 automobile perd un million de dollars de production parce que,

1 par exemple, les pièces ne peuvent pas se rendre à l'usine où
2 les voitures sont fabriquées, bien, c'est certains emplois ou
3 l'équivalent d'emplois à temps plein qui se retrouvent détruits
4 de façon temporaire ou permanente. Ces gens-là qui perdent
5 temporairement ou de façon permanente leur emploi, c'est
6 complètement hors de leur contrôle, puis ils se retrouvent comme
7 dommage collatéral, en fait, d'un conflit avec lequel en réalité
8 ils n'ont rien à voir. Il serait intéressant, remarquez, de
9 colliger davantage de données sur les impacts réels au niveau
10 des emplois de la manifestation sur le pont Ambassador.

11 Autre chose qu'on peut considérer aussi, c'est
12 l'occupation du centre-ville d'Ottawa par le convoi des
13 camionneurs. Demandez à n'importe qui qui voulait simplement se
14 rendre au travail pendant ces semaines-là et qui avait à passer
15 par le centre-ville d'Ottawa, ils n'ont pas des beaux souvenirs,
16 puis à quelque part, ça enfreint aussi leurs libertés puis leurs
17 droits parce que, en même temps, c'était pas... c'était pas un
18 après-midi que ça se passait puis après les camionneurs s'en
19 allaient, ils sont restés là pendant... pendant quand même
20 longtemps. Donc, y'a les droits et libertés de ces personnes
21 aussi à considérer puis c'est là que ça devient quand même un
22 dilemme là, je vous avoue.

23 **DR. VANESSA MacDONNELL:** Oui. Merci.

24 I mean, I can't help but just sort of jump in
25 here, in my own capacity as a constitutional law scholar, to
26 say, you know, I think one of the challenges in all of this is
27 identifying whether these -- the disruption of the type that
28 you're talking about, whether this -- these are sort of economic

1 interests alone that are being disrupted, or whether there's
2 more to this than just economic considerations. And that's, of
3 course, relevant because under section 1 of the *Charter*, under
4 our constitutional analysis, the courts have been very reluctant
5 to conclude that economic considerations alone are sufficient to
6 justify infringements on constitutional rights.

7 So my sense is, you know, one of the challenges
8 for the Commission is how we characterize the nature of the
9 disruption when it comes to the Ambassador Bridge, in
10 particular, where the -- you know, certainly economic interests
11 are very strongly at play. But there may also be considerations
12 that go beyond that.

13 All right. So ---

14 **Mme FLORENCE OUELLET:** Oui ---

15 **DR. VANESSA MacDONNELL:** Oh, pardon.

16 **Mme FLORENCE OUELLET:** Pardon.

17 **DR. VANESSA MacDONNELL:** Oui, oui, s'il vous
18 plait.

19 **Mme FLORENCE OUELLET:** Oui. Florence Ouellet.

20 Je me permettrais même d'ajouter, on se bute, peu
21 importe jusqu'où on pousse cette réflexion-là, on se bute
22 souvent à un dilemme de quels droits et libertés enfreignent les
23 droits et libertés d'autres personnes parce que, si on pense à
24 ce contre quoi le convoi de camionneurs manifestait, c'était,
25 entre autres, l'obligation d'être vaccinés contre la COVID-19
26 pour passer d'un côté à l'autre de la frontière entre le Canada
27 et les États-Unis.

28 Le fait de ne pas être vacciné a, ce qu'on

1 appelle en économie, des externalités négatives. Ça, ça veut
2 dire qu'il y a des parties des gens à l'extérieur des simples
3 personnes, qui doivent prendre leur propre décision à propos,
4 par exemple, du fait d'être vacciné ou non, qui vont vivre les
5 impacts de cette décision-là malgré eux. Un exemple qu'on
6 connaît peut-être mieux d'externalité négative, par exemple, si
7 c'est la fumée secondaire de cigarette, par exemple, si y'a
8 quelqu'un à côté de moi qui fume, puis, ben, moi, j'ai pas le
9 choix de respirer, mais c'est pas moi qui ai pris la décision de
10 respirer de la fumée de cigarette, c'est la personne à côté de
11 moi.

12 Alors, il y a toute la notion de, bon, c'est pas..
13 c'est pas la faute des gens qui vivent au centre-ville d'Ottawa
14 si ils doivent vivre les conséquences du convoi des camionneurs,
15 mais en même temps, ces gens-là manifestent contre quelque chose
16 qui a des externalités, positives ou négatives, quand même
17 significatives aussi, mais, d'un autre côté, on comprend aussi,
18 comme l'expliquait le professeur Quigley, qu'il y a des gens qui
19 pensent que la cause du convoi de camionneurs, on pouvait
20 sympathiser avec aussi.

21 Donc, c'est vraiment des questions très
22 intéressantes qui vaut la peine d'explorer davantage, selon moi.

23 **DR. VANESSA MacDONNELL:** Merci beaucoup.

24 All right. So I have a couple of other
25 questions. What I'd like to do, though, now is I want to make
26 sure we have lots of time to gather the panelists'
27 recommendations for the Commission on some of the things that
28 we've discussed today.

1 And so what I'd like to do now is turn the
2 discussion to, you know, what we need to be thinking about at a
3 policy level going forward. We've started some of that
4 discussion, but, you know, in light of the stakes, the economic
5 impacts, but also the relevance to rights, how should we be
6 thinking about critical infrastructure and trade corridors,
7 moving forward?

8 Que devons-nous retenir de cette table ronde
9 jusqu'à présent?

10 Professor Chandra, I will go to you first.

11 **DR. AMBARISH CHANDRA:** Sure. I -- one of the
12 things that I write about, so I -- obviously I feel like it's
13 important, is the question of diversifying our trade, and
14 especially the way in which we trade with the United States.
15 I've already mentioned how Ontario is the -- disproportionately
16 attracts truck traffic and trade from the United States. We --
17 you know, Ontario gets -- punches well above its weight, getting
18 63 percent of income in trucks, as opposed to just 30 percent of
19 population.

20 It's more than that, though. Virtually every
21 U.S. state, certainly every large U.S. state, the majority of
22 its exports enter Canada at Ontario. That's true even for
23 states like California, to the west, the majority of
24 California's exports to Canada come to Ontario. So we are
25 highly concentrated in a way that's a little concerning, I would
26 think, in Southern Ontario on these bridges in terms of critical
27 infrastructure.

28 And so the -- what this means is that there are

1 certainly goods and merchandise that are ultimately headed for
2 Atlantic Canada or the Prairie provinces, some of which are
3 actually passing through Southern Ontario, being sorted and then
4 routed on to the final destination, which raises the risks that
5 has, you know, obviously increased fuel costs, increased labour
6 costs, increased risk of spoilage of perishable goods enroute,
7 but there's just the risk, you know, concentrating all this risk
8 into a small geographic area. And what that means is if there
9 is catastrophic events or, you know, unforeseen events, whether
10 they're national disasters or human caused interventions, like
11 blockades or terrorist attacks, we're vulnerable to that --
12 something like that happening in Southern Ontario, which really
13 could be catastrophic for the entire country.

14 So as another example, we actually have a rival
15 to the Ambassador Bridge being built right now, the Gordie Howe
16 Bridge, which is under construction and will be operational
17 hopefully like within a couple of years, but -- and the Gordie
18 Howe Bridge is right next to the Ambassador Bridge. So in some
19 sense, it does take the pressure off our reliance on this one
20 privately owned bridge, but on the other hand it's just yet
21 another bridge, and so in some sense we're just concentrating
22 our risks even further by our reliance on the Gordie Howe
23 Bridge.

24 And so the concerns I would have would be if
25 there are, let's say, weather related or climate related
26 disruptions, you know, we already saw this year the Mississippi
27 River dried up to a large extent and was almost non-navigable
28 for large stretches, which is sort of incomprehensible to people

1 who study trade because we take for granted that goods flow up
2 and down the Mississippi and then they connect at the Great
3 Lakes to roadways and railways across North America. What would
4 happen if the Mississippi was non-navigable at some future date
5 in some future year? Or what would happen if the Great Lakes
6 keep rising, as they have been doing, and forecasts are that
7 they will continue to do year after year? If there's a risk of
8 flooding in Southern Ontario around the Great Lakes area, that's
9 going to impact all of the roadways and highways that connect to
10 these bridges and make us -- leave us especially to disruption.

11 So what I'd like to see, I'm happy to hear what
12 others have to say, but my hope would be that we have some sense
13 of whether Canada is thinking about diversification down the
14 road, so not to say that we're going to completely revamp North
15 American trade, it's just not feasible, but on the margin are
16 there small changes, certain investments, certain government
17 decisions that can push us towards a more diversified trading
18 network that leaves us less vulnerable and less concentrated on
19 the Southern Ontario region? That would be one of the things
20 that I would like to discuss further.

21 **DR. VANESSA MacDONNELL:** Can I just ask you a
22 clarification question to get maybe, you know, just a bit more
23 precise on what this might look like, as a non-expert? So you
24 said the Gordie Howe Bridge is, you know, just another bridge.
25 What are -- like what are the alternatives to more bridges? So
26 when you say at the margins could we diversify, can you maybe
27 just tell us a bit more about what the options are?

28 **DR. AMBARISH CHANDRA:** So if we're talking about

1 trade into Ontario, there is no option, you have to cross a
2 bridge to get to Ontario from the United States. Whether it's
3 the Detroit River or the Niagara River or the St. Mary's River,
4 or the St. Claire River, you have to cross a water body. The
5 alternative would be to not rely on bridges, in other words, not
6 rely on Ontario.

7 So there are plenty of land crossings on the
8 U.S./Canada Border, the Champlain/Lacolle crossing comes to
9 mind. It connects Quebec and New York State. It's a land-based
10 crossing. It doesn't need a bridge, it's a roadway. Anytime
11 there's a blockade it's far easier to clear, far cheaper to
12 maintain than a bridge.

13 That bridge or that crossing is well under
14 capacity. In fact, I would argue that Quebec, in particular, is
15 deeply underserved by our current network of truck traffic, and
16 that crossing could be easily handled many more -- especially if
17 expanded and if the right infrastructure is diverted towards it,
18 it could easily be expanded to handle, you know, the same
19 capacity as the Ambassador Bridge. The same would be true at,
20 you know, crossing out west, that Alberta has the Coutts
21 crossing, for example. So I would say our reliance on these
22 bridges that, particularly, cross into Ontario, is the problem.

23 **DR. VANESSA MacDONNELL:** Got it. Okay, thank
24 you. That's very helpful.

25 Let's continue with the folks who are in the
26 room, and then we'll go to our colleagues online.
27 Professor Boyle?

28 **DR. PHIL BOYLE:** Yeah, thank you.

1 I wanted to maybe get to some of my
2 recommendations by responding to what Mme Ouellet was saying
3 earlier about balancing rights between different groups. And
4 certainly, I understand that that's a part of what the
5 Commission is looking in to.

6 And I don't really have an answer to that when it
7 comes to what ought to be done with respect to critical
8 infrastructure and balancing the right to protest with
9 protecting critical infrastructure. You know, I do want to
10 reiterate, though, that I think the provincial legislations that
11 I've touched on a couple of times in Alberta, Manitoba, and
12 Ontario, are good examples of how not to go about introducing
13 new powers to protect critical infrastructure. I think these
14 three pieces of legislation are problematic in a couple of ways:

15 One, is that as is typical of various policy
16 reports and laws and government, you know, reports on critical
17 infrastructure, critical infrastructure is introduced in a way
18 that -- in the form of lists, right, or it says critical
19 infrastructure is bridges, airports, energy facilities, et
20 cetera, or any other location designated by a provincial
21 authority, an Attorney General, a Department of Justice,
22 something like that. So basically, critical infrastructure can
23 be whatever the government wants it to be in certain
24 circumstances and situations.

25 Then the actual offence is also quite broad,
26 which is interfering with critical infrastructure. That too, I
27 think, could mean many things.

28 I understand the need to perhaps introduce

1 enhanced protective security measures around some, you know,
2 high value targets. In that case, it would be nice if those
3 locations were explicitly defined in law, the actual offences
4 were explicitly defined in law, what can and cannot be done in
5 this area, defined quite narrowly, perhaps publicly posted in
6 the same way that we do with airports, or, as Professor Quigley
7 said earlier, nuclear power stations. Like that I can certainly
8 understand. But I think these very broad understandings of
9 critical infrastructure and offences related to critical
10 infrastructure make those offences prone to abuse, prone to
11 selective and strategic enforcement in certain situations where
12 it's convenient to invoke them.

13 And so I don't know what should be done,
14 necessarily, but I know that I don't think that's a good way of
15 what ought to be done, yet that's what's happening at the
16 provincial level.

17 **DR. VANESSA MacDONNELL:** Thank you. One of the
18 things that we talked about yesterday is sometimes we tend to
19 think about the right to assemble or the right to peaceful
20 assembly in binary terms. So, you know, either you are fully
21 allowed to protest without condition or it you get sort of shut
22 down, and the importance of thinking about that in-between,
23 which allows, you know, substantial realisation of the right or
24 recognising the existence of compelling interest.

25 And to me, your comments are very much in this
26 vein, you know, the need to be very careful about thinking about
27 how these rights are restricted, and particularly, you know, the
28 importance of thinking carefully about, you know, ex anti,

1 significant ex anti-restrictions on protest, which I think in
2 the context of critical infrastructure is maybe something that's
3 on the table to a degree that it's not in other contexts. And
4 so I think you're raising something that's very helpful that
5 wasn't part, perhaps, of our discussion yesterday.

6 **DR. PHIL BOYLE:** I have a couple more things.

7 **DR. VANESSA MacDONNELL:** Please. Yeah.

8 **DR. PHIL BOYLE:** Yeah.

9 I just wanted to go back to some other thoughts
10 about the National Strategy, and particularly with respect to
11 the issue of stakeholders. And again, Public Safety Canada is
12 aware that this is a limitation of the National Strategy. But
13 municipalities and Indigenous groups really need to be brought
14 into that conversation in a more structural way. I think
15 they're consulted on a sort of ad hoc basis, but they're not
16 defined in the strategy as sitting at the table.

17 And they should be in there for different
18 reasons. For municipalities, I think it was Professor Quigley
19 mentioned earlier, that -- so first of all a very small fraction
20 of our critical infrastructure is publicly owned. Very little
21 of that is owned by the federal government. A little bit more
22 of that is owned by provincial governments, but the vast
23 majority of it is owned by municipal governance, and at least
24 that's according to the Federation of Canadian Municipalities,
25 which estimates that about 80 percent of public infrastructure
26 is urban, municipally owned or regulated infrastructure. So
27 they really need to be at the table as well for those
28 discussions.

1 The issue is the opposite for Indigenous groups
2 and it's the lack of infrastructure, so they need to be brought
3 into that conversation as well, which I think touches on the
4 announcement yesterday, and I hope I got the details right,
5 about Justin Trudeau making a police -- Indigenous police forces
6 essential infrastructure in Canada on the horizon. So that is a
7 positive move in that direction.

8 **DR. VANESSA MacDONNELL:** Thank you. This is
9 really helpful. One of the questions that has come to us
10 through this process is actually exactly what you've just
11 mentioned, which is, you know, should municipalities, should
12 Indigenous governments play a greater role, particularly since
13 they're often the first responders in ---

14 **DR. PHIL BOYLE:** Yes.

15 **DR. VANESSA MacDONNELL:** --- in this kind of
16 situation.

17 **DR. PHIL BOYLE:** Yeah, yeah.

18 **DR. VANESSA MacDONNELL:** Great. Okay. So now
19 let's move to the folks online. Professor Quigley, do you want
20 to sort of jump in here? One of the things that we've been
21 discussing today are -- is the challenge and the importance of
22 coordination when it comes to emergency response, and I'm hoping
23 that you might be able to talk a little bit about, you know, can
24 we do better in this area when it comes to coordinating
25 emergency responses where critical infrastructure and trade
26 corridors are impacted.

27 **DR. KEVIN QUIGLEY:** Sure, I think I can offer a
28 couple comments here. I think I'll preface my comments with

1 just a general observation I feel I -- I feel about this field
2 generally and I've felt for a long time. And one is this bias -
3 - I know there's a question about, you know, should we have a
4 list of critical infrastructure, and I think that the -- I
5 always -- I'm always a little sort of suspicious of that sort of
6 approach that somehow critical infrastructure can be put on a
7 list on a spreadsheet and we can say those are the critical
8 assets and we have to protect them. And I think it's because of
9 this earlier point that I made that there's this sort of
10 contextual piece that goes along with these crises and
11 disasters. They happen in particular ways, in particular
12 moments, they're amplified certain ways, there's a certain
13 amount of hysteria that obviously goes along with -- often goes
14 along with it. And so whoever is responsible has to deal with
15 all of those circumstances in that particular moment in time,
16 and then often has to respond in a way that seems reasonable,
17 which is quite challenging.

18 And so critical infrastructure, you know, we talk
19 about the Ambassador Bridge, clearly, this is a piece of very
20 significant infrastructure for the country. There are other
21 times though when you see, like, these sort of small bridges to
22 a village in Newfoundland, or some, you know, single road going
23 to a territory that is there for delivering food supply to those
24 communities and for those communities that is critical
25 infrastructure, and they depend on it. So it may seem small in
26 sort of mezzo macro level terms, but it's important for those
27 particular communities.

28 And I think it's worth noting as well that a bit

1 along the lines of Professor Boyle's comment around Indigenous
2 communities, you know, rural communities often can be quite
3 vulnerable because they have very little infrastructure, but
4 what they have they're depending on as a sort of lifeline for
5 the community. It's also the case in small ---

6 **COMMISSIONER ROULEAU:** Can you try and slow up
7 just a bit? You're going too fast for the interpreters.

8 **DR. KEVIN QUIGLEY:** Sure, by all means. It's
9 because my comments aren't scripted in that case, so I just get
10 all kind of worked up when I start to -- I shouldn't have
11 prefaced it, you see. I shouldn't have prefaced my comments.

12 So I think, anyway, small communities I think
13 have little infrastructure and what they have they depend on.
14 And, you know, even more so the case with telecoms failures and
15 whatnot where you've got small communities that when telecoms
16 fail, they can't call ambulances and things like that during
17 crises.

18 So my point simply is that to establish a list
19 and say this is the list of critical infrastructure I think
20 would be challenging, bureaucratically appealing,
21 administratively appealing, but hard to actually put into
22 action, plus, you'd have to determine how you're going to do it.
23 What's on the list? What's off the list? Who's responsible for
24 it? Who's responsible for the list because you have to actually
25 keep it up to date? Who's managing that asset? What does it
26 mean to be on the list? What are the standards that you have to
27 actually achieve if you're on the list, if you're considered
28 part of critical infrastructure? Those are interesting

1 questions, I have to say, and they're, as we've said before
2 complicated. So could we actually establish those standards.

3 The second point I'll make as a preface is just,
4 again to reiterate, that the assets are largely in private
5 sector hands. So we talk about stakeholders, which really, to
6 me, masks the concept of private interest and interest groups,
7 which we use a lot less frequently, but political scientists
8 still like to use this term about interest groups, their
9 interests. And insofar as those private interests can align
10 with public good, then it can provide good infrastructure and
11 managed efficiently with some stability. I think a lot of the
12 assets are in private hands because there's an optimism that
13 they are more creative, innovative and efficient, and that can
14 very well be the case. But there are risks that go along with
15 such a large private interest in our national assets and upon
16 which we rely every day. And as Professor Chandra mentioned
17 earlier, that in some cases were publicly funded in the first
18 instance and then maybe privatized later.

19 So, on that note, I'll also just mention that as
20 Professor Boyle has said, that Public Safety Canada is engaged
21 in a process of reviewing the national strategy. I encourage
22 them to continue along that path. And I think that one of the
23 issues that continues to challenge us in the way we address the
24 risks associated with critical infrastructure is the fact that
25 you have so many different interests, complex governance
26 settings, but particularly private interests, and the
27 coordination function or the regulation function seems to be
28 rather light touch on that in the whose managing the

1 infrastructure, what standards should they be achieving, what
2 degree of transparency should we expect if you are managing
3 critical infrastructure, and who is accountable and to whom are
4 you accountable. I think those are all important questions that
5 have really existed for quite some time that I think we need to
6 continue to pursue in the management of critical infrastructure.

7 I'll pause on that point.

8 **DR. VANESSA MacDONNELL:** Thank you, Professor
9 Quigley. I'm going to go to Mme. Ouellet and M. Delome in a
10 moment. There are a couple of things though that arise from
11 your comments, Professor Quigley, that I think are perhaps worth
12 pursuing just briefly with the rest of the panel. So one is, I
13 just want to note that you've introduced another dynamic here
14 with your comments. We had talked about the sort of multilevel
15 governance challenges. We had talked about the public/private
16 challenges, but you've also now introduced rural and urban as
17 another dynamic for us to keep in mind in thinking about
18 critical infrastructure, and I just want to note that as
19 important.

20 The other piece here is, you know, this question
21 of do we need more central coordination when it comes to the
22 protection of critical infrastructure. Do we need the
23 equivalent of a FEMA in the United States? You know, to what
24 extent should we be thinking about something like that?

25 And one of the questions that came through to us
26 that I'd like to put to the panel as a whole now is in thinking
27 about the ways that we protect critical infrastructure, you
28 know, how in your opinion do we balance the use of kind of

1 emergency planning tools with other regulatory tools, right,
2 more general regulatory tools? So to what extent do we want to
3 treat critical infrastructure as being related to emergency
4 planning, and to what extent do we want to think about it as
5 being, you know, something that we need to think about
6 regulating in perhaps a more proactive way, in a way that
7 focusses on the strength of our infrastructure.

8 Monsieur Delorme, est-ce que vous aimeriez offrir
9 un commentaire sur ce sujet-là peut-être?

10 **M. FRANÇOIS DELORME:** Non, c'était sur votre
11 partie sur les recommandations, Madame MacDonnell. Alors...

12 **DR. VANESSA MacDONNELL:** D'accord. Alors, peut-
13 être...

14 **M. FRANÇOIS DELORME:** ...je peux attendre avant
15 d'intervenir, oui.

16 **DR. VANESSA MacDONNELL:** OK. Parfait.

17 Professor Quigley, do you want to come in on this
18 point?

19 **DR. KEVIN QUIGLEY:** Sure, I'll offer some
20 observations. I think on the question of do we need a FEMA, it
21 has been commented before that the Canadian -- so with FEMA, of
22 course, you have an agency that is responsible for coordinating
23 federal government actions during an emergency, and Canada
24 doesn't have the equivalent. In some respects, Public Safety
25 Canada emerged in the post-9/11 environment as a response to
26 Homeland Security. Homeland Security needed a department to
27 work with, so a number of organizations were merged. In the
28 same way that a number of organizations were merged in the U.S.

1 to create Homeland Security, a number were merged here to create
2 Public Safety Canada. But there isn't the equivalent of a FEMA
3 here, and it has been commented before that in the case of
4 certain crises, there's so much -- there's so many organizations
5 involved. And if we're only talking about large-scale
6 devastation, like, we're talking about a west coast earthquake
7 sort of thing, you would be bringing in so many supplies from so
8 many different regions, and so it does beg the question does it
9 require some coordination, because in an emergency, you need
10 certain -- like, you know, if you think about Walmart, for
11 instance, Walmart's considered to be quite excellent at supply
12 chain management and responding during crises, but they'd
13 probably need some direction in terms of what supplies can they
14 bring. And so there's a coordination function in an emergency.
15 And so I think it does raise an interesting question, and that
16 could be -- I think that can be investigated.

17 I think on the question of emergency and response
18 versus, you know, ongoing maintenance of infrastructure, for me
19 in some respects, like, they are separate but they're also the
20 same; right? I think when I listened to Professor Chandra talk
21 about just the huge significant dependence that we have on the
22 Ambassador Bridge, I think he makes the compelling case that
23 this is significant vulnerability for our country, and if that
24 infrastructure fails, you know, what would the consequences be.

25 So, you know, part of it is about emergency
26 response maybe in a crisis, but I think a more thoughtful
27 response is to say, you know, to what extent does this represent
28 a significant risk, and, you know, in some -- when I think about

1 sort of the normal accidents literature, Charles Perrault, I
2 mean, he would say you have to say to yourself the system is
3 going to fail, and then ask yourself what does that look like,
4 and can you live with it. And now I would say that the way
5 we've talked about the failure of the Ambassador Bridge the
6 answer is no. So what are we going to do about that? And we
7 can focus on the threat side, but I think that only gets you so
8 far, to a certain extent. And I think one of the themes that
9 has come up repeatedly in our discussions today is the
10 governance side. To what extent have we got to modify the way
11 we're managing these assets, so that we don't have these single
12 points of failure that can have these massive cascading effects.
13 And I think this is kind of a -- this event in itself has
14 brought this into focus, although I'm sure, you know, many
15 scholars, Professor Chandra among them, is aware of that. And
16 so now we need to do something about it and there's an
17 opportunity here to start addressing some of these risks.

18 **DR. VANESSA MacDONNELL:** Thank you.

19 **DR. KEVIN QUIGLEY:** I'll pause there, yeah.

20 **DR. VANESSA MacDONNELL:** Thank you. Professor
21 Chandra, would you like to jump in here?

22 **DR. AMBARISH CHANDRA:** It's just very interesting
23 to hear all these points of view, and I agree with a lot of --
24 almost everything that's being said. I think I certainly do
25 think that governments should be aware of risks on an ongoing
26 basis, especially because the potential negative fallouts are
27 more than just -- you know, so Mme. Ouellet mentioned the effect
28 on jobs and so on, which is absolutely important, but just on a

1 day-to-day basis, our food supply in Canada is so heavily
2 dependent on trade and incoming trucks from the United States,
3 especially at certain times of the year. So in February, we're
4 getting almost all of our fresh food from the U.S., and we
5 really can't afford to have that be interrupted. It's a matter
6 of, you know, of feeding people, which is even more critical I
7 would say than the jobs. And there's other critical supplies
8 that come in every day, medical supplies, vaccines, they all,
9 you know, come in by truck.

10 So I guess my hope or question would be do we
11 have a plan for inevitable failure going forward? And some of
12 these failures we can even start to foresee are just becoming
13 more common as driven by climate risks. You know, I mentioned
14 the Mississippi becoming almost non-navigable this year. Well,
15 we saw the same thing in Europe. The Rhine River was briefly
16 non-navigable as well, which was also a big, you know, trade
17 corridor within Europe. We saw the Swiss Canal blockade for
18 weeks in last year. So I think governments around the world are
19 scrambling to on the fly come up with solutions when things go
20 wrong, but things will keep going wrong and maybe at an
21 increasing frequency.

22 So, yeah, my questions would be would -- does the
23 federal government have a plan for flooding in the Ontario
24 region, or drying up of the Mississippi, or wildfires that cut
25 off access between B.C. and Washington just becoming
26 increasingly common. And so I would say these are both critical
27 threats as well as ongoing threats that we need to be aware of.

28 **DR. VANESSA MacDONNELL:** Thank you. Just

1 continuing then with the folks in the room, Professor Boyle,
2 would you like to add something here?

3 **DR. PHIL BOYLE:** Yeah, on the question of do we
4 need a more centralized approach, it's -- you know, I think
5 critical infrastructure protection in Canada, you know, already
6 is conceptualized largely within the framework of emergency
7 preparedness and emergency management, and that whole field is
8 already in a federal system shared between the federal and
9 provincial governments. And then, of course, all the
10 responsibilities that different federal departments have within
11 their respective statutory responsibilities. So it's hard to
12 imagine how Public Safety Canada could adopt much more of a
13 different role than what it already is being a steering,
14 coordinating body more than anything else. Although I did say
15 earlier it might be useful for Public Safety Canada to be able
16 to work with those lead federal departments to have tailored or
17 more developed, more enhanced systems and practices for
18 enhancing resilience within those specific fields. But I don't
19 think an overall one-size-fits-all approach would work.

20 The other thing I wanted to touch on is the idea
21 of lists. So Professor Quigley mentioned that the idea of a
22 list of critical infrastructure is bureaucratically -- might be
23 bureaucratically attractive. And I believe it was in one of the
24 more recent critical infrastructure action plans put forward by
25 Public Safety Canada that mentioned for the first time having a
26 list of national critical infrastructure. And then in the
27 subsequent action plan, I don't think that activity appeared
28 again. So it looked like there was some maybe interest in

1 developing a list, but then it got dropped somewhere down the
2 line.

3 I just want to say that, you know, in my own
4 research, I've looked into old civil defence planning activities
5 pertaining to what used to be called vital points. And the
6 federal government for the better part of 60 years did maintain
7 lists of facilities that it thought were important for Canada to
8 go to war. This was -- all took place underneath the *War*
9 *Measures Act*. And everything that Professor Quigley said about
10 the difficulties of updating lists, maintaining lists, defining
11 the formulas that would determine what was a vital facility
12 versus another facility that was not, what did it mean to be on
13 the list, all that is true.

14 What I would add to that is that, you know,
15 having looked at 60 years of list making through the Cold War,
16 it's also true that all of those lists were tailored to the last
17 war, right, not what was useful going forward. So during much
18 of the '50s, quite a points list was concerned with industrial
19 war, and then it was nuclear war. And then during the FLQ
20 crisis, it was found that those lists made for nuclear war were
21 next to useless for the October crisis at that time, so a new
22 list was made. So I think it's bureaucratically attractive, as
23 Professor Quigley said, but logistically very difficult to
24 arrive at a meaningful list of what critical infrastructure
25 might be, except for very smallest and most high value locations
26 and facilities and things like that. Thank you.

27 **DR. VANESSA MacDONNELL:** Thank you, Professor
28 Boyle.

1 Et merci, Madame Ouellet et Monsieur Delorme pour
2 votre patience. J'aimerais maintenant vous inviter de – peut-
3 être on pourrait commencer avec monsieur Delorme – offrir des
4 commentaires, des suggestions pour le commissaire au sujet de
5 qu'est-ce qu'on devrait retenir de cette discussion en bref.

6 **M. FRANÇOIS DELORME:** Ben, c'est sûr, moi, c'est
7 pas mon... ce n'est pas notre zone d'expertise à Florence Ouellet
8 et moi, mais le mémoire que nous avons préparé pour la
9 Commission n'amène pas de recommandations comme telles, notre
10 exercice est d'essayer d'évaluer surtout, on l'a fait pour le
11 centre-ville d'Ottawa, mais pour le pont Ambassador, combien
12 d'emplois étaient à risque, et au meilleur de notre
13 connaissance, on est arrivé au chiffre de... autour de 350 000
14 emplois en Ontario. Est-ce que c'est beaucoup? Est-ce que ce
15 n'est pas beaucoup? C'est pas à moi de juger.

16 Et on a fait la même chose pour... en termes
17 d'activité économique. Est-ce que, par exemple, 275 millions, on
18 est arrivé autour de 150 à 400 millions par jour. Est-ce que
19 c'est beaucoup? Est-ce que c'est pas beaucoup? Si je dis que
20 c'est autour de 0,1 % du PIB, ben, c'est sûr que ça apparaît
21 comme négligeable, mais si... le point que j'essaie de mentionner
22 ici, c'est si la perturbation ou le blocus avait perduré et
23 qu'on était arrivé à un mois et que je vous dis que les pertes
24 en termes d'activité économique eut été 8,5 milliards par mois,
25 là, on arrive à quelque chose qui est plus important. Et donc je
26 pense que le point, on ne peut pas, de notre... de nos travaux, de
27 notre analyse arriver à est-ce que c'est trop, est-ce que c'est
28 pas assez. Ce qu'il faut considérer avec l'étude que l'on a

1 faite sur les impacts économiques, c'est : qu'est-ce qui se
2 serait passé, est-ce que les impacts deviennent importants à
3 mesure que le nombre de jours passe et que les mois... pas les
4 mois, mais les jours deviennent des semaines et que des semaines
5 deviennent un mois.

6 Alors, c'est dans cette optique-là, je pense, que
7 notre étude doit être prise en ce qui a trait à la vulnérabilité
8 et de l'importance des impacts économiques. C'est : est-ce que
9 le temporaire risquait de devenir permanent.

10 Alors, je sais pas si madame Ouellet veut ajouter
11 quelque chose?

12 **Mme FLORENCE OUELLET:** Je pense que monsieur
13 Delorme a mentionné pas mal tout ce qui était pertinent. Par
14 contre, j'ajouterais peut-être que notre mémoire a malgré tout
15 une certaine ligne directrice qui est la vulnérabilité de
16 l'économie canadienne et ontarienne et celle des emplois
17 également envers certaines infrastructures critiques, comme le
18 pont Ambassador.

19 Notre rapport mentionne aussi brièvement la
20 question de l'approvisionnement en nourriture que le professeur
21 Chandra soulignait – c'était très pertinent d'ailleurs, merci –,
22 puis donc, notre rapport, même s'il ne mentionne pas
23 explicitement de recommandations, irait probablement dans le
24 sens des commentaires qui ont été faits jusqu'ici autour de la
25 table ronde, donc... Merci.

26 **DR. VANESSA MacDONNELL:** Merci beaucoup.

27 Now, Professor Quigley, is that an old hand, as
28 they say, or did you wish to come in and offer something?

1 You're muted. I was hoping I was going to get to
2 say that.

3 **DR. KEVIN QUIGLEY:** It's never a meeting until
4 somebody's muted. Anyway, I almost made it two hours without
5 that mistake.

6 It's a comment, probably an extension of
7 Professor Boyle's comments about lists, if that's useful. Or
8 have we passed that?

9 **DR. VANESSA MacDONNELL:** Yes. No, I think, you
10 know, we're getting our final points on the table, and you
11 should feel free to speak to that issue.

12 **DR. KEVIN QUIGLEY:** Okay. Well, in that case I'm
13 going to make two separate points, but one is about the issue of
14 -- the issue of the list.

15 I think that one thing that -- so Professor Boyle
16 made reference to Y2K, which is a case study near and dear to my
17 heart, I have to say. And one of the things they did in the UK,
18 that I thought was very interesting, in the run-up to Y2K was
19 they grouped a lot of the critical -- they identified 26
20 critical sectors, and they were all subject to a sort of
21 standard audit. And each of those sectors, the audit for the
22 sector was published, and they were given a red mark, which
23 meant you weren't ready for Y2K; a yellow, which meant you were
24 getting there but not quite ready; or blue -- not green, blue;
25 nobody got green when it came to Y2K because nobody was ever 100
26 percent sure that it wasn't going to go off without a hitch, but
27 you got blue if it meant you did the best you could and we think
28 you're ready.

1 So the idea was that no -- there was no
2 disclosure on any particular company; it was the sector as a
3 whole that got the evaluation, so they were kind of all in it
4 together.

5 Now, there's a whole bunch of reasons why that
6 doesn't necessarily work out. A lot of the stuff in critical
7 infrastructure is voluntary by nature, by the way. So these
8 private companies participate if they want to. If it gets a
9 little bit too tough, they might actually defect. So that's
10 always a risk, that they won't actually participate in these
11 strict audit functions, so the audit function might be a little
12 bit too easy or a little bit too light.

13 But, nevertheless, it does introduce some level
14 of accountability at the sector level. It creates an
15 opportunity to establish, you know, what are the standards we
16 should be looking for in this sector, and then some outward
17 reporting of how those sectors are doing. So -- and then
18 there's a collective responsibility that the sector has to be
19 ready for some improvement.

20 So I just put that in as one example of an
21 exercise that happened when a crisis was occurring at a
22 deadline, and it was meaningful, and I think those critical
23 infrastructure owners and operators wanted to tell the world
24 they were ready, so they were interested to buy into some
25 process.

26 There were some, as I say, weaknesses and flaws,
27 but I felt it was a more ambitious approach than I've probably
28 seen since then of actually trying to pull the owners-operators

1 together and say, "There are going to be some standards, and we
2 want to hold you to them."

3 I will say, also, that some of these pre-event
4 evaluations aren't always super strong, and I know there was
5 some evaluation of which country was best ready for a pandemic,
6 and the US and the UK finished number one and number two. And I
7 think after the pandemic occurred, people questioned whether or
8 not those pre-event evaluations were really all that rigorous.

9 So sometimes before the crisis, it's not quite
10 the same as during the crisis. But it's something, and I
11 thought it was an interesting mechanism.

12 Let me just make one separate point that I didn't
13 make earlier, which I think is important for the discussion,
14 it's the notion of a precautionary principle, because we haven't
15 actually mentioned that, so I just want to introduce this to the
16 lexicon.

17 In the risk community, I think generally
18 speaking, people are -- it's a concept that largely emerged
19 through environmental studies and a feeling of trying to protect
20 the environment. The precautionary principle has since been
21 criticized quite a bit for its absence of a standard definition,
22 absence of standards, absence of accountability.

23 However, there is some sympathy when you're
24 dealing with a risk that is highly catastrophic, potentially
25 catastrophic, and irreversible, that you would adopt a
26 precautionary approach. The term "Precaution" was used a lot
27 during the pandemic, and I think there was some precautionary
28 rationales that underpinned some of the actions in this

1 particular exercise we're talking about.

2 So I just wanted to put that term, "Precaution"
3 in play as well as something that is criticized in the risk
4 community, I think rightly so for its vagueness, and who pays
5 for precautionary approaches; not always clear who pays. But
6 that there's some sympathy when you're dealing with a
7 potentially catastrophic, irreversible risk.

8 So I'll just pause on those points, but I would
9 just offer them.

10 **DR. VANESSA MacDONNELL:** Thank you, Professor
11 Quigley.

12 So we have about five minutes left, and so I
13 might take us to one final question -- possibly two if it goes
14 quickly -- that came to us through a Commission Counsel. And
15 this one deals -- well, both questions -- we'll see if we get to
16 them -- deal with the mechanics of critical infrastructure
17 protection.

18 So the first question is that critical
19 infrastructure is located where people live, work, play, and
20 study. And, you know, what does that mean for how critical
21 infrastructure should be protected so as to ensure the interests
22 and needs of the local communities or the host communities in
23 which they're located.

24 So this isn't a question that you were prepared
25 for, but I think, you know, it's possibly an interesting one for
26 us to explore, and I'm wondering if there is anyone who would
27 like to kind of talk about this idea of host communities;
28 communities that are home to specific types of critical

1 infrastructure and their -- what their stakes or interests are
2 in regulation.

3 **Mme FLORENCE OUELLET:** Je suis Florence Ouellet.

4 **DR. VANESSA MacDONNELL:** Oui.

5 **Mme FLORENCE OUELLET:** Je peux offrir un élément
6 de perspective peut-être. Dans le cas du pont Ambassador, par
7 exemple, c'est le premier auquel je pense parce que notre
8 rapport à monsieur Delorme et moi était concentré sur cet
9 élément d'infrastructure critique là en particulier, j'ai aucun
10 doute que la communauté de la ville de Windsor, qui est
11 l'extrémité canadienne du pont Ambassador, va trouver qu'elle a
12 intérêt probablement à une certaine réglementation ou à explorer
13 certains projets de politique en ce qui concerne le pont
14 Ambassador parce qu'il y a beaucoup d'emplois, entre autres,
15 dans cette communauté-là qui sont très nombreux et reliés aux
16 industries qui dépendent en grande partie du pont Ambassador,
17 comme l'industrie manufacturière et le secteur automobile. Donc,
18 c'est un exemple probant que je...auquel je pense.

19 **DR. VANESSA MacDONNELL:** Merci beaucoup.

20 Would anyone like to add something here?

21 Professor Quigley?

22 **DR. KEVIN QUIGLEY:** Maybe just to note that if I
23 think about Halifax, for example, I mean, as a port city, I
24 think there are obligations for social licence on behalf of
25 those who move their goods through cities like Halifax, and some
26 of the ports, particularly in the US, have been points for
27 protest and -- because of the, you know, differing environmental
28 standards, environmental concerns about the way some of the

1 infrastructure affects the water and the community. So I think
2 there's an obligation on our operators to be mindful of that,
3 and I think that some of them are because if they lose their
4 social licence they won't be able to move their goods through
5 those ports.

6 **DR. VANESSA MacDONNELL:** Right. So that maybe
7 this -- on this question, you know, it sort of cuts both ways.
8 On the one hand, those local communities need the
9 infrastructure, but they also have interests that -- in those
10 communities that may well give rise to protests, or strategic
11 interruptions of that infrastructure.

12 **DR. KEVIN QUIGLEY:** That's right. And I think
13 there's some other infrastructure; I'm thinking about nuclear
14 power in Deep River, I think, for example. It's -- you know, I
15 think it's the highest concentration of PhDs in the country
16 because they're good at doing nuclear.

17 So those things have to exist somewhere, and you
18 want to make sure qualified people are -- manage them. And
19 there're benefits for the community in doing so, but risks.

20 **DR. VANESSA MacDONNELL:** Thank you.

21 Okay. So I think we've come to the end. I won't
22 attempt to squeeze another question. I think we're better to
23 cut -- sort of close on time.

24 I can turn things over to the Commissioner to
25 close the session?

26 **COMMISSIONER ROULEAU:** Yeah, I think we -- we're
27 going to have a question ---

28 **DR. VANESSA MacDONNELL:** Yes.

1 **COMMISSIONER ROULEAU:** --- period.

2 **DR. VANESSA MacDONNELL:** Right.

3 **COMMISSIONER ROULEAU:** So what we'll do now is
4 take a half-hour break, on va prendre une demi-heure. And then
5 we'll come back with questions that have come from the various
6 parties and that will be put -- put to you when we come back,
7 and we'll have another half hour of discussion and debate.

8 Alors, lors de notre retour on pourra vous
9 questionner avec des nouveaux propos, des nouvelles questions.

10 Alors, une pause d'une demi-heure.

11 **THE REGISTRAR:** The Commission is in recess. La
12 Commission est levée pour trente minutes.

13 --- Upon recessing at 3:56 p.m.

14 --- Upon resuming at 4:28 p.m.

15 **THE REGISTRAR:** The Commission is reconvened. La
16 Commission reprend.

17 **DR. VANESSA MacDONNELL:** Would you like to say
18 something before I begin, or we can -- okay.

19 Well, welcome back everyone. Thank you.

20 **COMMISSIONER ROULEAU:** No, not quite everyone.

21 **DR. VANESSA MacDONNELL:** It's true.

22 **COMMISSIONER ROULEAU:** Sorry to play ---

23 **DR. VANESSA MacDONNELL:** Monsieur Delorme? He
24 might be there without his camera on.

25 **COMMISSIONER ROULEAU:** Ah, hey there.

26 **DR. VANESSA MacDONNELL:** Le voilà. Rebienvenue.

27 So we have a series of questions that I'm hoping
28 I can take you through in the next 30 minutes or so. And I

1 think we'll begin with the concept that perhaps hasn't really
2 been discussed today, and perhaps doesn't even exist. And so
3 the question for you is, you know, should this be something that
4 we're conceptualizing; and that is, international trade
5 corridors.

6 So we've talked generally about trade corridors
7 today; we've also talked about the Ambassador Bridge, but we
8 perhaps haven't surfaced sufficiently the fact that there is an
9 international dimension and that many of the trade corridors
10 we've been talking about today are corridors that involve, not
11 just multiple Canadian jurisdictions, but the United States.

12 And so my understanding is, to date, in the
13 policy and in the sort of legal thinking there isn't this notion
14 of an international trade corridor, which would be a concept
15 that perhaps has distinctive characteristics; that differentiate
16 it from trade corridors that are fully within the borders of
17 Canada.

18 And so I'd like to invite the panellists.

19 Si vous avez des commentaires sur ce sujet, est-
20 ce qu'on devrait commencer à penser à ce concept-là de façon
21 plus profonde, peut-être?

22 Oui, s'il vous plait, Monsieur Delorme.

23 **M. FRANÇOIS DELORME:** Mais je ne suis pas sûr de
24 parfaitement comprendre la question, mais est-ce que le concept
25 de corridor commercial...

26 **DR. VANESSA MacDONNELL:** Oui.

27 **M. FRANÇOIS DELORME:** ...qu'il soit à l'intérieur
28 des frontières canadiennes ou international, c'est un concept

1 empirique, dans le sens, ben, est-ce que y'a beaucoup de
2 camions, y'a beaucoup de passagers qui passent.

3 **DR. VANESSA MacDONNELL:** Mm-mm.

4 **M. FRANÇOIS DELORME:** Évidemment, au Canada, on a
5 une zone de... c'est une zone de libre-échange à l'intérieur des
6 provinces pour la plupart des produits; évidemment, lorsqu'on a
7 une frontière avec les États-Unis, ça complexifie les choses,
8 mais si on avait un camion qui passait par année sur le pont
9 Ambassador, ce serait un corridor commercial international,
10 c'est juste que ça serait un minuscule. Donc, vraiment, ce qui
11 est important ici, c'est est-ce que y'a des marchandises et même
12 des services qui traversent le pont ou les corridors commerciaux
13 internationaux qui sont principalement avec les États-Unis,
14 comme on en a convenu dans la première partie, mais est-ce que
15 ces corridors-là sont des corridors avec un « C » majuscule ou
16 avec un « C » minuscule? Et à ce niveau-là, je pense que c'est
17 davantage, comment je comprends votre question, un concept
18 empirique qu'un concept théorique parce qu'un corridor, c'est
19 quelque chose qui nous amène à observer quelque chose qui va
20 dans une direction ou une autre, commercial, c'est ce qui amène
21 la valeur des marchandises, et internationale, c'est ce qui
22 traverse une frontière.

23 **COMMISSAIRE ROULEAU:** Oui, et si je peux juste
24 essayer de préciser un peu ce que je comprends et le concept,
25 c'est, pour prendre l'exemple de Windsor et le pont Ambassador,
26 protéger cette infrastructure – entre guillemets – implique le
27 Fédéral qui a le poste frontalier et a la loi sur le pont,
28 internationale, il y a la route d'accès qui est contrôlée par la

1 province... euh, c'est-à-dire par la ville, qui connecte à la 401
2 qui est la route principale qui est « appartenue » par la
3 province et ce... quand la route a été bloquée, ça n'avait rien à
4 voir avec le poste frontalier parce que le Fédéral n'a aucune
5 compétence au-delà de la porte du poste frontalier.

6 Alors, la question est vraiment une... si on parle
7 de protéger de l'infrastructure, est-ce qu'on devrait créer un
8 concept juridique ou autre qui regroupe ces trois compétences-là
9 et qui peut aussi transiger avec les Américains, parce que c'est
10 un poste frontalier, et la protection peut être suite à un
11 blocus par exemple, un blocage, ou ça peut être suite à un feu
12 sur le pont ou... mais y'a rien... y'a aucun organisme, aucun plan
13 qui implique ces trois compétences-là et pour seulement... on
14 parle du pont. Alors, c'est un peu ça l'intention de la
15 question, si je l'ai bien comprise.

16 **DR. VANESSA MacDONNELL:** Mr. Chandra, would you
17 like to come in here?

18 **DR. AMBARISH CHANDRA:** I'll just take a very
19 literal view of the phrase, straight corridor, I think it's also
20 coming back to the idea that, again, most of the trade, all the
21 trade that we do with Europe and Asia and the rest of the world
22 doesn't involve those literal trade corridors because they're
23 over air and sea. And so the vessels and the planes and the
24 ships leave those countries, go through international airspace,
25 international waters and then arrive in Canada, but in the case
26 of the U.S. there are literal trade corridors, these bridges and
27 roadways, and so I think that's where the definition is
28 important.

1 Not being a legal scholar at all, I would say,
2 though, that any -- given the importance of the Ambassador
3 Bridge, which is clearly international -- of international
4 concern to both Canada and the U.S., it shouldn't -- you know,
5 it almost seems to me like a technicality that the roadway,
6 which is under municipal control, should be able to block and
7 international bridge, and so it to me seems as though the
8 importance of such that there should be a unified framework ---

9 **DR. VANESSA MacDONNELL:** Right.

10 **DR. AMBARISH CHANDRA:** --- to deal with all
11 points of access to something like a international bridge.

12 **DR. VANESSA MacDONNELL:** Right. So I think --
13 you know, I think that you're right, that in talking about this
14 being a literal trade corridor it is an international trade
15 corridor. I guess the question is or one of the issues that
16 arises is this raises complex jurisdictional issues, then, in
17 terms of how you protect that infrastructure and sort of who's
18 in charge, and that there may have been -- it may be the case
19 that, in fact, rather than, you know, being a technicality the
20 perception about where a protest is happening might very well
21 impact the view on the ground about who is in charge, and that
22 perhaps, you know, are there ways of thinking about this which
23 might give -- permit jurisdictional coordination around issues
24 of common concern.

25 So thank you, Professor Chandra.

26 Je vois maintenant monsieur Delorme?

27 **M. FRANÇOIS DELORME:** Oui, j'aimerais oser une
28 réponse au commissaire, qui n'est pas une opinion juridique,

1 mais je me souviens quand je travaillais au ministère des
2 Finances, on cherchait à prendre une décision si on allait
3 réparer le vieux pont Champlain à Montréal ou en construire un
4 nouveau, et ce dont monsieur Rouleau parle, parlant de... je me
5 souviens que les tabliers du pont, je mélange peut-être les
6 juridictions, mais il me semble que les tabliers du pont étaient
7 de juridiction fédérale et le pont comme tel, ce qui traversait
8 le fleuve Saint-Laurent, était de juridiction provinciale, et...
9 oui, c'est ça, et donc, on avait un problème juridictionnel en
10 termes de qui allait payer quoi et est-ce que les tabliers
11 étaient en plus mauvaise... en plus mauvais état que le pont comme
12 tel.

13 Alors, j'oserais dire que, oui, il y aurait un
14 besoin de définir ce que c'est une infrastructure critique ou un
15 corridor commercial international dans ce contexte-là et ça
16 ferait du sens d'avoir des accords entre fédéraux ou fédéral-
17 provinciaux qui pourraient préciser ce genre de corridor
18 international. Là, je pense que c'est important.

19 **DR. VANESSA MacDONNELL:** Professor Quigley, and
20 then Professor Boyle.

21 **DR. KEVIN QUIGLEY:** Just a quick observation to
22 say that I think the question of jurisdictional responsibility
23 would apply equally to questions around the port, the seaports,
24 and you've got the same kind of mess there in terms of the
25 seaport itself is federally regulated, but when you get those
26 trucks off or when you get the goods off the boat there are
27 municipal issues, provincial issues, and do they cross
28 provincial borders, there are additional federal issues. So you

1 have a complex space with seaports also, so it wouldn't just be
2 about road transport bridges to the U.S.

3 **DR. VANESSA MacDONNELL:** And Professor Quigley,
4 not to put you on the spot, but are there existing regulatory
5 mechanisms or tools that permit those sort of what might be
6 considered jurisdictional constraints to be overcome in a space
7 where, you know, there are multiple overlapping jurisdictional
8 interests?

9 **DR. KEVIN QUIGLEY:** So -- I mean, I'm reluctant
10 to say because I'm not aware of any, but what I am aware of is
11 this fact that we normally talk about the complexity of
12 jurisdictions when it comes to seaports. That there are ---

13 **DR. VANESSA MacDONNELL:** Right.

14 **DR. KEVIN QUIGLEY:** They're all involved, and
15 there are a lot of private sector operators, and as we've talked
16 about with trucking, there are many private truckers on that one
17 space. So it's a very, very complicated space.

18 I'm not aware of any overriding kind of authority
19 that could sort of seize control. I suspect there is none.

20 **DR. VANESSA MacDONNELL:** Thank you ---

21 **DR. KEVIN QUIGLEY:** I will -- maybe one other
22 point I would say is that I can recall an issue of speculation
23 that a boat was bringing in a number of people -- there was sort
24 of people smuggling going out of port, and the various
25 government agencies had to prepare because they had -- they were
26 led to believe that a boat was coming in and they didn't know
27 what boat it was and they were bringing people in. And I
28 remember there were at least 14 different government departments

1 from various jurisdictions that were responsible for standing at
2 the ready in case this boat arrived, they didn't know which
3 boat, and in case they had people on and they didn't know. And
4 they had to do it all quietly because they were worried that if
5 the boat found out that they were caught for smuggling that they
6 might do something bad with the people who were on the boat.

7 But anyway, there were at least 14 different
8 departments involved in that exercise. I remember it was
9 something that happened quite a few years ago in Halifax. But
10 it's a complicated space, even within the Federal Government, a
11 lot of different government departments have responsibilities,
12 but it's spread out over quite a few. Yeah.

13 **DR. VANESSA MacDONNELL:** Professor Boyle?

14 **DR. PHIL BOYLE:** Thank you.

15 This question of how to clear up jurisdictional
16 disputes or uncertainties and how to incorporate private sector
17 actors, how to incorporate different layers of regulation and
18 statutory responsibilities made me think of airports, to add
19 another piece of this puzzle that Professor Quigley has added
20 about the seaports. It seems to me that airports must have
21 found a way to work out a lot of these uncertainties already. I
22 don't know the nuts and bolts about how that is done, but I
23 wonder if airports would provide something of a transposable
24 model that could be applied in other situations where similar
25 problems arise, like the Ambassador Bridge.

26 **DR. VANESSA MacDONNELL:** So maybe this takes me
27 to a follow-up question, which is we've talked at some length
28 today about, you know, the need for coordination across

1 government or between levels of government. What you're
2 suggesting sounds like it raises an additional possibility,
3 which is to think -- you know, approach these issues from the
4 bottom up, and to think about the level of jurisdictional
5 coordination that might be required around a particular piece of
6 critical infrastructure.

7 And I'm wondering if anyone has thoughts on that
8 model? You know, would it be helpful to have a plan in advance
9 in thinking about, you know, strategic planning around the
10 protection of critical infrastructure, so that it's clear, you
11 know, when it comes to a particular piece of critical
12 infrastructure, who does what in the event of an emergency.

13 Do you want to come back ---

14 **DR. PHIL BOYLE:** I think, you know, this reminds
15 me about what we talked about earlier, and the idea that a one
16 size fits all approach is not going to work.

17 So yes, a bottom-up governance approach tailored
18 to particular infrastructural locations, facilities, assets
19 could very well work I think. Again, you know, I -- and I want
20 to go back to my concerns around freedom of assembly, freedom of
21 protests. As long as those governance arrangements are very
22 tailored to particular locations, particular places that are --
23 that -- where it's transparent that these are the security
24 practices that are in play, and not -- and we don't give into
25 the temptation to want to sort of introduce very vague, very
26 general ---

27 **DR. VANESSA MacDONNELL:** Right.

28 **DR. PHIL BOYLE:** --- powers to protect critical

1 infrastructure, where people don't know exactly what is
2 infrastructure and what isn't, then, you know, that -- I've
3 already said that's a problem. But particular institutional
4 arrangements for particular locations might be a way to strike
5 that balance that we talked about earlier as well.

6 **DR. VANESSA MacDONNELL:** And does that also maybe
7 look like, you know, thresholds? Like given your concern for
8 freedom of expression and freedom of peaceful assembly, does
9 that maybe look like thresholds for triggering some sort of, you
10 know, restrictions on protests around critical infrastructure
11 rather than sort of a standing sort of restrictions?

12 **DR. PHIL BOYLE:** Yeah, I think all of this would
13 have to be tailored to particular vulnerabilities.

14 **DR. VANESSA MacDONNELL:** Right.

15 **DR. PHIL BOYLE:** You know, risk is an ever-
16 changing, you know, condition, so there might have to be some
17 changing level of, you know, security and precautions, given a
18 particular risk environment. But if they were tailored and
19 specific to particular locations and not disperse big powers,
20 then that might be a good way to strike that balance.

21 **DR. VANESSA MacDONNELL:** Right.

22 Professor Quigley?

23 **DR. KEVIN QUIGLEY:** I'll just offer some thoughts
24 about emergency planning exercises that sometimes happen in
25 anticipation of these kinds of events, because this is one of
26 the sort of favourite exercises of agencies that work in this
27 area. They sort of imagine a scenario and they think about how
28 are we going to respond to this particular scenario.

1 And so one of the things they do too often is
2 they work with public agencies. They always say, you know, you
3 don't want to meet somebody in a crisis, you know, meets them
4 for the first time in a crisis, so they want to know who all the
5 emergency responders are, and that sort of stuff. Sometimes
6 these exercises are a little bit false because they only bring
7 together agencies from the same order of government because
8 they're -- they've been told to sort of work out an exercise, so
9 they kind of develop these scenarios that are not really very
10 realistic.

11 Because the thing about disasters and crisis is
12 they don't respect jurisdictions. Disasters and crisis come and
13 hit you the way they do, and they will hit all three orders of
14 government. The very fact that a province is responsible for
15 emergency response in the first place means the province is
16 going to be at the centre of anything that's -- any sort of
17 seriously devastating issue is going to go well beyond one piece
18 of infrastructure or the community at large.

19 So one is we need to have approaches that where
20 we actually bring a lot of the stakeholders together. It's hard
21 traditionally to bring the private sector in on these emergency
22 response exercises. Maybe they don't see the value, maybe
23 they're too busy, I'm not sure, maybe they don't want disclose
24 their vulnerabilities. Certainly noted, with some concern from
25 public agencies, that private sector agencies don't necessarily
26 come to emergency response exercises, and they should.

27 And then I think the other thing that we need to
28 do in these exercises is we need to actually get better at

1 trying to establish clearly what are we trying to learn from
2 emergency response exercises, and we have to declare them, and
3 then we have to monitor over time if we're getting better at
4 emergency responses. Too often these emergency exercises occur,
5 there isn't really kind of serious report afterwards, there's no
6 benchmarking, and we have no sense if anybody's ever getting
7 better at these things. There's just a kind of occasional
8 exercise that they kind of make up, and then they run a few
9 things, and then there's a hotwash afterwards where they kind of
10 report out, and then it -- but there's not necessarily
11 sufficient and rigorous follow up to show if we're actually
12 getting better at emergency response.

13 So I think there's a fair bit of learning that
14 could be done from public agencies, and the private sector,
15 that's owning and operating a lot of these infrastructures.

16 **DR. VANESSA MacDONNELL:** Anything else on this
17 point?

18 Okay. So I'll move on to another question, then.
19 We've talked only a bit about rail, and so I'm wondering, you
20 know, are there considerations that are particular to the
21 protection of rail as a piece of critical infrastructure?
22 Perhaps because it is a significant, sort of physical piece of
23 infrastructure that runs throughout Canada, or because
24 particular groups are particularly likely to protest by
25 disrupting rail.

26 So I'm just wondering if the panel has any
27 comments that it'd like to offer on the protection -- the unique
28 considerations related to the protection of rail?

1 **DR. AMBARISH CHANDRA:** I can just jump in with a
2 little bit of background more than anything else.

3 **DR. VANESSA MacDONNELL:** Professor Chandra. Only
4 just for the transcript. Thank you.

5 **DR. AMBARISH CHANDRA:** Sure. In some ways, the -
6 - our trade over rail is -- well, it's a lot less important than
7 by truck. It's about 16 percent of our trade with the U.S. But
8 it's also easier to regulate because there's far fewer actors.
9 There's basically Canadian National, Canadian Pacific, and then
10 two big U.S. firms, BNSF and Union Pacific, I think, across the
11 border, and transport maybe grain, coal, and so on.

12 And in some ways, the nice thing is that the
13 operators also own their own railroads, and so, you know, CN
14 operates on CN tracks and so on. So they're very much -- they
15 also have a strong incentive to make sure infrastructure is
16 upgraded and maintained and so on.

17 I'm sure there's challenges around rail, but it
18 also strikes me at first blush to be a lot easier than
19 regulating or the challenges that come ---

20 **DR. VANESSA MacDONNELL:** Right.

21 **DR. AMBARISH CHANDRA:** --- around trucking.

22 **DR. VANESSA MacDONNELL:** Thank you.

23 Professor Boyle?

24 **DR. PHIL BOYLE:** Thank you. Yeah, I mean,
25 railways are an interesting case because that's where the idea
26 of protecting something really break down. You can't protect a
27 rail network, you can't protect all of it anyway. You might be
28 able to protect particular, you know, bridges where rail

1 networks come together and have to cross a major geographic
2 feature, and you can protect that bridge or that tunnel or
3 something, but you can't protect rail networks overall.

4 It's interesting in my research on civil defence
5 measures during the Cold War is that railways were always
6 treated separately from other industrial facilities for that
7 very reason because you couldn't protect rail like you could
8 protect a manufacturing facility. And so what they've tried to
9 do, and I think what still is the case, is trying to build
10 redundancy and resiliency into those networks. So if particular
11 components of a rail network goes down, there is still other
12 opportunities to move things around, whether it's other rail
13 networks or other modalities of transportation because I think,
14 you know, security, protection, that breaks down in that context
15 of a network that can't be secured.

16 And that goes for a lot of things. Electrical
17 grids, you know, entire highway systems, right, it's -- we need
18 to be thinking about resilience more than securing and
19 protecting individual points in those networks.

20 **DR. VANESSA MacDONNELL:** Right.

21 Professor Quigley?

22 **COMMISSIONER ROULEAU:** Speak slowly.

23 **DR. VANESSA MacDONNELL:** And I'll ask everyone to
24 speak slowly if you don't mind.

25 **DR. KEVIN QUIGLEY:** Yeah. I'll just point out
26 that, you know, when I think about rail, first off I think about
27 how you can't really move the track. I mean, this is one of the
28 flexibilities that you have with trucking that makes trucking

1 very appealing in terms of its adaptive capacity that you don't
2 have with rail necessarily, notwithstanding Professor Boyle's
3 comments about some additional rails where flexibility is built
4 into the system.

5 The other thing I would just note is there is
6 quite a bit of work done around critical infrastructure and
7 various pressures that are exerted on the railway lines through
8 the Lac-Mégantic experience. So I think there's actually quite
9 a bit of documented evidence about challenges with managing the
10 railway line and protecting and the sort of push for efficiency
11 and maybe safety over -- lapses I guess that occurred.

12 So I think there's quite a bit of work that has
13 been done there that could be looked at and fair questions about
14 whether or not Transport Canada has made progress in that area
15 and whether or not private industry has made progress in that
16 area.

17 **DR. VANESSA MacDONNELL:** Thank you. Anyone else
18 on that point?

19 Okay. So I'd like to turn us or take us now to
20 yet another form of infrastructure that we touched on, perhaps
21 briefly, but to any great extent, and that is cyber
22 infrastructure. And you know, wondering whether we have the
23 regulatory tools that we need to deal with threats to Canada's
24 cyber infrastructure.

25 Professor Boyle?

26 **DR. PHIL BOYLE:** Thanks. I was wondering when
27 this would come up at some point in this discussion.

28 **DR. VANESSA MacDONNELL:** This is your moment.

1 **DR. PHIL BOYLE:** I mean, when it comes to the
2 cyber, I -- you know, I don't know. I don't know enough about
3 cyber policies and digital security. But certainly part of, you
4 know, the cyber infrastructure is material, and it comes down to
5 server farms, and buildings in Downtown Toronto and other places
6 around Canada.

7 And so the only thing I would say about the cyber
8 is that, you know, the internet is also a physical location, and
9 so a lot of these concerns come to bear on cyber security as
10 well that we've been talking about. Private ownership of
11 cables, for example, and how that introduces vulnerabilities to
12 cyber networks. So the internet is also a material network as
13 well.

14 **DR. VANESSA MacDONNELL:** And maybe just a follow-
15 u p question. Are there different considerations at play when
16 we're talking about domestic threats to cyber infrastructure as
17 opposed to foreign threats, or are there different regulatory
18 tools that we need? And perhaps I'll go to you first,
19 Professor Boyle, and then to Professor Quigley.

20 **DR. PHIL BOYLE:** I -- you know, again, I'm not
21 too -- I don't think I have enough knowledge to be able to
22 answer that properly.

23 **DR. VANESSA MacDONNELL:** I can go right to
24 Professor Quigley, then.

25 Oh, you're muted, Professor Quigley.

26 **DR. KEVIN QUIGLEY:** Don't worry, you didn't miss
27 much. It was just to say that I actually agree with
28 Professor Boyle, that I also don't know much about this. And in

1 fact, I think it's interesting and telling that it's a sector
2 that's -- the importance is significant, and experts are saying
3 that we should be more aware of the vulnerabilities. I think
4 the Society of Actuaries has talked about this particular domain
5 is maybe one of our greatest vulnerabilities. But I'm not sure
6 that it gets a lot of popular attention, and there's the sort an
7 awareness of the vulnerability, but I'm not really sure we're
8 ready for the consequences of a significant failure.

9 So I also couldn't comment I think with any great
10 intelligence to translate on it, other than to say that in my
11 own research around popular attention to cyber it gets very,
12 very little, dare I say, the least amount of coverage of all the
13 key sectors, I think partly because, as I mentioned earlier,
14 it's complex, it's hard to see who is responsible.

15 And in many respects, people, I think, enjoy the
16 technologies they have and they want to be continued -- to be a
17 certain level of deregulation and freedom and flexibility in the
18 way they use technologies, they don't necessarily want them
19 regulated and limiting to what they can do with their
20 technology. So there's a lot of resistance and ignorance around
21 the space that I think that allows the vulnerabilities to
22 flourish.

23 **DR. VANESSA MacDONNELL:** Thank you. I think we -
24 - oh, Professor Chandra?

25 **DR. AMBARISH CHANDRA:** I'll just jump in with one
26 point. This is -- I don't particularly have expertise in this
27 area, but I do have colleagues at U of T who are working
28 especially in this area.

1 And coming back to the issue of network cables,
2 which is what their research is on, it was pointed out to me
3 that, you know, every time we communicate over the internet,
4 send and receive messages or download information, data is being
5 transmitted all around the world, but in particular, even
6 messages or information that is transmitted domestically within
7 Canada is almost invariably passing through the United States at
8 some point. It's a well-known fact.

9 And in the past, Canadian scholars and legal
10 experts have raised the concern that the NSA in the U.S. has, in
11 some ways, the right to seize or intercept these messages, and
12 that's been a well-known problem, and it's not clear that
13 there's ever going to be a solution to that.

14 **DR. VANESSA MacDONNELL:** Right. Thank you.

15 We have time for one more question, and it's for
16 you, Professor Boyle.

17 So you noted earlier in your comments that you
18 had concerns with the way that provincial laws placing
19 restrictions on protests in the vicinity of critical
20 infrastructure were drafted, and that those are not a good --
21 they don't represent a good model of protection of critical
22 infrastructure while balancing civil rights.

23 Do you have any suggestions for what a good model
24 would look like?

25 **DR. PHIL BOYLE:** Thank you. I want to be clear
26 that those provincial laws don't necessarily regulate free
27 speech or freedom of assembly per se. They -- what they do is
28 create defence for interfering with critical infrastructure.

1 And what I wonder is does that fairly broad idea of interfering
2 with critical infrastructure, could that capture protests? So
3 that's part of my concern there.

4 I think that a, you know, productive model going
5 forward might be along the lines of what we had talked about,
6 even just in this brief discussion, about if there is a need to
7 designate certain locations, certain facilities as critical and
8 in need of additional protective measures that perhaps there's a
9 single multi-jurisdictional unit that is responsible for
10 governing those locations. That might mean that there is
11 federal funding that would be tied to that to provide the
12 enhanced protection. I think that as long as it's transparent
13 and not secret or ambiguous about where these locations are, and
14 what or is or is not allowed in these vicinity of these
15 locations, that could be a productive way forward.

16 I think the concern from a rights perspective is
17 that the provincial laws, as they are, are ambiguous on a couple
18 of levels. First, in terms of what is or isn't critical
19 infrastructure, basically under those laws it could be anything
20 that the government decides on a Monday could be critical
21 infrastructure. And then the very broad idea of interfering
22 with critical infrastructure ---

23 **DR. VANESSA MacDONNELL:** Right.

24 **DR. PHIL BOYLE:** --- is I think just simply too
25 broad, the specific understanding about what is or isn't allowed
26 in certain areas.

27 **DR. VANESSA MacDONNELL:** I think I'll just close
28 by saying that the point you're making is perhaps related to

1 that one of the panels that will be held later this week on law
2 enforcement. I understand you to be saying and having said
3 earlier, that, you know, we have to think not only about sort of
4 what's in the law, but the way it will subsequently be ---

5 **DR. PHIL BOYLE:** Absolutely.

6 **DR. VANESSA MacDONNELL:** --- used by law
7 enforcement. And I think I heard you sort of suggest that there
8 is a concern that you create a broad power and that then vests
9 the law enforcement with discretion about how that power is
10 utilised, and there is a concern that where there is substantial
11 discretion there is a potential for selective enforcement.

12 **DR. PHIL BOYLE:** Yes, yes. Selective or
13 convenient or strategic enforcement of ambiguous categories of
14 offences. Yes, I think ---

15 **DR. VANESSA MacDONNELL:** Right.

16 **DR. PHIL BOYLE:** --- that's a concern.

17 **DR. VANESSA MacDONNELL:** Thank you.

18 So we are at the end of our time.

19 J'aimerais remercier tous les panélistes. I'd
20 like to thank all of our panelists.

21 And I will turn it over to the Commissioner to
22 close the session, for real this time.

23 **COMMISSIONER ROULEAU:** For real, yes.

24 Bien, j'aimerais aussi remercier les panélistes,
25 comme l'a fait la professeure MacDonnell. C'était très utile,
26 très intéressant, puis on apprécie, la Commission apprécie
27 beaucoup votre volonté de venir contribuer vos connaissances et
28 répondre à nos questions.

1 On behalf of the Commission, and myself, we're
2 very, very thankful for the contributions. We thank you. We're
3 always impressed having academics and people of your quality
4 come and help us with some of the tough challenges we have.

5 And I also want to thank you,
6 Professor MacDonnell, for being here to coordinate and do --
7 moderate this panel. Again, very appreciated, especially in
8 yesterday and back today, we're -- you're a double-dipper and we
9 much appreciate it.

10 **DR. VANESSA MacDONNELL:** Thank you.

11 **COMMISSIONER ROULEAU:** So thank you, and we'll
12 adjourn the Commission to tomorrow morning at 9:30.

13 On va remettre jusqu'à demain matin 9 heures et
14 demie. Merci beaucoup.

15 **THE REGISTRAR:** The Commission is adjourned. La
16 Commission est adjournée.

17 --- Upon adjourning at 5:00 p.m.

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C E R T I F I C A T I O N

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