



**PUBLIC ORDER  
EMERGENCY  
COMMISSION**

**COMMISSION  
SUR L'ÉTAT  
D'URGENCE**

**Public Hearing**

**Audience publique**

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

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1 Ottawa, Ontario

2 --- Upon commencing on Wednesday, November 30, 2022 at 9:30 a.m.

3 **THE REGISTRAR:** Order. À l'ordre. The Public  
4 Order Emergency Commission is now in session. La Commission sur  
5 l'état d'urgence est maintenant ouverte.

6 **COMMISSIONER ROULEAU:** Well, good morning, all,  
7 and welcome to Day 3 of our policy hearings.

8 And we have this morning a National Security and  
9 Public Order Emergencies topic.

10 Nous avons ce matin un nouveau panel sur la  
11 sécurité nationale. Alors, aujourd'hui, nous avons Kent Roach  
12 qui va animer la session.

13 So I'll just turn it over to Kent to introduce  
14 our speakers and our panelists and get the program going.

15 Go ahead. Kent.

16 **--- ROUNDTABLE DISCUSSION: NATIONAL SECURITY AND PUBLIC ORDER**  
17 **EMERGENCIES:**

18 **MR. KENT ROACH:** Bon matin. Je m'appelle Kent  
19 Roach. Je suis un professeur de droit à l'Université de Toronto,  
20 and as you've heard, I'm the moderator of this panel. I've  
21 worked with the Ipperwash, Arar, and Air India Commissions on  
22 matters relating to policing and intelligence.

23 This panel includes two former directors of CSIS  
24 and two leading national security scholars, who I will shortly  
25 ask to introduce themselves and make opening five minute  
26 statements. I will then ask them to address a series of  
27 questions relating to intelligence, as collected by security  
28 intelligence agencies and the police; the definition of threats

1 to national security, particularly the 2(c) definition in the  
2 CSIS Act first enacted in 1984. I will then ask them to address  
3 whether that definition should be changed, whether further study  
4 is required, and finally, we will explore whether the exiting or  
5 the new definition of threats to national security to Canada  
6 should continue to be used as part of the threshold for the  
7 declaration of a Public Order Emergency under the *Emergency Act*.

8           So without further ado, Mr. Elcock, would you  
9 please introduce yourself to the Commissioner and make your five  
10 minute opening statement?

11 **--- PRESENTATION BY MR. WARD ELCOCK:**

12           **MR. WARD ELCOCK:** Good morning, Commissioner. My  
13 name is Ward Elcock. I am a lawyer by training. I have spent  
14 some 10 years as the counsel to the Privy Council Office from  
15 1984 until 1994. In 1989, I also became the Coordinator for  
16 Security and Intelligence, which was the original title of what  
17 then became the National Security Advisor after 2001,  
18 September 11th. I became the Director of CSIS in 1994, and in  
19 2004, I became the Deputy Minister of National Defence, and  
20 subsequently, I was the Coordinator for Security and  
21 Intelligence -- Coordinator for Security through the Olympics  
22 and the G8 and the G20 on behalf of the Federal Government,  
23 which is my background in these subjects.

24           A comment, rather than a statement, because I  
25 wanted to make sure that I said it: One of the things that I  
26 found strange in the lead up to the Commission, and through some  
27 of the testimony, was the focus on the importance or the  
28 relevance the interpretation that CSIS gives to the definition



1 in the *CSIS Act*, which is also the definition in the *Emergencies*  
2 *Act*. To my mind, that was odd because, frankly, the relevance  
3 of the interpretation that CSIS gives to that definition is, in  
4 my view, beyond the normal rules of statutory interpretation,  
5 pretty much non-existent.

6           The reality is the Service interprets that  
7 provision in the context of its role of its responsibilities in  
8 terms of the limitations imposed on it and the limitations that  
9 are inherent in any -- in the management of any intelligence  
10 service. None of those things are relevant to the discussions  
11 of Cabinet or to the issues that a cabinet might debate, but  
12 they do have important consequences for CSIS's interpretation of  
13 those -- of that definition.

14           In that context, it is not clear to me that any  
15 revision of the *CSIS Act* definition would make any sense. If  
16 one were to introduce any new concepts into the definition in  
17 the *CSIS Act* that would create substantial difficulties in terms  
18 of the interpretation of the *CSIS Act* and raise some very  
19 significant separate issues. If you were, for example, to  
20 include power with respect to economic intelligence, that would  
21 in a stroke bring the Service virtually into a full-fledged  
22 foreign intelligence agency.

23           So the consequences of a definition -- changing  
24 the definition in the *CSIS Act* are enormous, and in any case, I  
25 think, frankly, that's really beyond the purview of the  
26 Commission. You're looking at the *Emergencies Act* not the *CSIS*  
27 *Act*. We can come back to the issue of what I think ought to  
28 happen to the definition and what ought to be added, but I think

1 it's important to recognise that CSIS's interpretation of that  
2 definition is a very different animal than the animal that  
3 Cabinet looks at when it's dealing with the *Emergencies Act*.

4 **COMMISSIONER ROULEAU:** Okay. You're back on  
5 mute, Kent.

6 **MR. KENT ROACH:** Thank you very much, Mr. Elcock,  
7 and you came in under time.

8 Mr. Richard Fadden.

9 **--- PRESENTATION BY MR. RICHARD FADDEN:**

10 **MR. RICHARD FADDEN:** Good morning again. I am a,  
11 like Ward, a lapsed lawyer. I retired a few years ago as  
12 National Security Advisor. Before then I was the Deputy of  
13 Defence, and before then, the Director of CSIS. But I spent  
14 most of my career and all of my career in the Federal Public  
15 Service.

16 In fact, my remarks today are based on the fact  
17 that for part of my career I was in an organisation that  
18 produced intelligence, another part of my career in  
19 organisations that used intelligence. I think that's actually  
20 something that's worth thinking about a little bit. So my  
21 remarks this morning may surprise some of my colleagues, but I  
22 hope you think it's worthwhile.

23 Having listened to testimony before the  
24 Commission, following reporting in the media, I think  
25 intelligence doesn't merit the star billing that it's getting.  
26 In the end, intelligence is information, and when we start  
27 talking about national security information we sort of have, you  
28 know, marching bands surrounding it, and it develops sort of an

1 ethos or a quality that I don't think it entirely deserves. So  
2 I want to come back to that.

3           So again, I think intelligence is basically  
4 information, and I think we need to remember that. So I very  
5 much hope that you will look at the definition of intelligence  
6 from the perspective of decision-makers, and not only from the  
7 perspective of collectors, lawyers, judges, and  
8 parliamentarians, because I think it gives a different construct  
9 to the whole thing.

10           Later this morning, Professor Roach is going to  
11 ask me to take two or three minutes to talk about the more  
12 traditional view of national security, and I'll do that, but for  
13 the time being, I just want to talk about intelligence as  
14 information. And I think most decision-makers treat this --  
15 they don't care where they get the information, they really  
16 don't. In my experience, they don't care where it comes from.  
17 As long as it's before them, it's lawful, and it makes sense  
18 they're happy. So this fixation with declaring national  
19 security intelligence as something extraordinarily special, I  
20 would argue is sometimes misplaced.

21           Having said that, when they are given national  
22 security information, decision-makers at all levels, and I'm  
23 talking here both about Prime Minister and Ministers, and the  
24 police superintendent who is trying to manage a convoy in Lower  
25 Mandible (ph), Manitoba. And I think it's important to  
26 remember, both with respect of the Prime Minister and Cabinet,  
27 who are decision-makers, but also, everybody else in the system,  
28 when they're thinking about either invoking the *Emergencies Act*

1 or collecting information, that the information comes from a  
2 whole variety of perspectives, the media, especially what you  
3 can see; policy staff; political staff; colleagues; political;  
4 professional; personal contacts.

5           So to illustrate: is the view of a minister who  
6 happens to see something and talks about it in Cabinet, national  
7 security information if it relates to the *Emergencies Act*, or is  
8 a police officer on the frontline, who reports something to his  
9 inspector and that gets sent up for lying, is that national  
10 security information? Indeed, is it intelligence? And I think  
11 it's important to remember that one of the characteristics in  
12 this country of national security intelligence is when and how  
13 you can collect it is very seriously circumscribed.

14           Professor Roach is going to talk in a few  
15 minutes, I think, about police intelligence, which is slightly  
16 different. But a lot of people think and believe that national  
17 security intelligence can be collected whenever somebody in CSIS  
18 or elsewhere believes there's a problem. That's absolutely not  
19 the case. And I think because of this, these institutions  
20 suffer a little bit in their credibility. This is not  
21 Ceaușescu's Romania where somebody just waves a hand, and you  
22 can collect anything about anyone anywhere. And I think that  
23 was one of the problems, conceivably, that developed in dealing  
24 with the road up to the invocation of the *Emergencies Act*. When  
25 the convoy started in British Columbia, were they a legitimate  
26 target of National Security Intelligence collection or Police  
27 Intelligence collection? I'm not entirely certain at that  
28 point. I'm being told by Professor Roach that I have a minute.

1                   So let me just say that, in the end, I want to  
2 leave with you the thought that what is intelligence, how  
3 important is it in decision making is really quite critical to  
4 doing all of this. Prime Ministers, in particular, do not  
5 decide solely on the basis of what we might characterize as  
6 national security intelligence. They have a variety of sources  
7 from everywhere and I'm not sure you can control those. But  
8 what's very important given all these sources of information is  
9 how you aggregate them, how you collect them, how you  
10 prioritise, and how you pull them together in a way that makes  
11 sense.

12                   I'll just close with the thought that given all  
13 of this information from any variety of sources, for both the  
14 Police Superintendent and the Prime Minister, it brings to bear  
15 something that we haven't talked about a great deal, which is  
16 judgment. And I think the reason we elect our political leaders  
17 is to exercise judgment. And I think when we do that, we have  
18 to give them a little bit of leeway. And I say this abstracting  
19 entirely what this current government did with respect to the  
20 *Emergencies Act*, so I'll stop there. Thanks very much.

21                   You're on mute.

22                   **MR. KENT ROACH:** Sorry, I'll get off of that.  
23 Thank you very much, Mr. Fadden.

24                   Now Professor Wesley Wark, please, introduce  
25 yourself and your five-minute opening statement.

26 **--- PRESENTATION BY DR. WESLEY WARK:**

27                   **DR. WESLEY WARK:** And thanks, Commissioner and  
28 Counsel and members of the public who may be tuned in. I'm very

1 grateful for this opportunity to discuss issues which shape the  
2 national security crisis perceived by the federal government in  
3 February '22 issues which are at the heart of the Commission's  
4 mandate.

5 I've studied national security and intelligence  
6 issues for the entirety of my career, beginning with a  
7 historical interest nurtured when I was a student at Cambridge  
8 University, which is full of the ghosts of spies. The arch of  
9 my subsequent career could be described as MacDonald Commission  
10 to Rouleau Commission.

11 I want to make three, quick contextual points  
12 before providing what our moderator suggested should be a chief  
13 nugget of opening advice for the Commissioner. The first point  
14 is light-hearted, I make it because I suspect the Commissioner  
15 hasn't had many moments of levity over the past few weeks, the  
16 other two not so much.

17 So I want to take you, with a purpose, to my  
18 favourite intelligence cartoon published in the New Yorker  
19 magazine sometime after the 9/11 attacks. It showed a group of  
20 Neanderthals crouched in a stony landscape, inspired I'm sure by  
21 the movie 2001 "A Space Odyssey", the leader says -- I have no  
22 idea what a Neanderthal accent is meant to sound like -- the  
23 leader says, "We've got enough rocks. What we need is better  
24 intelligence." The *Emergencies Act* was rocks. What about the  
25 intelligence.

26 The second point is about the historical context  
27 for this inquiry. It joins a long list of distinguished  
28 predecessors that grappled with national security crises, from

1 the Gouzenko Royal Commission in 1949, through the MacDonald and  
2 Arar Commissions, to the Air India inquiry and intelligence  
3 performance issues were central to all these inquiries.

4           This leads me to a third contextual remark. In  
5 my research paper for the Commission, I explored whether the  
6 effort to understand the intentions, capabilities and  
7 opportunities of the Freedom Convoy amounted to a major  
8 intelligence failure. Now with the benefit of the public  
9 hearings and associated documents, we can trace, I believe, a  
10 path from intelligence failure, especially early warning  
11 failure, to policing failure, to eventually the invocation of  
12 the *Emergencies Act* marked by great uncertainty about what the  
13 future might hold.

14           The concept of intelligence failure is a much  
15 studied but contested term, and you won't hear it spoken by  
16 government officials or ministers before this Commission. This  
17 is understandable. It is a hard thing to face, and intelligence  
18 failure is easily oversimplified and used for the purposes of  
19 scapegoating.

20           My nugget of opening advice to the Commissioner  
21 is this. I urge the Commissioner to identify the critical  
22 points of intelligence failure and consider their impact on the  
23 invocation of the *Emergencies Act*. Such factfinding is also  
24 relevant to recommendations to avoid future intelligence  
25 failures that might shape the course of national security  
26 decision making in a crisis. If we can get the intelligence  
27 function right, that might allow us to keep the *Emergencies Act*  
28 legislation on its intended high shelf.

1           To go further, I would say it's important to  
2 consider the limitations that affected intelligence collection  
3 on the so-called Freedom Convoy, especially in regard to open  
4 source intelligence. Equally important is the quality, accuracy  
5 and utility of threat assessment reporting produced by diverse  
6 entities including the Ottawa Police Service, the OPP, the RCMP  
7 and ITAC. On the governance front, it is also important to  
8 understand the extent to which a largely decentralized national  
9 security system was able or not to coordinate and integrate  
10 diverse intelligence and information streams. The testimony  
11 heard by the Commission, especially from the National Security  
12 Intelligence Advisor, strongly suggests this was a real problem.

13           More advice. Consider the phenomenon of mental  
14 maps, especially those used by political decision makers as they  
15 received intelligence threat reporting. This includes what they  
16 thought of the intelligence function in general and their  
17 receptivity to intelligence reports.

18           Finally, it seems to me crucial to understand  
19 exactly how the available intelligence informed decision making  
20 prior to and with the invocation of the *Emergencies Act*.  
21 Intelligence failures generate serious consequences for  
22 government and society. History is littered with them. If the  
23 Commission can successfully write what I call the first draft of  
24 the history of the Freedom Convoy including the intelligence  
25 piece -- got it, Kent -- and determine recommendations to  
26 improve the performance of the intelligence system writ large,  
27 it will have done notable work in the public interest. Thank  
28 you.



1                   **MR. KENT ROACH:** Thank you very much, Professor  
2 Wark. A little bit under time.

3                   Batting cleanup, Professor Leah West.

4 **--- PRESENTATION BY DR. LEAH WEST:**

5                   **DR. LEAH WEST:** Good morning, Commissioner. I'm  
6 Dr. Leah West. I'm an assistant professor at the Norman  
7 Patterson School of International Affairs where I teach national  
8 security law, international law and counterterrorism. I'm a  
9 former DOJ lawyer. My client was CSIS. And I'm the co-author,  
10 along with Craig Foreces, of National Security Law.

11                   I'd like to begin by acknowledging that the  
12 premise of this panel is seemingly that what occurred in Canada  
13 in January and February of this year was a national security  
14 threat, at least as we understand them in the law. For this  
15 reason, we've been asked to consider the definition of threats  
16 to the security of Canada, the challenges of security  
17 intelligence and the rise of IMV.

18                   With the greatest of respect, I'm not certain  
19 that this underlying presumption is accurate. I do not question  
20 the impacts the protests had on citizens in Ottawa, Windsor,  
21 Coutts or elsewhere, nor do I question the economic impact the  
22 blockades and the borders and the capital had on this country.  
23 But as we typically understand it, did these activities or their  
24 impacts constitute a national security threat; namely, one of  
25 terrorism.

26                   If we take a step back and look at what happened,  
27 we should ask ourselves whether unlawful and even violent  
28 protests typically give rise to what we call a national security

1 threat under the law in this country. Did we label the G8 and  
2 G20 protests in Toronto a national security or terrorist threat?  
3 Would we have said the same thing about the violent protests in  
4 the United States in the summer of 2020?

5           Threats to public order and public safety, no  
6 doubt, but we have never labelled violence against police  
7 officers attempting to disrupt a protest terrorism. Moreover,  
8 the fact that individuals who hold extremist beliefs would seek  
9 to co-opt a political protest to advance their agenda is not a  
10 new phenomenon. We do not label entire protest movements  
11 terrorist because some amongst the protesters are looking for an  
12 opportunity to create violence. Again, I'd point to the history  
13 of G8 and G20 protests and even the Summit of the Americas in  
14 Quebec City in 2001.

15           Similarly, we have never labelled blockades and  
16 other non-violent but illegal means of obstructing critical  
17 infrastructure as terrorism. This country has a long history of  
18 protests along rail corridors and ports. While certainly these  
19 activities threaten trade and Canada's economic interests, they  
20 do not fall within section 2(c) of the *CSIS Act*, no matter how  
21 broadly one interprets it.

22           It is the -- is it then the combination of these  
23 types of activities that made them rise to a national security  
24 threat in February of this year? Perhaps. Or were they perhaps  
25 labelled a national security threat because that is what is  
26 currently required to unlock federal authorities that were  
27 necessary to bring these activities and their impacts to an end.  
28 If there is a chance that it is the latter, I urge restraint in

1 broadening our understanding of national security, and in turn  
2 expanding the powers and authorities of our national security  
3 agencies like CSIS.

4           While I wholeheartedly agree the *CSIS Act*  
5 requires modernisation, I do not believe this Commission or the  
6 Freedom Convoy should form the factual basis for those reforms.

7           Instead, we should ask whether Cabinet should  
8 have the authority to use executive action to end unlawful  
9 protests and obstruction of critical infrastructure that rises  
10 to the level of a national emergency and, if we do, then the  
11 solution, in my opinion, is to explicitly define the trigger for  
12 that type of emergency and narrowly tailor the available powers  
13 to bring those activities to an end.

14           Thank you.

15 **--- OPEN DISCUSSION:**

16           **MR. KENT ROACH:** Thank you very much, Professor  
17 West, and everyone. You were excellent with the time limits. I  
18 must have scared you.

19           So let's start with a little bit of intelligence  
20 101 and explaining the concept of intelligence as it pertains to  
21 national security. In the hearings it's often been referred to  
22 as an inexact science.

23           Mr. Fadden, you've already referred to it as  
24 information. Could you start us on -- with a little discussion  
25 about elaborating on your views about what intelligence is?

26           **MR. RICHARD FADDEN:** Okay, thank you.

27           So I'm going to be more traditional here and  
28 start talking a bit about national security intelligence and

1 security intelligence by just listing a few of the general  
2 characteristics which apply.

3           First, generally speaking, national security  
4 intelligence of use to politicians is to be policy neutral. It  
5 is not to advocate a particular end, either in policy or  
6 operational terms. Ideally, it's prepared by people who don't -  
7 - who are not involved with policy or operations.

8           Again, ideally, it draws on all information  
9 lawfully available, secret, confidential and open source.

10           It's important to remember that in this country  
11 when you can collect security intelligence and how it's severely  
12 prescribed by law, and this has an effect sometimes on whether  
13 or not information is, in fact, collected.

14           There are three broad categories relating to, I  
15 think, the *Emergencies Act* that are worth thinking about:  
16 security intelligence, which is mostly what I'm talking about;  
17 foreign intelligence, which could bear a bearing if there are  
18 foreign entities involved, and police intelligence, which  
19 Professor Roach is going to talk about in a few minutes.

20           While security intelligence relates to threats to  
21 the security of Canada as set out in the *CSIS Act*, I would argue  
22 that it should be broader than that. The definition in the *CSIS*  
23 *Act* relates to what CSIS can do, not what the Government of  
24 Canada or any other institution might consider to be a national  
25 security threat.

26           There's a difference, I think, as between what an  
27 administration -- administrative body can do and what CSIS or  
28 another collective agency can do. I think that's fairly

1 important.

2                   To make sort of what may seem like an odd  
3 comment, partially in response to what I know Professor West  
4 believes, there is more to the *Constitution* in this country than  
5 the *Charter*, which we seem to forget sometimes. We're supposed  
6 to have a *Constitution* similar in principle to that of the  
7 United Kingdom. We're supposed to promote peace, order and good  
8 government, and in that general context defence of the realm and  
9 public order is an executive government function that I think we  
10 need to remember even if the very narrow descriptions contained  
11 in particular statutes are relevant or not.

12                   There's a cycle to collecting intelligence or  
13 intelligence production, and one part is particularly important.  
14 That's the collection strategy, when do you start collecting  
15 intelligence, against whom, with what tools.

16                   You have collection, then you have analysis and  
17 contextualization and distribution, and this varies a great deal  
18 depending upon whether you're in a crisis or not, whether it's  
19 long, short or medium term in its orientation.

20                   But I think one of the things that's particularly  
21 important is collection strategy or the authority to collect.

22                   As I tried to mention in my opening remarks, in  
23 this country you just can't start collecting intelligence  
24 because you feel like it's a good thing. I personally think  
25 CSIS constrains itself somewhat too much in terms of what it can  
26 or can't collect, but that's another issue. But for the  
27 purposes of this Act, remembering that all of this collection is  
28 constrained in some shape, way or fashion I think is very, very

1 important.

2                   The other thing that's very important, I think,  
3 is to remember that no one intelligence agency has a monopoly on  
4 correctness or truth when it's looking at national security  
5 intelligence. The Canadian intelligence community is usually  
6 defined as CSIS, CSE, DND and the military, GAC, PCO, ITAC,  
7 FINTRAC, and a few others. All of these could have had  
8 something to bear on what was being given to political decision-  
9 makers prior to the invocation of the *Emergencies Act* and how  
10 they are brought together in such a way that they can -- they  
11 form a coherent whole is really important.

12                   One of the dangers of dealing with intelligence  
13 is group think because there's a real pressure within that  
14 community to develop a consensus. There are rules which say  
15 that you can formally disagree, but that happens very, very  
16 rarely. And one of the things that I guess worried me then and  
17 worries me now is this group think phenomenon. Somebody  
18 develops a view and you don't want to cause too much trouble and  
19 you sort of move long and, before you know it, it becomes a  
20 consensus view when, really, it shouldn't be.

21                   And I wonder a little bit if during the lead-up  
22 to the invocation of the *Emergencies Act* that might not have  
23 played a little bit in the production of intelligence.

24                   So again, I was just trying to give you a bit of  
25 a general sense of what national security intelligence is and I  
26 think two important components and then I'll close there.

27                   It is supposed to be policy neutral. You're not  
28 supposed to use intelligence to advocate a particular position

1 either in respect of policy or operations, and secondly, the  
2 collection strategy respecting the acquisition of this  
3 intelligence is really, really important and it varies  
4 tremendously between the organizations that I've listed and then  
5 the police on the other side, so I'll stop there.

6 Thank you.

7 **MR. KENT ROACH:** Thank you very much, Mr. Fadden.  
8 Professor Wark, what would you add, agree or  
9 disagree with to this question of what is intelligence as it  
10 pertains to national security.

11 **DR. WESLEY WARK:** Kent, thanks very much.

12 Listen, I'll just expand on some things that Mr.  
13 Fadden raised, and I'm particularly delighted that he mentioned  
14 the intelligence cycle and the different components that goes  
15 into the intelligence process.

16 But maybe I'd begin just by saying it's important  
17 to understand, of course, the purpose and objective of  
18 intelligence, which is to understand threats and threat actors,  
19 including their intentions, their capabilities and what  
20 opportunities they might have from malicious action.

21 Professor Roach, you know, mentioned of is  
22 intelligence a science or an art. I suspect everyone around  
23 this table will say it's an art, but there are scientific  
24 components to it, particularly in a contemporary context and the  
25 ways in which it is reliant on technological tools to assist it  
26 in collection and analysis.

27 But I would also say, and it -- I think it's an  
28 element that is worth paying close attention to, a key part of

1 the intelligence cycle is the process of intelligence assessment  
2 and reporting.

3                   We spend -- tend to spend a lot of time talking  
4 about intelligence collection, but intelligence collection is  
5 valueless unless you have a very strong assessment system.

6                   Just a couple of other remarks on objectives of  
7 intelligence. I think Dick captured these well, of course.

8                   It's often referred to in a very lofty way the  
9 role of intelligence is to speak truth to power. That is very  
10 lofty, but I think we can kind of climb down a little bit and  
11 say that the important objective of intelligence is to inform  
12 decision-making, to allow for wiser decision-making and being  
13 policy neutral in that context, as Dick mentioned, is extremely  
14 important.

15                   Intelligence is meant to provide to government  
16 and what is often called an information advantage to give them  
17 some kind of edge in understanding perhaps a fast-moving or  
18 crisis situation. The early warning component of intelligence  
19 is very important, as is its predictive capacity or ability to  
20 see beyond the current moment and anticipate or assess the kinds  
21 of threats that might face.

22                   Just two final points, very quickly. One is that  
23 in thinking about a definition of intelligence, I was drawn to  
24 the very first definition that I know of that was composed in  
25 our modern era, and this was written by a man named Sherman  
26 Kent, who was one of the early leaders of CIA intelligence  
27 analysis. He wrote a small book that was published by Princeton  
28 University Press in 1949 and he described three categories of



1 intelligence.

2 Intelligence is knowledge, intelligence as  
3 organization and intelligence as action.

4 And I'll just end, Commissioner and Kent, just  
5 with a quick word about ITAC because Kent had asked one of us to  
6 speak to this and perhaps I will as well.

7 But I think ITAC plays an important, unique role  
8 and had an important role potentially to play with regard to the  
9 Freedom Convoy. It is meant to be an intelligence fusion centre  
10 for the National Security and Intelligence System as a whole.  
11 It is not an intelligence collector, as the Commissioner has  
12 heard.

13 A little bit on its history. It was created in  
14 2004, we can argue a little bit about its exact birthdate, based  
15 on a predecessor established within CSIS in 2003. Its original  
16 intent was signaled by its initial title, Integrated Threat  
17 Assessment Centre. But over the years, its scope was diminished  
18 and it became the Integrated Terrorism Assessment Centre.

19 ITAC is a resource for the National Security and  
20 Intelligence Advisor, who in her testimony, as I recall, said  
21 that she mostly relied on its reporting for her understanding of  
22 the threat picture, but also arguably found it insufficient.

23 And I think that the challenges that were faced  
24 by ITAC and the potential deficiencies in its reporting are an  
25 illustrative case of some of the wider problems that were faced  
26 in coming up with an integrated clear picture, clear as possible  
27 picture of the threats posed by the Freedom Convoy.

28 And I'll just end by saying there is an

1 extraordinary moment that was revealed in the IRG minutes and  
2 the IRG tracker, where the National Security and Intelligence  
3 Advisor felt that she had to turn to something called the  
4 Intelligence Assessment Secretariat at the PCO to try and pull  
5 together an Integrated Threat Assessment picture.

6 I say this is extraordinary because the  
7 Intelligence Assessment Secretariat does not do domestic threat  
8 reporting. It has always, over decades, existed to produce  
9 strategic foreign intelligence assessments. The very fact that  
10 the National Security Intelligence Advisor felt, as Cabinet was  
11 beginning to consider its track one and track two and the  
12 potential invocation of the *Emergencies Act*, felt she had to  
13 turn to this unit within her office, I think is an important  
14 illustration of some of the problems that the system as a whole  
15 faced.

16 So thanks.

17 **MR. KENT ROACH:** Thank you very much, Professor  
18 Wark.

19 And Commissioner and the public should know that  
20 there is much, much more detail in Professor Wark's excellent  
21 paper that he prepared over the summer, and that is available on  
22 the Commission's website.

23 So finally, on the issue of intelligence, and I'm  
24 only a little disappointed, I know Professor Wark could have  
25 talked about Grahame Greene, and John le Carré, and cultural  
26 ideas of intelligence, but perhaps Mr. Elcock will help  
27 demystify intelligence.

28 Thank you.

1                   **MR. WARD ELCOCK:** I'm not sure I can demystify it  
2 particularly.

3                   I would agree with what Dick has said about  
4 intelligence. It is -- it's information. It is not  
5 necessarily, even if it's collected by technical means, it is  
6 not necessarily accurate. It is simply information which you  
7 try and make an effort to bring to a level of greater certainty,  
8 or the greatest level of certainty you can get it to, but the  
9 reality is it is never evidence or proof of anything. It's  
10 simply information that informs decision makers. Hopefully it  
11 does give them an advantage, but there are lots of cases where  
12 there is not intelligence, and therefore decision makers have no  
13 particular advantage as a consequence of it.

14                   I'm not sure I agree with the view that, in this  
15 case, there was necessarily an intelligence failure. The  
16 Commissioner has more information before him than I do. But it  
17 does strike me that listening to some of the information I did  
18 listen to, that indeed there was intelligence which was  
19 available to some of the participants, the Hendon process of the  
20 OPP, that would have provided pretty good intelligence about  
21 what to expect.

22                   The fact that the Federal Government did not have  
23 a wide swatch of intelligence reporting upon which to rely, one  
24 would like to have more, but the reality is the Service came to  
25 the conclusion, and I think rightly so, that it -- that the  
26 protest did not rise to the level of the section in the *CSIS Act*  
27 as a threat.

28                   Whether it would have risen to that level, one

1 could argue that it arose to that level during the process  
2 itself, as the protest morphed into something more than the  
3 initial convoy. It's an interesting question, but not one on  
4 which, frankly, I'm in a position to come to any conclusion.  
5 Although I would say that even if the Service had come to that  
6 conclusion, it really, at that point, would have made little  
7 difference, because the reality is the ability to collect  
8 information at that point would have been -- the question would  
9 be moot. One's ability to actually collect any useful  
10 information would be pretty difficult.

11 I think Professor Wark is right to note the  
12 importance of assessment. Assessment is crucial. But at the  
13 end of the day, if you don't have information, there's nothing  
14 to assess.

15 In this case, there was no -- there was little  
16 information, apart from whatever information might have been  
17 gleaned from public sources or from police sources that would  
18 have allowed the assessment of -- or a really detailed  
19 assessment of the information for the Federal Government at the  
20 Federal Government level. In some sense, this was an issue  
21 which was not at the federal level. The Federal Government does  
22 not normally have responsibility for issues within a particular  
23 province. In this case Ontario, and would be the same in other  
24 provinces.

25 It is a provincial jurisdiction. I think the  
26 Government on Ontario has pointed out on a number of cases, in a  
27 couple of cases in its existence, cities are creatures of the  
28 Province. The reality is, that is a matter for the Province,

1 not a matter for the Federal Government. So it is not entirely  
2 surprising to me that the Federal Government was not  
3 particularly well informed about the issues surrounding the  
4 protest.

5                   And indeed, I'm not sure that one could  
6 necessarily expect that they should be well informed, because  
7 this is a matter for another jurisdiction, frankly.

8                   So again, the issue of whether there's an  
9 intelligence failure, I'm not sure.

10                   Having said that, clearly there was a necessity,  
11 given what did happen, given the fact that the protests morphed  
12 into something else, whether because they were allowed to morph  
13 into something else, or just simply the passage of time allowed  
14 it is, as I said, an interesting question. But I'm not sure  
15 that there's any point in pursuing that issue particularly.

16                   Apart from that, I think what -- I think it's  
17 really important to keep in mind the reality of what  
18 intelligence is or isn't, and that it is not an exact science.  
19 Even if it's collected by technical means, it's not an exact  
20 science. It's still an art. You're still dealing with untested  
21 information which you can't absolutely guarantee.

22                   **MR. KENT ROACH:** Thank you very much. At this  
23 point, and with the Commissioner's indulgence, I will briefly  
24 step out of my role as a moderator and say a few things about  
25 the collection of intelligence by the police, as opposed to  
26 security intelligence agencies, which the panelists have  
27 addressed.

28                   Here I think it's important to understand that

1 the starting point is the 1981 McDonald Commission, which led to  
2 the creation of CSIS. The McDonald Commission warned that the  
3 RCMP Security Service, which had an intelligence function within  
4 the police, had trouble seeing the difference between dissent  
5 and threats to national security.

6                   And of course, this was manifest in different  
7 ways. At one point, reports of 800,000 files on Canadians at a  
8 time when our population was I think about 22 million or 25  
9 million, the detention of almost 500 people under the *War*  
10 *Measures Act*.

11                   And so what the McDonald Commission recommended  
12 was what you've already heard, is the creation of CSIS with a  
13 statutory mandate, a fairly restrictive statutory mandate with  
14 words like, "strictly necessary" with it, and a really state-  
15 of-the-art external review at that time by CERC and the  
16 Inspector General, now by NSIRA and the National Security  
17 Committee of Parliamentarians.

18                   So when you look at police intelligence, I think  
19 it is important to realise that it is working in a less  
20 circumscribed way. Now, Justice O'Connor, in the 2006 Arar  
21 Commission, went back to some of the things that  
22 Justice McDonald and his colleagues observed in 1981, and there  
23 was a common concern that the police at that time, within the  
24 RCMP, were not adequately trained in national security matters.

25                   Now, obviously, the context was different. In  
26 1981, the issue was knowing the difference between a staunch PQs  
27 and someone who would actually use or support political  
28 violence. In the post 9/11 environment, it was, was there

1 adequate information among RCMP officers about the human rights  
2 situation in Syria and Egypt and the consequences of sending  
3 questions and cooperating with those people.

4           But I think it is an important background to know  
5 that although Justice O'Connor accepted that intelligence is  
6 part of policing, indeed, you often hear about intelligence-led  
7 policing, which, as you panelists have indicated, could be seen  
8 as information-related policing, that Justice O'Connor  
9 recommended that the RCMP collection of intelligence should  
10 always be restrained by the role and expertise of the police in  
11 enforcing the law and in preventing crime.

12           Now, Mr. Commissioner, you've heard evidence  
13 about the collection of intelligence by both the RCMP and the  
14 OPP. In my view, you should be aware that the police, and here  
15 I say especially the municipal police and the provincial police,  
16 are generally subject to less watchdog review than CSIS or even  
17 now the RCMP's national security activities, which can be  
18 reviewed by NSIRA, the National Security Intelligence Review  
19 Agency, which has access to all documents other than Cabinet  
20 confidences, and I should add, including documents covered by  
21 solicitor/client privilege.

22           So there is a very robust relatively new  
23 oversight mechanism with respect to federal, but when it comes  
24 to municipal and provincial police forces there is not the same.  
25 This is not to say that there is none, but there is not the  
26 same.

27           Justice Linden, in his Ipperwash Report, raised  
28 concerns about police at public protests receiving different and

1 divergent streams of intelligence prepared by people with  
2 different levels of experience. And you've already heard about  
3 the importance not simply of collection but of assessment, so  
4 estimates are made about reliability and the importance of how  
5 it is communicated.

6           Justice Linden was particularly concerned in the  
7 Ipperwash context that Natural Resources, perhaps not known as  
8 for producing intelligence, was producing intelligence that did  
9 not always jive with what the OPP had heard. And of course, the  
10 Ipperwash Inquiry is relevant because it resulted in what many  
11 have recognised was thankfully avoided during this emergency.

12           Just finally in concluding, I will mention that  
13 you've heard about Operation -- OPP's Hendon intelligence  
14 operation, and was examining the convoy after first examining  
15 Indigenous protests, the Wet'suwet'en, Tyendinaga, Six Nation  
16 and Caledonia. We really don't know very much about how that  
17 started. We do know that in contrast to national security  
18 intelligence the OPP Hendon reports were, it's an exaggeration  
19 to say shared with everyone, but they were certainly shared much  
20 more freely than is normally the case with national security  
21 intelligence. You also have heard that the RCMP's ideologically  
22 motivated extremism intelligence branch also produced reports,  
23 but I've not seen them as exhibits.

24           Finally, I would add that there has been much  
25 commentary, I don't know if you need to get into this to  
26 discharge your mandate, but from the 2010 Air India Report on  
27 down about whether intelligence is -- national security  
28 intelligence is adequately shared with the police. Generally, I



1 think it's fair to say, in part because they operate with the  
2 expectation that matters can end up in court, are more generous  
3 in sharing intelligence where, to hearken back to perhaps the le  
4 Carré/Graham Greene vision of intelligence, which I recognise is  
5 partly mythologized, the sources and methods, and particularly  
6 the fact that Canada relies heavily on foreign intelligence  
7 which is not ours to share, is -- are some of the reasons why  
8 security intelligence tends to be shared less widely.

9 I apologise for going over my own self-imposed --  
10 -

11 (LAUGHTER)

12 **MR. KENT ROACH:** --- time limits.

13 So returning to my role as moderator, we'll move  
14 to the next question. What are the gaps and -- unless there's a  
15 question. No. Okay. What are the gaps and challenges around  
16 sharing intelligence with law enforcement across the Federal  
17 Government and between jurisdictions?

18 Professor Wark, can you take the lead here?

19 **DR. WESLEY WARK:** Professor Roach, thanks very  
20 much.

21 Maybe I'll begin by saying that challenges in the  
22 sharing of intelligence, either within a national security  
23 intelligence community, or more broadly, with law enforcement  
24 and first responders, is a perennial issue for any intelligence  
25 system that I am aware of, but it is an important issue, I  
26 think, for this Inquiry. And the gaps in sharing of  
27 intelligence was an issue highlighted by the National Security  
28 Intelligence Advisor as one of the two key gaps she identified,

1 the other being problems with regard to capacity to effectively  
2 use open source intelligence, which I know Professor West is  
3 going to address in a minute.

4           Why are these gaps important? And again, I would  
5 come to the significance of having, the necessity of having as  
6 comprehensive and integrated an intelligence picture as  
7 possible. And of course, various national security intelligence  
8 actors, including law enforcement, operate under distinct  
9 authorities and mandates. We can talk about gaps in the sharing  
10 of intelligence collection, or raw data if you'd like, but I  
11 think the most important gap involves the sharing of  
12 assessments.

13           Just on the federal national security  
14 intelligence system, there are multiple intelligence assessment  
15 units that have sprung up, many since 9/11, across the  
16 government. An integrated intelligence picture means the  
17 ability to share across those units. The Intelligence  
18 Assessment Secretariat at PCO is a central hub for foreign  
19 strategic intelligence assessment but there is no real  
20 counterpart for domestic intelligence assessment. The mandate  
21 of what became the integrated terrorism assessment centre is far  
22 too narrow, so that is one problem.

23           When it comes to law enforcement, threat  
24 assessment sharing with the National Security Intelligence  
25 community, I found it noteworthy that the National Security  
26 Intelligence Advisor felt that she wasn't getting the  
27 information she needed from the RCMP, which would be one  
28 important conduit.

1                   The most striking aspect for me of this failure  
2 to share threat reporting involved events at Coutts, Alberta.  
3 Although the RCMP Commissioner informed the Public Safety  
4 Minister on February 13<sup>th</sup> about the Coutts investigation and  
5 impending arrests, the National Security Intelligence Advisor,  
6 Jody Thomas, and the Assistant Secretary to the Cabinet for  
7 Security and Intelligence, Mike MacDonald, both testified that  
8 they learned about the Coutts threat through media reporting.

9                   A few other quick points to conclude. One, to  
10 come back to the OPP project Hendon reports, which have been  
11 mentioned, we do know a little bit about the history of this  
12 initiative, but I would say in the context of Freedom Convoy  
13 threat reporting, it was a remarkable effort. And as Professor  
14 Roach said, it had a wide distribution list for its reports, but  
15 a wide distribution list doesn't mean that people read it and  
16 take it in. Project Hendon reports simply failed to penetrate  
17 and didn't have the impact on threat assessment reporting at the  
18 federal level that it should have had.

19                   A second point I will make is both specific and  
20 more general. The Ottawa Police Service proved incapable of  
21 generating a sufficient threat picture about the Freedom Convoy.  
22 But at the same time, as far as I can see from the evidence, the  
23 OPS was unwilling or unable to draw on Hendon or other sources  
24 of intelligence. My conclusion briefly about this challenge of  
25 a sharing, in particular, of threat assessment is that I think  
26 the picture that was revealed is one of too many silos and  
27 engrained cultural practices that contributed to a dysfunctional  
28 intelligence ecosystem.

1                   But I did want to give a little bit of credit to  
2 the former Ottawa Police Chief Peter Sloly for his thoughts  
3 about this. And I commend the Commissioner to some of those  
4 remarks that the former OPS Chief made about his feeling in  
5 retrospect that there was a need for a much more integrated  
6 system of intelligence assessment sharing that the OPS, other  
7 law enforcement agencies and the entire National Security  
8 Intelligence community could draw on. Thank you.

9                   **MR. KENT ROACH:** Thank you.

10                   Mr. Fadden, what would you add?

11                   **MR. RICHARD FADDEN:** Thanks, Ken. A couple of  
12 things. First of all, I think we have to start from the premise  
13 that Parliament has set up various national security entities  
14 for a reason. They have different priorities, they have  
15 different objectives, they have different authorities, so we  
16 should not be surprised if in the end they produce intelligence  
17 that is not exactly the same as all the others, thus arising the  
18 issue of coordination. But there's nothing inherently wrong  
19 with various entities with national security responsibilities  
20 coming up with slightly different conclusions. So I think  
21 that's the base of a lot of this.

22                   One of my hobby horses when I was still working  
23 was that national security is no longer national. I think that  
24 is beyond dispute today. Virtually any national security issue  
25 that's arisen in the last 10 years has had international  
26 components, and it has also had subnational and civil society  
27 components. So to suggest that national governments, in this  
28 case Canada, is uniquely or specially or God-given right to

1 define and to deal with national security alone is dreaming in  
2 technicolor. They cannot do it. Civil society entities,  
3 provinces and municipalities are much closer to the people of  
4 this country than generally speaking is the federal government.  
5 So somehow, I think, we have to change the culture that while in  
6 the end the federal government may have some special  
7 responsibility for national security, they cannot do it alone,  
8 either from an international perspective, or a subnational, or a  
9 national security perspective.

10           The coordination of security intelligence, I  
11 agree entirely with what Wesley was saying. It's fine and dandy  
12 to give the National Security Advisor the mandate to do all of  
13 this but they need staff support. She has it on the foreign  
14 intelligence side. It does not exist on the security  
15 intelligence side.

16           One of the questions that often came up when I  
17 was still NSA was do you need a statute that puts in law your  
18 mandate to coordinate and to do all these sorts of things that  
19 everybody wants to do. I always answered no because I thought  
20 this was -- would conflict with ministerial accountability. But  
21 having said that, what's lacking in order to bring about this  
22 coordination is political will. Certainly, when I was working,  
23 I suspect it was true of Ward, but he can certainly speak to  
24 himself, we spent a lot of time getting people to do what they  
25 should have wanted to do on their own without our telling them,  
26 in terms of sharing information. And I found that in a  
27 particular crisis or particular circumstances, I had more than  
28 enough umph in my job as NSA to get people to do it, coordinate

1 things, and to do it properly. I did not have enough umph in my  
2 job to do that systemically because there was no political will  
3 to do it.

4 Prime Ministers have to accept, I think, that  
5 national security is more important than they traditionally do  
6 accept in this country. I mean, I started working in this area  
7 under Mr. Chrétien, who was driven screaming and yelling into  
8 having to deal with 9/11 because his priorities were social and  
9 economic. They weren't national security. Mr. Harper's were  
10 economic. They weren't national security, although he had to  
11 deal with Afghanistan. And I think it's fair to say that Mr.  
12 Trudeau became Prime Minister not expecting to have to spend a  
13 lot of time, money and effort on national security. Why is this  
14 the case? I think it's because Canadians don't feel threatened,  
15 and, generally speaking, there ain't no votes in national  
16 security. That's just a statement of fact, I think.

17 So the question I would have for you,  
18 Commissioner, is how can you in your report convince the  
19 government that what happened with the invocation of the  
20 *Emergencies Act* is not likely to be unique. We're going to have  
21 future disruptive events over the course of the next few  
22 decades. They're not -- there are not going to be fewer. There  
23 will be more. Some of them will be generated inside this  
24 country, some of them will be generated outside this country.  
25 So somehow, the government, the politicians have to accept that  
26 this is important and provide their officials with the  
27 wherewithal to integrate because Ministers aren't going to do  
28 it. It's an unreasonable request to expect Ministers to do

1 this. So I don't think there are enough coordinating resources  
2 available to do security intelligence coordination.

3           Two last thoughts. I was told once by the  
4 Director of the CIA of the day that over 96 percent of the  
5 information his agency used was open source information. By  
6 open source, he did not mean something that was readily  
7 available, but something that, if you worked at it, you could  
8 get access to, and it wasn't secret as defined by governments.  
9 I suspect that's still true today. So coming to grips with how  
10 much this open source information, sometimes hard to get at,  
11 should form part of security intelligence and I think it's  
12 something that we need to consciously address.

13           I can remember a circumstance, this is many, many  
14 years ago now, I'd like to think it doesn't apply today, I had a  
15 security assessment to approve, and it was relating to some  
16 specific activity in Africa. And I asked why a certain event  
17 wasn't reported because I'd seen it on television. And the  
18 analyst told me that, well, he couldn't put it in because he  
19 didn't have any intelligence confirming it. I mean, it's the  
20 sort of things that drives people to distraction, this cultural  
21 difficulty of dealing with open intelligence against, you know,  
22 a hundred years of secret intelligence, of the James Bonds of --  
23 you know, all of the people that Wesley talked about. This is a  
24 cultural issue. You don't need legislation to deal with this, I  
25 don't think, but somehow, somebody somewhere has to pull a few  
26 levers or pop a clutch and convince people, I think, that there  
27 are real threats on the national security front in this country.  
28 We should talk about them more. I hope your report will help

1 this because we don't talk about national security in this  
2 country and we're not going to get the politicians to move.

3 Last thought, which probably will not endear me  
4 with a couple of my colleagues, but I would just remind, that  
5 Parliament created the national security entities in order to  
6 promote the national security, not to provide opportunities for  
7 audit, review, and oversight; these are incidental. And  
8 sometimes I wonder that we get so taken up how we're monitoring  
9 the collection of security intelligence and how we're dealing  
10 with it, that we forget that the initial objective was to  
11 promote the national security. Again, that's a cultural issue  
12 and there's a balance to be had. But I'll stop there.

13 Thanks, Kent.

14 **MR. KENT ROACH:** Thank you very much. Food for  
15 thought.

16 Professor West.

17 **MR. RICHARD FADDEN:** You're very diplomatic.

18 **DR. LEAH WEST:** Thanks.

19 I'm going to focus on the specific question of  
20 gaps on sharing intelligence with law enforcement, and Kent  
21 already alluded to a lot of this. And I'm taking a big-picture  
22 lens here.

23 So I think it's important to really take away is  
24 that in Canada, domestic intelligence sharing, at least at the  
25 operational and tactical level, only routinely flows one way; it  
26 flows from law enforcement to CSIS, not the other way around.

27 You heard from representatives at CSIS that they  
28 became aware of the Hendon report through the Integrated



1 National Security Enforcement Team, so the INSETs. And through  
2 these teams, intelligence from law enforcement related to CSIS's  
3 mandate is fed back to CSIS, and when necessary, information  
4 from CSIS regarding INSET investigations can be shared with law  
5 enforcement, but it's through a highly centralized, strategic-  
6 level process, and what's known as the One Vision 2.0 Policy.

7           So lots of information flowing to CSIS from law  
8 enforcement, but only trickles of intelligence from CSIS to  
9 police. And generally; I'm not, again, narrowly focusing here  
10 on the convoy.

11           But I do think in one sense this makes sense.  
12 CSIS's investigative mandate, at least when it comes to national  
13 security threats, is far wider than law enforcement. CSIS's job  
14 is to advise the government about threats, realized and  
15 potential; and it's not to lay criminal charges. And you only  
16 have to look at the definition of terrorist activity in the  
17 *Criminal Code*, for example, versus the definition of what  
18 captures terrorism in the *CSIS Act* to get a sense of how much  
19 wider CSIS's mandate actually is.

20           And I do want to pause here and emphasize one  
21 point; the scope of political violence captured by the *CSIS Act*  
22 is actually quite broad, although I totally agree that how CSIS  
23 chooses to focus its activities can be much narrower than what  
24 the law allows for. And I think we have to remember that CSIS's  
25 activities are necessarily proactive, other than law enforcement  
26 activities that tends to be reactive.

27           A CSIS investigation needs not be tied to a well-  
28 identified threat actor or well-defined group. Moreover, CSIS

1 can take numerous investigative steps to investigate threats  
2 before they need a warrant, which is something you heard a lot  
3 about. The threshold for obtaining a warrant is significantly  
4 more demanding than the threshold to start a section 12  
5 investigation into threats into the security of Canada, and one  
6 only needs to look at reports of review bodies to understand  
7 that the number of warrants CSIS obtains is nowhere near the  
8 number of investigations the Service undertakes in a given year.  
9 And that's precisely how the Act is set up to work.

10 Kind of digressing, but my point is that the flow  
11 of intelligence between CSIS and law enforcement is far more  
12 restricted than the other way around, and while that is to be  
13 expected there can be instances where CSIS does not share  
14 intelligence relevant to criminal investigations for fear that  
15 its intelligence will cede criminal investigations and be  
16 subject to disclosure and testing in criminal proceedings, and  
17 this fear is often shorthanded as the intelligence to evidence  
18 dilemma.

19 What's the basis for this fear? Kent alluded to  
20 it; as a security intelligence service, every action taken by  
21 CSIS, regardless of the threat under investigation, is governed  
22 by what I consider to be three preoccupations, which is that  
23 security intelligence has national and international dimensions;  
24 the threat actors, the influences, the consequences, and the  
25 theatres of operations demand liaison and information-sharing  
26 with foreign and domestic partners of all types, and often under  
27 a demand for secrecy, and as a net importer of intelligence,  
28 maintaining strong relationships of trust with these partners is

1 vital to CSIS's success.

2           Second, the constant fear of penetration by a  
3 foreign agency or threat actor demands unrelenting vigilance and  
4 creates, I would say, an obsessive need to safeguard employees,  
5 sources, and investigative techniques.

6           And, third, the ultimate aim of security  
7 intelligence organization is not public recognition for its  
8 successes or to provide a sense of security to citizens; the aim  
9 is the collection of information about people and organizations  
10 who seek to obscure their true intent, which necessitates the  
11 careful use by CSIS of deceit, manipulation, intrusive  
12 technology, all without violating the rights and freedoms the  
13 Agency has been established to protect.

14           So disclosing CSIS information in open court  
15 threatens all of that, and quite frankly, our evidence law is  
16 not well structured to balance those concerns against the rights  
17 of the accused.

18           And so numerous proposals have been put forward  
19 over the years, starting with the Air India Commission and  
20 moving forward in an attempt to remedy that issue to allow for  
21 greater information flowing between CSIS and law enforcement.  
22 But, again, I would say that there's a lack of political will to  
23 tackle this problem.

24           And if a finding of this Commission is that there  
25 is greater need for intelligence sharing between federal and  
26 provincial agencies and municipal police forces, this problem is  
27 going to need to be addressed. And until it is, the reality is  
28 that intelligence between law enforcement and CSIS will continue

1 to largely flow one way.

2 Thank you.

3 **MR. KENT ROACH:** Thank you very much.

4 Mr. Elcock.

5 **MR. WARD ELCOCK:** I think I'm batting cleanup  
6 here, so rather than try to respond to everything that has been  
7 -- much of which I agree with, let me just pick a few issues.

8 I think Dick is right; one of the clear issues  
9 that creates problem in the national security area is that  
10 national security is not widely perceived as an important issue,  
11 both by governments, but also even by Canadians, which  
12 unsurprisingly, if Canadians don't think national security is  
13 terribly important, their politicians are likely to think that  
14 national security isn't terribly important either.

15 I think, however, it is important, and it would -  
16 - I would hope, as Dick said, that to the extent that -- of your  
17 work that it does, in fact, engender a little more attention to  
18 national security, more attention to national security would in  
19 theory allow us to build a better system.

20 I think also the issue of national security --  
21 because we tend to focus more on review of the national security  
22 agencies is -- because we don't necessarily worry about national  
23 security, we tend to focus more on reviewing those agencies and  
24 constraining their abilities and their actions to the point that  
25 I frankly think that there is a question of risk tolerance on  
26 the part of organizations such as CSIS. If you live in a world  
27 where you are heavily reviewed by, I would argue, three review  
28 agencies -- Professor Roach has mentioned two, there is a third,

1 the Federal Court, which, frankly, acts sometimes as if it was a  
2 review agency. I think in the circumstances often the agencies  
3 are so reviewed that they become risk averse, to a certain  
4 extent. Perhaps more attention to national security issues, and  
5 less attention, as Dick said, to review of national security  
6 agencies would be a good thing.

7           The issue of -- between police and the  
8 intelligence agencies, the flow, as everybody has said, is  
9 pretty one way -- pretty much one way, and has been described by  
10 Professor West, the reality is that for CSIS there is a constant  
11 question; can I share this information without risking both  
12 sources and methods? And I think in the context, one has to  
13 realize that the methods that the Service uses are frequently  
14 different, and sometimes much more advanced, than police forces  
15 use, and in some cases, is the identity of sources and  
16 particular methods that they might have used, beyond technical  
17 ones, that are at issue for the Service.

18           So there is a great reluctance on the part of the  
19 Service to share information with law enforcement, both because  
20 it may compromise those sources, but also because frequently it  
21 compromises the criminal investigations. If the Service  
22 provides information to the RCMP or another police force, and  
23 that investigation is compromised because the Service refuses to  
24 share the information for the purposes of a prosecution, then  
25 the reality is we're interfering with law enforcement. So there  
26 is a tendency not to share with police, and that's inevitable.

27           The issue of police sharing with -- that came up  
28 in the context of the NSIA and whether or not she had received

1 enough information.

2 I think the issue there, in fairness to the  
3 police, is that they're in the process of criminal  
4 investigations and therefore are reluctant to share information  
5 that may compromise their criminal investigation. And that is a  
6 continuous refrain, and it is one, frankly, as counsel to the  
7 Privy Council Office, I was familiar with.

8 To the extent that -- I have to say my experience  
9 in dealing with -- I think the issue of the flow of information,  
10 I think it has gotten harder than it used to be. Frankly, in my  
11 time in the Privy Council Office, I had fairly close  
12 relationships with the RCMP and they did share, on a fairly  
13 consistent basis, the kind of information that I needed to be  
14 able to provide Ministers with advice on a variety of issues, as  
15 the Coordinator for Security and Intelligence.

16 I think that has become harder to do in the  
17 context of more circumscribed rules around all of those issues.

18 But it also depends on the way that police forces  
19 see sharing. And in some respects, that's a very personal  
20 issue. Often some senior police officers will be prepared to  
21 share. Others will not be prepared to share. It is how each  
22 individual sees it, to some extent. Unfortunate, but real.

23 I think I've hit -- I mean, I agree with most of  
24 what has been said, so I'm not going to delve beyond that into  
25 the issues, unless there are questions that we come back to it  
26 at some point.

27 **MR. KENT ROACH:** Thank you very much. And I'm  
28 going to have to call inaudible now, with apologies to the

1 panel. What I'd like to do is move into, because we want to  
2 have time to look at the legislation. So if we can wrap this up  
3 by giving each of you three minutes to make one brief suggestion  
4 to improve intelligence gathering and sharing.

5 But in doing that, Professor West, I'd like you  
6 to also address gathering and open-source. That was question 3,  
7 which is now gone.

8 And Mr. Elcock, I'd like to have you address  
9 question 4, concerning how it fits into deciding whether there  
10 is a public order emergency.

11 So while both of you think about that, why don't  
12 we start off with Professor Wark?

13 So this is your three-minute wrap up on  
14 intelligence gathering and sharing?

15 And again, my apologies.

16 **DR. WESLEY WARK:** Professor Kent, thanks very  
17 much.

18 So I'm going to take us back to my cartoon  
19 illustration. We need, in this country, better intelligence.

20 And as Mr. Elcock indicated, one of the  
21 challenges in getting there is the lack of public understanding  
22 and attention to the significance of intelligence and alongside  
23 that, often the lack of political will and political seriousness  
24 paid to this issue.

25 But in thinking about better intelligence, we  
26 need and must consider the intelligence cycle as a whole. All  
27 the different elements that go into the intelligence function.  
28 And we need, I think, improvements across the spectrum.

1                   And this is not a conclusion drawn simply from  
2 the Freedom Convoy events. I think there are longstanding  
3 issues involved in improving the Canadian National Security  
4 Intelligence system. But I think that the Freedom Convoy events  
5 demonstrated were some particular gaps and deficiencies,  
6 especially in the context of threat assessment.

7                   And it is on the basis of an integrated and high-  
8 quality threat assessment that the success of the intelligence  
9 function I think ultimately depends.

10                  So there are some things that I think need to be  
11 done, and some of these are probably outside the scope of the  
12 Commission and the Commissioner's report, but I will just put  
13 them on the table.

14                  One is we need a real review, not a compliance  
15 review, of the intelligence system, which is at the heart of  
16 much of what this new review system does. And a couple of my  
17 colleagues on the table have raised questions about the impacts  
18 of that review system.

19                  I'm -- when I'm talking about the need for a real  
20 review of the intelligence function, I'm talking about the need  
21 for a real look at its capacities and effectiveness.

22                  And I would say in that context that if you  
23 examine the entire history of the modern Canadian intelligence  
24 system since 1945, there has never been a systematic review of  
25 intelligence capabilities and performance. And that is a  
26 remarkable thing.

27                  I would say there's no point in collecting  
28 intelligence if you don't have the analytical system to make use



1 of it.

2                   Sharing of intelligence that we've talked about  
3 is important, but it's not as important as the sharing and  
4 coordination of high-quality analytical products to create a  
5 common and integrated foundation for what Sherman Kent called  
6 intelligence as knowledge.

7                   If we don't have an intelligence culture which  
8 allows for intelligence to inform decision making, then the  
9 system as a whole is a waste of money and effort. And some of  
10 my colleagues with great experience inside the system have, I  
11 think suggested, if I am reading them right, that intelligence  
12 is only one part of a multiple stream of information that comes  
13 to decision makers.

14                   And that is absolutely true, but what  
15 intelligence has to be, thank you, Kent, is the most important  
16 part. It will never have a monopoly on the information  
17 available to decision makers, but it has to be understood as  
18 being the most important input.

19                   And in that context, and I'll just conclude on  
20 this, I was puzzled and worried by some of the testimony  
21 provided by the Deputy Prime Minister and Minister of Finance  
22 about her views on the intelligence that was reaching her. She  
23 described it as finely sifted flour. That doesn't sound like  
24 praise to me.

25                   She also said, "As Minister, I want my own  
26 sources of information. As Minister, I think I should get out  
27 and understand the situation on the ground." Those are  
28 understandable, political objectives, but they diminish what I

1 think of as the prime role that an intelligence system must play  
2 and it reflects the fact that we have not got to that point.

3                   Sorry, Kent, I'm wrapping up.

4                   Not got to that point where we really understand  
5 the significance of intelligence and its role in national  
6 security decision making.

7                   Thanks.

8                   **MR. KENT ROACH:** Thank you very much. Mr.  
9 Fadden, your three-minute takeaway, and also focused, if  
10 possible, on national emergencies and open-source. Thank you.

11                   **MR. RICHARD FADDEN:** Thank you. I mean, there  
12 are any number of things that need to be done, and Wesley has  
13 mentioned a good number of them.

14                   I think what I would suggest in terms -- you  
15 know, the note here talks about a brief suggestion.

16                   I think that there must be recognition that  
17 intelligence comes from multiple sources.

18                   I come back to my national security being above  
19 and beneath the nation state. I think in fact, to get this to  
20 change, because it's so culturally entrenched, it probably  
21 should be in the law. And then once that's the case, that this  
22 is part of the definition of what security intelligence can  
23 concern itself with, there would be changes in policy and  
24 operations.

25                   And I think secondarily, there need to be clear  
26 agreements across the board in this country between the Feds,  
27 the Provinces, and Municipalities about the sharing of  
28 intelligence.

1 I disagree a little bit with what Wesley said  
2 about the capacity of municipal police forces in dealing with  
3 intelligence.

4 I think, for example, Montreal, Toronto, and  
5 Vancouver have just as many resources and capabilities as the  
6 federal government has, should they choose to use them.

7 So ignoring them entirely, I think would be a  
8 mistake.

9 The coordination issue then, beginning to share  
10 all this information, what the heck are you going to do with it?

11 The usual response in the Federal Government is,  
12 "We'll set up a federal coordinating capacity."

13 I think it should be a national coordinating  
14 capacity. One that's not just federal, maybe even the Federal  
15 Government can finance it. But, you know, a great deal is being  
16 made about the nature of our federation, you know, and how, you  
17 know, at one level jurisdictions don't overlap each other, and  
18 at another level, how they entirely overlap.

19 But I think on national security, they do  
20 overlap. And having a national coordinating capacity, not an  
21 exclusively federal one, would encourage Provinces,  
22 Municipalities, and even some parts of civil society to share  
23 information.

24 Just to finish off -- perhaps even earlier than  
25 Kent hopes -- Wesley's view of a review -- view on a review, I  
26 take the point that we haven't had a great review, but if we  
27 don't consider, in this country, national security to be  
28 important, I'm not quite sure what a high-level review is going

1 to give us.

2                   This current government and the previous one  
3 generally didn't like reviews. And it's a minor miracle that  
4 they finally got out the Indo-Pacific Review after, I think,  
5 three years. So putting it into review, or as the Brits used to  
6 say, "Into commission" I'm not sure it will give us what we  
7 need.

8                   I don't have a solution, but I think if we start  
9 a review of this it'll never come out, because -- and it won't  
10 be useful because it will be so high level, because we tend to  
11 lowest common denominator a lot of the things that we think  
12 about on national security in this country, or they're so  
13 politicized that you can't have an effective dialogue.

14                   Anyway, my main point is, in terms of improving  
15 intelligence gathering and sharing, is recognize that it just  
16 doesn't come from the federal government, and we have to have  
17 mechanisms to make sure that we can collect it from everywhere  
18 and then make sense of it on a national basis.

19                   Thank you.

20                   **MR. KENT ROACH:** Professor West, your last three  
21 minutes on intelligence gathering and sharing?

22                   **DR. LEAH WEST:** Sorry; I'm going to focus on open  
23 source, because that's what I was asked to focus on.

24                   And so we know open source is derived from  
25 information publicly available; not readily publicly available,  
26 but publicly available, regardless of the type of medium. And  
27 in the testimony you heard from intelligence officials, no-one  
28 can convert -- excuse me; conveyed concern about the ability to

1 collect, share, and analyze newspaper articles -- sorry -- or  
2 YouTube videos.

3           The pressing question is about the ability to  
4 collect, share, analyze information shared on social media  
5 platforms. Moreover, I don't think anyone would suggest that  
6 CSIS couldn't follow its targets on Twitter or TikTok, or that  
7 it's inappropriate to read pages on Reddit that are very clearly  
8 tied to the Agency's mandate. And the same could be said for  
9 law enforcement investigating a criminal suspect.

10           My understanding, based on many conversations  
11 with officials and the testimony you heard, is that what's  
12 currently lacking within Canada's national security and  
13 intelligence community is the ability to monitor social media  
14 for trends that could pose a threat to national security. They  
15 want to be able to understand social movements, and narratives  
16 and the motivations and intentions of those participating and  
17 promoting them.

18           Doing this requires taking a very large lens to  
19 observe and analyze social media activity that is not  
20 immediately and may never become threat-related. It can also,  
21 depending on the technique used, require the collection and  
22 analysis of vast quantities of personally identifying  
23 information, which would trigger, you know, the *Privacy Act*, and  
24 potentially the *Charter*, but there's still an area of legal  
25 uncertainty.

26           So despite there being numerous private entities  
27 with these capabilities, there is no federal agency in Canada  
28 with a mandate or the legal authorities to conduct this type of

1 OSINT. The closest thing that exists, and you heard a bit about  
2 this, was the Canadian Rapid Response Mechanism, the RRM, but  
3 the RRM monitors the digital information environment for foreign  
4 state-sponsored disinformation and provides the Government of  
5 Canada and its international RRM partners with open-source --  
6 open primary-source data analytics about threats specifically to  
7 democracy.

8                   So the question troubling the intelligence  
9 community in Canada is; if we need this similar capability --  
10 and I suggest that it would be worthwhile -- where should that  
11 capability reside? CSIS, I suspect, would be the first one to  
12 tell you that it's not their job, and that they don't want to be  
13 seen to be monitoring the population.

14                   Alternatively, you could think Public Safety, but  
15 Public Safety is not a collection agency; it's primarily a  
16 coordination, and sets priorities and policy. So too for PCO;  
17 not a collection -- intelligence collector but does serve a  
18 coordinating function.

19                   One alternative I'm going to throw out there, but  
20 I think it is a little bit beyond your mandate, is the promise  
21 of establishing an arm's length public-facing body that could  
22 publicly identify social trends and defamation as a form of  
23 warning and information to Canadians writ large, civic  
24 education. But there are pros and cons to that -- that proposal  
25 as well, and because I have limited time, I'm going to stop  
26 there.

27                   **MR. KENT ROACH:** Thank you very much, and my  
28 apologies.

1                   Finally, Mr. Elcock, please take us home on  
2 intelligence gathering and sharing.

3                   **MR. WARD ELCOCK:** Okay. Again, you're making me  
4 play cleanup.

5                   A few points. I would share the view that a  
6 greater degree of sharing of information between the federal  
7 government and -- between federal government agencies and  
8 provincial agencies, and municipal police forces and so on, is  
9 important. There have been some efforts to do that over the  
10 years; they have not progressed as far as they probably should  
11 have. They probably ought to continue to progress, and there  
12 ought to be more pressure to make them progress. Although, to  
13 some extent, I suspect that that is a result of the reality that  
14 national security, or security -- national security issues are  
15 not widely seen as crucial.

16                   The issue of whether or not some national  
17 coordination body, it would or would not be useful. My guess  
18 is, frankly, that since we haven't managed to achieve a national  
19 regulator for securities issues, we're unlikely to get to the  
20 point of creating a national coordination for -- or coordination  
21 agency for security and national security issues anytime soon.

22                   I have long, frankly, resisted suggestions, or  
23 have frequently resisted suggestions that there should be  
24 reviews of this or that; and, in particular, national security  
25 issues. Frankly, I'm not sure they're all that useful. They're  
26 often formulaic. They're unlikely to -- it is unlikely to  
27 happen any time in the near future. Since an election is --  
28 we're in a minority situation and an election is two years away,

1 I suspect that that's not going to happen any time soon.

2                   And to be uncharitable -- my academic colleagues  
3 will probably not share this view, but sometimes I think that  
4 academics would like to see more reviews because it gives them  
5 something to write about, rather than achieving anything, in  
6 terms of real process.

7                   I think one of the things that is clear here --  
8 because it's not my view, frankly, that there -- this was  
9 necessarily -- as I said earlier, that this was necessarily an  
10 intelligence failure. I think one of the areas where there  
11 really needed to be better cooperation has nothing to do with  
12 the federal government; it's really the issue of how Province of  
13 Ontario organizes itself and deals with its police forces.  
14 That, to me, in some respects, was much more important issue  
15 than whether we have any national coordination function or  
16 broader sharing. That seems, in this case, to have been  
17 deficient. It would be -- but that is a much more discrete  
18 issue.

19                   Clearly, in this case the RCMP did not see it as  
20 important to share as it might have. I think that is an  
21 inevitable consequence, as I think I said earlier, of the way in  
22 which police forces function. But if -- I think that it would  
23 be important for police forces broadly writ, since in some sense  
24 this, at a certain level -- certainly in its initial stages --  
25 was much more a public safety issue than it was a national  
26 security issue, or seen as a public safety issue rather than a  
27 national security issue.

28                   The issue of police sharing and of, perhaps,



1 funding of better police analysis capabilities, in some cases  
2 would be more important than trying to build some national  
3 structure, which I'm -- suspect we won't get any time soon.

4 **MR. KENT ROACH:** Thank you very, very, very much.

5 So for our last half hour, we're going to drill  
6 down on two separate but interrelated statutes.

7 The Commissioner has heard much evidence about  
8 threats to the security of Canada, the 2(c) definition, and  
9 whether it should include serious threats to economic security,  
10 serious threats to critical infrastructure, and threats posed by  
11 ideologically motivated violent extremism. Those issues are  
12 actually dealt with a bit in the 2001 *Anti-terrorism Act*, but in  
13 a highly subscribed way.

14 So the first question will be to ask all the  
15 panellists, should the CSIS definition be changed? What are the  
16 consequences for CSIS and Canadians? And do you think the  
17 Commissioner should make that recommendation or make, as is  
18 contemplated also in the Order in Council, further study? So  
19 that's the first question.

20 And then the second question, which you can also  
21 address, is should the CSIS definition of threats to the  
22 national security of Canada, whether it's the current or a new  
23 one that you may support or not, should that be part of the  
24 definition of a Public Order Emergency, or should those two  
25 things be decoupled?

26 So Mr. Fadden, do you want to start, and I'll  
27 leave it to you to untangle those two questions.

28 **MR. RICHARD FADDEN:** Okay. I will in fact try

1 and deal with the two of them at the same time.

2           So in terms of changing definitions, I mean, I  
3 just remind us that the *CSIS Act* was brought into place in 1985,  
4 where the main preoccupation was the Cold War. Once we got over  
5 the Cold War, by and large it was terrorism. After that, we  
6 started becoming very preoccupied with cyber threats of one sort  
7 or the other, and today, we seem to be drifting into extreme  
8 violence by one group or the other.

9           Just listing these three or four main  
10 preoccupations suggests to me that the definition set forth in  
11 1985 clearly needs updating, but I would argue that it should be  
12 totally decoupled from the *Emergencies Act*.

13           The definition of threats to the security of  
14 Canada, either renewed or not, is appropriately very precise and  
15 very narrow for a security intelligence agency. The last thing  
16 we need is an open-ended definition that would allow CSIS more  
17 flexibility than it needs. I think security intelligence  
18 agencies, with very, very extensive powers of investigation,  
19 intrusive powers of investigation, need to be constrained. I  
20 sometimes think they're already too constrained, but that's for  
21 another time.

22           But what this has to do with the declaration of a  
23 Public Order Emergency escapes me entirely. I think the  
24 preoccupation with the various things that Kent listed,  
25 infrastructure, cyber issues, and the economy, are quite  
26 realistic preoccupations in a Public Order Emergency context,  
27 not necessarily, if at all, in the same way under the *CSIS Act*.

28           So I would totally decouple the two, and I would

1 broaden the definition being given to a Public Order Emergency,  
2 and either perhaps expand the one given to the *CSIS Act*  
3 slightly, but still remember that a security intelligence agency  
4 needs more constraints than a declaration of an emergency by the  
5 federal -- by the Governor in Council.

6 Leah raised one issue that I think is important  
7 in all of this, and that's the changing view that we have to the  
8 right to privacy, you know, the reasonable expectation of  
9 privacy. I think it's changed since 1985, and it's one of the  
10 things that preoccupies a lot of people in CSIS because they  
11 worry the instant they come up against this whether the barrier  
12 or the threshold, however you want to call it, is reasonable or  
13 not.

14 And I would say that under the *CSIS Act* the right  
15 to privacy is pretty important. When you're talking about a  
16 Public Order Emergency, privacy still remains important, but I  
17 think it's less important if you're really talking about, you  
18 know, significant threats to public order. And so I would  
19 include the definitions of -- I would include somewhere in the  
20 *Emergencies Act* a way of addressing the right to privacy, such  
21 that it is separated for that -- in the way that that right is  
22 set out in the *Privacy Act* and the way how it's used by other  
23 entities in the Federal Government.

24 So I think I'll stop there and give Kent a bit  
25 more time, but I just stress my meta-issue here is the  
26 *Emergencies Act* should have no reference whatsoever to the *CSIS*  
27 *Act*. They're two entirely different things, and whatever  
28 motivated Parliament at the time, since 1985 a lot of things

1 have changed, and we should recognise that.

2 Thanks, Kent.

3 **MR. KENT ROACH:** Thank you very much. Much  
4 appreciated.

5 Professor West, same sort of question. So  
6 modernisation of CSIS threats; decoupling, good or bad idea;;  
7 and how Public Order Emergency ought to be defined if there is  
8 decoupling?

9 **DR. LEAH WEST:** Sure. So on the should the  
10 threat of the security of Canada be changed, as I mentioned in  
11 my Opening Statement, I'm uncertain that what happened qualifies  
12 as threat to the security, as defined in the *CSIS Act*, and so to  
13 suggest that it did, by definition, as it's clearly written in  
14 the *CSIS Act* is inadequate. To (inaudible) activities I would  
15 argue is to accept that perhaps the legal threshold wasn't met.

16 I think the question of whether the *CSIS Act*  
17 ought to be modernised is the important one, and I would tend to  
18 agree that it does, but like I said earlier, I don't think the  
19 facts of what took place this year or the Commission is the  
20 place for that discussion. I think the role of this Commission  
21 is to honestly assess what went wrong, and respectfully, I don't  
22 think the cause of prolonged blockades in Ottawa or at our  
23 borders was because the *CSIS Act* doesn't adequately capture  
24 those activities.

25 In my opinion, the Commission should identify the  
26 reasons why protesters were able to establish blockades, what  
27 challenges law enforcement had in ending them, and make  
28 recommendations according to that, rather than suggest ways to

1 make it easier for the Executive to invoke the *Emergencies Act*.

2           On the second question, of should the definition  
3 of Public Order Emergency be tied to the *CSIS Act*, yes and no.  
4 Currently, as Dick mentioned, what currently falls under the  
5 heading of a Public Order Emergency is an emergency caused by a  
6 national security threat actor, it doesn't really capture public  
7 order disturbances. So if Parliament is of the view that what  
8 we want to be able -- we want to be able to invoke the  
9 *Emergencies Act* to respond to Public Order Emergencies caused by  
10 unlawful protest, blockades, and interference with critical  
11 infrastructure, then I believe the entire section of that *Act*  
12 needs to be rewritten for that specific purpose. Not only do we  
13 need to change the triggers, but the powers and authorities  
14 available to the Executive once a public emergency is invoked.

15           Alternatively, the Government could introduce  
16 separate legislation to create new offences and new police  
17 powers and prevention orders related to the protection of  
18 critical infrastructure and the maintenance of public order.  
19 The UK Government has recently introduced a piece of legislation  
20 that does just that, it's the Public Order Bill, and it's  
21 currently committee in the House of Lords.

22           That said, I suspect Parliament will still want  
23 to ensure that emergencies arising from threats of terrorism,  
24 espionage, sabotage, foreign interference and subversion can be  
25 addressed through the *Emergencies Act*, and in that case, I would  
26 not recommend decoupling the definition from the *CSIS Act*.  
27 These threats are already difficult for the public to assess,  
28 let alone identify. Canadians can see the effects of a flood, a

1 pandemic and a blockade in a war. Images and stories of those  
2 impacts fly across the country in real time. But espionage,  
3 covert efforts to overthrow the Government or influence our  
4 democratic processes, terrorist -- foiled terrorist plots?  
5 Often the only one that has the knowledge of those threats will  
6 be Canada's intelligence and law enforcement agencies.  
7 Moreover, the target of these threats is in most cases is going  
8 to be the Government itself.

9                   So we have potential for an unseen threat against  
10 those with the power to invoke the *Act*, coupled with the fact  
11 that any such decision to invoke it will be given significant  
12 deference, and the intelligence used as the basis for that  
13 decision can be withheld on Cabinet and national security  
14 privilege grounds, although not in this case. But this section  
15 of the *Emergencies Act*, and if we want to protect emergencies  
16 from them, is already ripe for abuse.

17                   Tying the invocation of the emergencies, of the  
18 emergency, excuse me, tying the invocation of an emergency  
19 caused from those types of threats to the *CSIS Act* in my opinion  
20 creates some level of objectivity to the legal test. The  
21 definition there is one that is routinely applied, understood,  
22 and subject to lots of review, as we've heard, and the whole  
23 point of including it in the *EA* was to eliminate questions about  
24 what does and does not amount to a national security threat that  
25 could trigger the *EA*, and I'm talking about threats from  
26 terrorism, subversion, espionage, et cetera. Using some novel  
27 or wider definition that would capture those threats, I think  
28 would render essentially a legal threshold meaningless.

1 Thank you.

2 **MR. KENT ROACH:** Thank you very much.

3 I'll turn to Ward Elcock now. Same two  
4 questions. The one thing I'll just remind everyone is if there  
5 was decoupling do you have any thoughts about section 3 of the  
6 *Emergency Act*, which here defines a national emergency as an  
7 urgent and critical situation of a temporary nature, and I think  
8 we're dealing mostly with (a), seriously endangers lives,  
9 health or safety of Canadians, and as such of a proportion or  
10 nature as to exceed the capacity or authority of a province to  
11 deal with. And then, of course, where CSIS threats to security  
12 comes in is in the definition of a public order emergency, which  
13 has to meet that first definition that I have read, but also,  
14 the section 2 definition.

15 So, Mr. Elcock, could you address, one, *CSIS Act*,  
16 two, *Emergency Act*, should they be separate or joined in some  
17 fashion.

18 **MR. WARD ELCOCK:** Some of the issues that come up  
19 here are -- a comment that Dick made suggests to me that I may  
20 have been around for too long. I do in fact recall the passage  
21 of the emergencies legislation and Dick asked the question what  
22 was the driver for it, and in some respects, the driver at the  
23 time was constitutional discussions with Quebec in which the  
24 issue of the *War Measures Act* was an irritant. And as much as  
25 anything, the driver for moving the emergencies legislation  
26 forward was the need to get that irritant off the table in the  
27 context of those constitutional issues. And that was, as I'm  
28 sure some of the people in the room will recall, was a time of

1 considerable constitutional ferment. It was a very difficult  
2 period.

3 I think that was the driver, and obviously, they  
4 were looking for a fast solution to the definition of an  
5 emergency, and they were at an earlier time before a lot of  
6 other issues, before 9/11, before our economy became closely  
7 interlinked with the United States and the consequences of  
8 border closures became a huge issue as they did with 9/11,  
9 although why they left out things like national disasters, I'm  
10 not quite sure. But I think the definition was too narrow, but  
11 I think it was a quick fix.

12 I agree with Dick entirely that there is --  
13 there's no connection between the *CSIS Act* really -- a real  
14 connection between the *CSIS Act* and the *Emergencies Act*. There  
15 not -- need not be any close connection between the two. I  
16 think if one were to move to amend the definition and preserve  
17 the connection with the *CSIS Act*, and I think the *Emergencies*  
18 *Act* definition needs to be broadened to cover things like  
19 potentially economic issues, like potentially economic  
20 disasters, what will climate change mean, what would an  
21 earthquake in British Columbia that takes a good chunk of  
22 British Columbia out to the ocean mean in terms of disaster and  
23 a necessity of the federal government taking some action under  
24 some authority.

25 Clearly, there are things that people need to  
26 think about. I don't have any particular advice on what are the  
27 sensible -- what are the things that should be added at this  
28 point, but I think they do need to be broadened.



1           If those things were to be imported into the *CSIS*  
2 *Act* definition and retained in the *CSIS Act*, that some of those  
3 would have consequences for CSIS that I think are well beyond  
4 the purview of this Commission. So as Dick said, I think it  
5 would be a great -- I think that it will be really important,  
6 and as I said at the beginning of this, to separate the  
7 definition in the *Emergencies Act* from the *CSIS Act*,  
8 particularly if there's any contemplation, as there should be,  
9 to change the definition and broaden it. It makes no sense to  
10 have the connection -- to preserve that connection between the  
11 *CSIS Act* and the *Emergencies Act*, in my mind.

12           **MR. KENT ROACH:** Thank you very much. So we now  
13 have two former directors of CSIS saying decouple. That may or  
14 may not be related to Mr. Fadden's admonition that intelligence  
15 should be policy neutral. We have Professor West saying that  
16 there are some connections. So, Professor Wark, where are you  
17 on this continuum?

18           **DR. WESLEY WARK:** So I get to play cleanup here  
19 as the only non-lawyer on this panel.

20           So I thought actually we were all going to agree.  
21 I thought we were all going to agree that the *CSIS Act*  
22 definition of threats to the security of Canada performs a  
23 different purpose than anything that we would want to see in the  
24 *Emergencies Act*. And so I'm going to go to that decoupling  
25 argument in a minute, but the first thing I would say is that I  
26 suspect there's widespread agreement that the *CSIS Act* itself  
27 needs modernisation. And the Commissioner may decide that that  
28 is not central to the scope of his work, but any encouragement

1 he could give in that direction I think would be welcome. And,  
2 of course, it is an idea that has already been floated numerous  
3 times by the CSIS Director and indeed by the Minister of Public  
4 Safety. So there is a lot of work to be done to modernise the  
5 *CSIS Act* passed in 1984 and passed in 2 contexts, which are I  
6 don't think any longer relevant. One context was scandal, the  
7 other context was the Cold War.

8           But the first argument I'm going to make about  
9 now focussing on modernisation of the *Emergencies Act*, and this  
10 is maybe a little bit out of scope, so I'll be very brief about  
11 it, but while I recognize that there could be public welfare  
12 emergencies, I actually think that part of the *Emergencies Act*  
13 should be dropped, because I don't think it is ever going to be  
14 usable in the context of a federated system. I also think the  
15 international and war emergency parts could be consolidated into  
16 one. This would leave a slim-down *Emergencies Act* with just two  
17 branches, and one of which would be a public order emergency.

18           The second argument I would make is that there  
19 will be a need for a definition of threats to the security of  
20 Canada to be included in a public order emergency. Just again,  
21 in my view, that should be uncoupled from a modernised *CSIS Act*.  
22 And such a definition of threats to the security of Canada would  
23 also need to be involved in a consolidated international war  
24 emergency crunch.

25           The -- I think certainly as I've learned, the  
26 *Emergencies Act* serves a different and wider purpose than the  
27 *CSIS Act*. It involves a different set of decision makers.

28           As we move to considering how to reframe a

1 definition of threats to the security of Canada in an  
2 *Emergencies Act*, I think it will be important to include  
3 explicit references to cyber threats, to threats to democracy,  
4 to replace old-fashioned concepts about subversion,  
5 investigations of which CSIS for understandable historical  
6 reasons is very loath to undertake, economic security threats  
7 and critical infrastructure threats.

8                   Now there are elements of the old CSIS section 2  
9 threshold that I think would be just inappropriate to carry over  
10 into a modernised definition of security thresholds in the  
11 *Emergencies Act*.

12                   References to espionage, 2(a), however pervasive  
13 espionage might be, continues to be, might become in the future.  
14 I find it hard to imagine that it would ever amount to a public  
15 order emergency. I also find it hard to imagine that threats of  
16 foreign interference, the current CSIS section 2(b) clause,  
17 short of war in international crisis again would ever amount to  
18 a public order emergency. So I think we can tighten the  
19 thresholds as we build them.

20                   Ideologically motivated violent extremism is a  
21 component of a recently defined lexicon of extremist threats,  
22 and in my view, should not be directly incorporated in a public  
23 order emergency definition including the security threshold.

24                   Threats to property needs to be properly defined,  
25 modernised in references again to -- in reference, excuse me, to  
26 economic security and critical infrastructure protection as  
27 opposed to the kind of classic terrorist-oriented concern about  
28 things going boom.

1                   So as we revamp the *Emergencies Act*, I think we  
2 need to add new elements and remove old ones.

3                   But as a final thought, excuse me, three perhaps  
4 very obvious points. One is that *Charter* compliance has to be  
5 key. The procedural safeguards built into the original  
6 *Emergencies Act* must be maintained, and I think many of them,  
7 from my perspective, were brilliant. I would encourage one  
8 possible change, and that would be to think about passing the  
9 parliamentary review baton to the National Security Intelligence  
10 Committee of Parliamentarians, which of course did not exist  
11 when the original *Emergencies Act* was passed.

12                   And there are reasons for that that I would be  
13 happy to discuss.

14                   But whatever the outcome, and I think we will  
15 agree on this panel about this, and I suspect the public will  
16 agree more broadly, whatever the outcome of a modernized  
17 *Emergencies Act*, it must not be to make the *Emergencies Act* any  
18 easier to use, not one iota easier to use, or to make it  
19 anything other than a last resort.

20                   So thank you.

21                   **MR. KENT ROACH:** Well thank you all for  
22 accommodating the changes. I think we've heard a lot here.  
23 We've heard a lot about the need for coordination, both within  
24 the Federal Government, the NSA needing staff on the domestic  
25 side, and having new staff from the foreign side. We've heard  
26 the arresting statement, I think it was by Professor Wark, that  
27 the NSA heard about the Coutts arrest on the media. We've heard  
28 both for and against issues of the utility of policy, efficacy-

1 based reviews. We've heard a lot about intelligence being  
2 policy neutral. And we've also heard about the danger of both  
3 overusing the 2(c) terrorism mandate and making emergencies too  
4 easy to declare.

5                   So given that we have eight minutes, I would give  
6 each of the panelists the last two minutes, if they have  
7 anything else, or if there's something that one of their fellow  
8 panelists said that they would particularly like to agree or  
9 disagree with? And then after the break, other people will be  
10 asking those questions.

11                   So Professor West?

12                   **DR. LEAH WEST:** Okay. Well I wasn't expecting  
13 that.

14                   I'm going to take this opportunity to be nerdy  
15 about the *Emergencies Act* law for a minute, if you indulge me,  
16 Commissioner.

17                   So *Roberts v Canada*, a decision in 1989 of the  
18 Supreme Court of Canada interpreted the phrase "any other law of  
19 Canada" as it's used in section 101 of the Constitution, and  
20 held that it includes either federal statute or federal common-  
21 law.

22                   Typically federal legislation uses the term "any  
23 other law of Canada, or a province, or any other law", if it's  
24 used to denote wider application than just federal statute and  
25 common-law.

26                   And I would say that we've heard different types  
27 of interpretations of that phrase put before you and since the  
28 Act was invoked.

1                   And I would say that this more narrow reading of  
2 that is actually more consistent with the definition of national  
3 emergency in the *Emergencies Act*.

4                   And if you look to Part A, it already stipulates  
5 that an emergency has to be beyond the authority of a province,  
6 and it would be redundant to require that an emergency be both  
7 beyond the authority of province, and also require that it not  
8 be effectively dealt with under any law of a province.

9                   And as you're aware, and your counsel is aware,  
10 there is an interpretative presumption against redundancy.

11                   And Part B of the definition already considers  
12 matters that fall outside of provincial jurisdiction, so it  
13 wouldn't be subject to resolution through provincial law in the  
14 first place.

15                   So once Cabinet has determined that there is a  
16 national emergency under A or B, and it's so therefore beyond  
17 the authority of a province, the question is simply whether  
18 there are federal legislative authorities that it can rely on to  
19 deal with the emergency.

20                   Now, I don't think this actually changes the  
21 facts that Cabinet needs to establish in order to meet the legal  
22 threshold, but I do think that there's been a lack of clarity  
23 around this element of the definition, and I wanted to take this  
24 opportunity to try to clear it up.

25                   **MR. KENT ROACH:** Well as a fellow statutory  
26 interpretation nerd, Professor West, thank you very much.

27                   Mr. Fadden?

28                   **MR. RICHARD FADDEN:** Just a couple of points that

1 either I made or have not made and my colleagues have made, one  
2 of which is the importance of judgement in all of this and the  
3 invocation of the *Emergencies Act*.

4 I think the government's judgement has already  
5 been sustained by the House of Commons, and in our system of  
6 government, that's final.

7 I can remember being told of a story arising out  
8 of the United Kingdom Parliament, where a Home Secretary was  
9 being harassed for some reason or other by the opposition, and  
10 he finally stood up and said, "Her Majesty's Government is  
11 preoccupied with the defence of the realm and public order. If  
12 you do not agree with how we're dealing with it, case us out."

13 I'm not advocating that position here today, nor  
14 with the U.K., but there has to be something in the political  
15 judgement that is sustained or not by Parliament not to -- I  
16 actually think, despite my criticism of reviews and what not,  
17 that this Commission is very useful. But I think in the end,  
18 the political judgement of the government has been sustained,  
19 whatever you conclude on the law.

20 The threat definition. I just wanted to add one  
21 element that we haven't talked about, which I take from  
22 international law, which is control the borders. You know, we  
23 lost control of our border, whether we like it or not. And I  
24 just wonder if something like that shouldn't be included in some  
25 of the definitions.

26 Also, the element of apprehended violence, which  
27 the Prime Minister pushed a fair bit in his conversations.  
28 There's a real difference between violence occurring and

1 apprehension of violence, and surely one of the objectives of  
2 government, writ large, is to avoid violence, if they can. So I  
3 just have that.

4                   Next to last though, I think a lot of the issues  
5 that we've all talked about do not necessarily involve  
6 legislative change. They involve policy change or cultural  
7 change. And those of us who have worked in the government will  
8 know that sometimes cultural change is harder to get than is  
9 legislative change. So I would commend to you, Commissioner,  
10 the importance of emphasizing that just because the law has  
11 changed doesn't mean things will change on the ground very  
12 quickly, if at all.

13                   And lastly, this may seem like a strange point to  
14 make, but I'm going to make it anyway. Government, by  
15 definition, is very messy. And we all try, in our different  
16 ways, to make it less messy, with definitions, and criteria, and  
17 processes, and what not. And I think, as you work your way  
18 through everything that you've heard, an acknowledgement that  
19 democracy requires some messiness would not necessarily be a bad  
20 thing.

21                   You can't have a democracy with preoccupations  
22 about transparency, and rules, and different people doing  
23 different things, without some degree of messiness, which I  
24 don't think is ever going to go away. So I think we just have  
25 to acknowledge it and try and l'encadrer, as they say in French,  
26 as much as you possibly can.

27                   So I'll stop there. Thanks, Kent.

28                   **MR. KENT ROACH:** Thank you, Mr. Fadden. I'm



1 going to henceforth refer to my office as democratic.

2 Professor Wark?

3 **DR. WESLEY WARK:** Kent, thanks very much.

4 Let me begin just by relaying an experience I had  
5 with regard to the Public Order Emergency Commission.

6 So I turned up on Friday morning, that foggy,  
7 slightly miserable morning, to hear the Prime Minister.

8 And while we were waiting at the entrance, I  
9 decided to sort of don my amateur journalist hat and I just  
10 asked people that were waiting in line with me why they were  
11 there.

12 There were lots of different reasons, but the  
13 common theme was that those folks from all kinds of backgrounds,  
14 and some from considerable distances away were there because  
15 they felt that this was a historic moment.

16 And certainly it was a historic moment to hear  
17 the Prime Minister testify, but I think more broadly, the work  
18 of the Commission is itself a historic moment. It's the closest  
19 thing that I think we've had in terms of examining a national  
20 security crisis since the McDonald Commission. And I appreciate  
21 that the work ahead is going to be very, very challenging.

22 But I want to make two points, they're really  
23 related, in closing.

24 And one is just to ask this question. How can  
25 you have effective national security policies and institutions  
26 without a clear definition of what you mean by national  
27 security? We do not have that definition either in law or in  
28 any kind of common understanding in this country.

1                   And this is something, again, that was pointed  
2 out by the National Security Intelligence Advisor.

3                   And the second point I would make is that how can  
4 you have effective institutions and laws without any clear  
5 policy guidance? We have no national security strategy. We are  
6 unique among our Five Eyes partners in that deficiency.

7                   The last national -- I'm making Ward wiggle here.  
8 The last national security policy was issued, as counsel and the  
9 Commissioner know, in April 2004 and it has never been upgraded  
10 or modernized, and it's a challenge to find it even, archivally.

11                   I think, and encourage the Commissioner to the  
12 extent that he feels it's in the scope of his report, that we  
13 need to draw attention to these two key lacuna, the lack of a  
14 definition and understanding of what national security is for  
15 the government, for Canadians, for all levels of government, and  
16 the lack of any policy guidance whatsoever.

17                   Thank you.

18                   **MR. KENT ROACH:** Once again, Mr. Elcock, you're  
19 the cleanup hitter.

20                   **MR. WARD ELCOCK:** Yeah. I agree with  
21 Professor West, since she raised that comment. I share her view  
22 with respect to the issue of any other law of Canada and how it  
23 ought to be interpreted. I agree with that Dick said. I don't  
24 entirely agree with Professor Wark. Again, I love strategies as  
25 much as the next person. I would remind people that the  
26 original strategy, which was published in -- just after 9/11 or  
27 shortly after 9/11, was as much as anything not about national  
28 security policy, but was more about ensuring that our neighbours

1 to the south knew that we were actually engaged and doing  
2 something. We also changed the title of the Coordinator for  
3 Security and Intelligence because all of us had gotten tired of  
4 going to Washington and trying to explain to people what a  
5 Coordinator was to the Director of the CIA. I suspect Dick had  
6 the same problems I did.

7 I'm not sure that a strategy is the issue extant.  
8 I think the issue is to go back to something that Dick said  
9 earlier, and with which I agree and I expressed the same view,  
10 national security is not perceived as a central issue in this  
11 country for a variety of reasons. I participated this year, and  
12 as Dick did as well, I two exercises to look at national  
13 security problems in Canada, and in every single one of those we  
14 struggled with how do you encourage people with the idea of --  
15 with the question of how do you encourage people to pay more  
16 attention to national security, care about national security.  
17 I'm not sure a study does it. I'm not sure a strategy does it.  
18 I don't have an easy answer to how to accomplish that, but I  
19 think that many of the problems that we have talked about here  
20 or are being talked about here would fall by the wayside if we  
21 actually had governments and a population which cared about  
22 national security regardless of whether we did a strategy or did  
23 a statement or whatever. But I'm not sure how to get there.

24 I think the other problem, frankly, that we all  
25 struggled with in those two exercises is how do you define  
26 national security? And I do not think in either of those  
27 exercises we reached a real conclusion about what an acceptable  
28 or agreed definition of national security was. I think that to

1 some extent that's kind of a wild goose chase, diving -- or  
2 diving down the rabbit hole, whichever metaphor you want to use,  
3 that actually probably achieves not very much in the process.

4 **MR. KENT ROACH:** My sincere thanks to all the  
5 panelists. And Mr. Commissioner, I hope that that is of some  
6 assistance to you.

7 **COMMISSIONER ROULEAU:** Certainly is, and we'll  
8 take the break and see what questions have drifted in, and we'll  
9 call you, Kent, on your phone and figure out what the questions  
10 will be for this panel when we come back.

11 **THE REGISTRAR:** The Commission is in recess for  
12 30 minutes. La Commission est levée pour trente minutes.

13 --- Upon recessing at 11:34 a.m.

14 --- Upon resuming at 11:59 a.m.

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

17 **COMMISSIONER ROULEAU:** Okay. Professor Roach,  
18 we're back.

19 **MR. KENT ROACH:** Okay. Thank you.

20 So before the break, there was a consensus that  
21 CSIS's approach to threats to security of Canada is not  
22 necessarily determinative. I would ask Dick Fadden and then  
23 Ward Elcock to talk to us, based on their experiences, about  
24 some of the other inputs that would go through Cabinet, PCO, and  
25 the like in determining whether the threshold for a Public Order  
26 Emergency has been met.

27 So Mr. Fadden?

28 **MR. RICHARD FADDEN:** Can I suggest that Ward

1 start because we're always making him last, and I don't think  
2 it's fair.

3 (LAUGHTER)

4 **MR. KENT ROACH:** Fair enough. Okay.

5 Mr. Elcock?

6 **MR. WARD ELCOCK:** Then I can rely on you to  
7 answer the question first.

8 Can you repeat the question because I was  
9 expecting Dick to deal with it.

10 **MR. KENT ROACH:** Sure. Sure. So can you tell us  
11 about some of the factors other than CSIS's determination of  
12 whether there was a threat to security of Canada that would go  
13 to Cabinet in determining whether there was a national order  
14 emergency?

15 **MR. WARD ELCOCK:** The other sources, to be, I  
16 guess to be specific if that answers the question, I think the  
17 key one would be a point that Dick made earlier, which is that  
18 it is the judgement of ministers. I mean, the reason we have a  
19 Cabinet is for them to have a discussion about a range of issues  
20 and exercise their judgement on all of that -- those issues as a  
21 result of that discussion and come to a conclusion.

22 We go through a long process to elect MPs to  
23 become Cabinet ministers to become part of Cabinet, that's a  
24 pretty important part of our process. Having said that, what  
25 feeds into that process, the advice of the Attorney General, the  
26 Department of Justice, there will be as well pieces of advice  
27 from a variety of parts of PCO that go to the Prime Minister and  
28 some other ministers. Other departments will have provided

1 advice to their minister on the basis of their participation at  
2 some level in the events. Different departments will have more  
3 capacity, others will have less, but there will be a whole range  
4 of things that will be before ministers, quite apart from whatever  
5 ministers -- whoever else ministers are listening to, their  
6 perception of events in Canada. Their conversations with their  
7 -- with electors, with people in their ridings. There are a  
8 whole range of things that ministers will have in their minds  
9 and before them as they go through these discussions, but again,  
10 as Dick said, it's the issue of judgement that they're there to  
11 exercise, that's why we elect them, that's why they get  
12 appointed to Cabinet, and hopefully they'll exercise that  
13 judgement as part of that responsibility.

14 **MR. KENT ROACH:** Thank you.

15 Final word to Mr. Fadden on this question.

16 **MR. RICHARD FADDEN:** Thanks. I agree with what  
17 Ward was saying. The only thing I would add is the practical  
18 reality of the Prime Minister and minister listening to their  
19 political staff. I mean, public servants always say this is not  
20 a great thing because they're not subject matter experts, but  
21 inevitably, almost always the last people the ministers and  
22 prime ministers will talk to are their political staff.

23 I tend to think that if they don't try and set  
24 themselves up as subject matter experts there's no harm in that,  
25 but what they do bring I think is the operating philosophy and  
26 values of a particular political party, and there's nothing  
27 wrong with that. I mean, if Mr. Poilievre had been prime  
28 minister as opposed to Mr. Trudeau I think some of the decisions

1 would have been differently. There's nothing inherently wrong  
2 with that because they bring an operating construct that's  
3 different and their political staffs often push that forward.

4 I guess lastly is I wouldn't underestimate the  
5 importance of the media in all of this. I mean, if ministers  
6 and the Prime Minister are connected to anything, it's on what  
7 the media is saying, and that has a not insignificant influence,  
8 I think.

9 Thanks.

10 **MR. KENT ROACH:** Professor West, you suggested  
11 that we should have an open source mandate, but that it  
12 shouldn't be in CSIS or Public Safety. Could you elaborate on  
13 where you think it should be or whether a new agency of some  
14 sort should be created?

15 **DR. LEAH WEST:** Well, that is the million dollar  
16 question, I think. And I -- as someone coming from a -- someone  
17 with a strong civil libertarian streak in me, I would like to  
18 see it be an organisation that is not directly tied into  
19 security intelligence because of the power of social media  
20 monitoring and assessment. And what we're looking at, when you  
21 think about what you're looking at when you're assessing social  
22 media is not necessarily reality. There are a lot of  
23 augmentation, there's a lot of, you know, bots pushing things,  
24 there's a lot of people saying things that they would never act  
25 on or ever really say out loud in public. And so as a real  
26 strong source of intelligence that's credible and reliable,  
27 there is, you know, inherent difficulties in anything that  
28 you're just getting when you look, at a broad sense, at social

1 media. But it is important to get a sense of political  
2 movements and political grievances and, you know, the scope of  
3 anger around certain issues and whether that has the possibility  
4 to, you know, be unleashed as violence, you know, and to get a  
5 sense of the social concerns of Canadians, especially when they  
6 may pose a risk to public order and national security.

7           So I think there is a good use for it, but it is  
8 a very different type of intelligence than what I think, you  
9 know, we want CSIS to be relying on, but it can help narrow the  
10 focus of our security intelligence agencies on potential areas  
11 of concern.

12           So I think there's a use for it, but because of  
13 the concerns about it, and because of the sheer fact that you  
14 really are monitoring people's conversations, right, their free  
15 expression and their exercise of that online, we have to be  
16 really careful about who has the responsibility for monitoring  
17 that.

18           And so that's why I think a public facing  
19 organization that is not a security or intelligence  
20 organization, but is an organization that is responsible for  
21 understanding public discourse and potential threats to --  
22 threats arising from disinformation or understanding trends that  
23 are happening online, and then sharing that publicly with  
24 Canadians, rather than just simply sharing it with CSIS, right,  
25 would be very helpful.

26           Clearly if an organization like that were to come  
27 across very highly threat related type of analysis, you know, we  
28 already have capacity for information sharing between agencies



1 of that kind under the *Privacy Act* and under SCIA. So I would  
2 envelop it under that.

3 But I think it's more important that Canadians  
4 have an understanding of what's happening, because we do get  
5 such a siloed interpretation of what's happening. So having  
6 some sort of arm's length public facing body that can take a  
7 scan of the pulse of Canada and talk about these really  
8 important issues, or at least put them forward and then identify  
9 where there's some disinformation happening could also be a  
10 really useful tool.

11 And so maybe that's a place for something  
12 associated with Heritage Canada, because it's taking up that  
13 mantle.

14 But I just -- I do have a hesitancy to say that  
15 that type of intelligence analysis should be resident within a  
16 solely public safety or one of its portfolio agencies.

17 **MR. KENT ROACH:** Thank you. Your thoughts  
18 briefly, Professor Wark?

19 **DR. WESLEY WARK:** Kent, thanks. First of all,  
20 just to emphasize just how important open-source intelligence is  
21 for the national security intelligence system. And the way we  
22 do it at the moment I think is far too diffused, and siloed, and  
23 fractured. I think there is a need for a central organization  
24 that is responsible for open-source collection, and especially  
25 analysis.

26 And I'm thinking about Professor West's comments.  
27 I think it should be public facing to a degree. But I think it  
28 is only going to be truly useful if it is within a place within

1 the national security and intelligence community.

2 I would not put it in CSIS. The CSIS director  
3 has made it clear he doesn't want it there.

4 The obvious home for it is the Privy Council  
5 Office, operating alongside the Intelligence Assessment  
6 Secretariat, and to a certain extent, connected to the  
7 Intelligence Assessment Secretariat.

8 But to address, you know, concerns about what we  
9 might broadly call democratic legitimacy, which I think is a  
10 real concern that Professor West has raised, its mandate would  
11 have to be very clear, it would have to be accountability  
12 mechanisms, and there would have to be real transparency about  
13 its work so that Canadians could be reassured that what it was  
14 doing was lawful, that what it was doing was in the public  
15 interest and serving national security.

16 So it certainly couldn't be built and hidden  
17 away. I'm not saying it needs to be created through statute,  
18 I'm not sure that would be a good idea, but in order to be  
19 useful, it does have to be in the national security intelligence  
20 system, and providing that open-source intelligence product to  
21 decision makers so that they can exercise, as Dick has said,  
22 their judgement.

23 **MR. KENT ROACH:** Okay. Back to Professor West.  
24 Both you and myself have talked a little bit about police  
25 intelligence. And we've heard the issue of the origins of  
26 Operation Hendon in collecting intelligence about various  
27 Indigenous protests. And of course, there are distinct concerns  
28 about the monitoring of Indigenous protest.

1                   I wonder what you could say about, on the one  
2 hand, the evidence that the Commissioner has heard or the  
3 submissions that there is this deficit, a structural deficit in  
4 supplying intelligence that may be, in some ways, easier for the  
5 police to supply, than security agencies that are concerned  
6 about sources and methods, and on the other hand, the threats to  
7 civil liberties in downloading that intelligence collection to  
8 the police, the threats to both civil liberties and Indigenous  
9 rights?

10                   **DR. LEAH WEST:** Well I think the history of why  
11 we have CSIS exemplifies that risk, is understanding the  
12 difference between potential threats to the security of Canada  
13 and actual criminal offences, and where the line to be drawn is  
14 when you're collecting intelligence.

15                   Again, obviously there is some level of proactive  
16 police -- law enforcement intelligence; right? But for the most  
17 part, it should be reactive. You can be proactive in assessing  
18 past trends; right? So if you are thinking about where crime is  
19 most likely to occur, you can look at past trends and think  
20 proactively about where you might see crime into the future.  
21 But it shouldn't be about crimes that have yet to manifest  
22 entirely, and potential individuals who have not yet started to  
23 take the action towards criminal offences. And so figuring out  
24 that line when you're talking about ideologically motivated  
25 extremism versus ideologically motivated violent extremism is  
26 particularly challenging. One is illegal. The other one is  
27 not.

28                   And so I have strong concerns about downloading

1 that responsibility to law enforcement, whose job it is to  
2 investigate crime with an eye towards criminal prosecutions, not  
3 advise the Government of Canada about potential threats.

4 And I think especially with IMVE, figuring out  
5 where that line is is really challenging and I hesitate that we  
6 wouldn't get into a situation where we err on the side of  
7 caution when collecting intelligence about potential IMVE  
8 actors.

9 **MR. KENT ROACH:** Okay. So Mr. Fadden, you've  
10 suggested to the Commissioner that we need a kind of national  
11 collection of intelligence. What about this danger in the  
12 context of IMVE, Indigenous protests that Professor West has  
13 spoken about? Is there a danger that while CSIS may be too  
14 circumscribed, it could be a bit of the wild west when it comes  
15 to provincial and municipal police deciding where the line  
16 between extremism and violent extremism, or wherever the line  
17 is? So how would civil liberties and Indigenous rights be  
18 protected, in your understanding of a kind of national clearing  
19 centre that would include municipal and provincial police  
20 intelligence, as well as the federal products?

21 **MR. RICHARD FADDEN:** Well I understand, and I  
22 guess accept some of the concerns that you've just listed. But  
23 I have a problem with the underlying premise that provinces and  
24 municipalities are children in our system of government. I  
25 think they have challenges and difficulties, much like the  
26 Federal Government has.

27 So if we were going down the path that I was  
28 suggesting, I think you'd need a fairly clearly articulated

1 framework with criteria and objectives about how things were to  
2 be done.

3                   And I'm not suggesting, as well, that every  
4 municipality in Canada be instantaneously involved in this.  
5 But, you know, you start off with a pilot, the Federal  
6 Government and, I don't know, Ontario, or in Quebec, or B.C.  
7 And then a couple of municipalities. And if it doesn't work,  
8 you disengage.

9                   But I think one of the difficulties in the  
10 national security area generally are people are afraid to try  
11 anything new, for a whole variety of reasons. Some I would  
12 consider good; some I would consider bad.

13                   But I do think that you raise a reasonable  
14 concern, and I think that it should be taken into account if we  
15 go that route.

16                   And Mr. Elcock said in response to my comments  
17 that he wasn't convinced that national coordination was any  
18 better than federal coordination, and he may well be right, but  
19 somehow we have to find a way of involving these other levels.

20                   **MR. KENT ROACH:** No. Thank you very much.

21                   So we've also heard about -- and this has come up  
22 in the hearings -- a lack of a definition of "national  
23 security". Are there international or other models that we  
24 should look to?

25                   Professor Wark?

26                   **DR. WESLEY WARK:** Thanks very much.

27                   There are, and I suppose it's important to say  
28 where we find them because it -- that intersects with other

1 arguments, at least, that I've made.

2                   Generally where you'll find definitions or  
3 concepts of national security are in national security  
4 strategies, which all of our five Is partners have in one form  
5 or another and tend to keep up to date, most regularly in the  
6 context of the United States.

7                   And the importance of having these definitions is  
8 partly to guide policy, it's partly to align with law and lawful  
9 authorities, but it is principally in terms of public education.

10                   And the point that's been made by many of my  
11 colleagues, and I agree with entirely, is that one of the  
12 challenges for Canada is that national security is not taken  
13 seriously either at the political level or at the public level.  
14 I would make the argument that that is going to change  
15 dramatically as the threat environment changes, but it is  
16 important, I think, to try and help the public understand what  
17 the meaning of national security is, what the threats might be,  
18 what the response capability of different levels of government  
19 might be and to outline that both as a piece of public education  
20 and as national security policy guidance for the government.

21                   So this is a little bit different than simply  
22 giving academics something to write about. This is a serious  
23 mission, I would say.

24                   And what is -- and Ward is absolutely right  
25 referring to the two projects that were undertaken recently with  
26 regard to thinking about national security strategy. It is very  
27 difficult to define what we mean by national security, but it's  
28 a worthwhile enterprise because what it does has to do and does

1 do, I think, in other doctrines adopted by our allies, is to  
2 align a concept of national security with the public interest,  
3 in other words, to spell out why should this matter for ordinary  
4 Canadians.

5                   And so the models are there. In the best  
6 Canadian practice when it comes to national security, as my  
7 colleagues will know, we can adopt those models as a late  
8 responder, study them and think about them. But I think the  
9 idea is just so important.

10                   **MR. KENT ROACH:** Mr. Elcock, could you weigh in  
11 on whether we need a definition of "national security" and where  
12 we should get one?

13                   **MR. WARD ELCOCK:** I think the issue of a national  
14 security definition, I mean, it's -- as I said earlier it's  
15 really hard to come to an agreed definition on national  
16 security, not an easy discussion. I think borrowing from  
17 abroad, I think you have to be careful when you're borrowing  
18 from abroad because definitions of national security almost  
19 inherently reflect the circumstances of the country where that  
20 definition is developed, and so you want to be careful that  
21 you're not buying yourself problems or issues that, actually,  
22 you don't want to.

23                   So choosing a definition, I'm not sure that I  
24 would import a definition from a foreign country. I think it's  
25 a question of informing oneself about possible definitions and  
26 coming to a conclusion.

27                   Whether it's wise for the Commission to come to a  
28 conclusion about a definition of national security, I think that

1 that probably is ultimately a better -- that Parliament is  
2 probably the ultimate decider of what the definition should be  
3 and I think if the Commission were to come to a conclusion about  
4 what the definition was, that would probably freeze the issue in  
5 terms of how government saw it going forward, and that may not  
6 be the right -- the right course of action.

7 But ultimately, there will have -- a definition  
8 is not a bad thing. It's a question more of how you arrive at  
9 that definition than whether or not there should or shouldn't be  
10 one.

11 **MR. KENT ROACH:** Thank you very much.

12 And of course, as one of the parties has raised,  
13 if there was a legislative definition that might involve  
14 consideration of Canada's obligations under the United Nations  
15 Declaration of Indigenous People.

16 I have one specific question and then one more  
17 general question which I think we can end up.

18 So Professor Wark, you suggested that in looking  
19 ta accountability mechanisms -- and there will be another panel  
20 that looks at accountability -- that it makes sense for the  
21 National Security Committee of Parliamentarians as opposed to  
22 the Joint Committee, which is currently looking at this, to play  
23 a review function.

24 Could you elaborate on that?

25 **DR. WESLEY WARK:** Sure, Kent. Happy to do so.

26 And the reason I point to the National Security  
27 Intelligence Committee of Parliamentarians as possibly the body  
28 that could act on Parliament's behalf to conduct a Parliamentary



1 review, really, is threefold.

2                   One is that the National Security Intelligence  
3 Committee of Parliamentarians has, in my view today, proven  
4 itself in terms of the kinds of reports it's done. A second  
5 point is that the National Security Intelligence Committee of  
6 Parliamentarians throughout its history -- and it's gone  
7 through, you know, many different members from different  
8 political parties, the House and the Senate, has always adopted  
9 and sustained a non-partisan approach to national security  
10 issues which, of course, you will not find in a Parliamentary  
11 committee.

12                   The third is that the National Security  
13 Intelligence Committee of Parliamentarians, as I think you've  
14 referenced, has wide access to classified information and  
15 classified briefings not available to an ordinary Parliamentary  
16 Committee.

17                   And finally, unlike an ordinary Parliamentary  
18 Committee, the National Security Committee of Parliamentarians -  
19 - sorry to keep, you know, not using the acronym -- has a  
20 dedicated secretariat research staff, which is, in my view,  
21 highly professional, highly competent and capable of being the  
22 kind of engine room for a study that it might conduct.

23                   So I think there are a lot of advantages to  
24 putting it there.

25                   Would Parliament accept that? I'm not sure.  
26 There are different views among parties about the legitimacy of  
27 the National Security Intelligence Committee of  
28 Parliamentarians, and we've seen that played out. But in my

1 mind, it would be the ideal solution.

2           **MR. KENT ROACH:** Professor West, I'm going to  
3 spring this on you because you're the author of the leading text  
4 on national security law. What, if any, role should the NSIRA,  
5 the National Security Intelligence Review Agency, should that be  
6 built into amendments to the *Emergency Act*?

7           And I'm thinking in particular, of course, that  
8 NSIRA has jurisdiction to see the legal advice that -- in  
9 relevant investigations that the government acts upon and this  
10 Inquiry has not seen the legal advice that was given to the  
11 government.

12           **DR. LEAH WEST:** I don't think NSIRA should have a  
13 role here, and I -- I'll step back and say I tend to agree that  
14 in terms of whether or not Canadians accept the position put  
15 forward by the Government of Canada, Parliament has already had  
16 to speak on that issue and I don't know that having a detailed  
17 analysis of the actual legal opinion by a separate body will  
18 really advance anything.

19           I think this Commission has its own purposes and  
20 it'll do its work and it should be left to do its work and not  
21 have a separate agency doing something on the side.

22           I will, however, push back on -- and also,  
23 NSIRA's just not really structurally set up for that.

24           NSICOP, I agree with all of the benefits of  
25 NSICOP be the ones to conduct the Parliamentary review.  
26 However, there are serious deficits with it as it is currently  
27 structured as a body of Parliamentarians and not a Parliamentary  
28 Committee, for example, the inability to compel witnesses or

1 evidence before it. It does not have that capacity.

2           And Ministers, for example, can say, "I'm not  
3 going to testify or provide you with that information that you  
4 want right now because it continues to be operationally  
5 relevant", which I think when you're dealing with an ongoing  
6 emergency, which is one of their tasks, would be really  
7 problematic for the committee.

8           So if we wanted to give it to NSICOP, we would  
9 need to make it a full-fledged committee of Parliament, it could  
10 not do that function as a committee of Parliamentarians.

11           **MR. KENT ROACH:** Thank you.

12           And last question, open to all: At various times  
13 the issue of intelligence failure has been discussed; the  
14 Commissioners heard a variety of views. To what extent is that  
15 a helpful term; is it influenced by hindsight bias, and do you  
16 have any last thoughts you would like to share with the  
17 Commission about the issue of intelligence failure?

18           So I'll start with Mr. Elcock, so he doesn't go  
19 last.

20           **MR. WARD ELCOCK:** Intelligence -- by definition,  
21 you have an intelligence failure when you don't actually provide  
22 the information in advance. So in a sense, intelligence failure  
23 is something that every director of an intelligence service --  
24 and both Dick and I have done that for a few years, is something  
25 you live with all the time. You have probably more intelligence  
26 failures than successes. Fortunately, most of them are probably  
27 not in the public domain.

28           Having said that, it's not entirely clear to me

1 here that an intelligence failure is the real issue. I think  
2 the reality is that the issues here are much more complicated  
3 than an intelligence failure. There was some intelligence that  
4 probably should have given the Ottawa Police Service pause for  
5 thought. Clearly, analytical capacity failed in some way  
6 because that didn't get transferred through.

7                   One can look at the national security agencies  
8 and say they should have come up with information, but the  
9 reality was it was not a subject that, in their view, rose to  
10 the level of national security -- a national security threat,  
11 and therefore it probably, apart from some analysis from ITAC or  
12 some other assessment agency, would not have -- would not have  
13 given rise to the collection of additional information.

14                   So whether there's an intelligence failure here  
15 or not, I think is open to question.

16                   **MR. KENT ROACH:** Professor Wark, and again  
17 briefly.

18                   **DR. WESLEY WARK:** How can I be brief on this,  
19 Kent? Thank you, though.

20                   Listen, I would say, first of all, discussing  
21 intelligence failure is just an inescapable reality. You know,  
22 the challenge for the Commissioner, I think, is deciding how  
23 real this was; how serious it was, what was the nature of the  
24 impact was on the absence of critical pieces of good  
25 intelligence, whether it's early warning intelligence or  
26 intelligence, for example, on the fact that slow-rolling convoys  
27 might turn into border blockades.

28                   And I would also say not only is it an important

1 thing to think about, but it's out there in the public domain.  
2 It is a question that has to be answered because it has been  
3 raised in the public domain and in the media; it cannot be  
4 avoided.

5           Is it the real issue? You know, I think it is.  
6 I guess it just reinforces a point that I made at the beginning;  
7 I think that there is a direct link between intelligence  
8 failures, policing failures, and the circumstance in which the  
9 Cabinet found themselves in a rush of decision-making over a few  
10 short days before the *Emergencies Act* was invoked.

11           And it's important to remind ourselves that the  
12 Incident Response Group was only called for the very first time  
13 on February 10<sup>th</sup>, and the decision to invoke the *Emergencies Act*  
14 was issued on February 14<sup>th</sup>. That is crisis decision-making in  
15 its purest form. And I think it is clear, at least in my mind,  
16 from the evidence that we've heard, that there was a lot of  
17 uncertainty about the threat that was being faced, particularly  
18 the future manifestations of that threat.

19           So, yes, intelligence failure is a big issue, and  
20 I'll finish on that, Kent.

21           Thank you.

22           **MR. KENT ROACH:** Thank you.

23           Mr. Fadden?

24           **MR. RICHARD FADDEN:** Thank you.

25           I don't like the expression, not because I worked  
26 in intelligence, and as Ward said, I certainly had my fair share  
27 with my colleagues, but I would think of it more than an advance  
28 warning failure, because we -- or at least I articulated the

1 view that government was in receipt of information from any  
2 number of sources, not just intelligence. And, seemingly, none  
3 of these sources, be they from the police or anywhere else, you  
4 know, sort of got up and rang the alarm bell. Part of this is,  
5 I think, structural; part of it is I think people just couldn't  
6 believe this was going to happen in Canada, which is one of our  
7 problem with these issues.

8                   But also, in terms of failures, I think it's  
9 important to distinguish between what I would characterize as  
10 operational failures; you know, something didn't happen in the  
11 context of, you know, the public order Order, or what might be  
12 termed more strategic. I mean, did we have, as a country, a  
13 general view of where right-wing extremism was going in its  
14 opposition to the COVID mandates or not? I don't think we did  
15 that particularly well. And for that you didn't need the secret  
16 intelligence and the intrusive methods of collection that CSIS  
17 have to do. Any number of people could have done this; some  
18 thinktanks could have done this better than was the case.

19                   So I think I would -- I would dilute, a bit, your  
20 question by saying; were there failures? Absolutely. I'm not  
21 sure it was exclusively intelligence; I think we could spread  
22 the blame. Also remembering that intelligence is advice; it's  
23 not determinative, and I think sometimes people forget that.

24                   Thanks.

25                   **MR. KENT ROACH:** Thank you.

26                   Professor West.

27                   **DR. LEAH WEST:** So I would agree that I -- from  
28 what I've seen, to me, didn't seem to be an intelligence

1 failure, but a failure to act on that intelligence. And what we  
2 really had was a federalism failure.

3           The *Emergencies Act* is based on the premise of  
4 everyone doing their jobs at the municipal, provincial, and  
5 federal levels.

6           **MR. RICHARD FADDEN:** That's a good point.

7           **DR. LEAH WEST:** And that didn't happen. I think,  
8 to me, that is the biggest failure that we need to take away  
9 from this.

10           **MR. KENT ROACH:** Well, thank you very much, and  
11 my sincere thanks to the panellists for your patience and  
12 brevity.

13           And again, Mr. Commissioner, I hope this is of  
14 some use.

15           **COMMISSIONER ROULEAU:** Well, I just want to echo  
16 Kent's thanks to the panel. This was a very thoughtful panel;  
17 obviously you've given this a lot of thought. You were very  
18 helpful, and it's for me a real pleasure to be listening to  
19 experts from the different -- well, it's actually one area and  
20 -- but different perspectives; how's that? And it's -- it was  
21 very stimulating to me, stimulating thoughts, and I hope will be  
22 reflected in the ultimate report whenever I figure out what  
23 that's going to look like.

24           And, finally, I want to thank Kent for ably  
25 handling this and moving it along so well and focused on issues  
26 that I think are very important to the Commission.

27           So with that, we're going to break for the lunch  
28 and, again, mes sincères remerciements pour une excellente

1 présentation et une excellente gestion du comité.

2                   **THE REGISTRAR:** The Commission is in recess until  
3 2:00 p.m. La Commission est levée jusqu'à quatorze heures.

4 --- Upon recessing at 12:32 p.m.

5 --- Upon resuming at 2:00 p.m.

6                   **THE REGISTRAR:** The Commission is reconvened.  
7 La Commission reprend.

8                   **COMMISSIONER ROULEAU:** Okay. So we're now into  
9 the afternoon session of today's policies rounds. And it's  
10 dealing with a little bit different subject: policing of public  
11 protests.

12                   So, c'est pour cet après-midi, ça va être les  
13 protêts et... comment... les polices doivent gérer ce genre  
14 d'évènements. Alors, nous avons des panélistes par excellence,  
15 j'ai hâte de les écouter, et nous avons quelqu'un, un modérateur  
16 par excellence, c'est, je crois, le professeur Williams. Alors,  
17 I'll turn it over to Professor Williams to introduce our panel  
18 and get this going.

19 **--- ROUNDTABLE DISCUSSION: POLICING OF PUBLIC PROTESTS:**

20                   **MR. MICHAEL WILLIAMS:** Thank you very much,  
21 Commissioner. My name is Michael Williams. I'm a professor in  
22 the Graduate School of Public and International Affairs and I  
23 will be moderating this panel on the policing of public  
24 protests.

25                   I'll keep my remarks very brief. I guess it's  
26 obvious to say that the Ottawa protests, as well as those that  
27 took place at the border, provided significant, if not almost  
28 unprecedented challenges to the questions of policing public



1 order and public protests in Canada.

2 I think we have a superb panel to examine some of  
3 the policing dimensions of this today.

4 The crucial element of this panel is it is  
5 designed to be forward looking. That is, we're not so much  
6 interested in precisely what happened. The Commission has been  
7 looking into that in extensive detail. We're very much  
8 interested in what we can learn from these events, what kinds of  
9 reforms might be useful, what kinds of strategies might be  
10 effective, what kinds of lessons in general can we learn for the  
11 future in terms of both public capacities for dissent and  
12 protest and also for the policing, if necessary, of precisely  
13 those kinds of actions of dissent or protest.

14 Because of the breadth and complexity of the  
15 issues that are involved, the panel has decided to divide the  
16 issue into three different sections. The first we're going to  
17 deal with as a question or a series of issues around policing  
18 strategies. The second around questions of interagency  
19 collaboration, or lack thereof, cooperation. And the final one,  
20 around questions of regulatory legislation or regulatory  
21 instruments.

22 I've asked each of the panelists to take the lead  
23 on this -- on different areas. So I will ask them to come and  
24 speak to those areas for about 10 minutes each. And then we  
25 will open it up for discussion on that issue for about -- for  
26 the remaining period, up to a 35-minute limit, and then we will  
27 flip over into the next issue.

28 So without further adieu, let me introduce our

1 panelists. We have four of them in the room with us today and  
2 who unfortunately has come down, I believe, with a cough, and is  
3 therefore going to come in virtually to us.

4 So the first person I will introduce you to is  
5 our virtual panelist, Cal Corley, who is the Chief Executive  
6 Officer of the Community Safety Knowledge Alliance.

7 He is followed by Robert Diab, who is a professor  
8 in the Faculty of Law at Thompson Rivers University in Kamloops,  
9 B.C.

10 We're also lucky enough to have Bonnie Emerson,  
11 Superintendent of Community Engagement of the Winnipeg Police  
12 Service.

13 Followed by Colton Fehr, Assistant Professor in  
14 the Faculty of Law also at Thompson Rivers University.

15 And finally, Michael Kempa, Associate Professor  
16 in the Department of Criminology at the University of Ottawa.

17 I'd like then to turn first to the question of  
18 policing strategies and the lessons, the implications, the  
19 consequences of the Ottawa protest.

20 Michael, perhaps you could lead us off on that  
21 topic?

22 **--- PRESENTATION BY DR. MICHAEL KEMPA:**

23 **DR. MICHAEL KEMPA:** Sure. Thank you very much,  
24 Commissioner, and all the counsel who are here. I very much  
25 appreciate being included.

26 What I wanted to do, essentially, today was some  
27 briefer comments on overall strategies for dealing with mass  
28 protests and really focus my comments on opportunities for

1 integration, integration planning, some of which are, as yet,  
2 under exploited, but where there may be directions for  
3 improvement in the future.

4           In an over-sweeping type statement, we can say  
5 that the lessons of policing mass protest that were learned at  
6 the G20 in Toronto in 2010 were in many ways applied in the mass  
7 protests in the Ottawa region, and across Canada for that  
8 matter, but the lessons of G20 were, in many ways, not  
9 applicable to the nature of protests that we saw this time  
10 around.

11           Simply stated, very much the lesson of G20 was to  
12 have police work on more of a stand back type strategy of  
13 containment, where over a period of time, protests would run  
14 their course, dissipate, and ultimately, where an enforcement  
15 action may be necessary, it would be on a smaller scale.

16           That type of approach in Ottawa was heavily  
17 criticized, as we all know. And we spoke in terms of a new  
18 paradigm in protest type, for which many of the lessons of the  
19 past do not seem to apply.

20           So in terms of meeting that new challenge,  
21 pooling collective knowledge, pooling collective resources is a  
22 major issue. And of course, we've covered the ground thoroughly  
23 that coordination across policing agencies, coordination between  
24 police agencies and their civilian oversight bodies, and  
25 political overseers is extraordinarily difficult.

26           So the comments that I'll make, I'll mostly focus  
27 on the framework in Ontario for the reason that Ontario was very  
28 much a focus in terms of police coordination for this

1 Commission, but also, very often, what we see in Ontario  
2 legislation finds its way into police frameworks across the  
3 country over time.

4           So the current reality in Ontario is that police  
5 interaction and police governance is ultimately governed by the  
6 *Police Services Act* of 1990. The most recent piece of  
7 legislation, 2019's COPS, the *Comprehensive Ontario Police*  
8 *Services Act*, of which the *Community Safety Act* is a part, is as  
9 yet unproclaimed.

10           Some of the institutions that are created by that  
11 legislation are in sort of semi-operation at the moment, such as  
12 the inspector general of policing that we began to learn about  
13 the other day in the testimony of Mr. Weatherill. But we're  
14 still waiting on the development of regulations prior to that  
15 legislation coming into full effect.

16           So in terms of coordination across agencies and  
17 particularly at the level of planning and sharing resources,  
18 there are obviously the proactive and reactive dimensions to  
19 integration.

20           At the proactive level, it is clear that where  
21 police services boards, by the authority of the *Police Services*  
22 *Act*, 1990, as made clear in the Morden Report, although this is  
23 mostly the subject of other panels, do have the authority to ask  
24 questions, and even offer input or advice, which chiefs are free  
25 to take or leave, on matters of operational planning for most  
26 issues, but most especially for major events, what Justice  
27 Morden calls "corporate events", which is to say events that are  
28 large enough that the entire police service is implicated in

1 dealing with that particular event.

2                   So there is certainly a role for boards working  
3 proactively with their chiefs to ask if the possibility, the  
4 need to coordinate with other police organizations could be on  
5 the table, and perhaps leading that conversation with their  
6 chief and linking up through currently the OCPC by the 1990  
7 *Police Services Act*, and moving forward, that same role, I  
8 understand, will be taken over by the Inspector General with the  
9 new legislation.

10                   My understanding is that the IG would serve as a  
11 type of quarterback role for police services boards, with the  
12 Solicitor General coordinating messages, offering mostly  
13 procedural advice, rather than policy advice, to boards from the  
14 Inspector General.

15                   Where there's an anticipation that there might be  
16 the need for a major event of resources and coordination, ---

17                   **COMMISSIONER ROULEAU:** Can you just slow down a  
18 bit ---

19                   **DR. MICHAEL KEMPA:** Sure.

20                   **COMMISSIONER ROULEAU:** --- for the interpreters?  
21 It's ---

22                   **DR. MICHAEL KEMPA:** Certainly.

23                   **COMMISSIONER ROULEAU:** --- a bit of a challenge.

24                   **DR. MICHAEL KEMPA:** Certainly. Where there is a  
25 need, or there's an anticipated need for coordination with other  
26 police organizations, boards could reach out through the OCPC,  
27 or later the IG, to discuss the matter between their chief and  
28 the heads of other police organizations and pose questions as to

1 what types of coordination or resources might be needed.

2           In terms of post hoc or reactive coordination,  
3 however, there is certainly the possibility of this type of  
4 discussion between chiefs, their boards, the OCPC, or IG and  
5 other police services within the *Police Services Act*, but the  
6 thresholds for when this might happen and who might lead these  
7 conversations is left as an open question in the legislation,  
8 which is to say, there's a lot of ambiguity as to who would  
9 drive these particular discussions.

10           So it's very clear that boards set policy, boards  
11 are involved in questioning on operations and offering input the  
12 chiefs are free to take or leave, but at the time that a chief  
13 of police would indicate to their board that things have gone  
14 sideways and they're not capable of providing adequate and  
15 effective policing given disturbances associated with a major  
16 event, it would fall to the Board or the Chief to approach  
17 another police organization, in the case of Ontario, that would  
18 be the OPP, seeking for the resources. At the moment, the IG,  
19 the Inspector General would be intended as the body that should  
20 be notified of this move that a Board and/or their Chief would  
21 be making. Where a Chief makes the request directly to the  
22 Commissioner of the OPP, the Commissioner of the OPP is  
23 obligated to provide support to the OPS, in this case, but it  
24 would be within that Commissioner's interpretation of what type  
25 of support would be appropriate. Where a Board maybe doesn't  
26 agree with their Chief and would be making a request directly to  
27 the OPP, for example, the Commissioner of the OPP is not  
28 required to necessarily provide support, but if he or she

1 decides that support is necessary, again, it is within their  
2 discretion to decide what type of support might be appropriate.

3           This system, while it allows for this type of  
4 discussion and coordination, is silent on what exactly the  
5 thresholds would be to move the discussion if there's not  
6 agreement, for example, between a Chief of Police, a local Chief  
7 of Police, municipal, their Board and the OPP in the example of  
8 Ontario. So this is to say that our system works well where the  
9 stress test or the event is not so difficult to handle that it  
10 stresses that particular system, or where there's an alignment  
11 of opinion or personalities or priorities of the personalities  
12 involved. In other words, if there's good working relationships  
13 between Boards, Board heads, Chiefs of Police and Commissioners  
14 of the OPP and those who are either on OCPC but more later -- or  
15 when the legislation is updated, the Inspector General, it works  
16 well where there's agreement between these particular players.

17           What might be suggested though would be a series  
18 of thresholds where automatic degrees of either coordination or  
19 either transference of decision-making authority might move  
20 between organizations depending on the nature of the ask and the  
21 nature of the circumstance.

22           So we heard testimony from Commissioner Carrique  
23 of the OPP, for example, that there are over 200 requests of the  
24 OPP for various forms of assistance over the course of the year.  
25 Most of them are quite small in scope and size, and most of them  
26 come with very few strings attached on the part of the OPP. As  
27 the ask gets larger in terms of number of police officers, the  
28 OPP explains that it has a responsibility for influence over

1 what will be done with its resources. And obviously, for  
2 reasons of collective agreement of having to ensure the safety  
3 of their officers and membership, they want influence over what  
4 will be used with their personnel resources.

5           It's been suggested in some of my conversations  
6 with police professionals in these organizations that perhaps as  
7 the ask increases and the size of officer or resource request  
8 increases, the degree of OPP influence would increase in a  
9 commensurate way. So for example, and I'm not sure what the  
10 thresholds would be, these would be open questions, if a  
11 municipal police service was asking for a percentage of officers  
12 relative to its own membership in greater of a certain  
13 threshold, it would come with automatic integration of OPP  
14 involvement in the planning stages. And if that threshold was  
15 to increase further to a certain percentage, it may then be an  
16 automatic threshold where the OPP would simply take over  
17 responsibility for operational planning entirely. The  
18 suggestion being that if these were automatic thresholds, and  
19 I'm not sure what they would be, this would remove the  
20 implication, implied or otherwise, that the municipal police  
21 service was in some way failing, and it was just the scope and  
22 nature of the operation and the request of the OPP that would  
23 dictate their level of influence over planning moving forward.

24           The last thing I'll say is -- before we move on,  
25 is simply I've been asked whether the issue of bias within  
26 police organizations can influence the execution of their  
27 operations. I would say that that is almost certainly the case.  
28 We are confident that there was and are across police services



1 in Canada, at minimum, significant levels of sympathies for  
2 anti-vaccination movements, as there would be for various  
3 political positions moving down to the extremes of the polls, to  
4 the extent that the police are drawn from society, they would  
5 reflect the attitudes that exist in society. We simply don't  
6 know the end at this time. It has not been measured.

7           So what was put to me by a member of OPS, which I  
8 thought was very insightful, was they said that less than 10  
9 percent of officers can impact more than 90 percent of  
10 operational outcomes, where if you have a small number of  
11 officers with sympathies to various causes, it's quite easy for  
12 a small number to have an outsized impact on the execution of an  
13 operation.

14           So a little bit in the way that the CAF has  
15 undertaken measurement of the position of different political  
16 ideologies within their ranks, it is a priority area to actually  
17 map the N, the size of these sympathies within police  
18 organizations. I'll leave it there.

19           **MR. MICHAEL WILLIAMS:** Great. Thank you,  
20 Michael.

21           I'd like now to turn, please, to Bonnie Emerson.

22 **--- PRESENTATION BY MS. BONNIE EMERSON:**

23           **MS. BONNIE EMERSON:** I'm just going to start the  
24 time. Good morning, or afternoon. Since I'm in Ottawa, I'd  
25 like to start by recognizing that I'm on the traditional unceded  
26 territory of the Algonquin Anishinaabe people. I'm an  
27 Indigenous female, community advocate, and as the reason I  
28 believe I was invited here today, a police officer. I share all

1 of these things because they assist in shaping my worldview and  
2 they're going to impact what I see and how I react.

3 I'm currently a superintendent of community  
4 engagement with the Winnipeg Police Service. I'm part of the  
5 Canadian Association of Chiefs of Police CACP, Policing with  
6 Indigenous People's Committee, PWIP, and the Social Justice  
7 Committee of same. The Committee, as I believe you know, has  
8 created the National Framework for Police Preparedness for  
9 Demonstrations and Mass Assembly. It's considered a best  
10 practice document. And CACP has in the last three years been  
11 approved to teach a police liaison training course under the  
12 CAPC certificate course for police liaison training where the  
13 National Framework is utilized and taught. So I'm going to  
14 reference that a little bit later on here as I continue my  
15 conversation.

16 My expertise in police and community engagement  
17 and police liaison is a lot more granular, I think, than the  
18 presentations and the expertise at the table, but I hope to  
19 bring some operational perspective and experience to sometimes  
20 what is a very theoretical discussion in dynamic situations.

21 Mass demonstrations and assembly are very  
22 dynamic. And as you've heard, they're changing in real time.  
23 There's no realistic way to prescribe and plan for every  
24 possibility. People in protest or mass assembly situations are  
25 increasingly less predictable. Experience suggests this is  
26 intentional. Disruption is often sought. The larger the  
27 impact, the more your underlying interest may be served.

28 The CACP training and PLT trained officers are

1 impartial but not neutral. Impartial to address bias that may  
2 exist, it really should not matter what a police officer's  
3 personal views are, but not neutral means once safety is  
4 compromised, we are obligated to act. The primary role of the  
5 police in any demonstration or assembly is to preserve the  
6 police, protect life and property, and enforce the law.

7           Police to accommodate rights, it's our job, but  
8 it's also to maintain peaceful, lawful and safe assembly. PLT,  
9 Police Liaison Team, is more -- or, sorry, is relationship  
10 building, but it's also more than just talking. PLT play a role  
11 and are trained -- again, I'm talking in the context of the CACP  
12 training course -- to test resolve of leadership where  
13 leadership is identified in present. I believe there's been  
14 some papers and some presentations that addresses that we are  
15 often seeing on an increasing nature fragmented leadership, in  
16 fact, conflicting leadership in a number of mass demonstration  
17 and assembly situations.

18           But consequence and responsibility is  
19 communicated to participants and to leaders alike, and that  
20 could and should be a role of our PLT trained members. The  
21 majority of events this Commission is discussing, through the  
22 Commission and papers and testimony, often occur in large cities  
23 where municipal police services, such as, where I am from,  
24 Winnipeg Police, but when they reach a scale of public  
25 disruption and disorder, in many, almost all of the cases,  
26 provincial police and federal police are utilised because they  
27 have the resources or the mandate to respond.

28           So often it is this municipal to provincial to

1 federal response and coordination that is required, and how do  
2 we prescribe it but still allowing the flexibility and  
3 adaptation that is absolutely essential in a dynamic situation?  
4 Communication, interconnectedness, and training is what I  
5 propose.

6                   Communication. I watched a little bit of the  
7 expert testimony and read the papers. Words used across  
8 organisations do often mean different things. Personally, as a  
9 community advocate, I often engage with other systems and  
10 utilise a certain word, community policing, systemic racism,  
11 police liaison, thinking that my audience understands the same  
12 thing, and quite often it's different. I'm going to focus just  
13 on police liaison. I threw those other two in there just more  
14 for reaction.

15                   But we, systems and people, use words believing  
16 that we are engaging and talking about the same thing. This is  
17 not the case across systems, and it's certainly not the case  
18 even within systems, and within police systems.

19                   Police organisations across Canada have a number  
20 of liaisons, community liaison, diversity liaisons, so now we're  
21 adding a layer of a Police Liaison Team, and I've clarified a  
22 number of times that I mean in the context of the CACP training  
23 course utilising the national framework. I believe we need to  
24 be clear what we mean, and explain it.

25                   So the CACP national framework for a police  
26 response is a best practice document. It was based on OPP PLT  
27 training, RCMP DLT training. They're liaison training. It went  
28 under the umbrella of the CACP because you have the municipal,

1 provincial, federal components who belong under that national  
2 umbrella, who can provide a best practice document that allows  
3 the flexibility for smaller organisations to adapt within your  
4 own community context, but also have the consistent language and  
5 interoperability amongst police organisations to know what we're  
6 talking about and how we are responding across organisations.

7           Manitoba, Winnipeg just hosted in June our -- the  
8 first CACP PLT training course outside of Ontario. We've been  
9 planning it a couple of years, and we were finally able to do it  
10 this June. We planned it under the MACP, sorry about the  
11 acronyms, Manitoba Association of Chiefs of Police, model, our  
12 members, and we included First Nations policing.

13           So we had a training course with the concept of  
14 let's have our police colleagues in Manitoba aware of using the  
15 same language, having the training, and also, on a national  
16 scale, because we have seen with mass demonstration and assembly  
17 that the local goes national, international in some cases, and  
18 vice versa, so we have to have that flex and common  
19 understanding.

20           There is communication and information shared  
21 across borders and boundaries by organisers, participants of  
22 mass demonstrations and protest. Many times police and systems  
23 don't have this freedom and flexibility. Common training and  
24 language would facilitate better information understanding  
25 across systems and police. It would clear up some ambiguity and  
26 it would actually provide public transparency and accountability  
27 that I believe that the public and Canadians expect from their  
28 police services.

1                   So we have seen movement travel across provinces  
2 and municipalities. If information or intelligence received is  
3 a risk or a threat, we must respond quickly to address this  
4 risk. Allowing organisations to utilise and implement response,  
5 with some flexibility to adapt as required for their own  
6 community needs, but consistent language and understanding,  
7 would, I believe, be very forward-thinking and allow an  
8 accountable and transparent response.

9                   So the community of practice, that I was  
10 anecdotally sharing, as far as the MACP model, and what, sorry,  
11 CACP is trying to do, is building a community of practice of  
12 consistent language and training, but also incorporate it now  
13 across systems. The understanding of what a liaison officer is,  
14 in my experience with community policing and community  
15 organisations, I think there's some disconnect for what some  
16 would consider the soft approach where it's only talking, it's  
17 not response or it's not accountability, and that is simply not  
18 the case.

19                   To that end, I believe in mass demonstrations  
20 you've heard as far as Incident Command training, PLT and  
21 liaison training needs to be incorporated into that within the  
22 police systems so that you have multiple units within police  
23 organisations who have an understanding, because the Incident  
24 Command model, PLT is only a part, but if your Gold or  
25 Integrated Command doesn't have understanding of that, they may  
26 not utilise it appropriately.

27                   So I started with the role of the police and  
28 safety. In the end, safety is the bottom-line. Staying

1 current, understanding constantly shifting dynamic, social media  
2 has increased exponentially the volatility, the reach, and the  
3 impact of what we're seeing in mass demonstration. Technology  
4 has only amplified this. There's evolving factors and means for  
5 people to communicate. We have to be able to adapt, and  
6 sometimes police tactics in order to respond, we need to have  
7 that flexibility.

8                   We know there's backlash, increasing backlash  
9 against government, police, media, academia in growing numbers,  
10 it's on the rise, and I think that needs to be considered from a  
11 safety component, not just for the public but also for police  
12 officers. Police officers, government officials, high profile  
13 individuals are being targeted. How we incorporate our training  
14 and our members going out to respond may involve looking at how  
15 do we identify them in a way that may not include something like  
16 a nametag to recognise that security risk and impact?

17                   So finally, Canadian history and our historical  
18 context is relevant. It's necessary. We must pay attention to  
19 the "nothing about us without us". This means something.  
20 Indigenous leaders, leadership, the Canadian experience in  
21 context must be taken into consideration, and it has more to do  
22 that just the history of police and our Indigenous peoples. It  
23 involves all of our systems. So it's significant with police  
24 interaction, it also has significance for almost all areas that  
25 have been put before the Commission. Indigenous community  
26 leadership and governments should be acknowledged and considered  
27 as we go forward and make plans.

28                   Thank you.

1                   **MR. MICHAEL WILLIAMS:** Thank you very much.  
2                   Commissioner, would you have any questions before  
3 I open it to the panel?

4                   **COMMISSIONER ROULEAU:** No. No ---

5                   **MR. MICHAEL WILLIAMS:** No?

6                   **COMMISSIONER ROULEAU:** --- I'm fine to ---

7                   **MR. MICHAEL WILLIAMS:** Right.

8                   **COMMISSIONER ROULEAU:** --- listen.

9                   **MR. MICHAEL WILLIAMS:** Thank you.

10                  Would anyone like to respond, react, comment? I  
11 have a number of questions that I would like to ask, but I want  
12 other people to have a chance to go first.

13                  Michael, is there anything that you wanted to  
14 come in? Cal, I can't -- I don't want to ignore you down there  
15 on the screen. No? Okay.

16                  Can I ask you, then, Bonnie Emerson, I'm really  
17 curious, where you ended with "nothing about us without us" in  
18 terms of liaising with the leaderships of various protest  
19 groups. But you also stressed at the very beginning of your  
20 talk, the fragmented leadership nature of many contemporary,  
21 especially mass movements.

22                  How does one try to think about bringing in those  
23 two things together? With -- how do you think about who the  
24 "Us" ---

25                  **MS. BONNIE EMERSON:** Well ---

26                  **MR. MICHAEL WILLIAMS:** --- you need speak to is,  
27 if you have a fragmented leadership in a movement that is  
28 difficult to speak to?



1                   **MS. BONNIE EMERSON:** So Indigenous leadership I  
2 used in the context of a nation-to-nation relationship, and  
3 looking at the leadership there's special provisions, of course,  
4 in Canadian law, recognizing and acknowledging our Canadian  
5 history. So Indigenous leadership for land claims, and I  
6 believe Ipperwash was one of the papers studied and presented  
7 where there is a significant context that must be considered in  
8 response and in planning in this context.

9                   If you are looking at Indigenous land, then the  
10 leadership would be their governance structure and model, much  
11 like the political leadership is considered in a city context or  
12 a provincial context.

13                   The fragmented leadership that I referenced for  
14 mass demonstration and assembly is within a demonstration or  
15 protest capacity where, in one case, it is the evolving nature,  
16 I believe, of social media where people are responding, and so  
17 they have multiple different underlying interests on why they  
18 choose to participate. But it's also a response to  
19 accountability and how the police are responding and warning and  
20 holding people accountable.

21                   We see adaptation to cause and effect. So having  
22 a fragmented leadership and no one person saying, "Yes, I'm  
23 organizing this event," means there's further requirements  
24 and/or work that needs to be done by the police or the groups.

25                   So two different things, but I'll be quick and  
26 just say the final is in the context of my work, within  
27 community organizations and within Indigenous organizations.

28                   The historical context I reference is that

1 there's lots studying of Indigenous people without that  
2 information belonging to, or there's government or state or  
3 police advocating and saying, "For them".

4 So the "Nothing about us without us" is in  
5 reference to if we're going to be talking about the special  
6 provisions in Canadian law, then the people that that law  
7 affects should be involved in the discussions.

8 **MR. MICHAEL WILLIAMS:** Thank you very much.

9 **COMMISSIONER ROULEAU:** Cal's got a -- his hand  
10 up.

11 **MR. MICHAEL WILLIAMS:** Thank you.

12 Cal Corley, please.

13 **--- PRESENTATION BY MR. CAL CORLEY:**

14 **MR. CAL CORLEY:** Yeah, thank you, Michael.

15 And I apologize if I go on mute here  
16 periodically, just dealing with a bit of a chest cold.

17 I'd just like to pick up on Bonnie's comments as  
18 pertaining to Indigenous involvement, and I'll speak to it a bit  
19 more concretely later. But I think it's important for a couple  
20 of reasons. One is, the recognition today that our First Nation  
21 governments are recognized within the system, are consulted on a  
22 number of things; it's just the right thing to do.

23 On a very pragmatic level, in terms of dealing  
24 with conflict at public order events, I think there's also a  
25 perspective that's brought from Indigenous communities and  
26 Indigenous leaders, in terms of ways and means regarding --  
27 excuse me -- the resolution of conflict, that I think it's an  
28 important perspective that could be brought to bear.

1                   And as I'll speak later, the involvement of  
2 Indigenous leadership from the -- from the planning through to  
3 implementation, developing the strategies, tactics and  
4 operations and the implementation thereof, I think it's an  
5 important perspective that is, for both those reasons, very  
6 important.

7                   Thank you.

8                   **MR. MICHAEL WILLIAMS:** Excellent. Thank you.

9                   Does anybody else want to come in on that?

10                  Michael, ---

11                  **DR. MICHAEL KEMPA:** Sure.

12                  **MR. MICHAEL WILLIAMS:** --- please.

13                  **DR. MICHAEL KEMPA:** I would just add, in terms of  
14 overlapping the question of Indigenous involvement with  
15 questions of resources, the involvement of protest groups in  
16 self-policing initiatives within protest was under-discussed in  
17 the current context and is something that has come up as a major  
18 trend in policing mass protest over the last 20 years. Very  
19 often this has been tied to questions of PLT and negotiation of  
20 so-called protest green zones, where in exchange for moving  
21 protest into agreed areas after a period of time in symbolically  
22 important areas; this can be done in exchange for the  
23 involvement of protest leadership in taking some responsibility  
24 for the groups over which they have control.

25                  This obviously works better in situations where  
26 protesters are more unified, in terms of factions on the ground  
27 and so forth, which often is the case in Indigenous protests, as  
28 opposed to mass protest of the type we saw in Ottawa.

1           And further, something that fell out of use  
2 around the current protest was the involvement of private  
3 security entities in protest policing. This was a major feature  
4 of the G20 security planning in Toronto, and it's been a major  
5 trend for the last 25 years or so. This has been something that  
6 did not come up and was not a part of the current policing  
7 response or security response around the current issue.

8           And this comes up, both at the level of private  
9 security potential involvement at the lower level of street  
10 enforcement, just enforcement of bylaw, or the guarding of  
11 physical space, all the way up to the high end of strategic  
12 planning. And also, critically, the digestion of intelligence  
13 and its -- sort of the laying out the options for the  
14 operationalization of that intelligence. So what the  
15 operational implications of different types of intelligence may  
16 be.

17           It's just something that, curiously, was  
18 completely absent from the current situation across Canada.

19           **MR. MICHAEL WILLIAMS:** And is it your suggestion,  
20 then, that a coordinating device needs to be put in place to  
21 bring that kind of -- what in the jargon is called a policing  
22 assemblage together; ---

23           **DR. MICHAEL KEMPA:** Yes ---

24           **MR. MICHAEL WILLIAMS:** --- a public, private  
25 positioning in that way?

26           **DR. MICHAEL KEMPA:** Yes, and that becomes part of  
27 the proactive dimension of coordination that was missing this  
28 time, on the basis that people explained. It was a paradigm

1 shift that nobody fully comprehended its implications as it was  
2 approaching. But the idea that would again be that the fulcrum  
3 of all of this seems to be, unambiguously, it is police services  
4 boards that lead these conversations, whether they currently  
5 have the capacity to do so at the moment or not, and to be  
6 asking their Chiefs and facilitating perhaps with other groups,  
7 who can be involved in the policing assemblage.

8           So just for example, there's been some discussion  
9 that police services boards might take on the role more of  
10 community safety and wellbeing boards, to fit in with that type  
11 of municipal-level planning which -- of which policing is a  
12 part. It would be a similar type approach for public order  
13 proactive planning.

14           **MR. MICHAEL WILLIAMS:** Great.

15           Would anyone else like to comment on that before  
16 I turn it over to Cal? Okay.

17           Cal, please, you'd like to -- a number of these  
18 issues are obviously going to intersect with each other. Could  
19 you please talk a little about interagency interactions and the  
20 issues arising, and anything else that you want to come off the  
21 discussion so far?

22           **MR. CAL CORLEY:** Yeah, very much so.

23           So first of all, thank you, Commissioner and  
24 team, for the invitation to participate in today's panel.

25           I'm Cal Corley; I'm the CEO, as mentioned  
26 earlier, of the Community Safety Knowledge Alliance. We're a  
27 small non-profit that supports police agencies and governments  
28 in developing, implementing, and assessing new approaches to

1 improving community safety outcomes.

2 I'm calling today from the National Capital  
3 Region, and of course, on the unceded territory of the Algonquin  
4 Anishinaabe Nation.

5 I'm also a former Assistant Commissioner with the  
6 Royal Canadian Mounted Police. My policing career includes time  
7 in the National Capital Region, in both Protective Operations  
8 and also a couple of years heading up the National Security  
9 Investigations function in the NCR back in the 1990s.

10 Today I'll focus my initial remarks on a couple  
11 of areas, but they really centre around improving both  
12 structural and institutional capacities and capabilities across  
13 the public safety system as it pertains to public order  
14 policing.

15 More particularly, I'll argue -- or, rather, my  
16 arguments will centre on, first, the importance of national  
17 standards, national protocols in support of effective policing  
18 of public order events. Secondly, importance of considering the  
19 full scope of, as to use the nomenclature that Michael just  
20 used, policing assemblages, with particular emphasis on the  
21 involvement of private sector security at all levels, as Michael  
22 Kempa just mentioned, from planning and organizing through to  
23 the implementation strategies and tactics at the front line.

24 I'll speak as well to how we hold those two first  
25 points together from concept to practice to support positive  
26 community safety outcomes, and I'll talk there in terms of multi  
27 and bilateral agreements, and the vital importance of joint  
28 learning on the part of all of the actors.

1                   And finally, I'll offer a few observations as it  
2                   pertains to thresholds for leadership, responsibility, and  
3                   accountability at major public order events and public order  
4                   emergencies.

5                   Institutional failures in either public order  
6                   policing or other emergency or national security situations are  
7                   nothing new in our country. I can think of some of my own  
8                   experiences and some of the lessons I learned, including here in  
9                   the National Capital Region during protests, and violent  
10                  protests in fact, during the first Gulf War back in 1990/1991 at  
11                  Parliament Hill, at the Embassy of Iraq, and at a number of  
12                  other locations in the City of Ottawa.

13                  We can also think back, for more of a national  
14                  security context, April 1986, the hostage taking at the Bahamian  
15                  High Commission in Ottawa that featured or that had two senior  
16                  police officers from two organizations on the street in front of  
17                  the event engaged in a yelling match over who had jurisdiction.

18                  I could go on with examples, but I really want to  
19                  have a future focus here.

20                  Notwithstanding those instances, we generally  
21                  have a history in Canada of trying to learn from these  
22                  situations and improving our individual and collective efforts  
23                  and responses.

24                  I'm confident that this Commission is sure to  
25                  contribute to further improvements across that ecosystem.

26                  So let me begin with national standards and  
27                  protocols.

28                  Major public order events are typically complex

1 and multi-faceted. They often cross multiple jurisdictions, as  
2 we saw in January and February of 2022, and involve more than  
3 one police agency.

4 As we saw in that instance, they may also involve  
5 a combination of multiple causes and multiple groups. Sometimes  
6 these coalesce, but often they don't. There's often no single  
7 leadership structure within the protest group or groups.

8 These can be -- these groups can be incredibly  
9 nimble. They leverage technologies very well, as Bonnie  
10 mentioned a couple of minutes ago, as they adapt to changing  
11 circumstances in real time.

12 In terms of preparation for these events, some of  
13 them, such as the 2010 G8 and G20 conferences, were preceded by  
14 months of in-depth planning, coordination of governance, of  
15 strategies, tactics, capabilities, and capacities.

16 Others, such as the events last year, or earlier  
17 this year, particularly those in Ottawa, which have the initial  
18 thrust of events, offered considerably less time for authorities  
19 to plan, prepare, and coordinate their efforts.

20 A third category are those that are quite  
21 spontaneous, at least in terms of the authorities being aware  
22 and being ably prepared.

23 Regardless of which category a public order event  
24 falls into and whether authorities had months or days to prepare  
25 themselves, situations on the ground can evolve or devolve  
26 quickly. I've experienced this myself. It requires the public  
27 safety apparatus, and particularly the police, to be able to  
28 respond and adapt with nimbleness and acuity.



1                   This is clearly, in my view, an area of policing  
2 that warrants national standards and protocols.

3                   We've benefited in Canada for many years at the  
4 provincial and national levels from standards in other areas of  
5 policing. The two that come right to mind to me are in relation  
6 to Critical Incident Command, which you heard a little bit about  
7 a couple of minutes ago, and Major Case Management.

8                   Just as with major complex criminal  
9 investigations, responding effectively to major public order  
10 events requires skillful leadership and structured coordination.  
11 The importance of common tools, of common terminology, and  
12 methods cannot be overstated.

13                   The Province of Ontario developed its regulation  
14 and its Major Case Management manual in the wake of the Paul  
15 Bernardo investigation all those years ago.

16                   British Columbia has its own framework, which  
17 evolved from the Missing Women Commission of Inquiry.

18                   There's a common thread there. These emerged  
19 from an external lens looking in at policing.

20                   Major Case Management is a proven methodology.  
21 There is a national standard that's overseen by an advisory  
22 group of very senior police experts. It meets regularly, looks  
23 at recent cases, makes adjustments as and when required.

24                   The Canadian Police College's Major Case  
25 Management Course is the Canadian standard for training in that  
26 domain.

27                   The MCM model emphasizes accountability and a  
28 multi-disciplinary approach to complex and serious

1 investigations.

2                   Importantly, the approach provides for sound  
3 structure for these investigations, it establishes clear lines  
4 of responsibility and decision making, and creates rigorous  
5 approaches and infrastructure to record, document, and share  
6 information.

7                   The bottom line, in my view, is that interagency  
8 coordination and cooperation can be difficult. Personalities  
9 and egos sometimes get in the way of formal -- get in the way  
10 and trump formal arrangements. And on top of -- so on top of  
11 clear national standards, we would also benefit from equally  
12 clear agreements, both multilateral and bilateral, that support  
13 effective responses and operations at the cold phase.

14                   I'll move on now to speak a little bit about  
15 joint multi-jurisdictional agency exercises.

16                   This is the glue that holds all of this together.

17                   So assuming that formal standards are in place,  
18 supported by appropriate agreements between levels of government  
19 and between police agencies, et cetera, it's crucial that these  
20 standards and the elements of such agreements be practiced and  
21 stress tested. At minimum, it strikes me that today's policy  
22 makers, police leaders, and public order response practitioners  
23 must share a common lexicon, a common base line of knowledge of  
24 the relevant law, federal and provincial and local policies,  
25 including but not limited to the relevant legislation, such as  
26 emergency acts, both provincial and federal, the *Security*  
27 *Offences Act*, those critical elements of the *Criminal Code*, as  
28 well as private property law. And I'll come back on that one in

1 a moment.

2                   During my years in operational policing in the  
3 National Capital Region, then Solicitor General, now Public  
4 Safety Canada, coordinated and hosted major multi-agency and  
5 multi-jurisdiction training exercises for precisely this  
6 purpose. While these had a central emphasis on national  
7 security, they're certainly applicable in instances such as we  
8 witnessed in Ottawa.

9                   These exercises were typically two or so days in  
10 duration. They involved multiple agencies in the National  
11 Capital Region, including the OPS, the RCMP, the OPP, Sûreté du  
12 Québec, Gatineau Police, CSIS, Solicitor General, PCO, and  
13 relevant agencies within the Province of Ontario and the City of  
14 Ottawa.

15                   These exercises serve to, as I mentioned, to  
16 stress test all aspects of the enterprise, from governance,  
17 information sharing, and other protocols, leadership, tactics,  
18 and operations.

19                   Not only did these improve individual and  
20 collective capacities and capabilities, they also helped iron  
21 out a number of kinks within the system. It's one thing to have  
22 these written in formal agreements, et cetera, et cetera. Where  
23 it really matters is how they play out on the ground.

24                   We've developed a good understanding of grade two  
25 procedures and a better understanding of one another's agency  
26 capabilities, equipment, technologies, et cetera.

27                   It improved, ultimately, information flows and  
28 responsiveness in often very dynamic environments.

1                   And equally important, these experiences allowed  
2 for certainly my experience was it allowed to working over a  
3 couple days with my colleagues from these other organizations,  
4 to start to develop relationships with them that really carried  
5 forward when you needed it when the rubber hit the ground.

6                   I've recently learned that these extensive and  
7 in-depth exercises have not been undertaken in the National  
8 Capital Region for several years, and it strikes me that in the  
9 absence of such exercises, the risk is that formal standards,  
10 protocols, and agreements often, you know, don't survive "first  
11 contact with the enemy." And so those -- exercising this is  
12 highly important.

13                   I'll move on quickly just to cover two other  
14 areas.

15                   Private security. If I refer today to private  
16 sector, I'm inferring by that, private security, which has long  
17 been a key actor providing for safe and security communities  
18 across Canada. There's just a ton of literature on that. It  
19 offers in a policing context lower-cost alternatives often to  
20 fully trained and equipped public police officers in attending  
21 to certain lower risk to harm duties. But they also bring  
22 perspective, know-how and capabilities that the public sector  
23 often don't have, and I'm thinking there particularly but not  
24 exclusively as it pertains to private property laws, et cetera.

25                   At the 2010 G2, the private sector was intimately  
26 involved right from the get-go in terms of planning, strategic,  
27 tactical as well as certain operational aspects of the security  
28 response. I'm not aware of any such arrangement in terms of the

1 events in Ottawa in 2022.

2           There's a couple of potential barriers that I  
3 believe warrant examination in that regard in terms of why not.  
4 In the G20 circumstances with months to anticipate, there was an  
5 agreement between the Toronto Police Service Association and the  
6 private actors in terms of what that agreement would look like.

7           Barriers when trying to put these together in  
8 shorter order, such as was the case in Ottawa, I'd be looking at  
9 Ontario's adequacy standards under the *Police Act*, particularly  
10 around sections 11 to 14 or so, that limit what non-police  
11 officers can do. For example, under -- and related to that  
12 under Ontario's *Highway Traffic Act*, only sworn police officers  
13 can direct traffic at an intersection. Collective bargaining  
14 agreements also have some stipulations typically that can get in  
15 the way of these.

16           So developing national agreements, national  
17 protocols, certainly in the national capital region that sees so  
18 many of these events over the course of the year, dealing with  
19 the police associations and developing appropriate protocols to  
20 enable more effective cost-effective responses certainly would  
21 benefit.

22           Finally, the last area that I have, and I'll only  
23 take another moment here, has to do with thresholds of  
24 leadership responsibility and accountability. And the question  
25 that I've been pondering a bit lately is whether there are or  
26 could be unique circumstances together with a corresponding  
27 threshold at which the federal government, as in the case of the  
28 *Security Offences Act*, could or should exert federal primacy in

1 the carriage of a response into part 2 of the *Emergencies Act*.  
2 I'm thinking about particularly situations that could involve,  
3 on one hand, a major public order event that gets out of control  
4 and a related simultaneous national security incident, whether  
5 it's a hostage taking of an IPP, or otherwise, but something  
6 that falls under the *Security Offences Act*.

7           We have federal primacy in the case of the  
8 invocation of the *Security Offences Act* but not on the other.  
9 And where they're directly related, and I don't think it's a  
10 stretch to envision the potential for a situation like that, it  
11 could be very advantageous I think to be thinking this through  
12 in terms of whether there could be a threshold at the very  
13 highest level that could warrant that.

14           And the final point in terms of thresholds that  
15 I'd like to make, and it's not related to that, is the present  
16 situation we're predominantly dealing with major cities, Ottawa,  
17 Windsor, et cetera, together with some locations like Coutts,  
18 Alberta that are policed by the RCMP. What if the local police  
19 of jurisdiction was a small or medium-sized municipal service  
20 that didn't have many of the sophisticated procedures and  
21 abilities to exercise those such as many of the larger centres  
22 do? And I'm thinking here in terms of the province of Quebec,  
23 which has contemplated these issues and have years ago  
24 instituted a six-level of policing model. And I won't go into  
25 details on that now, but suffice to say that if you're, for  
26 example, the City of Gatineau, the threshold they're at as it  
27 pertains to public order policing is that they can respond and  
28 attend to crowd control issues that could contemplate there

1 being -- getting out of control or turning into a riot. But it  
2 takes a level four, five and six, ultimately level six being  
3 only the Sûreté du Québec, that can really take over and respond  
4 to incidences such that we saw here in Ottawa.

5           And as I say, I won't go into that. If anybody  
6 has questions, I'm happy to, but this may be an area that the  
7 Commission would see worthy of exploration.

8           So I've spoken about national standards and  
9 protocols, a regular regimen of joint exercises, sometimes  
10 costly, but the cost benefit analysis on this given the economic  
11 and other implications of what happened in Canada certainly need  
12 to be factored in there, together with the role of the private  
13 sector in all aspects of this and by extension back to the  
14 earlier comment, I would include in that the importance of  
15 Indigenous governments, and finally, the question of thresholds,  
16 which I suggest might warrant some additional exploration.

17           And with that, Michael, I'll cede the floor.

18           **MR. MICHAEL WILLIAMS:** Thank you very much, Cal.

19           I'll open it up to any other members of the  
20 panel. Anybody want to make an intervention, ask a question,  
21 comment?

22           Michael Kempa, please.

23           **DR. MICHAEL KEMPA:** Just to add or to build on  
24 what Cal Corley was saying is the main benefit of specified  
25 thresholds for when provincial, or if the RCMP provides  
26 provincial policing on contract to take over some influence or  
27 all control of operational planning for a jurisdiction, if it's  
28 set to a threshold, it removes the implication that the

1 municipal police service is failing in some way. So this can be  
2 tied either to or some combination of the threshold of security  
3 threat, such as in Quebec with the levels one through six,  
4 or/and to some proportion of total request of personnel power  
5 coming from the provincial or federal authority that's providing  
6 provincial policing via contract.

7           So you might imagine, just for example, that if a  
8 police service was asking for personnel somewhere in the range  
9 of 10 percent to 50 percent of its total size, that would  
10 automatically kick off integrated planning between the 2 police  
11 agencies. If it was a request that went to a larger -- an even  
12 larger number, something on the order of more than 50 percent of  
13 the size of the service making the request, it might be a  
14 situation of ceding operational planning to the agency that is  
15 giving the personnel support. Now I don't know what the precise  
16 numbers would ideally be, but some sort of proportional formula  
17 might work well, and just create that expectation that this is  
18 simply what happens. It's not an implication of an inferior  
19 police service or poor management, a lack of confidence in a  
20 police leader, and it also takes some of the pressure off of the  
21 current situation on police services boards to be the deciders  
22 in these circumstances.

23           In the end, if there's disagreement, for example,  
24 as a complete hypothetical, if a chief of municipal police did  
25 not want to cede operational control to a provincial police  
26 authority and the board of that municipal service thought it was  
27 a good idea, the board could force the issue by threatening to  
28 dismiss their chief, which is their prerogative. It is an



1 extremely harsh response to bring about the desired result, and  
2 probably not one that many boards would feel confident to make,  
3 given that very often they don't even have the confidence that  
4 they have the legal authority to ask questions of operational  
5 planning, let alone dismiss their chief for not ceding  
6 operational control to another police agency. So by rendering  
7 these formulaic, you are relieving some of the pressure over  
8 what is ultimately a group of civilian overseers who don't have  
9 that level of expertise on technical matters in police planning.

10 **MR. MICHAEL WILLAMS:** Excellent. Thank you.

11 Bonnie, I'm assuming you'd like to come in on  
12 this.

13 **MS. BONNIE EMERSON:** Yeah, I just wanted to say  
14 that regardless, as far as jumping, like, a solution, the  
15 multisystem training standards is optimal. How that is  
16 accomplished, if you were to prescribe a percentage, the police  
17 executive are going to be aware of this percentage and they're  
18 going -- it's just as easily as not asking if you're saying the  
19 threshold is 10 percent, then I'll just ask for 5. And so when  
20 we know that, it's simply a matter of -- I mean, again, my  
21 experience as a municipal service who -- there's a large-scale  
22 incident we're going to partner, it makes sense in having a  
23 national standard and that flexibility for the experts I think  
24 is recognizing the experience. The one part that I didn't cover  
25 when I had mentioned training was also the adequacy or adequacy  
26 recertification, meaning you can have your training once in a  
27 variety of areas, but there's no standard as far as how you  
28 maintain it. Recognising that we're one incident away, often we

1 say, of the world changing again, and all the planning and  
2 preparation and/or tactics may need to be updated, and so you  
3 want that training to be updated as well, at least on some level  
4 of basis. I think these dynamic situations require the openness  
5 and the community of practice, allowing the people who have the  
6 expertise, and not just police but within these systems, to  
7 engage in these conversations.

8 **MR. MICHAEL WILLIAMS:** Thank you very much.

9 Cal, did you want to come back on any of those  
10 issues?

11 **MR. CAL CORLEY:** Yeah, just very briefly. It  
12 strikes me that the beauty with the Quebec model is, and I go  
13 back to conversations over the years with the former Chief of  
14 the Gatineau Police, Mario Harel, what he really liked about it  
15 was that at Level 3 this is precisely the parameters that he had  
16 to ensure his police service was prepared for to deliver  
17 excellence. He didn't have to think about any of those issues  
18 that were at Level 4, 5, or 6, but he knew that when he called  
19 upon either the, for example, SPVM or the Sûreté du Québec, that  
20 they were prepared at those levels to come in and provide the  
21 requisite assistance.

22 So it's a -- it's an interesting model. I know  
23 that there's a couple of provinces that have looked at it in  
24 terms of their policing structures. No one's taken it up yet,  
25 but as it pertains to public order policing an important area to  
26 think about.

27 And I would agree with Bonnie in terms of multi-  
28 system training, you know, how it's done is less important than

1 a commitment that it be done with appropriate standards to  
2 attain.

3 **MR. MICHAEL WILLIAMS:** Thank you.

4 Robert Diab, please.

5 **--- PRESENTATION BY DR. ROBERT DIAB:**

6 **DR. ROBERT DIAB:** Sure, thank you.

7 Cal, I have a question about the decision about  
8 whether thresholds are met. So you spoke earlier about the idea  
9 that different police agencies in the future could police large  
10 protests by having a set of standards and protocols that would  
11 work out in advance, you know, who would do what, when, and  
12 where, and on the one hand, and maybe also a set of thresholds  
13 that would determine, you know, when this agency or -- would  
14 step in or not.

15 Who do you envision deciding whether those  
16 thresholds are met? And what I have in mind is what would  
17 guarantee or what would suggest that in the future we wouldn't  
18 have the kind of confusion we've seen in these earlier events  
19 arise in the event of a dispute over whether the threshold was  
20 met?

21 **MR. CAL CORLEY:** So ---

22 **MR. MICHAEL WILLIAMS:** Cal Corley, please.

23 **MR. CAL CORLEY:** Yes, thank you.

24 So Robert, just to begin, one of the most  
25 difficult matters when we're doing these exercise back when it  
26 was in that transfer, for example, under the *Security Offences*  
27 *Act*, that's one of the most difficult and awkward things because  
28 -- and from an RCMP perspective, assuming those responsibilities

1 we always felt it important as a matter of practice that you  
2 continue to keep the local police actively engaged and involved,  
3 but the locus of accountability and responsibility shifted and  
4 you tried to keep it workable like that.

5           In terms of when I spoke about the thresholds,  
6 and I'm thinking as I say specifically about an absolutely out  
7 of control situation where we're just short of, for example,  
8 calling in the military, that everything else has been  
9 exhausted. But on the other hand, you've got the *Security*  
10 *Offences Act*, national security investigations taking place.

11           And if, as if by fiat or otherwise, the Attorney  
12 General has invoked that and the RCMP assume responsibility, if  
13 it was related to a public order of significant magnitude event,  
14 is there benefits or -- is there benefit in having a single line  
15 of command on the two of these or is it appropriate to keep them  
16 separated? And that's what I was speaking of in terms of that  
17 threshold.

18           Under the *SOA*, I believe it's the Attorney  
19 General of Canada that exercises that authority and makes that  
20 determination. I wouldn't venture -- I don't come from a  
21 constitutional or a legal background, so I wouldn't venture to  
22 say who in this case would make that decision. But just with  
23 the dynamic world we're living today and what we've experienced  
24 and the propensity for large-scale civil unrest in the future,  
25 it struck me that it's something that's worth thinking about.

26           **MR. MICHAEL WILLIAMS:** Thank you.

27           Anyone else?

28           Commissioner?

1                   **COMMISSIONER ROULEAU:** No.

2                   **MR. MICHAEL WILLIAMS:** All right.

3                   I have a question, as I often do, for you, Cal.  
4 Your suggestion of bringing in the private much more  
5 extensively, would you include the -- those private security  
6 actors also in your planning groups, and in your practices?

7                   **MR. CAL CORLEY:** Absolutely. Absolutely, and  
8 particularly, but not exclusively, but I think about the  
9 National Capital Region, which is, you know, I couldn't -- we  
10 couldn't -- I can't guess how many protests in a contemporary  
11 society we have here in the NCR. Obviously many fewer than that  
12 are of a very significant magnitude. But engaging the private  
13 sector early in these is very important. We're crossing from  
14 private space, public space, back into private spaces. We saw  
15 what happened at the Rideau Centre in Ottawa, for example. Most  
16 of the police in the Rideau Centre is actually private sector  
17 undertaking.

18                   But there's tremendous benefits, I think, from  
19 that in that the private sector comes well with levels of legal  
20 authorities that the public police simply don't have. And so  
21 for the greater public good, how can those be used in concert?

22                   So absolutely, yes, from planning, involvement in  
23 joint exercises, ultimately on many protests that may or may not  
24 be required, but can't discount the cost of public policing as  
25 it pertains to these.

26                   Just a little sidenote, Michael. During the  
27 events in January, February, I was crossing the bridge from the  
28 Quebec side over to the Ottawa side, and a considerable way from

1 Parliament Hill, but there was roadblocks on the parkway. And I  
2 was driving through, and five or six sworn police officers  
3 there, and you know, part of the argument is that's relatively  
4 low risk to harm manning the barricades that distance away.  
5 Could those police officers or at least five of the six or  
6 whatever the numbers were, be redeployed to greater purpose and  
7 have private security there at much lower cost? Much better  
8 effective use of resources than what we saw.

9 **MR. MICHAEL WILLIAMS:** Thank you very much.

10 Anyone else on this topic? We'll come back to  
11 some of these issues I think. Right.

12 I'd like, finally, to turn to the issue of  
13 regulation, please. And begin, first of all, with Robert Diab,  
14 and then turn to Colton Fehr.

15 **DR. ROBERT DIAB:** Thank you. Well, thank you to  
16 the Commissioner to begin with, and the Commission for inviting  
17 me to speak.

18 So I provided a background paper to the  
19 Commission, and in it I make two main points that speak to  
20 lessons that may be learned from the February event for police  
21 in future protests. The first pertains to exclusion zones.

22 So the Government of Canada, as I understand it,  
23 found it necessary to invoke emergency powers partly to  
24 authorise the police to create an exclusion zone, and the  
25 government found it necessary to rely on emergency law because  
26 of a gap in ordinary law allowing for this. I believe this was  
27 the correct assumption.

28 As I note in my paper, the only authority to

1 create large exclusion zones, you know, zones where the police  
2 can, you know, close large areas of public space for not only  
3 vehicles but also pedestrians, is found in emergency  
4 legislation, emergency acts across the province, and also in the  
5 *Foreign Missions and International Organizations Act*. I'll call  
6 it the *Foreign Missions Act*, which is a power that only applies  
7 to intergovernmental conferences.

8                   Incidentally, I understand the Commission has  
9 heard evidence about powers in municipal or provincial traffic  
10 law that allows for street closures. So again, these -- my  
11 understanding is that these deal with vehicle traffic closing  
12 roads, not closing or regulating, you know, big areas of public  
13 space.

14                   So one takeaway is that, as with other major  
15 public events in the past two decades, creating exclusion zones  
16 is something important for police at these events at the moment,  
17 outside of these -- outside of intergovernmental conferences,  
18 the only source for doing this is emergency law. So to avoid  
19 relying on emergency law in the future, we need to give police  
20 the authority to create these zones in ordinary legislation, if  
21 we want police to have these powers.

22                   What would this add to existing law? Well, the  
23 power in emergency law and in the *Foreign Missions Act* to create  
24 these zones is vague. So police can create them under these  
25 Acts, but the law provides the police no guidance as to the  
26 size, the duration, the rules about, you know, passes; it says  
27 nothing about compensation for disruption, that sort of thing.

28                   So police at present, when these powers are

1 invoked, they decide all of this in, essentially, a vacuum, and  
2 they do so behind closed doors so there's very limited  
3 transparency or accountability. An ordinary statute would  
4 rectify this.

5                   A second lesson pertains to a topic that's taken  
6 up a lot of time today; how -- what lessons for the future  
7 should we draw about how police agencies work together?

8                   The gap in the law I pointed to about exclusion  
9 zones is part of a larger gap on the policing of public order  
10 events generally, and a big part of that gap pertains to the way  
11 police agencies work together when these -- when they're  
12 policing a big event.

13                   So the Commission has heard a lot of evidence  
14 about whether, when, and how the Ottawa Police or agencies  
15 across the country should have worked with outside agencies.  
16 The very same issue, as I believe Cal mentioned, and maybe  
17 Michael as well, the very same issue has come up in numerous  
18 other inquiries about big public order events, including the  
19 G20, and even as far back at least as the APEC meeting in  
20 Vancouver in '97. All of these events, possibly including the  
21 trucker convoy, suggest that when police agencies don't work  
22 together effectively what follows is disorder on the ground,  
23 rights violations, and limited accountability in how they decide  
24 to regulate the protest.

25                   Now, I believe what I'm going to propose here is  
26 consistent with what Cal has proposed, perhaps a little  
27 different; I think it may be a bit different from what Michael  
28 has proposed.



1 I'm going to suggest the problem may be  
2 straightforward. The problem may come down to the fact that in  
3 all of these cases, it's unclear who has lead command. If we  
4 assume that that's the problem; that the lack of clarity on who  
5 had lead command is the real reason that coordination was  
6 ineffective or even broke down, there are, I think, generally  
7 speaking, two inferences to draw. One is that we need better --  
8 a better set of rules or protocols on how they should  
9 coordinate; that we should go no further than that; then, you  
10 know, working out a set of protocols or standards, but let the  
11 police decide when those standards are met or thresholds or what  
12 have you. Let them -- do not tie their hands about how they  
13 should work together.

14 Another inference to draw, one I advocate, is  
15 that the law should clearly state that in a certain kind of  
16 event, one agency has authority. The *Foreign Missions Act* does  
17 precisely this. Section 10.1 of the Act says, and I'm quoting:  
18 "The Royal Canadian Mounted Police  
19 has...primary responsibility to ensure  
20 the security for the proper functioning  
21 of any intergovernmental conference..."

22 Sorry; I'm just losing my place.

23 So for this kind of event, this agency should  
24 take the lead, full stop; no confusion. You know, it's not a  
25 protocol that would risk being tucked away and neglected, you  
26 know, relatively quickly.

27 The section does go on to say that the RCMP can  
28 make arrangements with other forces, but it's clear that for

1 this kind of event, they're in charge.

2           So this points us, I think, at two things that  
3 happened in February. The first is that before the emergency  
4 powers were invoked, there was no ordinary legislation giving  
5 one agency a lead authority over what we might call a nationwide  
6 protest or, you know, a national-scale protest.

7           So if we were to assume that there was  
8 legislation, that had given -- that had named something, given a  
9 name to a species of public order event that we could call a  
10 national protest, among others; like, for example, the World  
11 Cup, you know, a major sporting event, among other kinds, if it  
12 had done so, what difference would that have made?

13           A second problem is that when the emergency was  
14 invoked, the *Emergencies Act* did the opposite. Section 20 of  
15 the Act says, contrary to what section 10 of the Foreign Mission  
16 Act says -- I'm going to paraphrase but it says something like  
17 nothing in a emergency declaration will derogate from the  
18 ordinary chain of command over the police of a city or a  
19 province.

20           I would suggest that the February emergency  
21 compels us to ask whether this is a good idea; whether instead  
22 section 20 should give a specific agency lead authority over a  
23 public order emergency. In my view, I think that would avoid  
24 the confusion that is likely to follow over, you know, who does  
25 what when, or when should this agency start working with that  
26 agency, and so on.

27           Another way to put it is; try to imagine how this  
28 might have worked had there been ordinary legislation that said,

1 for example, not necessarily the RCMP but in the event of a  
2 nationwide protest, the RCMP has lead authority. Maybe they  
3 could have been involved earlier on; maybe they could have  
4 coordinated more effectively; maybe there would not have been a  
5 different approach in places like Toronto, downtown Toronto, or  
6 Ottawa.

7                   So to close, in my view an important lesson for  
8 policing future protests of a national scale or other large  
9 events, is that we can avoid resorting to emergency powers; we  
10 have ordinary law setting out who has lead authority over  
11 specific events, and precisely what police can do.

12                   I advocate drawing on the example found in  
13 legislation from Australia, discussed in the paper. But the Act  
14 I point to there carefully circumscribed police powers to create  
15 an exclusion zone, how it would work, what they were allowed to  
16 do.

17                   So that, that piece, along with a law giving one  
18 agency authority over specific -- a specific kind of event  
19 would, in my view, go a long way to avoid the confusion about,  
20 you know, who should be involved and when.

21                   I'll stop there.

22                   **MR. MICHAEL WILLIAMS:** Excellent. Thank you very  
23 much.

24                   Colton Fehr, please.

25 **--- PRESENTATION BY DR. COLTON FEHR:**

26                   **DR. COLTON FEHR:** First, I'd like to thank the  
27 Commission for having me.

28                   And in addition to Robert's comments, I think

1 that that's sort of a law you propose you seems to be something  
2 that falls into the POGG, or Peace, Order, and Good Government  
3 national concern emergency grants power and seems quite prudent.

4           But I, too, authored, with my co-author,  
5 Professor Steven Penney, a paper for the Commission. And in  
6 that paper, we co-author -- we detailed the available police  
7 powers for responding to public order emergencies under federal  
8 and provincial legislation, some select municipal bylaws, and  
9 then also under the common law. And today I want to focus on  
10 two major themes that arise from the paper; so the first is  
11 institutional, and the second is constitutional.

12           So first I'm concerned about which institution,  
13 courts or legislatures, should craft police powers to address  
14 existing gaps with respect to public order emergencies. And  
15 under something commonly called the ancillary powers doctrine,  
16 the Supreme Court has granted judges broad authority to craft  
17 common law police powers; a tool that many judges have not been  
18 overly shy in using. And for some authors, judges should craft  
19 extensive police powers because it is, and I'm quoting the  
20 former Chief Justice of Ontario, Justice Roy McMurtry:

21                            "It's impractical and unnecessary to  
22                            legislate an extensive code of police  
23                            powers." (As read)

24           And with great respect, I'm not sure that such an  
25 approach is prudent. I think it overlooks problems that are  
26 inherent to judges crafting police powers, so sanctioning police  
27 powers after the fact renders it impossible for citizens to know  
28 the scope of police authority before they are subjected to that

1 authority. And in my view, this is troubling from a rule of law  
2 perspective as citizens do not know the actual extent of police  
3 power.

4           And further, the Canadian experience has shown  
5 that courts often make these types of criminal procedure rules  
6 in inadequate evidentiary environments, and I think this occurs  
7 in large part because the evidence upon which rules must be  
8 based in the adversarial system of justice must come from the  
9 parties pleading their respective cases. And a host of  
10 limitations can result in that evidence failing to raise  
11 interests or facts that are pertinent to developing the law.

12           So I think it's thus prudent for courts to  
13 require legislatures who are not hindered by the adversarial  
14 process to craft rules in the criminal procedure context, and  
15 then have courts use the *Charter* to rigorously analyze the scope  
16 of those powers as informed by both the judicial and legislative  
17 records.

18           Second, I have concerns about the  
19 constitutionality of the available police powers that can be  
20 employed in the context of public order emergencies and the fact  
21 that a good many of these laws just simply haven't been amended  
22 or updated, looked at sometimes in more than a century.

23           So, for instance, my reading of the relevant  
24 *Criminal Code* provisions suggests that if an antiquated  
25 provision commonly known as the *Riot Act* is read, police may  
26 resort without fear of criminal or civil liability to  
27 potentially unlimited force against anyone who resists state  
28 efforts to suppress the riot, and the stakes here are obviously

1 quite high. So this power, which I think is substantively  
2 similar to the English *Riot Act* first adopted in the early 18<sup>th</sup>  
3 century threatens to deprive individuals, in my view, of life,  
4 liberty and security in a manner that is inconsistent with  
5 fundamental justice.

6           And also troubling is a power in the *Criminal*  
7 *Code* allowing police to arrest anyone found or about to join in  
8 or renew a so-called breach of peace. And importantly,  
9 breaching the peace is not an offence under the criminal law,  
10 rendering it the only non-offence for which a citizen may be  
11 arrested under the *Criminal Code*.

12           And to my mind, permitting police to arrest for  
13 non-criminal conduct sits uncomfortably with the rule of law.  
14 The provision arguably fails to give people fair notice of the  
15 possibility of arrest, and it's also largely immune from  
16 judicial review as citizens would need to bring what would be an  
17 expensive civil suit to the courts before the issue can be  
18 legally resolved because it's unlikely to get there in the  
19 criminal justice system because we're not dealing with a  
20 criminal charge.

21           And that renders the provision what we would call  
22 low visibility; in other words, it's unlikely to be scrutinized  
23 in a public forum. So if it's kept on the books, I think that  
24 that really has the potential to facilitate abusive use of  
25 arrest powers in the context of these public emergencies, order  
26 emergencies especially, a fact that has actually been well  
27 documented during the G20 protests.

28           So I also share some concerns with Professor Diab

1 about whether Canada should rely too heavily on models for  
2 regulating public order emergencies adopted in other countries  
3 such as public order acts authorizing exclusion zones, and  
4 Professor Diab cited a -- or an Australian example, but he also  
5 wrote about a UK example. And I think authorizing these laws is  
6 prudent in one sense as it communicates, again, the scope of  
7 police powers in advance, which is a good thing. But it also  
8 appeared quite valuable in bringing recent protests to an end  
9 when invoked pursuant to the *Emergencies Act*. But I also think  
10 such a power must be carefully crafted to ensure freedom of  
11 expression, assembly and other fundamental liberties are duly  
12 protected. So, for instance, requiring individuals to give  
13 notice of their protest to the state as occurs under the UK  
14 legislation doesn't sit all that comfortably with me because it  
15 could very well chill fundamental democratic rights.

16           And then similarly, other proposals such as  
17 requiring protesters use alternative protest sites when the  
18 initially chosen protest space is deemed problematic by the  
19 state would also, to my mind, engage constitutional assembly and  
20 expression interests because the place in which a protest takes  
21 place, say in front of a government building or on contested  
22 lands, can also convey meaning in itself, thereby engaging some  
23 constitutional interest. So any such policy would, therefore,  
24 need to ensure that it arises only in response to a need to  
25 protect vitally important public interests such as upholding  
26 public safety.

27           So just to summarize, I think it's prudent for  
28 legislatures to both fill any existing gaps in police powers and

1 to update existing police powers to accord with the Canadian  
2 *Charter*. And while courts may serve that latter role if an  
3 appropriate case arises and also provide a check on any  
4 legislation that the -- that is passed, I do think that a  
5 proactive approach here by legislatures is preferable as that  
6 could avoid rights violations before they happen, especially  
7 when some of these violations could be very serious.

8 Thank you very much for hearing me.

9 **MR. MICHAEL WILLIAMS:** Thank you very much,  
10 Colten Fehr.

11 Comments, reactions. Michael Kempa, please.

12 **--- OPEN DISCUSSION:**

13 **DR. MICHAEL KEMPA:** So I just -- to respond to  
14 some of the comments of my colleagues, in particular, I have  
15 sympathy for the idea that you might have a definitional  
16 threshold to decide who would have responsibility for taking the  
17 operational and planning lead on a particular type of event.  
18 Two precisions that come up around that are, number one, there  
19 may not be an agreement around the table as to what type of  
20 definitional situation you are in. So, for example, some  
21 players around the table may say we are in an instance of a mass  
22 protest that poses a serious security risk and, therefore, by  
23 this definition, planning would fall automatically to the  
24 provincial agency, or a federal agency; whereas, other players  
25 at the table may say, no, this is an ordinary protest that stays  
26 within our jurisdiction of primary planning. So I would just  
27 say, even if you were to take a definitional threshold, you  
28 would probably have to tether it in some way to a magnitude



1 threshold of some form.

2                   So protest is typically the domain of the  
3 municipal police service, unless there is a request for  
4 personnel support exceeding a certain number or proportion;  
5 whereas, something different, you know, a national security  
6 issue to do with a bomb -- a coordinated bomb threat might  
7 automatically, no matter the amplitude or size of that  
8 situation, might automatically pass to another agency. But I do  
9 think that to avoid confusion around the table, you would have  
10 to tie it in some way to a size issue, size measurement  
11 threshold.

12                   **MR. MICHAEL WILLIAMS:** Colten Fehr, please?

13                   **DR. COLTON FEHR:** I wonder if that problem would  
14 always come up just because if, say, the federal government says  
15 we can declare that this is something of national concern, or  
16 emergency, thereby giving us, the feds, it would have to be  
17 litigated after the fact as to whether they were wrong on that  
18 question. So in the moment of the protest, would that be an  
19 issue? I'm curious as to your thoughts.

20                   **MR. MICHAEL WILLIAMS:** Michael, do you want to  
21 comment?

22                   **DR. MICHAEL KEMPA:** Sure. So to answer, I would  
23 just say, but obviously before we get to the question of the  
24 involvement of the Federal Government, the chain of planning  
25 would pass from Municipality to Province, to the Federal  
26 Government. So I think the thresholds that I was speaking of  
27 was more in terms of the primary response before we got to any  
28 situation ---

1                   **MR. MICHAEL WILLIAMS:** Okay.

2                   **DR. MICHAEL KEMPA:** --- of emergency. So  
3 proactive planning. Do we have any idea that we may be asking  
4 for resources from other police organizations and therefore a  
5 need to coordinate command on some level? And then afterward,  
6 things are going poorly, we are making a request, what is the  
7 level of integration automatically? Is it coordinated or does  
8 the other agency take control? This is before you get to a  
9 situation of the Federal Government saying it's completely  
10 broken down.

11                   **MR. MICHAEL WILLIAMS:** Robert Diab, please.

12                   **DR. ROBERT DIAB:** Michael, I think that's a  
13 great, absolutely great criticism or question to raise about  
14 what I'm proposing.

15                   So the way it works right now in the *Emergencies*  
16 *Act* is that the decision maker is the federal government. It  
17 must decide whether it thinks the standard is met, and then the  
18 Commission is the after-the-fact referee.

19                   But I think if we had ordinary legislation, maybe  
20 the model would be something like a warrant, where you have an  
21 independent decision maker. So you know, if there were a  
22 dispute about whether we were in something called, you know, a  
23 nation-scale protest, we could maybe -- there could be an  
24 independent figure who we quickly consult and, you know, on the  
25 basis of something like a warrant. You know, some sort of brief  
26 report, and then that figure would provide an independent  
27 decision quickly based on, you know, objective evidence, or  
28 evidence seen in an objective way. There are many mechanisms

1 like this in the world, in legislative frameworks of national  
2 security and counter-terrorism, and just in ordinary criminal  
3 law as well. But that's a great, absolutely great point.

4 **MR. MICHAEL WILLIAMS:** Bonnie Emerson, please?

5 **MS. BONNIE EMERSON:** Okay. Thank you. I would  
6 just comment that accountability is important. The community of  
7 practice, the issues may be the assessment of the information  
8 and how does a, in most cases, a municipal service, be able to  
9 adequately assess what the threat is outside of the fact that  
10 you've already got tens of thousands or more people there. So  
11 that would be that building of community of practice and sharing  
12 information under oversight rules, community of practice, to be  
13 able to share from interprovincially interagency in a  
14 responsible, ethical, legal way.

15 Right now, you have many different such  
16 communities of practice within police organizations for what I  
17 would consider sort of established and understood roles of  
18 police.

19 Because of the liaison work, and the organizing,  
20 in this mass demonstration assembly is evolving fast, the  
21 mechanisms to adjust to it, I believe, need to be.

22 There is, obviously my bias is on the table, I  
23 believe extensive oversight of police organizations, and I don't  
24 know of many people who would suggest that that's not  
25 appropriate. It is. So recognizing that, I think it's now a  
26 matter of how do you plan and prepare to be able to effectively  
27 make those decisions? And then you look at the question of what  
28 would the thresholds be? Because you can't even make the

1 decision unless there's going to be a mechanism for police to  
2 share information from interprovincially. There is a number,  
3 many, increasingly, demonstrations and assemblies that we see  
4 are moving from one province to another province, and that the  
5 local and the solidarity movements are such that it will affect  
6 it. And so even if the underlying interest is local to start  
7 with, the exponential factor of technology and social media, a  
8 solidarity effect is exponential, and so we need that -- the  
9 police need that ability to be effective.

10 **MR. MICHAEL WILLIAMS:** Robert, did you want to  
11 come back on that point? Okay.

12 Cal, I don't want to leave you out just because  
13 you're not in the room. Thank you.

14 **MR. CAL CORLEY:** Thank you, Michael. A couple  
15 points, and perhaps first on Bonnie's in terms of where she  
16 started off in terms of local police being able to appropriately  
17 assess risk.

18 And a couple of points there.

19 And one is -- one has to do with confirmation  
20 bias. And so confirmation bias, of course, you know, we  
21 discount the current intelligence that's coming in and give  
22 greater weight to our past experiences. And, you know, we heard  
23 -- at least my reading of some of the testimony we've heard of  
24 some of that here.

25 So those -- it speaks to me in part to the  
26 importance early on of, you know, back to the whole gambit of  
27 what I forward earlier, I suppose, in terms of standards and  
28 protocols, and one of which is around issues like that, would be

1 locally have a broad-based leadership group that's helping guide  
2 these. It can help counter, it can be certain to ask the right  
3 questions, et cetera, to support, ultimately, whoever the  
4 decision maker is at an institutional level.

5 I'd also -- while I've got the opportunity,  
6 Robert, you raised two important points, I thought, that I want  
7 to respond to.

8 One, you spoke a few minutes ago, in terms of  
9 being able to define, on a national scope event, that single  
10 authority that would be responsible and accountable. And again,  
11 that speaks to me to the importance of standards and protocols  
12 with significant precision. And I'll come back on that in a  
13 moment.

14 And the reason being, even in a center like  
15 Ottawa, where the Ottawa Police Services, the police of  
16 jurisdiction, I can see circumstances where, for example, under  
17 one scenario, if, just by way of example, that single authority  
18 you spoke of was the RCMP, I think we'd want to build in very  
19 clear, concise, pragmatic, protocol around that transfer of  
20 responsibility that tends to the hugely important of local  
21 context and local knowledge being maintained. So in that  
22 decision making and while most leaders would tend towards that  
23 partnership approach, I think it's really important that, you  
24 know, clear, very concise, and practical, pragmatic language we  
25 use, we tend sometimes to rely on too much that's reasonably  
26 concise, yet artfully vague, and that just leads us to problems  
27 in leadership and ultimate implementation of these strategies.

28 Those are my comments. Thank you.

1                   **MR. MICHAEL WILLIAMS:** Thank you. Anybody else?  
2                   Great. I would, if I may abuse my position for a  
3 minute, Robert, I'd like to explore the relationship between  
4 your idea of exclusion zone legislation and Colton's concerns  
5 particularly about symbolic spaces. And it ties us back,  
6 actually, to something Michael said right at the very beginning,  
7 that one of the policing strategies one might be able to  
8 consider in these cases is a certain period of time at a  
9 symbolically significant space, and then a move to a green zone  
10 or what everyone wants to call it, where one can continue to  
11 protest, however, one is no longer occupying that particular  
12 space.

13                   I would like to understand how you think about  
14 Colton's concerns about what this does to the nature of the  
15 protest itself, which is, after all, tied to a symbolically  
16 significant space; right? It is not the same, to use the Ottawa  
17 context, having a protest on Parliament Hill, and having a  
18 protest in the empty parking lot of a baseball stadium. Right?  
19 It simply doesn't do the same thing, if you're a protestor, even  
20 for the protest and for the public message you're trying to put  
21 forward.

22                   So I was wondering if you could just reflect on  
23 that issue for a minute?

24                   Then I'd like to ask Bonnie if she could put that  
25 specifically in the context that you spoke about earlier about  
26 Indigenous spaces in particular; right? Where these things are  
27 often very, very tied up, not simply with the protest itself,  
28 but with where the protest takes place. And if you could talk

1 about what the implications of that would be?

2                   Secondly, I'm most interested in this idea of  
3 what are the civil rights implications, if you like, of an  
4 exclusion zone? I know, although it is not my area of  
5 expertise, that the U.K. situation has come under -- the U.K.'s  
6 proposed use of these has come under very, very sustained  
7 challenged; right? People who worry that it will fundamentally  
8 curtail the public's right to dissent. And I was wondering if  
9 you could just speak to that general -- those general issues,  
10 please, and start off that discussion?

11                   **DR. ROBERT DIAB:** Shall I go first?

12                   **MR. MICHAEL WILLIAMS:** Please.

13                   **DR. ROBERT DIAB:** Sure. So very briefly, the  
14 exclusion zone, sorry, the protest zone raises its own set of  
15 issues distinct from exclusions. I agree with my colleague,  
16 Professor Fehr, that you know, they engage expression rights and  
17 assembly rights and even liberty rights, and -- but on the other  
18 hand, they have been considered already in Canada in a number of  
19 cases, and in some cases, they are deemed, you know, not to  
20 violate rights or reasonable limits on rights.

21                   Because among other things they do, is they  
22 facilitate, you know, the safe expression, like the safe conduct  
23 of a protest. So they're not simply restrictive, but they are -  
24 - on the other hand, they are restrictive and they are -- they  
25 do -- they may have a chilling effect. And -- but so those are  
26 really case-by-case and they're factual and so on.

27                   Exclusion zones, I think, raise a different set  
28 of issues, and they can be, I think, enormously invasive or, you

1 know, contrary to our rights. So I'm just -- my understanding  
2 is from, you know, the media coverage prior to the Commission  
3 conducting the fact-finding Inquiry, was that the exclusion zone  
4 in Ottawa was something like 70 blocks, and you know, there  
5 were, according to one news source, something like 100  
6 checkpoints.

7                   This is an extraordinary thing in Canada to -- so  
8 -- and like another example would be Quebec City where several -  
9 - at least a few square miles of the Old City were closed off.  
10 If you lived in the Old City, you needed a pass, you had to  
11 register to get one, and you couldn't have visitors. Like, you  
12 know, you couldn't have like your friends over for the weekend,  
13 or at least not without a lot of... This is -- you know, this is  
14 a extraordinary thing. It's an extraordinary incursion on our  
15 liberty.

16                   Whether it's necessary and justified is one  
17 question, but the light I'm trying to shine on the issue is not  
18 to say it's not justified, it can never be justified, it's to  
19 say that the decisions about whether in this one case it was  
20 reasonable are made in the dark, are made in the dark, like  
21 legally in the dark, no guidance, and also, behind closed doors.  
22 And that that's -- that seems contrary to the rule of law and to  
23 Canadian traditions that the place to do -- to make these  
24 decisions is the legislature.

25                   The only, I think, alternative we can point to is  
26 something like the Olympics in 2010, where somewhat similar  
27 issues were decided quite effectively in advance, but in public  
28 forums, mainly City Hall, but -- which wouldn't be ideal going



1 forward for, you know, small protests in small towns or smaller  
2 cities that can't afford to conduct the kind of preparation that  
3 we saw in 2010.

4 So I hope that addresses the question.

5 **MR. MICHAEL WILLIAMS:** Very much so.

6 Colton, did you want to address any of those  
7 issues?

8 **DR. COLTON FEHR:** Yeah. I think I'd agree with  
9 Robert that even though it addresses the -- or impacts the  
10 expression interest, that what I'd like to see from a  
11 legislature is some sort of clear set of guidance as to what  
12 threshold would be in place before -- what type of interest,  
13 public interests are being jeopardised before we should shift or  
14 allow the police to require a protest to be shifted. And if  
15 that was defined more clearly in legislation that seems like it  
16 could be the type of thing that withstands our justifiably  
17 infringed right under section 1 of the *Charter*.

18 So that is the, perhaps the main response I would  
19 have to Robert.

20 **MR. MICHAEL WILLIAMS:** Right.

21 Bonnie Emerson, please.

22 **MS. BONNIE EMERSON:** Okay. Thank you. I would  
23 first say that, again, the expectation of what you can expect  
24 from the police as far as cause and effect we have seen in the  
25 last -- most recently that there is a big disconnect, different  
26 understanding, and actually different expectations of police in  
27 response to protests.

28 And most recently, talking about in the last

1 winter and spring, it -- I was very surprised to see that a  
2 number of my experiences and conversations were based on what  
3 the underlying cause of the demonstration and the protests were,  
4 and that if people disagreed, go to the bias, with the  
5 underlying cause of it, they expected a greater police response,  
6 and that the police need to be able to be clear and articulate  
7 that the response will be same and "this is what you can  
8 expect." Whether it's from, in this context, exclusion zones or  
9 pushing them on.

10                   And why when you're looking at the totality of  
11 the situation, because I had started with PLT training as far as  
12 peaceful, lawful, safe, lawful is in there. Peaceful is, and  
13 safety, of course, underpins everything that we should be doing,  
14 but there is a lawful component in articulating that.

15                   I, again, this is me, but with our police they  
16 should not be using force on citizens unless we have tried what  
17 is reasonable to the extent that we can to mitigate that, and  
18 that is the bottom-line. Now, did we communicate that? Maybe  
19 it's a matter of having some community practice and training.

20                   To answer your questions as far as Indigenous  
21 space, I think there is two components. One is you're going to  
22 have jurisdictional issues.

23                   So Winnipeg has now the largest urban reserve in  
24 Canada, and it's going to be developed shortly. So a  
25 jurisdictional issue would be what is to happen if there's a  
26 police response on what will be an urban reserve in municipal  
27 policing in the middle of Winnipeg? How do we respond to that?  
28 I think that's a significant new area of -- to be considered

1 because it's in the middle of an urban centre and there is  
2 unique considerations.

3                   In the PLT training, we do, again, take a nod to  
4 the Indigenous history and the history of Canada as part of the  
5 training, but it's not meant to be Indigenous exclusive or  
6 specific. That cultural component and expectations that police  
7 officers educate and inform themselves of the underlying or  
8 interspaced reasons for the mass demonstration is expected, in  
9 the Winnipeg context, looking again back to where I said  
10 Incident Command models within policing, you have often a  
11 briefing for large incidents or large, well, incidents where  
12 you're going to plan, our liaison teams on a number of  
13 incidences it might be -- well, the lead, it might be me, where  
14 we're talking about cultural components, to make sure we look at  
15 appropriate response to regalia or ceremonial items.

16                   But that could be broader to a particular  
17 interest or a cultural component or sensitivity that a mass  
18 response by policing, not everybody is going to have the same  
19 training or knowledge base, so you incorporate the PLT into that  
20 briefing, incorporate the local knowledge so that your response  
21 is measured, consistent, lawful, safe and peaceful.

22                   **MR. MICHAEL WILLIAMS:** Thank you.

23                   Michael Kampa.

24                   **DR. MICHAEL KEMPA:** Just similar on the point of  
25 exclusion zones when we speak about moving people to green zones  
26 for protest and the importance of allowing people to access  
27 symbolically significant space. It's -- again, it's not in  
28 terms of a strict time limit where people would have 48 hours in

1 a significant space before being required to move along.  
2 Rather, there would, of course, have to be legitimate legal  
3 reasons for which a threshold to be met where a protest or  
4 members of a protest would be asked to go to a green zone  
5 perhaps as part of a self-policing arrangement.

6 I mean, long before we get to a situation of a  
7 mass protest threatening national security or any -- within even  
8 earshot of an *Emergencies Act* conversation, there are issues of  
9 threat to public safety, threat to officer safety, and lower  
10 standards where there -- that might be the bar for beginning to  
11 open up green space for a protest, partially as a strategy to  
12 begin to separate the very -- the vast majority of honourable  
13 protesters that are there to make a point, from the smaller  
14 number, who over time become a larger number attaching  
15 themselves to a protest with other objectives and less  
16 honourable intentions.

17 **MR. MICHAEL WILLIAMS:** Thank you. Yeah, please.

18 **DR. COLTON FEHR:** And just building on Michael's  
19 point. I think also that the state should be required to use  
20 the vast amount of police powers that they have, and in some  
21 instances, the criminal law to catch those problematic  
22 protesters early on so as to show the protest that the state  
23 means business.

24 You know, we have all sorts of tools under  
25 federal criminal law, under provincial regulatory statutes, and  
26 so on, that can be used to kind of send that message first. And  
27 I would want that to be something that would be considered first  
28 before we start saying, "Here's a green space and let's make

1 people go there," just because of the importance of protesting  
2 in a symbolic space.

3 Thank you.

4 **MR. MICHAEL WILLIAMS:** Thank you very much.

5 I notice we're coming to the end of our time. I  
6 wanted to give everybody the opportunity. Is there a final  
7 point or two points that you would like to make, either arising  
8 from our discussion; something we haven't spoken about that you  
9 would really think important to put on the agenda before our  
10 time closes?

11 **DR. COLTON FEHR:** We have ---

12 **MR. MICHAEL WILLIAMS:** Colton Fehr, please.

13 **DR. COLTON FEHR:** Thank you.

14 We haven't spoken about some of these very  
15 strange, antiquated police powers that you find in the *Criminal*  
16 *Code*. And some of these I just wasn't aware of, as a person who  
17 is a professor in the field of criminal law, before I started  
18 taking a deep dive here.

19 And this -- as with many criminal justice issues  
20 in Canada, legislative reform is direly needed, and we don't see  
21 that reform coming very frequently. And hopefully this  
22 Parliament takes the opportunity to reflect on some of these  
23 very troublesome powers.

24 And again I point to the -- this antiquated *Riot*  
25 *Act*, which derives really from the English *Riot Act* from the  
26 early 18<sup>th</sup> century. Why do we have this? If you look at other  
27 states in the Commonwealth; the New Zealands, Australias, even  
28 the UK, they've repealed this type of legislation long, long

1 ago. It's time for us to follow suit, I think.

2 **MR. MICHAEL WILLIAMS:** Thank you.

3 Cal Corley.

4 **MR. CAL CORLEY:** Yes, thank you, Michael.

5 My comment is one we haven't touched on yet, is  
6 just around the self-policing among protest groups. And it's a  
7 concept that has been brought about elsewhere, and maybe one  
8 that's worth exploring by the Commission. It's basically the  
9 idea that the police work right from the get-go with the protest  
10 organizers and involve them in policing, regulating their  
11 behaviour throughout the course of it.

12 It can tend to work very well, usually with those  
13 who are there with honourable intentions to protest peacefully  
14 and make their points. Sometimes less so, but it can be a  
15 differentiator and reduce the police effort as these groups  
16 multiply and such, as Michael mentioned earlier.

17 **MR. MICHAEL WILLIAMS:** Thank you.

18 Michael Kempa?

19 **DR. MICHAEL KEMPA:** Just, Commissioner, if I  
20 could, I would just end on the point; I know it's been very  
21 alarming for people to see what was widely seen as the collapse  
22 of the civil policing system in the face of what began as an  
23 honourable protest.

24 I would just -- there is a reassuring point to  
25 make, and that's that major public disorder episodes have always  
26 been major turning points in how policing is set up and  
27 delivered. Even the advent of modern public policing came on  
28 the heels of major civil disturbance; which is simply to say,

1 it's entirely within our power to reorganize the policing system  
2 to meet these challenges. It's a small reassuring point.

3 **MR. MICHAEL WILLIAMS:** Thank you.

4 Robert? Do you have any final point? No.

5 Bonnie Emerson? No?

6 Commissioner, any final questions?

7 **COMMISSIONER ROULEAU:** Well, one question I have,  
8 just going back to what was talked about in terms of control;  
9 and I totally agree, it has to be clear who controls. But I  
10 guess one of the questions I have is, in a system that's  
11 functioning wouldn't the people involved, the Chiefs or  
12 Commissioners or whoever, normally work it out?

13 And isn't it normal -- we heard a lot of evidence  
14 about the experts; the experts in planning or experts in dealing  
15 with types of disturbances, and I just wonder whether automatic,  
16 it goes against what -- a bit I've described in terms of the  
17 expertise or the decision of who should do it, on a basis of  
18 those who have, really, the same responsibility, which is  
19 policing, whether they be federal, provincial, or otherwise.  
20 And often there is expertise that may not rest in what would be  
21 an automatic changeover.

22 And the second dimension of that question is,  
23 does it make sense if -- to have automatic, if the complexion of  
24 the problem changes, and you would then change responsibility  
25 partway through, rather than a shared responsibility?

26 And I'm interested in the Quebec experience, but  
27 my understanding is Quebec has a long tradition which is  
28 different than others.

1                   So anyways, that's -- those are just sort of some  
2 questions, and I just throw them out there.

3                   **MR. MICHAEL WILLIAMS:** I think we have three  
4 minutes. We -- can we come up, Michael first, and Robert  
5 second, please. Yeah, Michael.

6                   **DR. MICHAEL KEMPA:** So Michael Kempa.

7                   **MR. MICHAEL WILLIAMS:** Quickly, yes.

8                   **DR. MICHAEL KEMPA:** So just very quickly.

9                   Commissioner, I absolutely agree. I think that  
10 the thresholds that I'm speaking of are for when consensus were  
11 to break down. The system works well when there's agreement at  
12 the moment. It's where there's disagreement, the ambiguity  
13 leaves it open and nobody's quite sure who has the final say.

14                   So perhaps you could have it that if there was an  
15 agreement on how to proceed, you would only move to thresholds  
16 when things would begin to break down, just for clarity.

17                   **MR. MICHAEL WILLIAMS:** Robert Diab.

18                   **DR. ROBERT DIAB:** Maybe two quick points.

19                   One is that I'm not sure that every kind of major  
20 event is truly new and unique. I would suggest instead that  
21 there's a finite number -- there's a finite variation. There's  
22 only, you know, certain kinds, there's a -- techniques or  
23 strategies in this current protest were interesting and new, but  
24 the general idea of a national protest; a protest unfolding on a  
25 national scale was not new.

26                   The second point is that history suggests that  
27 they don't just work it out. So if we look at what went wrong  
28 in all -- like, in a series of major events that have generated



1 inquiries, one thing I'm trying to show in my paper was that a  
2 common motif in all those inquiries was that coordination broke  
3 down because the nature of the leadership or of the arrangement  
4 was unclear.

5                   So to just take one example, in the G20 event,  
6 the *Foreign Missions Act* said to the RCMP, "You have primary  
7 responsibility over the meeting." So they created a zone, a  
8 small zone around the conference centre itself, and there were,  
9 like, not many problems in around that.

10                   Most of the problems -- the civil unrest, the  
11 confusion, the rights breaches and so forth -- unfolded around  
12 the areas that were larger, where it wasn't clear who could do  
13 what where, when, what the police powers were.

14                   So another way of putting it is to say that this  
15 question of a lack of clarity is closely related to a lack of  
16 clarity about what they can do. So I'm really calling for --  
17 I'm suggesting we're going to keep seeing this confusion and  
18 disorder unless we have clear leadership, and also, a clear  
19 delineation of what police can do; what tools are on the table  
20 for what kinds of events?

21                   **MS. BONNIE EMERSON:** Do we have time?

22                   **MR. MICHAEL WILLIAMS:** You do. You have one  
23 minute.

24                   **MS. BONNIE EMERSON:** Bonnie Emerson.

25                   I would suggest that because of the dynamic  
26 situation of mass demonstration and assembly, if you look at  
27 Scotland Police, they have one police service for municipal and  
28 federal. I recently met in the spring with a couple of their

1 liaison members, just looking at their training and best  
2 practices.

3           They are experiencing, within that model, much of  
4 what we've already discussed. And a lot of it is -- from their  
5 perspective, is also what we're experiencing here, where it is  
6 the volatility and the training and the intent of, again, the 10  
7 percent of people, organizers, looking to do as much disruption  
8 as possible to undermine whatever systems are in place; they're  
9 adapting and moving with that specific person.

10           And just for emphasis, I'm not suggesting that's  
11 the majority of lawful protesters, and -- at all. But I know  
12 from a -- I did a Peace Fellowship globally in Thailand three  
13 years ago. The global perspective, there is global training for  
14 professional protest, and the response they train. It was  
15 fascinating, as far as what to do when the police come. These  
16 are organized systems. And so the adaptation and that dynamic  
17 nature, I think whatever will be put into place, there will be  
18 mechanisms and situations where people try to circumvent it.

19           Thank you.

20           **MR. MICHAEL WILLIAMS:** Thank you very much.

21           On that note, Cal Corley, I saw that you had your  
22 electronic hand up, but technically speaking, we are now over  
23 our time.

24           So thank you very much, everyone. I'll call this  
25 session to a close. We will reconvene in 30 minutes. And thank  
26 you for your contributions.

27           **THE REGISTRAR:** The Commission is in recess for  
28 30 minutes. La Commission est levée pour 30 minutes.

1 --- Upon recessing at 4:00 p.m.

2 --- Upon resuming at 4:32 p.m.

3 **THE REGISTRAR:** The Commission is reconvened. La  
4 Commission repreneur.

5 **MR. MICHAEL WILLIAMS:** Thank you, everyone, for  
6 that really, really useful session. We have a number of  
7 questions that have emerged for further consideration, one of  
8 which has come in directly, and I will simply read it out.

9 So perhaps we'll begin with that. It's a rather  
10 technical question. So I would like people to deal with that,  
11 if they can. The question runs as follows: can the panel assist  
12 in framing a recommendation to address the establishment of a  
13 framework for drawing upon resources to deal with protests where  
14 required? This may be a more pressing issue in the NCR, the  
15 National Capital Region, where there are multiple police  
16 services. Is it desirable to develop a protocol to establish  
17 first, second, and third, and subsequent ports of call, or is it  
18 best left to the police of jurisdiction to deal with each  
19 situation on an ad hoc basis in response to each particular  
20 protest?

21 Anybody have suggestions, thoughts, questions on  
22 that?

23 Michael Kempa, please.

24 **DR. MICHAEL KEMPA:** Well sure. I think that the  
25 difficulty that has come in Ottawa has to do with just simple  
26 confusion over who may bring -- who may ask whom for resources,  
27 in what order of -- what order of request.

28 So where it started with the police of

1 jurisdiction, it always starts with the police of jurisdiction.

2           In Ottawa, the main point of coordination as it  
3 exists, is the Police Services Board. So where that board  
4 determines with their chief that they have a need for further  
5 resources, it is unclear at present to whom that board is  
6 supposed to go next. There is -- the Office of the Inspector  
7 General is intended to develop into the role, is my  
8 understanding, as the next point of call. But those regulations  
9 are not yet written, and the authority for the IG to act is not  
10 yet established by the new COPS Act in Ontario. So if that  
11 office is currently working only by the delegated authority of  
12 the Solicitor General's Office, it's only doing part of its  
13 functions right now.

14           So boards have not gone to the IG for that  
15 support as to who they would then ask for resources. Would they  
16 go to OPP? Would they go to Protective Services for the  
17 Parliamentary Precinct? Would they go elsewhere? So it should  
18 be the IG that would be the first point of call to provide that  
19 advice, to advise, in the circumstances, where the first port of  
20 call would be.

21           **MR. MICHAEL WILLIAMS:** Thank you very much.

22           Cal Corley?

23           **MR. CAL CORLEY:** Thank you, Michael. Just  
24 building on that, and to the question, if it was asked, I think  
25 the short answer is yes. but consist with good practice and  
26 being proactive about it, these are things we shouldn't leave to  
27 happenstance or in the heat of the moment trying to arrange and  
28 determine where those come from, but plan for it. And that's

1 part and parcel of the purpose of why a national framework or  
2 national standards are important and would cover off this very  
3 type of thing, based on best practice and prevailing practices.

4           The local practice, for example, in the National  
5 Capital Region, the OPS would typically reach out to the RCMP,  
6 who have a good size contingent locally, together with the OPP,  
7 and in some cases, across the river.

8           I think in addition to that, a framework such as  
9 the question posed, one should be thinking about not only public  
10 resources, but again, depending on the nature of the event, the  
11 nature of the duties required, consider how the private sector  
12 can play in that as well. So back to a more comprehensive look  
13 at this.

14           I was thinking about when Robert reminded us  
15 that, you know, in the other perimeter in Ottawa, there are 100  
16 check points. And if those are manned 24/7, let's just assume  
17 that they had three officers at each of those. And if you could  
18 convert even two of those to private sector, in the course of a  
19 day, you're looking at 600 resources, police resources that  
20 could be deployed to other functions.

21           So I don't think it's a question of just what  
22 other police services can we look at for these events, but  
23 looking more wholistically across the region, potential  
24 contributors, again, depending on the nature of the event.

25           **MR. MICHAEL WILLIAMS:** Excellent. Thank you.  
26           Bonnie Emerson, please?

27           **MS. BONNIE EMERSON:** Yeah, thank you. I agree  
28 with Cal. With the -- you have a national framework right now,

1 best practice document to build on. What I understand is, given  
2 the complexity right now, it's already causing, or has caused a  
3 significant amount of confusion and different levels of  
4 interpretation. If you add another level on to it, I don't -- I  
5 would only think that would exacerbate it.

6           You have a framework that exists right now that  
7 is partially utilized, and it becomes the national standard in  
8 modernizing and have required training across police services.  
9 That becomes part of the Incident Command model that is accepted  
10 police services, but I understand there's different models. So  
11 that would have to be clarified. And you have the PLT at the  
12 Incident Command table.

13           So you've got a framework that is considered best  
14 practice exists, you have the flexibility to, or the police  
15 service of jurisdiction, to reach out where it's required, but  
16 you have that now the liaison framework at the Incident Command  
17 table, which currently right now, that will exist in some police  
18 organizations, and there will be different levels of how that's  
19 incorporated in different police organizations.

20           So in Winnipeg, the experience was informally, a  
21 couple of years ago, because I was trained in this model, we  
22 incorporated it as best practices. We didn't have the formal  
23 training for our members to have a formalized liaison team until  
24 June. So the practices that I'm suggesting were incorporated  
25 into our model because of the Incident Commanders and now we're  
26 looking at the right people in the right positions to make this  
27 happen.

28           So what I would prescribe is that this should be

1 a standard so that you have that consistency.

2 **MR. MICHAEL WILLIAMS:** So in your view then, it's  
3 more a matter of clarifying and rolling out what already exists,  
4 as opposed to inventing anything new?

5 **MS. BONNIE EMERSON:** It is clarifying, mandating  
6 what exists so that it is consistent. Incorporating in a  
7 practice that is utilized and accepted within policing systems,  
8 the Incident Command Model is accepted and understood.

9 The liaison component is fairly new, in a  
10 formalized way, for police services, generally, even though  
11 philosophically I think there was lots of research talking about  
12 Peelian principles and how this truly is at the heart of  
13 community policing, liaison work, all of those principles  
14 coincide. But it's not a matter of reinventing the wheel. It's  
15 a matter of coalescing it so that we are consistent and it's  
16 easily articulable.

17 **MR. MICHAEL WILLIAMS:** Excellent. Thank you.  
18 Cal, your hand is up. Did you want to jump back  
19 in on this?

20 **MR. CAL CORLEY:** Yeah, thank you. I'd just like  
21 to pick up on that, and just what I suggest would be a friendly  
22 amendment to what Bonnie suggested, is as much as the CACP  
23 developed a national standard, as it were, it seems to me that  
24 given the nature and scope and the dynamic times we're in that  
25 they would warrant being refreshed by a much broader group that  
26 would include the police, that would include those involved in  
27 police governance, that would include, and I'm speaking there at  
28 the municipal, provincial, territorial, and federal levels,

1 Indigenous participation, private sector participation, and of  
2 course from the justice and AG side at the federal and  
3 provincial levels.

4                   The good workings of a national standard like  
5 that should be the responsibility of a multi-disciplinary group  
6 of experts, and again, crossing some of those various domains,  
7 and that's supported by training standards, established with the  
8 Canadian Police College, which provides advanced and specialised  
9 training to all police services across Canada, and supported by  
10 exercises of the type we've spoken of earlier, coordinated  
11 nationally by, I'd suggest, Public Safety Canada. And then with  
12 a feedback loop that feeds right back up to the top to ensure  
13 that those standards are refreshed on a regular basis, as and  
14 when required.

15                   Thank you.

16                   **MR. MICHAEL WILLIAMS:** Thank you.

17                   Robert Diab, please.

18                   **DR. ROBERT DIAB:** So I take this question to be  
19 asked in the absence of a plan or the approach that I was  
20 proposing a minute ago. So in other words, like I assume that  
21 the question is really prefaced by saying something like  
22 assuming we don't do what you're -- what I'm proposing, assuming  
23 we don't have either provincial public order police acts or a  
24 federal or both that define kinds of events and then set out,  
25 like, you know, who leads and what they're allowed to do and so  
26 on. I think -- so that -- this is a good question. What then  
27 would happen? How would we deal with resource allocation in  
28 dealing with protests of various scales that involve more than



1 one agency?

2                   And I think the interesting part of the question  
3 to me is if you wanted to give that any teeth, if you wanted to  
4 make that viable in a meaningful way, rather than just have a  
5 set of standards where we agree we might do X, Y and Z when this  
6 or that happens, you'd have to amend the provincial police acts  
7 and you'd have to amend -- and/or you'd have to amend the *RCMP*  
8 *Act*. Put another way, you'd have to find places to put this in  
9 federal, provincial legislation that create the obligation on  
10 the part of one or more agency to -- or one more government to  
11 commit resources.

12                   And I don't know how that would -- I don't know  
13 what that would like, you know, in a way that didn't become some  
14 version of what I'm proposing. In other words, in order for  
15 that to happen you'd have to have some sort of definition of the  
16 kinds of events that trigger these obligations and what the  
17 money should be used for if that makes sense. So -- or at  
18 least, you know, those questions would be in the picture.

19                   And so I'll leave it at that. Thanks.

20                   **MR. MICHAEL WILLIAMS:** Robert, could I just  
21 follow up on that? Because it seems to me that the key issue  
22 you're circling around there is that somebody has to be able to  
23 make that decision, right, and that that needs to be specified  
24 in advance. It can't simply be assumed that it will come out in  
25 a complex and evolving situation.

26                   Where would you suggest one begins to think about  
27 locating that point of decision?

28                   **DR. ROBERT DIAB:** You know, I don't know the

1 answer to that question. Again, if we, in the absence of  
2 something like an approach from the ground up, or for, you know,  
3 to go back to square one and say to create -- to treat public  
4 order policing as a special thing that requires, you know, its  
5 own law and so on, in the absence of that I don't know the  
6 answer. I'm simply pointing to the fact that policing straddles  
7 both heads of government or both powers.

8           And so you're -- we're getting into an area where  
9 both governments may be in a disagreement about who should pay,  
10 and really this is question about money. I mean, it's been  
11 couched of a question of, you know, who is going to commit so  
12 many officers to this protest and so on, but really it's about  
13 money, I think, but it also, as you suggest, involves decisions  
14 about what's appropriate. "Do you really need 200 more  
15 officers?" "I don't think so." And who makes that decision,  
16 and so on.

17           It's thorny, and I don't know the answer, but the  
18 tentative one I proposed was that maybe acts -- events of a  
19 national scope, a national nature, like the Olympics, the World  
20 Cup, national protests, maybe they belong in -- you know, maybe  
21 the Federal Government should take -- should assume authority  
22 over them, and conversely, you know, events of a provincial  
23 nature should be something that the provincial governments  
24 assume authority for.

25           So -- but nevertheless, I just think you can't  
26 divorce these two questions. You know, you can't -- if you  
27 reject the approach I'm contemplating, you're really dealing  
28 with the same problem.

1 Thank you.

2 **MR. MICHAEL WILLIAMS:** Anybody else?

3 **MS. BONNIE EMERSON:** But I ---

4 **MR. MICHAEL WILLIAMS:** Bonnie, please.

5 **MS. BONNIE EMERSON:** I just wanted to clarify  
6 just to agree with Cal and Robert, that currently the CACP  
7 model, like our training, the training program isn't resourced,  
8 you're right. Right now, the current trainers are from police  
9 services, municipal, provincial, and federal, so WPS, OPS,  
10 Ottawa or OPP and RCMP, and it's not sustainable for me to go  
11 and train multiple organisations across Canada. So it is a  
12 question of resource. And going to something like the Canadian  
13 Police College would be, I think, appropriate.

14 **MR. MICHAEL WILLIAMS:** Thank you very much.

15 Another question that came up, and I'd like to  
16 address this one first to Cal Corley, if I may, since you  
17 brought it up specifically, I think, in your remarks, Cal, is  
18 whether or not the major case management model provides a  
19 framework or a basis for thinking about the way in which  
20 interagency coordination could take place across Canada. Could  
21 you speak a little bit to the strengths and weaknesses of  
22 thinking about that as a model for alternative ways of  
23 institutional coordination?

24 **MR. CAL CORLEY:** Yeah, very much so. And first  
25 and foremost, it provides a mechanism that provides rigour to  
26 planning, implementation, supports leadership and sound  
27 decision-making across -- typically across multiple agencies.  
28 So there's clarity in terms of leadership, there is clarity in

1 terms of the methods by which where it's done, but I must say  
2 that it also does not hamstring a leadership team or the  
3 investigative teams in any way. They still have plenty of  
4 latitude to adapt and respond to local circumstances, it's just  
5 within a very well constructed framework.

6           And by way of using that as an analogy, I think,  
7 you know, it wouldn't be a difficult thing at all to take a  
8 framework like that and convert it, apply it to the current  
9 circumstances.

10           **MR. MICHAEL WILLIAMS:** Thank you.

11           Anybody else like to comment on that question?  
12 No? Okay, great. Thank you.

13           I'd like to return us, if we can, to the very  
14 beginnings of our discussion, and talk about concrete policing  
15 strategies of the protest itself. Someone I think mentioned it,  
16 it may have been you, Michael, that it was a rather old  
17 fashioned way of policing this protest.

18           And given that on-the-ground policing is  
19 obviously connected to all of the institutional kinds of  
20 questions we're talking about, can you reflect on what you think  
21 the lessons ought to be going forward in terms of the way in  
22 which policing was actually handled on a day-to-day basis on the  
23 ground as the protest evolved here, and how you think it might  
24 have implications in other contexts in the future? I realise  
25 that's a very big question.

26           **DR. MICHAEL KEMPA:** Sure. Well, I think that the  
27 main point that emerged in terms of the strategies that police  
28 services deployed in Ottawa, Coutts, Alberta, in the earlier

1 protests, and then Toronto and Quebec City going in a different  
2 direction, having observed what happened in Ottawa, is that the  
3 initial strategy was from a standard playbook that was  
4 essentially drawn up after the G20 in Toronto of containment and  
5 allowing protests to sort of fizzle out on their own time prior  
6 to any enforcement or apart from very dangerous behaviours, but  
7 for minor enforcement to not be undertaken until protests had  
8 dissipated.

9                   And we heard a little bit about that in terms of  
10 even on the interpretation of intelligence that came in where  
11 police officers said, "Well, when we filtered that through our  
12 experience of typical protest, our typical experience is that  
13 protests last for a finite period of time, focussed on an  
14 identifiable set of issues."

15                   So in this case, that strategy just is in no way  
16 designed for a multi-layered protest with different objectives  
17 with no particular end date in mind, other than the achievement  
18 of a long list of particular mandate and broader political  
19 objectives.

20                   So the stand-back approach, police officers put  
21 this to me in terms of, "We simply followed the playbook that  
22 came out after the G20 in Toronto, and it was completely  
23 inappropriate to the circumstances."

24                   So where I've spoken with police officers about,  
25 "Well, where is the sort of in between; between aggressive  
26 policing, which was the old style of handling mass protest,  
27 versus the containment strategy?" They all came back to early  
28 engagement with PLT; negotiation at an earlier stage to do with

1 what people might -- where they would begin to identify problems  
2 such that they might be willing to move at a future time if  
3 certain things were observed, so there was almost a pre -- there  
4 would be a pre-understanding of what behaviours wouldn't be  
5 acceptable and when there might be a need to move; and  
6 preparation for enforcement of more minor violations at an  
7 earlier stage so that things like the bedding in a vehicle  
8 simply wouldn't be able to happen.

9                   And police officers subsequent to the Freedom  
10 Convoy in February have pointed to using some of these things in  
11 more recent protests in Ottawa around Rolling Thunder in April  
12 and the Canada Day protests that followed along.

13                   So just simply that that containment strategy,  
14 which was lauded in many cases after the G20, was inappropriate  
15 in these circumstances.

16                   **MR. MICHAEL WILLIAMS:** Right.

17                   Bonnie, would you like to comment on that?

18                   **MS. BONNIE EMERSON:** Well, sure. I'll just say  
19 that without getting into specifics, but I think it does speak  
20 to training. The Manitoba context, we did have two mass  
21 demonstrations at the same time, and they were approached --  
22 I'll speak for Winnipeg but there was one at Emerson, Manitoba  
23 border.

24                   With the pre-intervention, with the understanding  
25 of PLT in that pre-engagement is not solely for relationship  
26 building and waiting it out. It is consequences knowing, eyes  
27 wide open, "Here is what your responsibilities are; here's what  
28 the consequences is," and testing leadership when they're

1 identified as an organizer of an event.

2           So I agree that -- with Michael, as far as  
3 looking at what is the strategies for police officers, why are  
4 they -- and how are they trained, as far as looking at what they  
5 need to do, and continuously updating that body of practice and  
6 knowledge is completely necessary.

7           **MR. MICHAEL WILLIAMS:** Right.

8           Cal, I see you nodding. Did you want to come in  
9 on this point?

10          **MR. CAL CORLEY:** Yeah, I nod well.

11           I was -- no, I was just reflecting, and I agree  
12 entirely. I mean, this is -- responses to events such as this  
13 involve an ecosystem; multiple agencies, multiple actors, and  
14 strategies and tactics that are not practiced, not stress tested  
15 are bound to fall short of expectations, to one degree or  
16 another. And I think as we've heard over the last number of  
17 months that we should expect better.

18           One question that resonated as I was listening to  
19 Michael was, you know, had there been any after-action reviews  
20 to date, for example, involving the parties? An event such as  
21 this typically would if it fell under a national standard, that  
22 would be a key element of it, and it's just a question I ask.

23          **MR. MICHAEL WILLIAMS:** That I have no answer to.

24           Anyone else? Great.

25           Those exhaust the questions that we have  
26 received. Does anyone have any final comments that they want to  
27 make that are particularly important; things that they want to  
28 put on the agenda, that the Commissioner, the Commission ought

1 to consider?

2 We have exhausted both the issue and our  
3 knowledge of it? Excellent.

4 **MS. BONNIE EMERSON:** Well, you prefaced it with  
5 anything particularly important.

6 (LAUGHTER)

7 **MR. MICHAEL WILLIAMS:** Yeah.

8 **MS. BONNIE EMERSON:** I was just going to say  
9 thank you. I can't imagine how exhausted you are, but this is  
10 exciting times with great opportunity, so...

11 **MR. MICHAEL WILLIAMS:** Thank you very much.

12 Commissioner, do you have any final comments?

13 **COMMISSIONER ROULEAU:** Just to thank the panel.  
14 It's obviously a privilege for me to have people such as all of  
15 you, who are knowledgeable in the areas, come and help me with  
16 my work; and believe me, I need help. And it's -- so I want to  
17 thank you very sincerely for your contributions; for your  
18 willingness to come; for the preparation that went into this.

19 It's, for me, as I say, a great privilege to be  
20 able to have people come and help me about areas I'm now going  
21 to know a heck of a lot more than I ever thought I would have.  
22 And so thank you for that.

23 And thank you, Michael, for doing a really great  
24 job in running the panel and making sure that it kept not only  
25 on track but addressed the issues that are important to me.

26 So thank you all, and we will adjourn for the day  
27 and come back tomorrow with another policing issue, which will  
28 be debated.



1 Thank you.

2 **MR. MICHAEL WILLIAMS:** Thank you, everyone.

3 **THE REGISTRAR:** The Commission is adjourned. La  
4 Commission est ajournée.

5 --- Upon adjourning at 4:57 p.m.

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**C E R T I F I C A T I O N**

8

9 I, Mitchell Kersys, a certified court reporter, hereby certify  
10 the foregoing pages to be an accurate transcription of my  
11 notes/records to the best of my skill and ability, and I so  
12 swear.

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14 Je, Mitchell Kersys, un sténographe officiel, certifie que les  
15 pages ci-hautes sont une transcription conforme de mes  
16 notes/enregistrements au meilleur de mes capacités, et je le  
17 jure.

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