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EMERGENCY
COMMISSION**

**COMMISSION
SUR L'ÉTAT
D'URGENCE**

Public Hearing

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

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V

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Ottawa, Ontario

--- Upon commencing on Thursday, December 1, 2022 at 9:33 a.m.

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

COMMISSIONER ROULEAU: Bonjour à tous et bienvenue à la quatrième journée de nos sessions de politiques.

Welcome to our fourth policy day.

Today, we're dealing with Police-Government Relations. Nous traitons des relations entre le gouvernement et la police. Alors, nous avons un panel d'excellence, on m'avise, alors il y a certains que j'ai déjà vus plus tôt cette semaine et d'autres qui sont nouveaux.

So with that brief introduction, I'll turn it over to Professor Baker for -- to introduce our panelists.

--- ROUNDTABLE DISCUSSION: POLICE-GOVERNMENT RELATIONS:

DR. DENNIS BAKER: Thank you, Commissioner, and good morning, everyone.

My name is Dennis Baker, and I'm an Associate Professor of Political Science and Acting Director of the Criminal Justice Programs at the University of Guelph. It is my honour to be moderating this roundtable this morning.

We have an impressive array of experts here, and I am going to introduce them briefly. Going around the table, Malcolm Thorburn is Professor of Law and Associate Dean of Graduate Studies at the University of Toronto. Next to him is Michael -- is Professor Michael Kempa, who is an Associate Professor of Criminology at the University of Ottawa. Kate

1 Puddister is Associate Professor of Political Science in the
2 Department of Political Science at the University of Guelph.
3 Ryan Teschner is Executive Director and Chief of Staff on the
4 Toronto Police Service Board; and James Ramer is Chief of the
5 Toronto Police Service. And joining us online is Christian
6 Lepreucht, who is the Class of 1965 Distinguished Professor of
7 Leadership at Royal Military College, and Director of the
8 Institute for Intergovernmental Relations at Queen's University.

9 So our topic here this morning is the
10 relationship between police and governments. As
11 Professor Puddister and I can attest, having taught many Guelph
12 students over the years in a class called Governing Criminal
13 Justice, this is a relationship that is fraught with challenges
14 and does not lend itself to easy answers.

15 We know that neither extreme is appealing. The
16 idea of government-directed police force, where the police
17 become an arm of the government of the day, is repugnant to our
18 commitment to the rule of law and threatens our democratic right
19 to express our displeasure with the government. The other
20 extreme, fully independent police, risks allowing those police
21 services to be a force unto themselves, disconnected from
22 civilian control and legitimate democratic authority.

23 The relationship must be somewhere in the middle.
24 But that middle, as my students know, and Professor Puddister's
25 students know, is sharply contested and often difficult to
26 operationalise.

27 So today, we're going to talk in some detail
28 about the capacity of governments to direct police, the sharing

1 of information, and the relationships between different police
2 services and the multiple levels of government. My hope,
3 Commissioner, is that even if we cannot provide you with
4 definitive answers today, we can at least assist you by
5 outlining the contours of the debate and where some of the
6 reasonable disagreements may lie.

7 With that, I'm going to turn the session over to
8 our panelists for opening statements. I've asked each panelist
9 to speak for about five minutes, introducing their approach to
10 the topic, and then we're going to have rounds of questions
11 focussed on different aspects of the relationship.

12 One final reminder to everyone on the panel,
13 speak slowly, something I'm going to have to struggle with, and
14 always identify yourself when speaking for the benefit of our
15 translators and transcribers.

16 So Professor Michael Kempa, I have you in
17 alphabetical order, so you are up first.

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

19 **DR. MICHAEL KEMPA:** Great. Thank you very much
20 for including me, Commissioner.

21 And as you know, the issue of political
22 engagement and civilian oversight engagement with policing has
23 plagued the Canadian system since the McDonald Report in 1981,
24 so over 50 years, but I have every confidence that we will
25 resolve these issues here today and through the work that you'll
26 do on the Commission after all this time.

27 I approach policing basically as a window into
28 politics and political economy, which is simply to say, the way

1 that a society sets up its policing system, divides
2 responsibilities between public policing authorities, private
3 policing authorities and civil or volunteer policing authorities
4 says a lot about their broader views of the proper role of the
5 state generally, what a market is and what its purpose is, who
6 it serves, what a civil society is and what a civil society can
7 contribute to the broader political economic context, how to
8 define citizenship and how rights of citizens are to be
9 institutionalized, including who is included and sometimes
10 accidentally excluded from these regimes of rights. So that's
11 at the theoretical level.

12 At a practical level, I'm simply interested in
13 who makes the decisions around policing policies, operations and
14 the exercise of policing power. And my general concern is that
15 all three of these things are as democratic as possible, which
16 means as close to community as possible, as reflective of
17 community values and needs as possible, balanced by the need for
18 the exercise of policing power as a form of legal power to be
19 independent and democratically accountable. Now the way that
20 those things come together in different circumstances will vary.
21 The answer will not always be the same depending on what type of
22 policing powers we're talking about and what circumstances, but
23 generally by interrogating those questions, you get a good
24 window into democratic theory and political economic theory.
25 Thank you.

26 **DR. DENNIS BAKER:** Thank you, Professor Kempa.

27 So next up is Professor Leuprecht, who's on Zoom.

28 **--- PRESENTATION BY DR. CHRISTIAN LEUPRECHT**

1 **DR. CHRISTIAN LEUPRECHT:** Yeah, so if we frame
2 the problem here -- donc, merci de l'invitation aujourd'hui --
3 so we had a modest but tenacious protest in Ottawa and the
4 system comes under moderate strain and is unable to come
5 together to achieve strategic effect. I mean, we get more
6 people in Kingston for homecoming than we did in Ottawa for the
7 convoy, so let's think about that. So *Police Services Acts* call
8 for adequate and effective policing. What does that mean? It
9 means policing in response to the needs, values and expectations
10 of the local community. On the other hand, police swear an oath
11 to protect life, property and prevent crime. So the question
12 for police is, what's the best way to keep the public safe? And
13 you can already see emerging here the fundamental problem, which
14 is the delta between public expectations on the one hand, as
15 well as the quantity and the quality of policing. And I would
16 say that delta in Canada continues to grow.

17 And so we can use the Ottawa convoy as a critical
18 case study and a laboratory of experimentation of generally what
19 ails the national security system, because what we have here is
20 a fundamental failure of the entire intelligence, law
21 enforcement and national security system.

22 So police resources are always oversubscribed,
23 even in normal times, and so they'll follow risk. And so that
24 means that police planning, decision making, and action depends
25 on the intelligence cycle, planning and direction, collection,
26 processing, analysis and production, dissemination. We had
27 multiple agencies generating those, CSIS, the RCMP, Criminal
28 Intelligence Service of Ontario, OPP, OPS, open source through

1 media, and it seems we never were able to come together to
2 actually produce a coherent picture. Just think about who would
3 let all these trucks downtown after the Royal Trade Centre
4 bombing in 1990 and the Oklahoma City bombing in 1998.

5 So there's four, I think, key elements here. The
6 issues with regards to the Chief in Ottawa I think are more
7 symptomatic of broadly issues in Canadian policing when it comes
8 to police leadership, police management, police institutional
9 culture and policing posture. Issues with regards to the Board
10 are emblematic of challenges of police governance more broadly,
11 but also what happens when we don't have adequate police
12 governance. We have interagency issues of -- and in particular,
13 police didn't ever appear to have an appreciation of the
14 totality of circumstances that affected this situation, and we
15 have intergovernmental issues where the Premier, the Prime
16 Minister and the Mayor should have stood together with their
17 chief law enforcement officers, and instead, we got squabbling
18 among them, all this in the capital of a G7 country, so the
19 system was unprepared.

20 And so I think what we get here, this was more
21 symptomatic of a number of broader issues. One is we have good
22 incident response among law enforcement in Canada. We have
23 difficulty with sustainment, in particular, on issues of
24 intelligence, planning and logistics that a medium-sized police
25 service such as the Ottawa Police Services cannot simply be
26 expected to have for a national protest. That's where we need
27 national, and to some extent provincial agencies to come in.
28 Where was the RCMP surge capacity? We're always told we have

1 this national police force of 17,000 people, so we can surge at
2 times of a crisis. Between A-Division, C-Division, O-Division
3 and headquarters, we have well over 2500 people that could have
4 simply gotten in their cars, that are not on frontline patrol.
5 Where were they? We had a loss of trust and confidence by the
6 public. That caused politicians to meddle. We had issues of
7 outdated policy, which are governance issues. There's a broader
8 debate about what constitutes national security. We have this
9 very realist and traditional approach that I think does not do
10 well in coping with economic security and political stability,
11 issues of hate crime, ideologically motivated violent extremism
12 and so forth. Six, we have a reactive national security posture
13 in preserving national security when we need a proactive and
14 intelligence driven one where federal agencies have to have a
15 firm and clear understanding of their mandate and on issues, so
16 that they can clearly advise local agencies. And I'd say
17 there's a general vulnerability that was created in Ottawa where
18 this vulnerability public safety, national security then created
19 multi-dimensional issues of destabilizing Canada and its
20 democratic institutions more broadly.

21 The conclusion is that the *Emergencies Act*
22 shouldn't and wouldn't have been needed had the system performed
23 well to achieve strategic effect. The fact that we had -- that
24 the *Emergencies Act* was invoked is an indictment of the system
25 and its inability to perform for Canadians, for the government
26 and for local citizens in Ottawa.

27 **DR. DENNIS BAKER:** Thank you, Professor
28 Leuprecht.

1 I'm going to remind the panel to please try and
2 speak slowly for the benefit of our transcribers and
3 translators.

4 Professor Puddister?

5 **--- PRESENTATION BY DR. KATE PUDDISTER:**

6 **DR. KATE PUDDISTER:** Thank you. Good morning.
7 My name is Kate Puddister and I'm an associate professor in the
8 Department of Political Science at the University of Guelph, and
9 I am pleased to be here with you today.

10 My research and teaching are in the areas of law
11 and politics and criminal justice policy. With colleagues, I
12 have researched and written on several aspects of police
13 governance and accountability. This work includes a study of
14 the RCMP's Mr. Big undercover technique as a test for various
15 types of police oversight for a routine but covert policing
16 operation.

17 My current research examines civilian police
18 oversight in Canada with a focus on Ontario in particular. I've
19 written on the investigation, prosecution and sentencing of
20 police officers in Ontario and the work of the Ontario Special
21 Investigations Unit as a method of police oversight and
22 accountability.

23 My work demonstrates the very complex and
24 challenging nature of these cases for the justice system.
25 Through my work, I try to highlight the importance of public
26 legitimacy and police oversight and the various sites of
27 accountability for police.

28 My research has shown that for some matters of

1 policing, parliamentarians, responsible Ministers and police
2 oversight agencies either show little interest or are incapable
3 of regulating police conduct in an ongoing basis or in
4 approaches that are more systematic and comprehensive.

5 To this end, there are examples of elected
6 officials in Canada being unwilling to take on difficult matters
7 of police policy and operations instead of choosing -- instead,
8 choosing to rely on a notion of police independence that is too
9 expansive and unhelpful for effective democratic governance of
10 policing.

11 I see my role on this panel to think about
12 connections to police accountability and civilian oversight with
13 respect to police government relations. In thinking about this
14 topic, we are often presented with discussions about the
15 importance of police independence and the dangers if police
16 independence is not taken seriously in a democracy. Too much
17 government direction of the police and overreach presents a
18 problem for the rule of law, but too much police independence
19 raises issues for democratic accountability and other problems
20 for the rule of law.

21 This conversation usually turns to distinctions
22 between policy, something that is the rightful domain of
23 governments and police service boards compared to operations,
24 something that is the rightful domain of police themselves. I
25 know that we'll discuss these issues this morning, but my
26 perspective is that this distinction and an attempt to draw
27 clear line between the two does a disservice.

28 This focusing on the distinction between policy

1 and that of operations leaves out critical conversations about
2 the role of the public, through civilian oversight, and the
3 importance of other sites of accountability, such as the courts,
4 the media, and inquiries like the present.

5 Importantly, this formulation allows governments
6 to shirk responsibilities with respect to policing. Perhaps as
7 a method of political strategy. Instead of having a more
8 nuanced discussion about the respective roles of each and how
9 this might change based on the nature of policing that is
10 required, considering the wide scope of responsibilities of the
11 police.

12 Police in Canada are tasked with a wide range of
13 responsibilities, as laid out in legislation: crime prevention,
14 law enforcement, assistance to victims, public order
15 maintenance, and emergency response. Each comprise different
16 and occasionally competing demands. When thinking about the
17 governance of the police, there's value in having a nuanced
18 conversation about these different roles and how police
19 independence or operational responsibility might take on a
20 different meaning and importance.

21 Perhaps there's a greater role for government
22 oversight when responding to issues of public order policing,
23 compared to the core responsibilities of the police to
24 investigate a particular person or persons and to lay charges.

25 My perspective is, is that there's value in
26 establishing, through public policy, the responsibilities of
27 both government and the police, to articulate the accountability
28 mechanisms, to define procedures of communication, information

1 sharing and direction, and so we can identify cases of undue
2 influence if they deviate from these guides.

3 Enacting policy and legislative guidelines can
4 promote openness by allowing for the setting of policy
5 priorities, debating the direction of those priorities, and for
6 policy evaluation. All of which can be aimed at ensuring
7 democratic values and principles are alive and well in Canadian
8 policing and police policy.

9 Clear rules can articulate lines of
10 accountability and oversight, which can not only guide
11 police/government relations in the future, but it can also
12 further public confidence.

13 And with that in mind, I look forward to our
14 discussions this morning.

15 **DR. DENNIS BAKER:** Thank you, Professor
16 Puddister.

17 I'll call on Chief Ramer.

18 **--- PRESENTATION BY CHIEF JIM RAMER:**

19 **CHIEF JIM RAMER:** Good morning. Let me first
20 thank you, Mr. Commissioner, for inviting me to participate in
21 this very important exercise.

22 I'm a lifelong practitioner, having devoted my
23 working life to policing, public safety, and crime prevention.
24 I hope that I can provide some insight into how theory is
25 applied.

26 The title of this session is Police/Government
27 Relations. The essence of the discussions is how do we
28 construct and reinforce public institutions that preserve or

1 promote democracy? I firmly believe that democracy is more than
2 just voting. Many institutions promote democracy and the
3 balancing of rights. Some institutions, however, can promote
4 democracy or detract from it, depending on how they are
5 administered. Policing is one such institution.

6 In my view, we must be careful to avoid adopting
7 strategies at remedying a particular problem that tend to
8 undermine a system that, generally speaking, works well in this
9 province and across Canada. A system of policing that is
10 independent of political interference is a system to be
11 protected and nurtured is a key aspect of democracy and must, of
12 course, be accountable to the people, and the leadership must be
13 responsive to the people and ensure that the rule of law is
14 maintained.

15 The police cannot be seen as a tool to be used by
16 any particular government, but must be seen to be operating on
17 the basis of democratic principles.

18 The leadership in policing need to be
19 experienced, trained, empathetic, and humble in order to be
20 effective.

21 Long ago, in response to political interference
22 in Toronto, born of divisions transplanted from abroad, the
23 Provincial Government created a police commission designed to
24 protect the police service from actual and perceived
25 interference. That system has evolved into the police services
26 board system we have today. That system has evolved and matured
27 to ensure that politics does not intrude into operations, but
28 that the direction of policing is responsive to the legitimate

1 needs and expectations of the people.

2 I am of the view that while I accept there is
3 room for improvement in the system we have developed in Toronto,
4 we are currently positioned as well as we ever have been to
5 ensure responsive, accountable, and independent policing for the
6 people who depend on us. The Service embraces the role of the
7 Board. We do all we can to ensure they have the information and
8 assistance they need from us to fulfil their role, which is
9 often stated to be ensuring adequate and effective policing.

10 I'm sure Mr. Teschner will unpack that concept
11 through the course of our time together, but for me, it includes
12 providing the Service with policy direction that informs our
13 operations. It is a relationship that recognizes that the Board
14 can and should collaborate with the service, and can do so in a
15 way that augments its oversight ability and does not detract
16 from it.

17 The Service has also matured, and we realize that
18 the Board can provide unique civilian perspectives that actually
19 enhance our operations. So we have policy and operational
20 discussions frequently, and each of us are the better for it.

21 However, a key to those discussions is that we
22 each honour the other's roles.

23 The Board also plays a key role for the police in
24 being a contact point with government. The Board is, in that
25 respect, another key democratic institution. The Board allows
26 the government to learn of some aspects of policing, and even
27 questions operations with the Board. Thus, the government will
28 not be seen as directing operations or attempting to do so.

1 The Board also assists in resourcing in concert
2 with the Service and assists the Service in speaking to
3 government in terms of powers and authorities that would assist
4 the police in carrying out their duties.

5 That encapsulates my view on police/government
6 relations and I look forward, as well, to today's discussion.
7 Thank you.

8 **DR. DENNIS BAKER:** Thank you, Chief Ramer.

9 Mr. Teschner?

10 **--- PRESENTATION BY MR. RYAN TESCHNER:**

11 **MR. RYAN TESCHNER:** Thank you, Professor Baker.
12 Good morning, Mr. Commissioner. Bonjour.

13 I have spent over a decade focused intensely on
14 police/government relations, first as a lawyer, then as lead
15 counsel to Judge Morden for the G20 review, and then now, a
16 front row seat as executive director and chief of staff to
17 Canada's largest municipal police services board. And so I have
18 some reflections.

19 I approach this as a discussion of principle, and
20 there are three that I think animate the approach to effective,
21 appropriate, well-balanced police/government relations in
22 Canada.

23 The first is an acceptance that we must keep
24 politics out of policing. Law enforcement decisions, in their
25 core fashion, should not be made or directed by those in elected
26 office. Police officers have common-law authority independent
27 of government and must undertake their core law enforcement
28 functions separate from government direction in order to

1 maintain the rule of law.

2 But we have to be careful no to lean too heavily
3 into creating a bubble of immunity that prevents governance and
4 oversight of police in terms of their plans, actions or
5 inactions, or otherwise impedes the flow of information
6 essential for governance and oversight to function.

7 The second principle is that we need governance
8 and oversight in some form. Policing requires, in my view, some
9 form of independent governance that is forward looking, that is
10 perspective, and that embeds due respect for community norms.
11 We need this to maintain the public approval required for
12 democratic community policing systems to function. It helps
13 ensure that the public's accepted values and norms, as many of
14 the other panelists have mentioned in their intros, guide the
15 delivery of policing. And it puts in place the policy
16 infrastructure that sets the rules and limits within which
17 specific law enforcement decisions will be made and actions
18 taken.

19 We also need independent oversight after the
20 fact, accountability processes that examine decisions or acts
21 once they have already occurred and help us learn from them.

22 Third principle is that we need an intermediary
23 who mediates and sometimes arbitrates interests. There must be
24 a way to, without government being the decision maker
25 improperly, translate public values and expectations into a
26 framework within which policing services will be delivered.
27 Someone must balance competing interests of different
28 constituencies, a diverse public, police leadership, elected

1 officials, oversight actors, interest groups, but ultimately
2 make the policy decisions, set the priorities and objectives
3 from which police actions flow.

4 There are a few other key points I'm sure I'll
5 expand on today.

6 One is that the ability of independent governance
7 and oversight bodies to function and fulfill their important
8 statutory mandate requires a healthy information exchange and
9 that that is not the same as impermissible direction of the
10 police.

11 The second is the need to balance the concepts of
12 independence and accountability in a way that avoids political
13 interference but avoids political shirking of responsibility.

14 And the third is that community connection that
15 the boards and commissions across this country provide help
16 ensure that a community needs and their expectations as they
17 evolve are matched, that there is a feedback loop, so that
18 policing evolves alongside. And very quickly, I'll put this by
19 way of analogy.

20 I look at the role of police boards and
21 commissions the way that I look at building a house. You have
22 an architect and you have a general contractor. Police boards
23 are the architects. They have a vision, they develop the
24 blueprints, they set the plan. Police chiefs and police
25 services are the general contractors. They are the experts.
26 They come in and they mobilise the trades, the resources, the
27 equipment, the tools in order to bring that plan to life. Each
28 have an important role. But for anyone who has built a home,

1 renovated a home you know that you have to respect the roles of
2 each in order for the system to function properly.

3 And I look forward to expanding on that more
4 today. Thank you.

5 **DR. DENNIS BAKER:** Thank you, Mr. Teschner.
6 Professor Thorburn?

7 **--- PRESENTATION BY DR. MALCOLM THORBURN:**

8 **DR. MALCOLM THORBURN:** Thank you.

9 Bonjour, et merci, Monsieur le commissaire, pour
10 l'invitation à participer aujourd'hui à la discussion.

11 Je m'appelle Malcolm Thorburn, je suis professeur
12 titulaire et vice-doyen aux études supérieures à la Faculté de
13 droit à l'Université de Toronto. Je tiens aussi la Chaire de
14 recherche pour l'innovation. J'enseigne le droit pénal et le
15 droit de la preuve et j'effectue des recherches sur la police et
16 sa place dans l'ordre constitutionnel au Canada, plutôt sur le
17 plan théorique, mais aussi sur le plan pratique.

18 Je donnerai mon discours en anglais aujourd'hui,
19 mais je serai ravi de répondre à des questions dans les deux
20 langues officielles.

21 I'll start my presentation by outlining what I
22 take to be the main concerns that should structure our thinking
23 about police government relations. I know that many of my
24 fellow panelists are criminologists, police officers, political
25 scientists, who will bring enormous -- who have already brought
26 enormous insight into the policy considerations that pull us
27 toward one arrangement or another. I'm going to focus my own
28 thoughts on some of the legal considerations, common law

1 doctrines, constitutional principles, and so on, that I believe
2 should structure our thinking on this topic.

3 And the central idea I want to put forward is one
4 that we've already heard mentioned here, that in Canada, I
5 believe we have for too long had a rather vague and sometimes
6 often overblown conception of police independence from
7 government. As a matter of common law doctrine, and of
8 constitutional principle, made clear in many places, our Supreme
9 Court's decision in '99 in *Campbell*, for example, it is clear
10 that the police should be fully independent of the government,
11 police services boards, minister, whoever, while engaged in
12 criminal investigation, commencing or ending investigations,
13 laying charges and the like. That much, I think, is clear as a
14 matter of law, and I think I would agree, as a matter of policy.

15 And that is because in these situations, when the
16 police are targeting specific individuals for the attention of
17 the criminal justice system, full independence is essential to
18 the integrity of their operations. Without it, there is a
19 significant danger that the criminal justice system might become
20 a tool of the government of the day. As with other parts of the
21 criminal justice system, impartiality is crucial to its
22 legitimacy.

23 But outside the context of criminal
24 investigation, there is no good reason, I think, to think that
25 the police should be fully independent of government. Indeed,
26 there are plenty of good reasons to think that they should not.
27 So the police have wide discretion, considerable coercive power
28 over increasingly wide variety of different areas, well beyond

1 the scope of criminal investigations. It is, I think,
2 intolerable in a democracy that all that power and discretion
3 should be exercised without significant democratic
4 accountability and input.

5 When making decisions about crowd control at
6 large-scale protests, for example, there are important public
7 policy considerations at play. The possibility of economic life
8 for the surrounding community, access to education, healthcare,
9 other important services, sometimes matters of international
10 trade, and so on, that must play a part in decision-making about
11 how to police those protests.

12 So we've seen in a number of important judicial
13 reports on policing, from Justice Morden about the G20,
14 Justice Linden on Ipperwash, and others, urging a more pragmatic
15 allocation of decision-making power, and certainly an increasing
16 flow of information over an array of police activities.

17 Unfortunately, though, many politicians,
18 solicitors general, police services boards, others, have assumed
19 that police independence should cover much more than just the
20 investigation of crime. What's more, of course there is
21 legislative language in Ontario, section 31(4) of the *Police*
22 *Services Act*, that draws this sharp distinction between
23 operational decisions with respect to day-to-day operations and
24 policy matters. But I believe that broader understanding of
25 police independence undermines the accountability and ultimately
26 democratic legitimacy of policing outside the area of criminal
27 investigation.

28 So how then should we demarcate areas where the

1 police should maintain strict independence from areas where more
2 government input is appropriate? Well, first, I think we should
3 continue to ensure full police independence over criminal
4 investigations, and we should do so in clear, unambiguous,
5 statutory language. But outside that area of criminal
6 investigation, we should make clear, also in clear statutory
7 language, that police independence is not a bar to the free flow
8 of information to and from police services and boards, and to
9 some direction from government. Making clear that these other
10 areas of police operations are not subject to strict police
11 independence will allow for a proper flow of information between
12 police services and government.

13 As Justice Morden pointed out 10 years ago, in
14 his report on policing the G20 Summit, police services boards
15 cannot perform their oversight function if they lack adequate
16 information about the police services operations. And further,
17 we should allow for more guidance and input from government in
18 crafting policies, priorities and objectives in these other
19 policing areas.

20 As we have seen at virtually every large-scale
21 protest in Canada over many years, including earlier this year,
22 the police lacked clear guidance about how to regulate those
23 protests. The police need more and clearer legal guidance about
24 how to deal with these large-scale protests and other critical
25 points, as there sometimes would.

26 That said, I wish to acknowledge that it is very
27 important that political guidance and the sharing of information
28 should not become a road into partisan capture of policing. The

1 police mission must be one that is subject to democratic
2 oversight, accountability and input, but not to become the
3 servants of the government of the day.

4 So to that end, I think we ought first to make
5 any government input clear, publicly accessible, and in writing,
6 such that those -- that guidance can be subject to democratic
7 accountability, also that, where possible organisations, such as
8 police service boards, can act as intermediaries between elected
9 officials and police departments.

10 I look forward to the discussion later this
11 morning. Thank you very much.

12 **--- OPEN DISCUSSION:**

13 **DR. DENNIS BAKER:** Thank you, everybody.

14 It's tempting just to let you all ask questions
15 of each other right now, but we're going to have slightly more
16 structure than that.

17 Our first set of questions relates to directions
18 from police -- to police from government. And we've already
19 heard a little bit about that in many of the statements. So the
20 questions we're going to specifically look at are what direction
21 a police boards and governments legitimately provide to police?
22 And in particular, I know this Commission is interested in
23 whether, specifically, may governments provide directions,
24 establishing priorities for which a region's police resources
25 should be deployed during a major event that impacts multiple
26 locations. So that question is before us.

27 What decisions in relations to managing protests
28 should be made by police alone? Is the policy operations

1 distinction, that we've already heard about, meaningful and can
2 it be usefully applied?

3 So with that, I'm going to ask Professor Kempa to
4 start us off.

5 **DR. MICHAEL KEMPA:** Thank you.

6 So Commissioner, I've made a real commitment to
7 our panel chair to be as practical as possible in my discussion
8 today and to really try to avoid getting bogged down in the
9 theoretical weeds that have accumulated over the last 50 years
10 on this particular topic.

11 The issue of whether or not the policy operations
12 distinction is even useful, in terms of discussing what types of
13 questions political overseers or civilian overseers can ask of
14 police organizations, what types of direction these same bodies
15 can give police is a good one.

16 And I think the metaphor that's come up over and
17 over again over the course of this Commission is the separation
18 of church and state, where the idea was that political direction
19 or questioning should definitely not cross some sort of a
20 threshold which was understood as church throughout the
21 Commission. But the opinions as to what exactly the line was
22 within the church were mixed from the evidence that you heard
23 here.

24 There were some that would have given you the
25 idea that political overseers or civilian overseers should not
26 even put a toe into the church, for example. And there were
27 others who said no, political overseers can come in and ask
28 questions, but certainly not even make a suggestion or tell us

1 what to do on any operational level whatsoever.

2 So what I would suggest when we go through the
3 history of the reports looking at these matters at the level of
4 civilian oversight bodies, police services boards, Linden is the
5 report that is most helpful for us -- excuse me; rather, the
6 Morden Report is the most helpful for us. At the provincial
7 level of political direction, it's Linden. And at the federal
8 level, of course, it's the McDonald Report, and the more recent
9 Brown Report looking into these matters with the RCMP.

10 So what I would suggest, rather than thinking of
11 church and there's really no role for the state or political or
12 civilian overseers inside the church; in fact, they're fully
13 welcome in. They can ask questions about operations; they can
14 give advice about operations at a general level, but they ought
15 not to be allowed into the confessional, which is to do with the
16 exercise of police powers, specifically.

17 So my answer to the question on whether that
18 dichotomy is useful is, I would say yes, but I actually prefer
19 to think in terms of a trichotomy that just makes it a little
20 bit more specific.

21 So on the one hand we do have policies, which is
22 the domain of either civilian oversight bodies where they exist,
23 or the political Ministers responsible, if we're talking about
24 the federal level of the RCMP.

25 Then there are plans, which can be conceived as
26 the more general level of operations, where there is a
27 legitimate role for any of these bodies to ask questions; demand
28 answers to these questions; offer even suggestions about overall

1 plans. But in the end it is the final decision of the chief
2 whether or not those suggestions will be executed at the level
3 of plans on the ground.

4 And then finally, powers. Powers -- the exercise
5 of powers is the most specific level of operations. This is the
6 confessional, and this is where there is absolutely no role for
7 civilian oversight bodies or for the political directors of
8 policing; the Ministers responsible.

9 So where we think about some of your more
10 specific questions, for example; what directions may police
11 boards in governments legitimately provide to police? Well,
12 obviously they're setting policies, but in terms of an
13 operation, like something for a major protest event, there is no
14 precise legal definition for what type of advice a board would
15 give a chief of police on how to generally go about strategizing
16 to deal with a mass protest. This comes from the Linden Report
17 as well.

18 Rather there needs to be a deliberative
19 discussion process in place where these issues would be worked
20 out. I know that very many would say it's difficult to define
21 these things in law, and it's important to leave some space for
22 your professionals to have room to work these things out amongst
23 themselves, within a framework.

24 So I'm suggesting this is a general but specific
25 enough framework; policy, plans, and powers, that within plans,
26 there's the space for the participants to negotiate where the
27 board would offer advice and where they would stop.

28 Some of this would be common sense, for example.

1 The boards members are typically not police professionals, so
2 they don't have experience in deciding exactly where you would
3 send contingents of officers on particular corners, and so
4 forth, nor would they even have very many questions about those
5 issues at that level for their Chief.

6 They would have questions about whether certain
7 laws might be used as tools to be enforced, but not when and
8 where those laws would be enforced or not. The timing and the
9 ultimate decision to use those authorities would be for the
10 police and the police alone.

11 What types of information can boards or political
12 masters ask for? On matters of operations, they should be
13 asking questions about planning before and after plans are
14 designed and executed.

15 So before, again, the types of questions that a
16 common-sense approach within this framework would dictate, would
17 basically be what any good board of management would be asking;
18 "Chief, how did you come up with this particular approach? Were
19 other alternatives considered?" The board may have no idea what
20 other alternatives would look like, but a good board of
21 management makes sure that their executive officer in whatever
22 branch has considered alternatives, for example.

23 "Is there any evidence to suggest that this would
24 be a better approach than something else?" The chief might
25 simply reply, "Yes, this was a model that was deployed to good
26 effect in protests in Seattle. We feel that there's some
27 similarities and that's why we're following this model here."
28 It's a standard, deliberative-type approach in that sense.

1 On your next set of questions here, we have a
2 question, "May governments provide directions establishing
3 priorities for which regions, for example, police resources
4 should be deployed during a major event that impacts multiple
5 locations?"

6 So the simple answer to that is yes, absolutely,
7 and that's by Linden, where it's clear that the provincial
8 government could issue such direction, providing they do so in
9 writing, so that this direction would be publicly visible. If
10 the public felt that this was unreasonable direction, the
11 government would then be accountable for providing that level of
12 detailed instruction to the police.

13 Further, if the head of the OPP, for example,
14 were to feel that those were unreasonable directions on the
15 basis that they could compromise public safety, that
16 Commissioner would provide that explanation; again, in a public
17 fashion, so that the logic of where the police were going,
18 either before, if that could compromise the safety of the
19 operation before, that could be explained after, where the
20 police are going and why.

21 What decisions in relation to managing protests
22 should be made by the police alone? At the level of power,
23 nobody should have any say as to how exactly when or in what
24 fashion an operation will be executed by the police
25 organization. So while a board may ask are certain laws going
26 to be enforced, for example, around the transportation of jerry
27 cans of fuel, that board cannot direct that at a specific time
28 of day you will begin enforcing these laws in any location in

1 Ottawa; or elsewhere, for that matter.

2 So finally, on that question of policy
3 operations, I would suggest it is a helpful distinction,
4 providing you break operations down in terms of plans and
5 powers. Powers are obvious and legally defined. Plans don't
6 need to be legally defined, it's just within that space, there
7 has to be that deliberative process. And if there is confusion,
8 if the agreement as to what constitute a plan breaks down, we do
9 have mechanisms to take this disagreement to other bodies.

10 So for example, my understanding would be when
11 the new *COPS Act* for Ontario is proclaimed, the Inspector
12 General would serve this role advising police services boards
13 whether or not they within their rights to ask for certain
14 information, and to enforce compliance on the part of police
15 chiefs, if they were withholding information that a board was
16 legitimately entitled to.

17 But hopefully, with that sort of hanging over
18 them, they would be able to resolve these things through the
19 deliberative process.

20 I think that the last thing I'll say about that
21 is that it is only Ontario and Manitoba in their *Police Services*
22 *Acts* that specify any notion of police operational independence.
23 I think it would be beneficial to remove the word "Operational"
24 entirely from any legal definition of police independence.
25 Simply refer to it as "Police independence," referring to the
26 exercise of police powers, and to specify that boards and
27 political overseers are entitled to issue this type of direction
28 at the level of policy and plans, providing that they do so in

1 writing.

2 For this reason, the private Member's bill at the
3 federal level for the RCMP, C-308, does have some improvements,
4 but is probably wrongheaded on its specific mention that nobody
5 shall provide any operational direction to the RCMP on any
6 level, although the rest of the private Member's bill does have
7 a lot to recommend it.

8 So I can leave that there.

9 **DR. DENNIS BAKER:** Thank you, Professor Kempa.

10 So Professor Puddister, I know that we've had
11 lots of discussions about the policy operations distinctions,
12 and Professor Kempa is already breaking it down, the plans,
13 policies, and power, which I think is an interesting way of
14 looking at it. But would you share your thoughts on some of
15 these questions?

16 **DR. KATE PUDDISTER:** Thanks. Yes. So yeah, I
17 want to focus more on the policy operations part of this
18 questioning that we're going through right now.

19 And I think the distinction that we tend to rely
20 on, policy on one side, and operations on the other, is really
21 not useful. And of course, this is not a novel opinion. This
22 has been written time and again in commissions of inquiry,
23 starting I think with the McDonald Commission in 1981, but also
24 more recently in the Missing and Missed Report by Justice
25 Epstein in 2021. So this is a conversation we've been having
26 for a long time.

27 The reports make it clear that it's difficult to
28 draw a bright line between policy and operations in every

1 scenario, and I would suggest that's not how things actually
2 operate in practice, that we need to avoid these absolutes.

3 So a few examples that are a little bit different
4 than what we've been talking about so far is, you know, if a
5 government is concerned about the disproportionate use of force
6 against a particular group, can it direct police policy and
7 resources to address this, or is that a matter of operations?

8 Other examples that complicate this are mandatory
9 charging policies developed by governments in issues of intimate
10 partner violence, policies that have existed for decades.

11 We also see examples where the police must have
12 approval from the Attorney General to lay particular types of
13 charges.

14 So even just saying police operations is
15 something that policy makers, like boards, and governments, and
16 Ministers have no space, doesn't reflect how things actually
17 operate in practice.

18 As a political scientist, I'm really interested
19 in those questions of policy. And I think police policy should
20 be open to debate. It should be created and evaluated in a
21 manner that ensures accountability for decision makers and
22 transparency.

23 As a student of public policy, I know that its
24 development is not a straight line. We often speak of the
25 policy cycle, the need for ongoing analysis, and review of
26 policies. This is important because we want policies that can
27 be revisited if new circumstances or problems arise so we can
28 amend and revise those policies.

1 But good policies will reflect, as best possible,
2 the situation on the ground.

3 Generally when we're having discussions about
4 police/government relations and the policy operations
5 distinction, references are made to the principle of police
6 independence that Malcom mentioned earlier.

7 Routinely we see elected officials comment on the
8 proper role of government as limited in the face of respecting
9 police independence. Statements like, "We can't direct the
10 police," or, "we can't tell the police what to do" are not
11 necessarily accurate.

12 Here we see references to the police being
13 answerable only to the law itself. In my view, this is not a
14 helpful understanding for police independence.

15 As was mentioned earlier, the Supreme Court of
16 Canada discussed police independence in the 1999 decision, *R v.*
17 *Campbell and Shirose*. Here the Court articulates that when an
18 officer is investigating a crime, they are not acting as a
19 government functionary or agent of anyone. The Court draws
20 connections between police independence from the executive as
21 fulfilling the constitutional principle of the rule of law.

22 However, I want to emphasize that in this case,
23 the Court was only speaking on police powers of investigation
24 and the decision does not provide guidance for other forms of
25 policing, or the other duties of the police.

26 I also urge us to think about the distinction
27 between accountability and answerability versus that of control.

28 My perspective is, is that there's need for more

1 government responsibility in policing, certainly at the federal
2 level, and not less.

3 Police independence, or some prefer the term
4 operational responsibility, should not be interpreted in a broad
5 manner to cover all things operational, which I think Michael
6 agrees with.

7 Instead, it should be narrowly tailored to
8 respect what are sometimes called the quasi-judicial role of the
9 police: investigation, charging, and prosecution of particular
10 individuals.

11 In other matters, this is where the space for
12 government and policy can come in.

13 Democratic models of police/government relations
14 recognizes that for some decisions of policing, it would be
15 improper for the government to make determinations.

16 Of course, for example, a government cannot say,
17 "Arrest this specific person." But it is important for the
18 police service board or the relevant Minister to be informed of
19 aspects of police operations to ensure accountability and
20 democratic input and to allow ministerial authority to intervene
21 in policy matters, should they arise.

22 Ministers have an obligation to develop policies,
23 review those policies, and explain and defend them in the
24 legislature.

25 When governments do not fulfil their duties to
26 provide direction, we have to rely on after the fact
27 accountability mechanisms, like courts and oversight bodies.
28 Based on my research, these are limited mechanisms for

1 accountability. They only come into play after the fact and
2 they are difficult to ensure outcomes. Courts are highly
3 restrictive, they're expensive, they're hard to access, and I
4 can speak later, if necessary, about the very important
5 challenges faced by police oversight agencies.

6 Importantly, after the fact accountability
7 mechanisms, the harm has already been caused. They have a
8 limited function to act in a preventative manner, whereas
9 policies set by police boards and governments that reflect on
10 the ground operations can potentially serve a preventative
11 function.

12 So the final thing I'd like to say before turning
13 it over to one of my colleagues is that I think public order
14 policing can be understood as different from other types of
15 policing and may invite greater government involvement, whether
16 that's from the Minister or the Police Services Board.

17 And I'd like to articulate why this is different.
18 Public order policing, we have competing demands and rights
19 between those who are engaging in protest, but also third
20 parties and other communities that can experience significant
21 consequences because of those protests.

22 There can also be concerns about regarding access
23 to public and government services, and of course concerns about
24 foreign relations.

25 There might also be important considerations of
26 protecting vulnerable groups. Here the line between policy and
27 operations becomes much less clear and specific processes and
28 procedures for government direction may be warranted.

1 I'll leave it there.

2 **DR. DENNIS BAKER:** Thank you.

3 Mr. Teschner?

4 **MR. RYAN TESCHNER:** Thank you. Judge Morden, in
5 his report, used a constitutional law analogy and talked about
6 the importance of no longer seeing this idea of policy and
7 operations as watertight compartments. I would certainly agree
8 with that.

9 I would also say that we have to stop seeing it
10 as "versus" and start seeing it as "and". There's a symbiotic
11 relationship between the policies that are set, the priorities
12 and objectives that are set by a police board, or in the case of
13 other police organizations in Canada, by the government, and the
14 way in which the operations are carried out by our law
15 enforcement actors.

16 Judge Morden also provided, I think, some very
17 important thresholds that we should keep in mind. Not every
18 instance of police action will merit the application of a
19 board's governance and oversight function in the circumstance.
20 And Judge Morden coined the term "critical points". These were
21 the threshold at which a police board or commission should
22 become engaged, because the policing operation that is being
23 contemplated or unfolding, the event is organizationally
24 significant. It's not focused on one detachment or one
25 division. It brings into play the entire police service and the
26 command of the police service.

27 Judge Epstein, in her report, Missing and Missed,
28 expanded on Judge Morden's critical point definition and said

1 that it should also include major operations that could have an
2 impact on the police service's reputation. Again, classically a
3 role that a board of directors would become engaged in.

4 And also operations that are likely to have an
5 impact on the police service's relationship with marginalized
6 communities.

7 But when I look at Ontario's *Police Services Act*,
8 which I actually think is a pretty decent structure that
9 requires, perhaps, some interpretative improvement, I'm less
10 concerned about section 31(4) that talks about the board's role
11 and the board's limits, and actually think a lot can be gleaned
12 from section 41(1)(a), which speaks about the role of chiefs.
13 And it says that it's the duty:

14 "...of a chief of police...[to
15 administer] the police force and
16 [oversee] its operation in accordance
17 with the objectives, priorities and
18 policies established by the board..."

19 So the board does have a role in providing
20 direction, and governments, where there are no boards, have a
21 role in providing direction. They do set the priorities and
22 objectives. And Judge Morden said not just in general with
23 respect to an annual business plan for the police service, but
24 in the context of a critical point.

25 When a particular event is being planned or
26 unfolded, it's the board's role to establish, in consultation
27 with the chief, what are the priorities for the policing of this
28 event? What are the objectives that the police service should

1 be seeking to fulfill? And what policy infrastructure is going
2 to be put in place in order to carry out those functions?

3 Once the board defines those priorities,
4 objectives, and policies, the police service does its work. It
5 develops the operational plans required to carry out that
6 mission and achieve the identified objectives.

7 I would argue, though, that the board's role is
8 not over them. The board should stay engaged in the life of the
9 operation. It should review what has been put in place by the
10 chief, not for the technical elements, for which it really
11 doesn't have the expertise, but to confirm that the plans are
12 consistent with the priorities, objectives, and policies, and
13 importantly, that the board is satisfied that adequate and
14 effective policing will be delivered in the municipality or
15 jurisdiction for which it is legally, that is, the board is
16 legally responsible.

17 And of course, the board should ask questions
18 about the plan. Was anything else considered? Why are you
19 confident that this plan will work? If Plan A doesn't work,
20 what is your Plan B? These are all kicking the tires that
21 boards should do.

22 So let's talk about this policy and operations
23 distinction. Judge Morden in his report said that:

24 "Apart from being impossible to apply
25 in its own terms, this statement does
26 not represent what the statute [that
27 is, the *Ontario Police Services Act*]
28 provides." (As read)

1 Not only is it not meaningful, in my view, it's
2 the culprit for decades of misunderstanding of the police board
3 role, and in some sense, the reason that the full promise of
4 independent civilian police governance and oversight has not
5 been fully realised.

6 A board can develop policies, priorities, and
7 objectives that affect operations without impermissibly
8 directing the chief of police with respect to core law
9 enforcement functions. And policies and directions that have no
10 impact on a police service's operational activities are
11 meaningless.

12 A board, of course, does have limits, and both
13 Professor Kempa and Professor Puddister have talked about the
14 case in *Campbell* and some of those limits. I would say that
15 there could be, perhaps, a gloss put on the *Campbell* case.

16 Really, where boards should step back and not
17 direct police is with respect to the discretionary law
18 enforcement power that police possess in our system. Whether
19 that's a determination about who to investigate, how to conduct
20 the investigation, who to arrest or not arrest, what search
21 warrant to carry out, or what to do on the ground in the context
22 of public order maintenance in a protest, these are
23 discretionary law enforcement decisions that are within the full
24 view and protected sphere of police independence, if you will.
25 But the infrastructure in which its carried out, the priorities,
26 the objectives, the policies, that is the role of the board.

27 And so I think in approaching it this way, rather
28 than an either/or, we can start to appreciate the symbiotic

1 relationship that should exist between these two functions.

2 Now, Dr., or Professor Puddister talked about
3 this in the context of policies, and she mentioned one that I
4 just want to illustrate through an example. A disproportionate
5 impact on use of force against particular populations.

6 In Toronto, the Toronto Police Services Board put
7 in place a race-based data collection analysis and public
8 reporting policy that is lengthy, is dense, and is detailed.
9 It's not just high-level, it talks about what the priorities and
10 objectives are in that particular space. And it compels the
11 chief of police and the service, through him, to put in place
12 action plans to identify the results of the analysis, the
13 disproportionality, where it's found.

14 Many would say, in the past or even today, that's
15 an impermissible intervention in day-to-day operations. You're
16 telling the chief that they have to develop plans to address a
17 specific issue, and you're creating the infrastructure in which
18 that occurs? And the answer is, absolutely. That's the role of
19 the board.

20 And the Toronto Board has taken this role in the
21 context of artificial intelligence, body-worn cameras, things
22 that traditionally have been seen as the domain, the sole domain
23 of the police service. But that infrastructure in which it's
24 carried out is absolutely the domain of the Board, in
25 consultation with the operational leader that has the expertise,
26 to express how these things are going to impact the way they do
27 their job in an effort to try and find a place that makes sense.

28 **DR. DENNIS BAKER:** Thank you, Mr. Teschner.

1 Professor Thorburn?

2 **DR. MALCOLM THORBURN:** Yes. Thank you. I am
3 glad to see that there is some convergence on some of these
4 questions among the panelists.

5 The question of what exactly the scope of
6 government input might be into police operations turns on a
7 number of questions. As Professor Kempa already pointed out,
8 there's a big difference between providing specific directions
9 and asking for information, and even making suggestions and
10 calling for a response.

11 In those kinds of questions, I think what we need
12 to do is keep in mind, also as Mr. Teschner pointed out,
13 recognise that it is not a simple model of setting down policy
14 and then leaving it to the chief to create specific day-to-day
15 directions based on that, but rather, a relationship with the
16 flow of information in both directions and a give-and-take on
17 questioning how those particular implementations are going to be
18 made out.

19 What I want to suggest, though, is that in
20 certain contexts the foreshortened prime window of planning and
21 execution is going to make that dynamic ever denser. That in
22 some contexts, planning and priority setting can take place well
23 in advance, that kind of discussion can take place in a way that
24 is more easily insulated from day-to-day operations because it
25 happens long before those day-to-day operations take place.

26 In circumstances, like the ones we saw earlier
27 this year, in Toronto at the time of the G20, and a number of
28 other events, sometimes the flow of information needs to occur

1 much more quickly and decision-making as well. And so I think
2 the easier distinctions that we're drawing, as to whether or not
3 we are making specific directions to day-to-day operations,
4 becomes much more difficult to draw.

5 So bringing this conversation back to one of the
6 questions we were first asked to discuss, about whether
7 governments should provide directions in establishing priorities
8 for which regions' police resources should be deployed in, in
9 the usual case where timing is such that it is much -- where we
10 have time to set out broader policies with a broader set of
11 directions, that may not be required.

12 In situations, in some of these critical point
13 situations, the time window is going to be such that the flow of
14 information, the flow of directions will be virtually
15 simultaneous with some of those policy day-to-day decisions. So
16 the kind of input -- it would be unrealistic, I think, to say
17 that the kind of input boards might have could be fully
18 insulated from that kind of operationalisation.

19 So would it be best to try to insulate oversight
20 boards, and particularly Ministers, in the case of RCMP and so
21 on, from directing chiefs on those specific matters, absolutely.
22 That -- although I would want to emphasize, I think, that public
23 order policing is a step, a very significant step, away from the
24 specific law enforcement role of police with charging and so on.

25 It is true that, nevertheless, we want to make
26 sure that the government of the day is not giving specific
27 directions on those questions. Given that time window, however,
28 I think it's unrealistic to suggest that we can keep them quite

1 so separate.

2 **DR. DENNIS BAKER:** Thank you.

3 So I knew when I budgeted 20 minutes for
4 operations versus policy, that would be too limited and we could
5 probably do another hour on that, and we won't, I'm sad to say.
6 But I did want to just make sure -- because I haven't been
7 looking closely at our online component -- whether Christian, or
8 Professor Leuprecht wants to make any comment here, or Chief
9 Ramer because you haven't been in this discussion. Or can we
10 move along to information sharing?

11 Oh, Christian's got the hand up function.

12 Yes, Professor Leuprecht, please speak slowly.

13 **DR. CHRISTIAN LEUPRECHT:** Christian Leuprecht au
14 microphone.

15 I'll just keep this brief, but I think we've had
16 this theoretical and legal conversation. Let's take a
17 sociological approach to this, and look at the G7, G20 in
18 Toronto. On the Friday afternoon, it got rowdy, and the locals
19 complained, and police took a heavy-handed approach, and we know
20 what the consequences of that were. And so I think that
21 response and the subsequent Morden Report and so forth have had
22 a chilling effect on the way we police mass gatherings ever
23 since. And given that the Chief in Ottawa at the time was
24 present at G7, G20, I think this very much would have informed
25 his response.

26 We also need to consider that in Ottawa, under
27 the circumstances, with only the Ottawa Police Service on the
28 ground, had there been, for instance, a more aggressive posture,

1 there's a high risk that the police would have had a rebellion
2 in his own ranks on his hands.

3 And so this is why I think this dialogue and
4 conversation is so important. And I think ultimately these
5 questions of direction need to take into account also particular
6 circumstances and also the size of a police service. And so
7 inherently the question of direction, I think, looks differently
8 in Toronto in a large service with large capacity than it does,
9 for instance, in Ottawa of a more medium-sized service.

10 And so trying to marry the theoretical and the
11 legal remarks, I think, with the sociological reality and the
12 reality of resources is, I think, important to keep in mind for
13 this conversation.

14 **DR. DENNIS BAKER:** Thank you. That's very
15 useful.

16 Chief Ramer?

17 **CHIEF JIM RAMER:** Yes, sorry, just one quick
18 comment.

19 What I would say is that police know and have
20 training and expertise to execute law enforcement functions.
21 But what we do is made more legitimate when it has the benefit
22 of independent oversight that's framing what we do. And I think
23 that's the essential read

24 **DR. DENNIS BAKER:** Thank you.

25 So now we're going to turn to information sharing
26 between police and government, and some of these discussions ,I
27 think, will overlap. But we're going to focus more particularly
28 on the following questions: What information would -- may

1 police boards and governments legitimately request from police?
2 How can requests for information be distinguished from
3 direction; is there a danger of it being taken as an implicit
4 direction? In what circumstances, if any, may the police
5 decline to provide information as requested by police boards and
6 governments? Is a problem for departmental officials to speak
7 directly to police below the Chief Commissioner level to get
8 that information, and what about elected officials doing that,
9 making those kinds of communications? What report should police
10 routinely provide to public authorities about their plans,
11 activities in relations to protests?

12 So there's a lot there but Mr. Teschner is going
13 to give us the first attempt at answering those questions.

14 **MR. RYAN TESCHNER:** I'm batting first on this
15 one, I guess.

16 Let me again pay homage to a great mentor of mine
17 and somebody who I think made a significant contribution to this
18 space, and that is Judge John Morden.

19 In his report on the G20, he talked about a
20 consultation protocol that should exist between boards and
21 chiefs of police. And I'll substitute "boards" for "government
22 entities" or "Ministers" where there isn't, currently at least,
23 a proper governance board.

24 That information exchange was the first element
25 of Morden's consultation protocol. Without access to all
26 relevant information, the ability to ask specific questions
27 about the operation and the plans, details that are
28 contemplated, ongoing or completed operations, independent

1 police governance bodies cannot fulfil their statutory function.
2 A board can't ask a chief questions, or turn its mind to
3 articulating priorities, objectives, or policies about things of
4 which it's unaware of; you don't know what you don't know.

5 And so the concern about a board not asking
6 questions out of a misplaced fear that it will be accused of
7 treading on operational matters, this is, I believe, as
8 Professor Kempa put it, a timidity that has become dangerous to
9 a board fulfilling its statutory mandate. It's created escape
10 hatches through which the policy maker; that is the board, and
11 the policy implementer; that is the chief have each avoided
12 responsibility.

13 And so the burden, in my view, is on the chief to
14 take initiative in ensuring that the board is probably informed
15 about matters; past, present, or future, that fall under the
16 purview of the board's responsibilities. And once he or she
17 does so, that kicks in this consultation protocol beginning with
18 the information exchange. An information exchange, by the way,
19 that is reciprocal in that the board should be consulting with
20 the chief on areas that it's considering.

21 Judge Epstein more recently doubled down on this
22 information exchange and said that only after a full
23 appreciation of contemplated or completed operations occurs,
24 will the Board be able to truly deliver on its statutory mandate
25 to ensure adequate and effective policing.

26 The only informational no-go zones, in my view,
27 is information that a police chief is prohibited from providing
28 to a board as a result of a specific statutory prohibition; so

1 an example to that would be information about an ongoing wiretap
2 operation, because that's prohibited under the *Criminal Code*, or
3 where otherwise prohibited by common law; so an example there
4 would be informer privilege; or, thirdly, where they're
5 precluded from doing so as a result of a specific court order.

6 Otherwise -- and I know some may consider this
7 controversial -- boards have, and should have, full access to
8 all information, and that includes, for example, information
9 about intelligence that a chief of police believes is important
10 in helping define the plans for a specific event.

11 And so as Judge Epstein said, the answer to a
12 concern about whether giving access to information could be seen
13 as direction is not to foreclose boards from making non-binding
14 recommendations, expressing opinions, or gaining access to that
15 information, but reminding boards that when they're getting this
16 information, they should be anchoring it to their priority,
17 objective setting, and policy-making functions to their mandate.

18 We also need to remember that board members and
19 chiefs of police are adults; if a chief of police believes that
20 the way in which a board is engaging in a conversation goes too
21 far, and gets into the direction of police discretion, they
22 should say so. And there are mechanisms in law and in certain
23 statutes that if saying so isn't enough, that decision can be
24 reviewed.

25 But the board has a role to play; we cannot say
26 that as a matter of law boards are statutorily responsible and
27 liable for ensuring adequate and effective policing, and on the
28 flip side say that they're not entitled to a whole bunch of

1 information about how policing is going to unfold in the
2 jurisdiction for which they're responsible.

3 Now, in terms of elected officials, my argument
4 here would be that elected officials should not be reaching in
5 to police leaders in order to understand what's unfolding, what
6 the plans are, because it puts both the police leadership and
7 the elected official in a potential precarious position.

8 A board or commission is the conduit so that we
9 can maintain both a real and perceived independence of that core
10 police discretionary function. And at least where a statutory
11 police governance exists, it is the board's role to ensure
12 adequate and effective policing, not elected officials. It's
13 the board's role. And so that's where the elected officials can
14 come. And then it's up to the board to keep those officials up
15 to date on areas of concern, listen to their concerns, and help
16 translate those concerns through their governance function to
17 the Chief of Police.

18 In terms of what kinds of reports or information
19 police should routinely provide to public authorities about
20 their plans and activities relating to protests, I would say
21 that the model that we adopted in Toronto for the Freedom Convoy
22 is a good one. This was clearly a critical point, to use Judge
23 Morden's term, and the Chief came to the Board and said, "We
24 have something unfolding and I want to make sure that you're
25 fully briefed."

26 And the Board's Institutional Report, at page 13,
27 outlines the various types of information that the Chief and his
28 team provided in that briefing.

1 The key context for the major event and
2 operation, including known intelligence that's animating the
3 operational planning.

4 Suggested priorities and objectives for the Board
5 to consider.

6 The command-and-control approach that was going
7 to be taken, especially if other police services from outside
8 the jurisdiction were going to be involved, a lesson learned
9 from the G20.

10 Confirmation that the Board's existing policies
11 and legal authorities in place provided an adequate framework
12 for the policing of the Freedom Convoy.

13 A discussion about whether the Service required
14 any specific Board approval associated with its planned
15 operations.

16 A discussion about the adequacy of the Service's
17 resources for handling both the major event and whether there
18 was a need for other services to participate and lend support,
19 and what the legal infrastructure was going to look like for
20 that.

21 Of course, all the adequacy of general policing
22 services, so that while that event was happening, the Board's
23 statutory role to ensure adequate and effective policing
24 generally in the city can't be forgotten. And so business
25 continuity was discussed.

26 And then importantly, public and stake holder
27 communications before, during, and after the operation.

28 All of these areas of information were put on the

1 table by the Chief and his team, were discussed by the Board,
2 gave them an opportunity to ask questions, and ultimately to
3 determine whether they were satisfied that the plan that was in
4 place would ensure adequate and effective policing in Toronto.

5 **DR. DENNIS BAKER:** Thank you.

6 I'm going to let Professor Thorburn in in a
7 second, but I just wanted to allow, Chief Ramer, if you wanted
8 to have any comments about the Toronto information sharing?

9 **CHIEF JUM RAMER:** What I would say to you is when
10 I was appointed Chief in August of 2020, one of the things I
11 instituted was a morning brief to the Executive Director and the
12 Chair of the Board to give them an idea of what was happening
13 overnight and what we, as a police organization and the City
14 were being confronted with.

15 And then, of course, when you had a priority
16 incident occur during the City, I would give them an immediate
17 briefing as to what was transpiring on the ground and what we
18 were doing about it and keep them apprised, just so that they
19 were aware of what was going on.

20 I found that it was an essential part of that
21 information sharing, so that the Board had an appreciation of
22 what we were doing, what our capacity was, where our weaknesses
23 were, what our resource issues were. These are all important
24 things for the Board to understand, because it was important in
25 terms that they oversaw budget recommendations, you know,
26 guidance, policy, and direction, and they had to be involved so
27 that anything that they decided to implement was what was going
28 to be the operational effect of those decisions? So they had to

1 be done in collaboration, and they had to be done with the
2 knowledge of actually what we were being faced with as an
3 organization.

4 So I just wanted to add that point in, and to the
5 importance of it.

6 And I -- with respect to, you know, how can
7 requests for information be distinguished from direction?

8 And I think there's always an opportunity where
9 the lines are going to be blurred there. You know, when you
10 look at the danger of actual or perceived direction from
11 government to the police. But that's the origin of commissions
12 and police boards, and that's why we need them.

13 **DR. DENNIS BAKER:** Do you have any comment on the
14 question about whether a police chief may decline to provide
15 information? Mr. Teschner gave us an example of where it's
16 statutorily barred, ---

17 **CHIEF JIM RAMER:** Yeah.

18 **DR. DENNIS BAKER:** --- but do you have any
19 reservations about other types of ---

20 **CHIEF JIM RAMER:** You know, quite frankly, no. I
21 mean, there's things like informant privilege that we do, any
22 type of, you know, secret operations that we'll have going on,
23 we don't discuss. We might discuss them after they're done and
24 talk about some success. But not while they're undergoing, not
25 while they're occurring.

26 But other than that, as far as I'm concerned,
27 there's an oath of secrecy and the Board cannot perform an
28 effective oversight function if they don't understand what we're

1 doing.

2 Many of them, it was mentioned earlier by the
3 Professor, they are not police professionals, in some cases we
4 have lawyers, and then you'll have city councillors and people
5 selected, like social workers selected from -- by government to
6 be on the Board. But we have to inform them so they have an
7 understanding. And without that information coming into them,
8 it makes it very, very difficult for them to do their job.

9 And then conversely, as I think one of my
10 colleagues mentioned earlier, one of the benefits is that when
11 we're having these discussions, and my team is letting them know
12 what we're going to do, and by the way, we're letting them know
13 that this is going to cost several millions of dollars, so you
14 need to be aware of this, they're also making, sometimes,
15 suggestions, "How about, are you communicating with City
16 Councillors so they've got an understanding of what's going on?
17 They could become helpful to this discussion to the City." You
18 know, that's a good idea. And so we then got on and we made
19 sure that we communicated with every City Councillor and gave
20 them a little bit of a briefing of what was going to happen over
21 the next couple of days.

22 So that collaboration has benefits. It makes us
23 much more successful in what we do.

24 **DR. DENNIS BAKER:** Thank you, Chief.

25 Professor Thorburn, thank you for being patient.

26 **DR. MALCOLM THORBURN:** Thank you very much. I
27 guess I just wanted to say a couple of things. I think what we
28 saw in the operation in Toronto on the Freedom Convoy was

1 convergence of greater democratic accountability and successful
2 operation. And so the extent to which information was shared
3 and this not only provided greater input and democratic
4 accountability, but also greater operational success, I think
5 you can show that there's kind of synergies that are at work
6 there.

7 What I want to emphasize though is that there are
8 plenty of places where that has not happened, and in the
9 existing framework, other police services have felt still
10 constrained, even 10 years after the Morden Report, constrained
11 in the kind of information they're sharing, not ensuring the
12 kind of free back and forth of advice that Chief Ramer was just
13 describing, that you were able to benefit from in operation with
14 the Freedom Convoy there.

15 And so what I want to emphasize here is a little
16 bit -- is quite similar to what I want to emphasize on that
17 first question, which is that it's one thing to say, "Here's how
18 we ought to operate," and there's another to provide clear
19 guidance to police forces across the country and to police
20 boards across the country as to exactly how to make sure that
21 they live up to that. And this is where clear statutory
22 language is helpful and sometimes clear regulations. But on the
23 level of the kind of successful integration of information and
24 democratic input, I think that's a good one.

25 **DR. DENNIS BAKER:** Professor Kempa, briefly,
26 please.

27 **DR. MICHAEL KEMPA:** Just I wanted to emphasize
28 Ryan Teschner's point that the first point of entry for

1 political influence is a board, rather than direct political
2 engagement by an elected representative in police matters for
3 the reason that that political engagement is rendered publicly
4 visible through the board structure. So there's not a person in
5 Ottawa, for example, who is not aware of the Police Services
6 Board in Ottawa at this point.

7 However, that's not the case for other police
8 organizations. So OPP, the precise board structure is a bit of
9 a mystery to most people in the Province of Ontario. Most
10 Canadians would not even be aware that there is an advisory
11 board for the RCMP. At this time, through the RCMP's
12 difficulties, there have been very few public statements of that
13 body.

14 So that is something that has been unresolved
15 more at the provincial and federal level than at the independent
16 municipal level of policing, that the primary port of call for
17 political influence at the municipal level is a board. It's
18 fuzzier at the provincial and federal level.

19 **DR. DENNIS BAKER:** Thank you.

20 Professor Leuprecht, very quickly?

21 **DR. CHRISTIAN LEUPRECHT:** Well, I'd say one
22 litmus test is that we have a long way to go on this. If you
23 look at police budgets, for instance, it can be exceedingly
24 difficult even for boards, let alone the public to understand
25 where exactly the money is going and where exactly people are
26 being deployed. So that, I think, is an interesting exercise.

27 The issues that were mentioned here, ultimately,
28 this comes down to policy, right? So do we have -- and in

1 Ottawa, an outdated major events policy? There's -- we need to
2 establish these beforehand. So we need -- boards need to
3 establish a policing designated major events policy. They need
4 to establish a policy with regards to a chief to board
5 communications. They need to establish a policy on information
6 sharing, information sharing protocol during emergencies.

7 And that ultimate looks different for different
8 police services and different boards, but I think we've heard
9 that Toronto here is leading by example, and there's a lot to be
10 learned.

11 **DR. DENNIS BAKER:** Thank you. And actually,
12 that's a good segue to our next set of questions, Professor
13 Leuprecht, where we're going to talk about different police
14 services and different relationships, because right now we've
15 been talking about kind of the police and the government, right,
16 but we actually know it's much more complicated. Some of the
17 issues arising from this Commission are much more complicated
18 because we have the RCMP, the OPP, municipal police force, the
19 Ottawa Police, the Parliamentary Protective Service. So we've
20 got all these relationships going on, so we want to probe that a
21 bit.

22 Does it -- does the RCMP's relationship with the
23 government and the Minister change when it's in a contracting
24 role as it might be in other provinces other than Ontario where
25 we have the OPP and we don't contract with the RCMP? What role
26 does the provincial government play in those situations? And
27 thinking more about police services boards, particularly when we
28 have one force, the RCMP, that doesn't have a police services

1 board, right, so we don't have that model.

2 So we've got all these different forces with
3 different institutional arrangements. How does that complicate
4 everything we've been discussing?

5 Professor Leuprecht?

6 **DR. CHRISTIAN LEUPRECHT:** So there's four police
7 services in this country that I'm aware of that do not have the
8 board -- sort of board structure that we are talking about, the
9 RCMP, the OPP, the Sûreté du Québec, and the Royal Newfoundland
10 Constabulary.

11 And we see the challenges that that raises, for
12 instance, for the RCMP when we look at the Mass Casualty
13 Commission in Nova Scotia.

14 So that's, I guess, the first observation.

15 The second is that boards can find themselves
16 challenged. Most appointees to boards don't necessarily have
17 the expertise, have the experience, and have the time that they
18 need, because in most cases, they are volunteers and they don't
19 necessarily come from any sort of public safety background. And
20 so I think there's a considerable gap, and that a symmetry often
21 works for chiefs in the sense that chiefs can sometimes rule
22 with an iron fist, especially when they face boards that don't
23 quite understand their particular agreement.

24 The third is that it is the benefit of boards is
25 that you have, as Mr. Teschner outlined, the ability to develop
26 a strategic plan that sets outcomes which we refer to as
27 priorities, but that also defines outputs that are measurable.
28 Those are what is known as objectives, and the way we translate

1 those outputs is then through policies. And while that happens
2 at the strategic level, it also needs to happen with regards to
3 certain elements of operational elements as defined sort of by
4 policy as we had sort of in the previous conversation.

5 Ultimately, information sharing on a high level
6 is also always about trust, and I think we have serious
7 challenges when it comes to trust within police services,
8 between the chief and often associations, not to speak of any
9 particular service here, but people will be familiar with forces
10 in this country where this has come to the fore. So it's
11 difficult, I think, for a force to be effective, and so boards
12 ultimately need to make sure that those relations are working
13 well. If you have a police service without a board, it is going
14 to be, I think, more difficult to have insights in that regard.
15 And you also ultimately need to have trust with other
16 stakeholders and agencies. We'll get back to that in a couple
17 of questions.

18 I would like to close, when we're talking about
19 the relationships among different police services that this
20 ultimately are fundamental questions about police governance,
21 and I would say that if you look at the recent webinar on police
22 governance held by the Canadian Association of Police Governance
23 with some terrific interventions, I would say that police
24 governance in this country is extremely challenged, and that one
25 of the opportunities for the Commission here is to provide a way
26 forward on police governance more broadly, because if we can
27 remedy the shortcomings on police governance that were on full
28 display during the Ottawa convoy and the meltdown of the Board

1 during a local and arguably national crisis, then that means we
2 wouldn't need to invoke emergency measures to try to remedy,
3 because ultimately, we need robust governance mechanisms.

4 **DR. DENNIS BAKER:** Anyone else want to comment on
5 that set of questions? Oh, Malcolm?

6 **DR. MALCOLM THORBURN:** Just a quick intervention.
7 I just want to emphasize that it's all the more important, first
8 of all, that board -- we look at board composition, not only in
9 their representativeness, but also in their ability to provide
10 useful interventions and to know what questions to ask when
11 serving on the board, to be able to provide useful insight.

12 The model that several of us have been discussing
13 this morning of a flow of information, question and answer
14 between board and the chief requires that the board members have
15 a certain level of ability and knowledge of some of those areas
16 in order to engage in that kind of conversation.

17 I just want to emphasize also something that I
18 think goes a bit, maybe too much emphasis, but the centrality of
19 some kind of intermediary between elected government officials
20 and police chiefs that organizations like RCMP and so on. Where
21 there is -- where we lack that board structure, there is a real
22 concern about sliding from democratic accountability to too much
23 -- a too close relationship with the government of the day.

24 **DR. DENNIS BAKER:** Thank you. Oh, Mr. Teschner?
25 Sorry.

26 **MR. RYAN TESCHNER:** Just very quickly, I do think
27 that this is a circumstance in which even though they don't have
28 constitutional status, municipalities can teach the rest of the

1 country, perhaps, a lesson. Where there are governance gaps
2 when it comes to independent civilian governance, they should be
3 filled.

4 The management board for -- the management
5 advisory board for the RCMP was mentioned today, and while I
6 think that's an important step along the transition, and I know
7 that the more recent mandate letter to the Minister of Public
8 Safety asks for enhancements in this area, I don't see any real
9 barrier, statutory, legislatively, legally, or otherwise, as to
10 why the RCMP cannot one day have a truly independent civilian
11 governance and oversight body. And I would say the same for the
12 others that Christian mentioned here.

13 The reality is that those boards are the
14 intermediary if they do their job effectively, and it gives real
15 definition to some of the principles that we've been talking
16 about today.

17 And so I would just urge the decision makers and
18 perhaps you, Mr. Commissioner, to give some consideration to
19 that.

20 **DR. DENNIS BAKER:** In the interests of time, I'm
21 going to collapse some of our questions and I'm going to turn
22 now to the related issue with respect to the varieties of
23 different police forces, and that's about collaboration.

24 So Chief Ramer, I wonder if you could give us
25 some insights about how collaborations between police
26 organizations should be managed? Particularly, I know this
27 Commission is interested in the deployment of multiple police
28 agencies' resources, how they can be coordinated during a major

1 event, and especially one that affects multiple locations
2 through the province?

3 **CHIEF JIM RAMER:** I think when it comes to
4 collaboration, there should be informal as well as formal
5 avenues to secure collaboration.

6 The formal ones should be available when the
7 informal ones, frankly, are not working. I find that we work
8 very effectively in collaboration with our other police
9 services. When -- you know, if you look at the Freedom Convoy
10 in Toronto, during the course of that entire event, we created
11 public order hubs throughout the province because we knew, you
12 know, the participants had information and they were being very
13 strategic in how they deployed. So they were in Ottawa, they
14 were in Windsor, they were in Toronto.

15 There's a reason for that. The reason for that
16 is because there's only limited POU assets in the province and
17 they want to spread them around. That was very strategic on
18 their part.

19 So we create these hubs to sort of manage that
20 and we designate people to oversee those hubs, and quite
21 frankly, they worked very effectively.

22 When we were looking at resources in Toronto, the
23 OPP provided resources, Waterloo provided some POU assets for
24 us, and then Peel, York and Durham were also communicated with,
25 and they were going to help with business continuity if we were
26 finding ourselves stretched and unable to meet our business
27 continuity demands. Those were all just informal
28 communications, easily set up, easily maintained, and they were

1 reciprocal if all of a sudden events ended up being staged in
2 Peel Region.

3 And so Nish Duraiappah, and Jim MacSween in York,
4 we were all having those conversations, very easy to move those
5 assets around, and worked collaboratively together. And I have
6 to tell you it works very, very effectively.

7 Now, when you have -- and even despite, you know,
8 what was going on at the time here in Ontario, and we had -- you
9 know, you had what was happening in Windsor, you had Toronto,
10 there was up London way as well, we had events, as well as in
11 Ottawa, we were managing those assets.

12 When you look at what happened in Windsor, quite
13 frankly, in my view was textbook in how that was addressed. And
14 when you think of lack of injury, you know, people being -- you
15 know, wrestling around and rolling around on the street and
16 people in handcuffs, none of that happened. It was done very,
17 very effectively. It was communicated what was going to be
18 done, and then you made sure you had the resources in place to
19 conduct it. And so that was all done with that kind of
20 collaboration.

21 I think sometimes when I talk about the formal
22 processes is, you know, within the *Police Services Act* it's
23 almost like an all or nothing thing. So in other words, you
24 know, if someone's not managing, then maybe the OPP are coming
25 in. Well, I'm not sure that's the answer as well.

26 If you look -- I think -- I refer to Windsor
27 again. If you look what was happening there, the OPP were
28 brought in with assets to really to conduct that public order

1 because they had the expertise in that area of the province to
2 actually exercise that, and they did that in conjunction with
3 the Acting Chief at the time. They sort of looked after --
4 Windsor was looking after business continuity. The OPP came in
5 to do POU. They worked collaboratively together. It was very,
6 very effective.

7 So I don't think it has to be an all or nothing
8 thing. I think if it gets -- if we were to hypothetically look
9 at potentially being something so overwhelming and bad, if we
10 are going to have the application of something more formal, it
11 needs to be more easily done, and there needs to be a formal
12 path to do that much easier, in my view.

13 **DR. DENNIS BAKER:** Thank you.

14 Mr. Teschner, briefly, please.

15 **MR. RYAN TESCHNER:** Yeah, just a brief point. I
16 do think that the police service and police board sector would
17 benefit from a little bit more rigidity in terms of the
18 structure. Flexible but structured.

19 And so I'm aware, for example, that the Ontario
20 Association of Chiefs of Police is working on template MOU or
21 agreements so that where boards need to seek assistance from
22 other boards for a particular operation on the basis of a
23 chief's recommendation, there is already a framework agreement
24 that's in place that boards and police services would be aware
25 of. It would address things like cost-sharing; training, if
26 there any issues; command and control considerations, so those
27 things are clarified; insurance matters, if those things come
28 up.

1 And so having some of this on the ready that
2 everybody's familiar with and understands means that the to-ing
3 and fro-ing that can sometimes happen during the life of an
4 event has already been resolved. And so I think that there's an
5 opportunity there, perhaps even to take that around the country.

6 **CHIEF JIM RAMER:** And if I could just -- that's
7 actually a good point. Because I think when it comes to MOUs,
8 quite often we're only looking at MOUs if there is going to be a
9 financial cost. So in other words, if a region says no we'll
10 send you to POU and don't worry about overtime or salary
11 dollars, we don't bother with an MOU. And we do -- already
12 training is all done together amongst all those Public Order
13 Units, so they already train well together and they know each --
14 what each other are doing. But the point of the MOU is
15 generally, it's usually a financial component that initiates
16 that MOU discussion.

17 **DR. DENNIS BAKER:** Chief Ramer, I wonder if we
18 could -- we talked a lot about police independence pretty
19 vaguely and generally, basically, the police as a whole
20 independent from government. Could you comment on police
21 independence within the force? So Incident Commanders might be
22 -- have some independence, right down to the line officer, every
23 police officer has a scope of independence. I wonder if you
24 could tell us more about that?

25 **CHIEF JIM RAMER:** Well, I mean, all police
26 officers are independent agents of the Crown, but when you have
27 an operation and you designate an Incident Commander, the
28 Incident Commander is in charge, not the Chief, the Incident

1 Commander is in charge, and he will direct all operations.

2 Really, the role of the Chief, my only role is to
3 oversee, ask questions if I have any concerns, and if I'm
4 unsatisfied with the performance of the Incident Commander, to
5 replace them. But my role is not to direct operations.

6 If the chiefs were constantly directing
7 operations across, you'd see us in court every day, and that
8 doesn't happen for a reason. It's not our role in managing an
9 event. You have trained experts, and those are the ones that
10 you allow to carry out the event. We have expert planners.
11 The, you know, the Operational Plan is approved. It's not
12 approved by me. I'm briefed on the Operational Plan after it's
13 approved, but it's briefed at a senior command level, but not by
14 me, and then it's operationalised.

15 And then that Incident Commander has -- there's a
16 real view team of chief superintendents that will sit and be an
17 advice to that individual to help guide them, provide some
18 instructions, just as a secondary thing to help that Incident
19 Commander fulfill their role, particularly in a very high-
20 profile event. And that's something we found was missing in the
21 G20, and it was something we implemented afterwards.

22 But you have to allow the people that are
23 designated in their role to actually carry out the operation.
24 And then once -- because when designate who's clearly in charge
25 everybody else now knows who's making the decisions and what
26 that chain of command is. And to me, that's what leads to a
27 successful operation.

28 When that G20 was going on, I was sitting in my

1 Command Boardroom and I was watching what was happening on TV.
2 With a couple of -- with the fire chief, my deputy, we would
3 brief our Executive City Managers every couple of hours just to
4 let them know what was going because there was so many different
5 assets that we were using throughout the city, but that was our
6 role. And I might have a question or something, but that's it.
7 The Incident Commander was in charge.

8 **DR. DENNIS BAKER:** Thank you.

9 Do any of the academics want to probe that a bit?
10 We've talked a bit about police independence. Does that
11 complicate any views on that? No? Okay. Everybody's happy.

12 So we're nearing the end of our time. We've got
13 about 15 minutes left, and we've got a big section of questions
14 next.

15 I'm going to call a little bit of audible here
16 and restrict us just to the first two questions on the list,
17 which are what changes to legislation might be appropriate, and
18 what laws, regulations, policies or norms governing powers of
19 responsibilities of police in relation to public processes and
20 their relations to public authorities, boy this is a long one,
21 should be revisited?

22 So this is really the question, to think about
23 the rules we have in place, the legislation, what would your
24 prescriptions be if a Commissioner was to make such
25 recommendations?

26 Professor Puddister.

27 **DR. KATE PUDDISTER:** Thank you.

28 Yes. So I'm going to suggest two. The first is

1 not novel or new, and has actually already been mentioned
2 already, but I think one of the biggest challenge for police-
3 government relations in Canada is thinking about the *RCMP Act*.

4 So we've had a lot of really great conversation
5 about what Toronto has done, and I think that's a really great
6 model, and I think things are working well there. The Ontario
7 Police Service's legislation has some more defined roles about
8 police-government relations and police independence. But when
9 we look to the *RCMP Act*, in section 5, in particular, we find
10 none of this sort of guidance.

11 So the current situation federally with the RCMP
12 really lacks a statutory framework in articulation of police
13 independence. It's unclear who can intervene and when, the
14 nature and scope of that intervention, there is no clear
15 guidance on what process should happen if there's a disagreement
16 between the Minister, so the Minister of Public Safety, and the
17 Commissioner. This, of course, results in a lack of
18 transparency and accountability for those who are involved.
19 Because of this, with the RCMP, our situation relies heavily on
20 leadership and decisions of key actors and that they will act in
21 good faith.

22 Here, I'm going to put the suggestion on the
23 table that policy has an important place here to set a framework
24 to deal with these situations in the future. Having defined
25 codified definitions of police independence can help address
26 these issues and make it less likely that political or partisan
27 interests on behalf of the government will come into play.

28 So here, I'm thinking we can look certainly to

1 the legislation in Ontario as a good starting point. We also
2 want to be reminded of the Supreme Court's decision in *R v*
3 *Campbell* as a definition for that core function of the police.
4 So here, legislation could specify that independence applies to
5 specific operations such as specific arrests, investigations,
6 and charging. I urge any recommendations to avoid just
7 operations. I think we've spent a lot of time discussing why
8 that's not a useful demarcation point.

9 Thinking through this, it might be legitimate for
10 governments to provide direction to policy as it relates to
11 crime prevention, maintenance of public safety, delivery of
12 services, general law enforcement, while other areas might be
13 less legitimate, like enforcement of law in a particular case,
14 decisions regarding individuals, including individual police
15 officers, and issues regarding individual members of the police
16 service.

17 Of course, reasonable, informed people may
18 disagree where this direction from the government is proper and
19 where it is not, but these are important conversations that can
20 only be had once we take a step towards articulating these
21 matters in legislation, and that legislation can be amended when
22 it's clear that there are errors or gaps. This ensures that we
23 don't have to start from scratch each time.

24 I also agree with the proposal that's been put
25 forward by Kent Roach in a variety of publications that this
26 legislation could require directions be made in writing and be
27 made public between the Minister of Public Safety to the
28 Commissioner, and that these written directions are provided

1 within a set period of time unless, of course, it would
2 compromise an ongoing police operation or investigation, but, of
3 course, that would be the limited exception.

4 The second suggestion I want to put before the
5 Commission and has come up on the side of some of the
6 conversations we've had already, is the consideration of a role
7 a truly civilian police oversight board for the RCMP. The RCMP
8 roots are paramilitary in nature and the force has evolved in a
9 manner that is distinct from other police forces in Canada that
10 have taken a more civilian approach to policing, like the
11 situation in Toronto.

12 Civilian oversight for the RCMP, in my opinion,
13 is lacking and is out of step with other police services in
14 Canada. The agencies tasked with providing oversight for the
15 RCMP in matters criminal and conduct leave much to be desired.
16 Creating a version of a police service board for the RCMP would
17 help to increase democratic accountability and create
18 opportunities for increasing diversity of those who are involved
19 in governance and moving away from that troubling line -- direct
20 line from the minister to the Commissioner that was mentioned
21 earlier.

22 A board can ensure that ministerial direction is
23 appropriate and given when necessary. This can be helpful to
24 transition the RCMP away from being a paramilitary organization,
25 which was a recommendation from the recent House of Commons
26 Standing Committee that examines systemic racism in policing.

27 Membership of this board, like boards in Ontario,
28 could have a combination of elected and appointed members, but

1 appointed members could provide an important opportunity to
2 ensure diversity of representation, especially of groups that
3 have a history of distrust of the police and have experienced
4 over-policing from the RCMP in particular. It could also
5 include members that have particular expertise or lived
6 experience that would be helpful in police governance.

7 Like other police boards, the majority of these
8 meetings could be held in public, receive submissions from the
9 public. Similar boards could be considered for provincial
10 jurisdictions in which the RCMP provides policing on a contract
11 basis.

12 I want to end with just one criticism that's
13 going to be obvious. And important criticism would be that a
14 police board would serve to diffuse responsibility. But given
15 the framework that I've suggested and the public nature of these
16 proceedings, the decision of the board and policies enacted
17 would create more potential for accountability and lay true any
18 overt attempts to diffuse responsibility. Of course, the
19 minister would have to chair the board and answer to parliament
20 to maintain ministerial responsibility, but I'll leave it there.

21 **DR. DENIS BAKER:** Thank you, Professor Puddister.
22 Professor Kempa?

23 **DR. MICHAEL KEMPA:** I -- just to say that I agree
24 with everything that Kate Puddister just said, except I would
25 add one precision, or maybe a slight difference which also
26 follows Roach and I think can be inferred from other sections of
27 *Campbell*, that when defining police independence, you simply
28 jettison the terms "operations" altogether, and define "police

1 independence" itself in terms of the exercise of their powers of
2 investigation, arrest, and delaying of charges. Of course, they
3 do that in consultation with the judiciary and the Crown, but
4 that is the area -- and that also follows, as I say, Kent Roach.

5 To echo Kate as well, the importance of the
6 minister being on any board for the RCMP is, I feel, replicated
7 at the municipal level. Mayors should be on their police
8 services boards, if for no -- for two reasons, number one, to
9 align policing direction with broader city municipal planning,
10 such as in areas of community safety and wellbeing, but also
11 just to ensure that there is no perception or reality that there
12 could be any political meddling in policing from any other
13 mechanism behind the curtains or whatever other than through
14 that board, if, for no other reason, to eliminate that public
15 perception.

16 **DR. DENIS BAKER:** Thank you.

17 Professor Thorburn?

18 **DR. MALCOLM THORBURN:** Very briefly, I think
19 Professor Puddister put it very well and I -- like Professor
20 Kempa, I would say I endorse all of the recommendations that she
21 made.

22 And I just want to summarize of this by saying
23 that clarity and direction is needed, that there are practices
24 that have been enormously successful, as we saw in Toronto
25 Police Services handling of the Freedom Convoy, but what we need
26 is guidance to police services across the country to make sure
27 that information sharing, these kinds of decision-making
28 processes are widespread. The same thing is true of clarity of

1 a board structure, and that there should be a board structure
2 for those without one, such as the four organizations that
3 Professor Leuprecht identified.

4 And on -- the last thing on board structure, I
5 think we can't underestimate the importance of
6 representativeness, both the matter of the mayor representing
7 the city's interest as a whole, but also of underrepresented
8 groups who have a very important role in providing insight to
9 police services.

10 **DR. DENIS BAKER:** Thank you, Professor Thorburn.
11 Professor Leuprecht, do you ---

12 **DR. CHRISTIAN LEUPRECHT:** So, as I documented in
13 my book, *Public Security and Federal Policies*, there is no other
14 democratic federation in the world that either structures their
15 police services the way Canada has or that funds their police
16 services that Canada has. And so, inherently, there's only so
17 much we're going to be able to do if we try to adjust governance
18 mechanisms as long as we have a model that seems rather
19 peculiarly unique, and so I think those are questions we need to
20 ask.

21 We also have a federal and national police force
22 where the commissioner has a span of control that is unlike that
23 of any other national or federal police force in a democratic
24 country across the world. I mention this in the context of the
25 current review of federal policing by the National Security
26 Intelligence Committee of Parliamentarians that was announced in
27 February.

28 And so I do think that the Commission may perhaps

1 want to take the RCMP's and the commissioner's span of control
2 into consideration because I am not sure that this is a model
3 that serves the public interest particularly well, in part
4 because the RCMP is torn in too many directions, and when called
5 upon when a situation, such as in Ottawa, transitions from
6 public safety to national security, and you need federal
7 involvement on the national security side, we had a
8 considerable, I think, breakdown in both resources and
9 interagency collaboration.

10 I also believe that there need to be clear
11 qualifications and certification laid out for members of police
12 services boards because that's essential to them performing
13 their function. And so simply getting an appointment, I think,
14 is not enough. We need to have -- Canada is also a bit of an
15 outlier in the way we generate police managers and police
16 leaders. Many of the functions that in other democracies are
17 managed by civilians, in Canada are managed by folks in uniform.
18 I'm not sure that necessarily serves the best interest.

19 Similarly, on the leadership side, there's not a
20 country -- a federal country that I'm aware of that requires
21 less in terms of education of senior police leaders that Canada
22 does. And so we have this assumption that somehow people will
23 acquire the skillsets for this extremely complex task, and the
24 fact that only a couple of months ago, I believe, 13 forces in
25 Ontario had been looking for a chief of police, suggests that
26 we're perhaps not quite generating the leaders that the country
27 needs under these particular circumstances.

28 And I'll close on saying that effective policing

1 -- adequate and effective policing is essential for democratic
2 legitimacy, and I think what happened at Ottawa severely
3 undermined the legitimacy of our democratic institutions and so
4 it's inherently essential for the health of our democracy that
5 the Commission find ways to ensure that we not witness these
6 types of breakdowns again, not just for operational and tactical
7 reasons, but for the broader reasons of safeguarding our
8 democracy and our democratic institutions and our public's faith
9 in them.

10 **DR. DENNIS BAKER:** Thank you. We only have two
11 minutes left, and the Toronto model has received so much praise
12 today, but if you want to capstone it off by some comments, it'd
13 be ---

14 **CHIEF JIM RAMER:** Actually, if I could go first,
15 I'll just be very, very quick. In terms of potential
16 legislation, I think two things. There should be a board or
17 commission for all police services that currently do not have
18 one. I think that's essential. Secondly, sufficient protection
19 for board appointees to do their jobs, to be free of political
20 influence or the appearance of, so they just can't be all of a
21 sudden removed from it by a council motion. And I think and
22 more importantly too, boards need the funding. They need the
23 funding to have the people in place. Some of the excellent
24 people that we have in Toronto, that really enables us to
25 actually ultimately perform a better function.

26 And then Professor Leuprecht comment, something
27 I've been advocating for now with the Ontario Association of
28 Chiefs of Police, and that's really standard senior command

1 training. That's something that I've met with the UK on and
2 they're going to do -- I'm bringing some of their trainers here
3 to Toronto in the spring to conduct some of that, and I'm just
4 trying to sort of speed up the process and invite other
5 organizations in. I think it's very much needed, so that
6 anybody who wants to be a chief superintendent, a deputy chief
7 or chief, has to have undergone this training. Right now, our
8 training is piecemeal. Some members are getting it. Some
9 members don't get it. It largely depends on municipal funding.
10 And perhaps if you're federally or provincially funded, you're
11 getting more access to training. If you're municipally funded,
12 you're getting less access to training. That shouldn't be the
13 case. It should be something where the province or federally
14 it's a standard either across the country, or certainly at least
15 in our province of Ontario, where we have that kind of
16 standardized training I think would be very, very effective.

17 And a final comment I make is we currently have
18 two deputy chiefs in Toronto that are civilians. Our Innovative
19 and Technology Deputy Chief Colin Stairs and our CAO, inner CAO
20 Svina Dhaliwal, and they make -- they are an excellent addition
21 to the team, and they bring in expertise and an outside thinking
22 that we have not -- you know, we generally in policing you don't
23 experience. And, in fact, I will tell you that Colin Stairs,
24 our IT specialist, leads our race-based data discussion and is
25 doing an incredible job with it. He's not a police officer. So
26 there's great value in that as well, so I just wanted to echo
27 that with the Professor's comments.

28 **DR. DENNIS BAKER:** Thank you, Chief.

1 Mr. Teschner?

2 **MR. RYAN TESCHNER:** Okay. Thank you. I'll just
3 amplify some of the recommendations. First, Commissioner, I
4 would say that harmonizing the approach to police governance
5 through legislation and otherwise does not necessarily need to
6 upset the constitutional order. And so there's an ability to
7 make recommendations, to bring to bear some of what was
8 discussed today in terms of best practice. For example, the
9 statutory roles and functions of police boards and commissions
10 being made more clear; the definition of police independence
11 that piggybacks off what happened in the case of Campbell, and I
12 would suggest with my suggested modification, narrowing it more
13 to the exercise of police discretion and the law enforcement
14 function; a legislative definition of critical point with the
15 attendant information exchange obligations; mandatory training
16 requirements for exercising the governance function and for
17 chiefs and command officers to receive mandatory training on
18 engaging with their governance bodies; and then the Chief
19 mentioned mechanisms to protect from a security of tenure
20 perspective, if you will, board members in certain
21 circumstances.

22 Secondly, I would just say again, ensuring
23 through legislation and other tools the ability of local police
24 boards and services to seek assistance nimbly and in real time
25 without compromising their ability to remain the police service
26 of jurisdiction; template agreements, MOUs and the like
27 established in advance, so that some of the legal issues can be
28 thoughtfully worked through and not necessarily dealt with on

1 the spur of the moment.

2 I've talked about, as many have, a fully
3 independent civilian governance and oversight body for the RCMP,
4 so I won't repeat that.

5 And then I would say two things from my front row
6 seat living within the world of police governance every day.
7 All of these recommendations are great in theory, but you have
8 to set boards and Commissions up for success. And I would say
9 there are two ways that you could potentially do that. One is,
10 I am not aware of another government function where the tall
11 order that boards and commissions need to fulfill are not
12 fundamentally and adequately supported by professional civil
13 staff that supports those boards and commissions. And I think
14 resources and a consistency of approach needs to be brought to
15 bear to ensure that part-time board members who are doing other
16 things and may not necessarily have the expertise within the
17 public service or otherwise are supported by independent civil
18 servants. And the second would be to establish tripartite
19 partnerships, municipal, provincial, federal, with the mandate
20 to establish regional centres of excellence for police
21 governance across Canada that can again bring some consistency
22 to the approach that boards and commissions take, allowing them
23 to still manage local issues, but on things like critical
24 points, information sharing, consultation protocols with chief,
25 approaches to certain policies, so there's a consistency of best
26 practice approach. Those would be my recommendations.

27 **DR. DENNIS BAKER:** Thank you, and thank you,
28 everybody, for a very enlightening discussion. And I said at

1 the beginning there are no easy answers, but there was lots of
2 consensus and I think lots of things that the Commissioner can
3 use and draw upon.

4 **COMMISSIONER ROULEAU:** Okay. So I think we now
5 take a break, and we'll see whether we've got some questions,
6 and we'll come back with those questions and maybe some others,
7 and have a half hour of discussion starting at noon.

8 **THE REGISTRAR:** The Commission is adjourned for
9 30 minutes. La commission est levée pour 30 minutes.

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

11 --- Upon resuming at 12:01 p.m.

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

14 **COMMISSIONER ROULEAU:** Okay, so we're back, and
15 as I understand we have a few questions. So I turn it over to
16 our Moderator.

17 **DR. DENNIS BAKER:** Thank you, Commissioner.

18 You'll be all pleased to know that your comments
19 generated lots of questions, and I've got a whole list of things
20 that we probably won't be able to get through in a half an hour.
21 But let's try and move through them as quickly as we can.

22 We talked a lot about prohibited direction. So
23 when we talked about police independence we said you can't
24 interfere with investigations; everyone basically has that kind
25 of understanding. But how does that apply in the public order
26 policing context? So what would constitute a prohibited
27 direction in specifically that context? So not in
28 investigations but in public order.

1 So the Commission would -- the parties would like
2 to know about a sharper definition of that. So some examples
3 that were proposed were whether -- should you negotiate with the
4 protesters or enforce -- or act? Should you enforce provisions
5 or not? What if the priority is established as Ottawa first,
6 Windsor second? When does timing become an operational concern?

7 So what are the types of prohibited directions
8 you would see in the public order context?

9 Professor Kempa.

10 **DR. MICHAEL KEMPA:** Sure. So I would just say
11 the moment it has to do with the actual carrying out or
12 execution of the operation; that's the moment where the board
13 cannot direct.

14 So the board may have a policy that PLT or
15 negotiation is an important part of mass protest management, but
16 exactly when that negotiation would be carried out would be a
17 police leadership decision because they would be weighing in the
18 safety of their officers; whether they had identified groups to
19 negotiate with.

20 But then the board would be asking -- properly
21 asking questions if they felt that they didn't see, for example,
22 PLT started. They could ask why, and demand a response. And if
23 they were given an adequate reason along those lines, that's
24 basically the end of the matter. And if they weren't given an
25 adequate, they could say, "Well, when will it be starting?"
26 But, fundamentally, they could not force the chief to begin on a
27 particular moment.

28 **DR. DENNIS BAKER:** Okay.

1 Any other comments on that?

2 **MR. RYAN TESCHNER:** I would just come back, Mr.
3 Commissioner, to my suggestion that you add on to the Campbell
4 definition, or clarify it, in terms of the exercise of law
5 enforcement discretion.

6 And so what happens on the ground during a
7 protest in a variety of ways, whether it's what tactics to use;
8 when to mobilize your POU; when to negotiate; when to cease
9 negotiations; whether the circumstances don't, in the view of
10 the person on the ground, allow for negotiations, even though
11 that may be the policy, because of safety risks or otherwise.

12 These are all exercises of law enforcement
13 discretion that should be protected once the operation is being
14 carried out. And to use an administrative law analogy, the
15 board should not fetter that discretion. They can, again, set
16 the stage for it, set the context for it, identify the
17 priorities and objectives, put in place policies, kick the tires
18 of the plan, ask that certain things be reconsidered, but when
19 the operation is underway, as Professor Kempa said, who'd be in
20 -- who's investigated; who's to be arrested or charged; whether
21 someone should be arrested or charged; the number of officers to
22 be deployed for specific tasks on the ground; the timeframe for
23 those actions, that is all the exercise of that law enforcement
24 discretion.

25 **DR. DENNIS BAKER:** So could I just follow-up?

26 And Professor Leuprecht, I'll get with you -- to
27 you in a second.

28 If the -- would we say it is a policy matter or

1 an operational or planning matter to say, "You have to enforce
2 -- we want you to start enforcing the law," right? Instead of
3 -- I accept, Mr. Teschner, that you don't want to say you have
4 to charge person X; like, that would be clearly an operational
5 ---

6 **MR. RYAN TESCHNER:** Sure.

7 **DR. DENNIS BAKER:** --- or a prohibited kind of a
8 direction. But what about saying, "We want you to enforce the
9 law"? Like, you're not taking as proactive an approach; ---

10 **MR. RYAN TESCHNER:** I would ---

11 **DR. DENNIS BAKER:** --- would that be prohibited?

12 **MR. RYAN TESCHNER:** I would argue that that would
13 be an odd direction ---

14 **DR. DENNIS BAKER:** Okay.

15 **MR. RYAN TESCHNER:** --- from the board. Police
16 officers are -- have that independent authority, and are
17 required by law to enforce the law based on the exercise of
18 their discretion. They are the experts in knowing what tools to
19 use and when.

20 And so a general direction to enforce the law, I
21 think is, as Judge Morton put it, one of those policies that
22 actually are meaningless. That should be the starting point in
23 any event. But when to enforce it; how to enforce it; what
24 tools in the law enforcement toolbox to use, that is the
25 discretion that we need to ensure police officers can exercise.
26 Again, based on a plan, with priorities, objectives, and
27 policies staked out in advance.

28 **DR. DENNIS BAKER:** Thank you.

1 Professor Leuprecht.

2 **DR. CHRISTIAN LEUPRECHT:** Yeah, I think this
3 sounds good in theory, but in practice -- look, I mean, when you
4 have multiple police forces that are under different sort of
5 jurisdiction, and each of them has sort of either been given
6 some different directions or has sort of different -- been given
7 different priorities, I think the integrated command structure
8 here is critical, and how do you generate appropriate oversight
9 and governance of an integrated command structure, especially
10 when you have some forces that have boards, and some forces that
11 don't.

12 The other issue that I would raise is that the
13 question here is a function also of, do you have sort of just
14 straightforward criminality, or are you facing a political
15 protest? And police are the first to know that there is no law
16 enforcement solution to a political protest. You will not
17 arrest your way out of a political protest, and officers know
18 that.

19 And I think there would have been a rebellion of
20 -- initially, at least, when there weren't enough resources of
21 officers in Ottawa had they just been told, "You go and just
22 arrest people."

23 And so I think there needs to be -- police will
24 look for top cover in terms of, "What approach do you want us to
25 take?" Because if they take an aggressive approach, they know
26 that there's going to be repercussions. So when in doubt, I
27 think, police will err on, "We're here to keep the -- to
28 maintain public safety, so that's what we're going to do, and

1 we're going to find a gradual strategy out of the situation that
2 we find our ways in."

3 If the political authority is unhappy with that
4 approach, then it needs to set a clear signal that federally,
5 provincially, and municipally they will have the back of the
6 police forces that are in place. The governance asymmetries
7 that we have make that difficult in Canada, and especially in
8 Ottawa.

9 **CHIEF JIM RAMER:** If I can just jump in?

10 **DR. DENNIS BAKER:** Thank you, yeah, Chief Ramer.

11 **CHIEF JIM RAMER:** You know, when you're having
12 these events, I just want to say, first off, the police position
13 is always to do this safely and peacefully. No one wants to be
14 rolling around on the sidewalk because everybody is getting
15 hurt. And it's not just the public. It's the police officers
16 as well.

17 And so that's always the goal.

18 And when we look on the events in Toronto on the
19 one day, I believe the 5th of February, we had a number of very
20 large trucks come down Avenue Road and try to breach Bloor
21 Street and they were unable to get through. But they ended up
22 staying there during the course of the day. And as we briefed
23 our executive body, which is the different city leaders, the
24 Mayor, and the executive director to keep the Board informed,
25 they were asking questions, "Well, what are you going to do?"
26 And we just said, "Well, the vehicles have stopped. People are
27 demonstrating. And we're going to facilitate peaceful
28 demonstration, but consistent with our mission of all day, no

1 vehicles are staying overnight."

2 And so we discussed with the leaders, and by the
3 end of the night, most of them moved on. There was a couple of
4 people in large vehicles didn't want to move, so we brought the
5 heavy tows into place and then they went home. And so --
6 because they saw that we meant business. And so that was the
7 plan. But the whole goal was to do it peacefully.

8 The Board asked questions, and we just told them,
9 "No, we're just going to allow them to demonstrate peacefully.
10 They're not hurting anything. We're there for the day, but
11 we'll encourage them by the end of the night, we will help them
12 move off." And that's exactly the way it did.

13 What my point was is that the Board had
14 questions, maybe coming from politicians as well to the Board
15 about what's going on, community members are calling and
16 complaining about the noise and the trucks. We said, "This is
17 the way we're going to do it. this is the safe way to do it."
18 They were satisfied. And that's the way it happened that day.

19 **DR. DENNIS BAKER:** Thank you.

20 Professor Thorburn?

21 **DR. MALCOLM THORBURN:** Just a quick intervention.
22 It's just important, I think, that we distinguish areas where
23 the reason why we want to leave police independence is because
24 of their kind of quasi-judicial function in making arrests and
25 so on from this area where mostly what we're talking about is
26 expertise.

27 And so in that area, we may want to insist we
28 should defer to those who have expertise on the ground, making

1 these decisions. But there, the kind of dialogue that Chief
2 Ramer was just describing, asking hard questions, saying, "Why
3 aren't you doing this and so?" is entirely appropriate, in a way
4 that it would not be when we're talking about specific
5 investigations.

6 **DR. DENNIS BAKER:** Any -- Mr. Teschner?

7 **MR. RYAN TESCHNER:** Sorry, just wanted to -- off
8 something that Christian said about integrated command
9 structure, and I know Commission Counsel have asked questions
10 about the deployment of resources to different areas depending
11 on what might be emerging.

12 I think it's important to be mindful of the
13 governance structure that exists.

14 In law, the police services board of, in this
15 case, Toronto, is legally responsible for the adequate and
16 effective policing in Toronto. If assistance needs to come from
17 other police services, it is vital, as Judge Morden laid out in
18 the G20 report, for the Board to understand what the command
19 structure is so that, yes, you can have an integrated command
20 structure, but who ultimately has command and control and
21 control of that event?

22 And so through the MOU process that I suggested
23 happen, these kinds of things should be worked out and should be
24 clear so there's never any doubt operationally and never any
25 doubt from a governance perspective as to who has command and
26 control, even though he might have multiple units involved at
27 the same time.

28 **DR. DENNIS BAKER:** There were some questions

1 actually related to the request for other forces to assist, and
2 section 9 of the *Police Services Act* being invoked, and there
3 seemed to be some, perhaps, reluctance to do so in certain
4 cases.

5 And this got back to a comment you made, Chief
6 Ramer, about all or nothing. Right? The *Police Services Act*,
7 sometimes interpreted as all or nothing. Is section 9 a kind of
8 all or nothing -- this is for the panel as well -- an all or
9 nothing request? So once you invoke section 9, suddenly the OPP
10 is in charge of the operation and there's a kind of take over of
11 the operation? Is that the best way of looking at that section?

12 **CHIEF JIM RAMER:** I think perhaps that's, you
13 know, the way it was written at one time, and maybe that's the
14 perception. I think operationally, that's not what happens. I
15 know, you know, when you're working with any of the
16 organizations and the OPP in the particular, they come in and
17 they provide assistance, and they work collaboratively together.
18 And quite frankly, that's the way that all of policing does
19 work.

20 And I just think it's -- you know, when you look
21 at section 9, it's in that -- it's going to be in that rare
22 incident that you have something that is beyond the capabilities
23 or capacity of a particular jurisdiction, and then maybe for
24 that particular event, there needs to be some more clarity about
25 what the roles are.

26 But in the meantime, as Ryan had said, when we do
27 this type of collaboration, there are -- consistent with Morden,
28 there are clear parameters that we have to address in terms of

1 command and control and how things are going to operate. So it
2 is happening already.

3 **DR. DENNIS BAKER:** Okay.

4 Professor Leuprecht?

5 **DR. CHRISTIAN LEUPRECHT:** So there are other
6 models in this country. So this is one approach. The other
7 approach is in Quebec, where Quebec has a tiered policing
8 structure, and my understanding is if, for instance, the
9 equivalent protest had happened in Gatineau across the river,
10 under the tiered policing structure, it would not have been the
11 Gatineau Police, because the tiered policing structure sets out
12 competencies for police in light of the size of the police
13 service. And so by default, the Sûreté du Québec would have had
14 the operational command and control of a national protest.

15 And so we either need to have a tiered structure
16 or, as the Chief and as Mr. Teschner have pointed out, need to
17 have a clear governance set up for a multi -- for joint force
18 operation.

19 And I think that was certainly one of the
20 challenges that we saw.

21 **DR. DENNIS BAKER:** Thank you. Any additional
22 comments?

23 So we have about 15 minutes remaining. Let's
24 shift a little focus to the role of -- to being a little more
25 concrete about the role of the chiefs and the board in
26 situations where there's a combined effort with multiple police
27 forces and a whole bunch of other actions.

28 So we talked a lot about some of the informal

1 discussions and the trust and mature relationships, which is
2 great. But what happens when that breaks down? Not just within
3 a single police service, chief, and the board, but also when
4 there can be competing boards, politicians of different levels,
5 all those sorts of things. How do we deal with that? And in
6 particular, how would we describe the role of the chief and the
7 board with respect to the declaration of emergency, whether that
8 was done at the provincial level or the federal level? Should
9 the -- either of those parties communicate with the decision
10 makers? Should they go -- or should it only be through the
11 Board? Should the Chief be talking to the decision makers when
12 it comes to the declarations of emergency?

13 That was a bit of a rambling question. Putting
14 it together.

15 Professor Kempa?

16 **DR. MICHAEL KEMPA:** Well I could just start the
17 conversation by saying I think the -- it's always open to the
18 chief of a municipal police service to have direct conversations
19 with the provincial police service, whether that's an
20 independent or contracted RCMP, if they require more resources.

21 The Board would be the first point of
22 communication through, later, the Inspector General, but
23 currently the OCPC to the Solicitor General communicating that
24 they were in some kind of difficulty.

25 But it is -- it is not likely the role of the
26 Board to make a specific request for the enactment of either the
27 provincial emergencies legislation or definitely the federal
28 emergencies legislation, simply to indicate that they are having

1 trouble providing adequate and effective policing, and then when
2 asked whether that's limited to resources, or also if there's
3 some authorities that are missing.

4 **DR. DENNIS BAKER:** Comments on that?

5 **MR. RYAN TESCHNER:** I would ---

6 **DR. DENNIS BAKER:** Mr. Teschner?

7 **MR. RYAN TESCHNER:** Yeah, I would just agree that
8 we have to come back to the statutory function and role of the
9 board. The board is responsible to ensure adequate and
10 effective policing. If through the information exchange with
11 the Chief of Police it becomes clear that the police service of
12 jurisdiction can no longer provide adequate and effective
13 policing, then that information should be transmitted to
14 decision makers who are considering other options that don't
15 exist within the world of the board or the chief of police, and
16 that would be an informational input that hopefully they would
17 consider in arriving at their decision.

18 But that information should be, again, because
19 it's a political decision made by elected officials as to
20 whether or not to declare the emergency, that transmittal of
21 information should come through the Board. But importantly, the
22 operational understanding would be conveyed to the Board by the
23 chief.

24 **DR. MICHAEL KEMPA:** Sorry, that was also exactly
25 my meaning. I may not have put it as clearly.

26 **DR. DENNIS BAKER:** Okay. Is the board then the
27 exclusive conduit in that situation? Or if an elected -- the
28 person responsible, the parties responsible for declaring the

1 emergency want to phone up the chief of the police and have a
2 conversation with him, is that appropriate?

3 **MR. RYAN TESCHNER:** I would suggest that it would
4 be far better for both the chief of police of the day, and for
5 the elected official of the day not to do that, but rather, to
6 use the infrastructure and the framework that is set out. The
7 board has that responsibility.

8 The board is the chief's employer. The board
9 should be informed by the chief about what's happening
10 operationally, and then the board can engage with elected
11 officials to have those conversations; and bring things back.

12 That's not to say that, with respect to matters
13 that are unfolding in a particular ward or a particular riding,
14 there won't be conversations with the police officer who runs a
15 division and the local elected official about what's happening
16 within that particular pocket of the city, but when it comes to
17 the overarching board duty to ensure adequate and effective
18 policing, and when elected officials are getting interested and
19 engaged because they're considering other options, there is a
20 conduit here, and so we should use it.

21 **DR. DENNIS BAKER:** Any other -- oh, Professor
22 Leuprecht.

23 **DR. CHRISTIAN LEUPRECHT:** I think from a board's
24 perspective there's also a question about is there a plan? So
25 you have to be able to develop a Plan B and alternatives. You
26 have to present those alternatives; you have to present the
27 trade-offs of those alternatives to the board. So that needs to
28 be conferenced by the board that the plan can actually work, or

1 for the chief and the board to come together and say that this
2 is simply beyond our capacity and so we're going to need someone
3 else to take command and control of the situation.

4 So I think we can't just, based on the event,
5 suggest, "Oh, we'd better call for an emergency." We need to
6 see what an effective plan actually looks like, and the plan
7 that both the chief and the board can either have confidence in
8 or say, "We don't have the capacity to develop a plan so we're
9 going to need to scale this up" -- classic sort of economies of
10 scale -- "to a force that actually has the command and control
11 capacity and the planning logistics, intelligence capacity to
12 run this type of operation."

13 **DR. DENNIS BAKER:** Thank you.

14 So one of the places we've seen consensus today
15 is on the idea of an intermediary, right? Having a police board
16 seems to serve important purposes and helps us reconcile some
17 competing demands. So the RCMP doesn't, but -- and Professor
18 Leuprecht noted that only four -- he described it as kind of an
19 aberration that there were these four that don't have the
20 intermediaries, right? But another way of saying that is that
21 the provincial forces and the RCMP don't have it, right?

22 So are there other things, like ministerial
23 responsibility and the RCMP being at Cabinet, right? They're
24 not -- they play a role there. Does that change the
25 relationship such that you might not need that intermediary, or
26 does it suggest that those types of forces that are perhaps
27 closer to ministerial control don't warrant that intermediary?

28 That's a wide open question. Professor

1 Puddister, you're smiling, though, which I mean ---

2 **DR. KATE PUDDISTER:** Sure.

3 **DR. DENNIS BAKER:** --- you have an answer?

4 **DR. KATE PUDDISTER:** Well, perhaps I'm just
5 reiterating what I said before, that I think a civilian board is
6 essential here.

7 I do think in the current configuration the
8 relationship between the Public Safety Minister and Cabinet
9 could be altered; this could be a halfway step. We could think
10 about the Public Safety Minister and its relationship to Cabinet
11 similar to the Attorney General and its relationship with
12 Cabinet, which would not be too far out of bounds because the
13 Solicitor General used to be part of the Attorney General.

14 And so when I'm speaking of the Attorney General,
15 I'm thinking of the role in such that they represent the views
16 of the Attorney General at Cabinet, solicit views from other
17 members around the Cabinet table, but still hold that ultimate
18 independence to make decisions.

19 A model like that could be implemented for a
20 Solicitor General or the Minister of Public Safety, but I
21 suggest perhaps one other change would be necessary.

22 Currently we have a Minister of Public Safety
23 that has a wide portfolio of responsibilities. Other
24 jurisdictions, like New Zealand, for example, have a minister of
25 just policing, so perhaps in the scenario I'm suggesting we have
26 just a minister of policing that's fulfilling that duty.

27 But I'll close in saying I still think the more
28 compelling solution is a civilian oversight board.

1 **DR. DENNIS BAKER:** Okay.

2 Professor Kempa, you're nodding along. Anything
3 to add?

4 **DR. MICHAEL KEMPA:** No. Just that in fact that
5 close relationship with the Commissioner being a Deputy Minister
6 has been specifically identified as a source of the number of
7 the problems facing the RCMP, in that whether there is real or
8 perceived political pressure on the Deputy
9 Minister/Commissioner, there has been a tendency to manage
10 upwards to anticipate the needs of the Minister in ways that may
11 not reflect the needs, the bottom -- the downward needs of the
12 organization. That, of course, was the main conclusion of the
13 Brown Report.

14 **DR. DENNIS BAKER:** Professor Leuprecht.

15 **DR. CHRISTIAN LEUPRECHT:** There's considerable
16 asymmetry in Canada with regards to the expectations Attorney
17 Generals have and lay out for the RCMP, so they are quite
18 detailed, but the most detailed, to my understanding, in British
19 Columbia; in other jurisdictions there is very little in terms
20 of the overall expectations.

21 And so I think there's probably some of the
22 expectations and the relationship also by the Ontario and Quebec
23 Attorney Generals, and the relationship with the RCMP because,
24 of course, in both provinces the RCMP normally only does federal
25 and national policing duties.

26 And so are there circumstances where the Attorney
27 General will need to make those federal units essentially
28 request that they become operational units because if you're

1 flying in people from British Columbia, it's going to take you a
2 very long time to surge capacity in Ottawa. And so I think
3 clarifying that relationship of the federal and national
4 policing capabilities and when that federal, national police
5 service provides, effectively, contract-quasi services, even in
6 Ontario and Quebec, that relationship, with regards to the
7 expectations from the Attorney Generals, needs some
8 clarification.

9 **DR. DENNIS BAKER:** Thank you.

10 Just being mindful of the time.

11 Would the panel have any comments with respect to
12 the appropriateness of police involvement or participation, or
13 even information and negotiation between government actors and
14 the protesters? So in a public order context where the
15 government is -- or actors in the government are seeking to have
16 negotiations with the protesters, talking about mediating the
17 problem, do the police play a role there, the police chief, or
18 intermediaries lower in the police?

19 **CHIEF JIM RAMER:** I see you're looking at me.

20 **DR. DENNIS BAKER:** Sure.

21 **CHIEF JIM RAMER:** I would ---

22 **DR. DENNIS BAKER:** Chief Ramer.

23 **CHIEF JIM RAMER:** Yeah. The only comment I would
24 make is that that should never happen, unless it's done in
25 conjunction with the police operation and with the full
26 knowledge and support of the police to help to come to some type
27 of peaceful conclusion or -- I mean, it's done every day. We
28 have 17, 18 protests every weekend in Toronto, and the first

1 thing we do is we meet with the protest leaders, and we talk to
2 them, and we say, "No, you can't shut down this, all the city,
3 but maybe we'll facilitate a march around these locations.
4 We'll help you do that." And we come to that.

5 And I think that, really, at the end of the day,
6 that's what -- by going to that level of government individual
7 to help, it's obviously going to be a more significant event,
8 but you're going to try to accomplish the same thing in
9 conjunction with the police operations. So I think they need to
10 be done in tandem if they are undertaken, and there's agreement
11 that they should be done.

12 **DR. DENNIS BAKER:** Okay, thank you.

13 So we did have a specific question for professor
14 Puddister.

15 You spoke early on about the significant
16 challenges faced by police oversight agencies, and there was a
17 question about whether you could elaborate on those challenges.

18 **DR. KATE PUDDISTER:** Sure. So my area of
19 research on this is mostly on Ontario, but thinking about the
20 jurisdiction of these oversight bodies, and the SIU in
21 particular, is what I'm going to talk about. And it's useful to
22 focus on the SIU because that's the model that's been exported
23 across Canada.

24 And I think one of the biggest challenges in
25 relying on an oversight body like that to provide
26 accountability, is that they have actually a very limited
27 jurisdiction in which they can investigate. The SIU, in
28 particular, is involved in serious injury, death, allegation of

1 sexual assault, or the discharge of a firearm. Beyond that,
2 there are other accountability mechanisms that come into play,
3 but their jurisdiction is actually very limited, and I think the
4 public has a very poor understanding of what they can actually
5 do.

6 The other significant area of limitation for the
7 SIU and for many oversight bodies, is that they don't have the
8 ability to engage in systemic review, such as like we're having
9 right now, to examine larger issues; to think about connections
10 between particular events that they've investigated; or perhaps,
11 you know, if there's repeat issues with a force, the director
12 can issue a letter to the chief, but they don't have the same
13 powers to compel a full review.

14 So their role is very limited in that they are
15 reactionary only. Very important mechanism of oversight but are
16 very limited in the ability to provide any, you know, guidance
17 going forward beyond criminal investigation.

18 **DR. DENNIS BAKER:** Any other comments?

19 **MR. RYAN TESCHNER:** Sorry ---

20 **DR. DENNIS BAKER:** Sure, yeah. Mr. Teschner.

21 **MR. RYAN TESCHNER:** If I could, I would just say
22 certainly the SIU's jurisdiction is, as limited as the statute
23 says that it is, it's a criminal law jurisdiction. There are
24 other players on the landscape that we have to also take into
25 consideration.

26 Of course, boards, which we have been talking
27 about, which have a unique ability, actually, almost an
28 unlimited ability in some respects to review a number of issues,

1 both with respect to complaints that are being brought forward
2 because they have a statutory mandate to review the
3 administration of the complaint system by the chief, and
4 particular issues that relate to their policies or the
5 implementation of their policies. A capacity, though, that
6 requires, again back to my recommendation, professional
7 resources to actually have some oxygen.

8 These are all great things in theory, but as a
9 practitioner, I can tell you that not all boards across this
10 country are in a position, in fact, very few, very, very few
11 would be in a position to actually carry these things out. And
12 so if we're serious about them, then we need to appropriately
13 invest in them.

14 **DR. DENNIS BAKER:** In our final minute, does the
15 panel have any concerns about -- so we've been very --
16 suggesting that police services boards do provide an important
17 function. Are there any problems with that where we might be --
18 have some reservations about having that kind of model at the
19 federal or provincial level? Or is it all goodness and light?

20 **DR. MICHAEL KEMPA:** Well, no. As Ryan Teschner
21 is alluding to, without proper resources -- police services
22 boards have not had a record of untrammelled success across
23 Ontario or Canada for that matter. And in fact, for example, in
24 the United Kingdom, they have moved away from the police
25 authority model, which is the same, essentially, as the Police
26 Services Board model, for an elected local body that through the
27 theory of being elected has even greater legitimacy to intervene
28 in operational type matters and so forth.

1 So it's -- it is a question of whether -- to
2 evaluate whether the Police Services Board model is a good one
3 for Canada, it's a bit unfair to look at the track record on the
4 basis they have never had the training, resources, or clear
5 explanation of their authorities to actually carry out their
6 functions.

7 **DR. DENNIS BAKER:** Any other comments? No.
8 We're one minute over time. Oh, sorry, Professor Leuprecht.
9 Briefly.

10 **DR. CHRISTIAN LEUPRECHT:** Just to point out that
11 ultimately it's up to the people to decide. We live in a
12 democracy, and the people create the framework under which
13 police boards, governance, and so forth transpires. And so we
14 can blame police, we can blame boards or whatever, but
15 ultimately the importance of the Commission and the Inquiry is
16 that it's a question of are the frameworks appropriate and are
17 they fit for purpose. And the nature of the discussion today
18 suggests to me that they are not entirely fit for purpose for
19 the 21st century.

20 **DR. DENNIS BAKER:** Thank you, that's a good point
21 to end on.

22 **COMMISSIONER ROULEAU:** Okay. Well, thank you to
23 all the panel members. It was very interesting. You've made a
24 lot of recommendations. Some may find their way into a report,
25 I'm not quite sure which or whether, but certainly you've been
26 very helpful in sharing your knowledge, sharing your expertise,
27 and sharing your thoughts. It's very appreciated. As always, I
28 learn a lot, and I have learnt a lot today thanks to you all.

1 So thank you to the -- all the panel members, and
2 special thanks to you, Professor Baker, for your moderation, and
3 I'm sure preparation for this, as everyone I'm sure has put a
4 lot of time, and probably you a little bit more. So thanks
5 again.

6 We're going to adjourn until two o'clock, when we
7 have another panel.

8 **THE REGISTRAR:** The Commission is in recess until
9 2:00 p.m. La Commission est levée jusqu'à 14 heures.

10 --- Upon recessing at 12:33 p.m.

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

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

14 **COMMISSIONER ROULEAU:** Okay, well, good afternoon
15 to all those who are online and to our guests who are here to
16 debate another subject, this one more related to
17 interjurisdictional response to protests and emergencies.

18 Alors, bienvenue à tous. C'est une session qui va
19 traiter des relations interjuridictionnelles pour les protêts et
20 les urgences, alors ça va être un sujet qui va beaucoup plus
21 près des différentes questions qu'on doit adresser sur la
22 déclaration d'urgence.

23 Alors, je vous remercie tous d'être venus. Sans
24 plus tarder, je vais présenter la coordonnatrice pour la
25 session, Jocelyn Stacey, professeure à l'école Allard School of
26 Law à UBC.

27 Alors, je vous laisse la parole. Maybe you can
28 introduce our panelists.

1 --- ROUNDTABLE DISCUSSION: INTERJURISDICTIONAL RESPONSES TO
2 PROTESTS AND EMERGENCIES:

3 **DR. JOCELYN STACEY:** Wonderful, thank you. Good
4 afternoon, Commissioner. Good afternoon, everyone. I -- I'm
5 very privileged to be here today. Thank you for having me and
6 for that introduction, and we're very luck to be joined by
7 experts who are both online and in person.

8 And so in person here with us today -- I want to
9 just acknowledge that we're meeting here today on unceded
10 Anishinaabe Algonquin territory, and we've got two experts who
11 are joining in person. So next to me is Mr. Jack Lindsey,
12 Associate Professor in Applied Disaster and Emergency Studies at
13 Brandon University. We also have Mr. Ryan Teschner, Executive
14 Director and Chief of Staff of the Toronto Police Services
15 Board.

16 And we have three experts joining us online, so
17 that you for joining us from a variety of locations around the
18 world. We have Dr. Dwight Newman, KC, Professor and Canada
19 Research Chair from the University of Saskatchewan College of
20 Law; Dr. Judith Sayers, President of the Nuu-chah-nulth Tribal
21 Council and member of the Hupacasath First Nation; and Mr. Cal
22 Corley who is the Chief Executive Officer of Community Safety
23 Knowledge Alliance and a former Assistant Commissioner of the
24 RCMP.

25 So thank you all for joining us this afternoon.
26 As the Commissioner has said, this is a panel that focuses on
27 interjurisdictional responses to protests and emergencies. The
28 experts that we have with us today are going to discuss topics

1 that fall roughly within sort of three themes, so the first
2 being the roles and responsibilities of different orders of
3 government in responding to protests and emergencies or public
4 order events and emergencies. The second theme will be more
5 focused on mechanisms for consultation, coordination and
6 cooperation between different levels of government and between
7 agencies. And then, finally, we'll focus on the Emergencies Act
8 itself and looking at the appropriate roles of multiple levels
9 of government in the use of the *Federal Emergencies Act*.

10 So I'm going to kick us off with some of the
11 questions that we have discussed focusing on, and we're going to
12 start by laying a bit of ground work in terms of
13 responsibilities of different orders of government.

14 So, Professor Newman, I'm looking to you to help
15 us lay a bit of the groundwork here by starting us off with the
16 question of, what is the federal government's constitutional
17 role in addressing emergencies, and how did the convoy events
18 engage matters of federal jurisdiction?

19 **--- PRESENTATION BY DR. DWIGHT NEWMAN:**

20 **DR. DWIGHT NEWMAN:** All right. Good afternoon,
21 and I'm very pleased to be a part of this discussion. I'm
22 fortunate to be joining from London England today and just glad
23 that the Zoom connection could work to facilitate participating.

24 I'll start off just briefly by saying that I
25 don't want to speak too directly to convoy itself so much as to
26 speak about the issues of jurisdiction on emergencies generally
27 in the context of the forward-looking nature of this roundtable.

28 The federal jurisdiction in relation to

1 emergencies can come from different sources, and the term
2 "emergencies" is potentially broad and potentially multi-faceted
3 and used in different ways in different contexts. But thinking
4 in general in terms of a federal jurisdictional role in the
5 context of emergencies, that can come from sources of federal
6 authority under Section 91 of the *Constitution Act, 1867*. Areas
7 where the federal government has jurisdiction, such as on
8 matters of international trade, the international borders of
9 Canada, there's federal jurisdiction, and to the extent an
10 emergency engages those contexts, there could be a
11 straightforward federal jurisdiction.

12 The same could be said of something like the
13 National Capital Region in terms of their being a recognized
14 area of federal jurisdiction there. At the same time, the
15 federal government can also take up jurisdiction that it would
16 not normally have in the context of an emergency making use of
17 the Emergency Power Branch of the Peace, Order, and Good
18 Government power held by the federal government, and that's been
19 interpreted in some case law to allow the federal government,
20 in the context of a temporary situation where it has made a
21 formal declaration of an emergency -- and there's controversy on
22 just how to describe it, but where there's a sufficiently strong
23 basis for that determination of there being an emergency with
24 that being defined differently in different cases, the federal
25 government has constitutional jurisdiction in relation to
26 something that normally would be within provincial jurisdiction.

27 Of course, provinces have, normally, much
28 jurisdiction, over matters of local concern, matters of property

1 and civil rights, many things that would relate to emergencies
2 in the broadest sense of the term, and so this POGG Emergency
3 Branch power is significant.

4 The Emergencies Act is a federal statute that
5 doesn't necessarily use all of the powers of the POGG Emergency
6 Branch but that uses that POGG Emergency Branch in some
7 circumstances. Some parts of the *Federal Emergencies Act* relate
8 to matters more within federal jurisdiction, and international
9 emergency or a war emergency would be within federal
10 jurisdiction.

11 Something that's a public welfare emergency, or a
12 public order emergency, might normally have been in federal
13 jurisdiction, or provincial jurisdiction, or a bit of a mix of
14 both, and the Emergencies Act says that in some circumstances,
15 the federal government may take up jurisdiction there,
16 presumably relying upon the POGG Emergency Branch if the matter
17 would normally be within provincial jurisdiction. The
18 *Emergencies Act* shifts power from the legislature to the
19 executive at the federal level, and it shifts, sometimes,
20 jurisdiction temporarily from province to the federal government
21 based on a set of balancing mechanisms within the Act, including
22 a number of a provisions on consultation with provinces,
23 requirements of provincial consent in certain circumstances, in
24 Sections 14 and 25 of the *Emergencies Act*, and various matters.

25 I'll just say, in the context of emergencies
26 where federalism is at stake, federalism can be affected by
27 responses to emergencies, whether it's symbolically or in
28 practical ways that resound over time. And certainly, the

1 invocation of the War Measures Act in the context of the October
2 Crisis -- obviously, predecessor legislation -- had some long-
3 term effects of federalism and issues related to the federal-
4 provincial tensions in the country. It remains to be seen what
5 will happen out of the 2022 situation.

6 The other thing I'll say -- and this probably
7 feeds into other topics, though, is simply that the *Emergencies*
8 *Act* has not been updated in light of Section 35 rights or in
9 light of the United Nations Declaration on the *Rights of*
10 *Indigenous Peoples Act*, Section 5, which obviously requires
11 measures at the federal level to ensure that the laws of Canada
12 are consistent with the UN Declaration on the Rights of
13 Indigenous Peoples. That's a topic I imagine we'll be getting
14 more into.

15 The federal government has ways of using some of
16 its jurisdiction more than it has without using the *Emergencies*
17 *Act*, necessarily. And to the extent that the convoy situation
18 highlighted vulnerabilities of the National Capital Region, I
19 would just say, the solution isn't necessarily solely in terms
20 of modifications to the *Emergencies Act*, but might involve the
21 federal government taking up more of its jurisdictional
22 potential in the context of the National Capital Region through
23 legislation just on how the National Capital Region is regulated
24 and policed. And that could be something else to be considered
25 apart from the *Emergencies Act*.

26 So those would be a few comments in response to
27 that question, and I might leave it there.

28 **DR. JOCELYN STACEY:** Thank you very much,

1 Professor Newman.

2 I wonder if just to complement that nice sort of
3 overview of federal jurisdiction we might get a bit of insight
4 from other experts about sort of what those constitutional roles
5 look like on the ground.

6 And so Mr. Teschner, would you like to weigh on
7 that maybe briefly? And maybe just -- I'll give a reminder to
8 everyone to speak slowly if you can so that our interpreters can
9 keep up.

10 **--- PRESENTATION BY MR. RYAN TESCHNER:**

11 **MR. RYAN TESCHNER:** Thank you, Professor Stacey.

12 My perspective is going to be a bit more local in
13 nature, because at the end of the day, in responding to an
14 emergency, regardless of who makes the declaration, the policing
15 that needs to be responsive to that emergency, generally
16 speaking, happens locally. And so it doesn't necessarily mean,
17 of course, that other interests, whether they be provincial,
18 federal, or both aren't engaged, but my message here today is
19 that effective coordination in responding to an emergency,
20 assessing whether or not to invoke the Act, or make a
21 declaration requires us to really take the lessons that we
22 should learn from cooperative federalism.

23 And that also includes giving a zone for
24 municipalities as appropriate through the provinces, but
25 importantly, for police services boards municipally that have a
26 statutory role to play when it comes to the adequacy and
27 effectiveness of policing in that jurisdiction, which includes
28 emergency response.

1 And so making sure that there is a mechanism
2 through which police boards that are most impacted can be part
3 of that consultative process, I think is essential.

4 I think the question that I was wrestling with in
5 preparing for this is how can any entity determine when
6 something engages a broader interest beyond its own, and if so,
7 what does that mean for the different orders of government?

8 And so I think one of the ways that this
9 Commission, Mr. Commissioner, could be helpful is perhaps, in
10 clarifying, you know, based on what was just said, clarifying
11 those triggers or those thresholds and getting perhaps a little
12 bit more granular. The approaches to escalation need to be
13 better set out, and that doesn't necessarily mean that they all
14 have to be set out in legislation, but they have to be set out
15 and they have to be understood so that we ultimately can move
16 towards a modern, multi-agency, governance framework that
17 defines roles, responsibilities, escalation methods,
18 communication protocols as an emergency is unfolding and while
19 it is unfolding, ultimately so that these responses don't unfold
20 in an ad hoc manner and everybody knows, to borrow an Abbott and
21 Costello analogy, who's on first?

22 **DR. JOCELYN STACEY:** Thank you.

23 Okay. So we're quickly getting the picture of
24 emergency management being a multi-jurisdictional endeavour.

25 And so one area of jurisdiction that we want to
26 bring into the conversation is the role of Indigenous
27 jurisdiction in protests and emergencies.

28 And President Sayers, can I turn it over to you

1 to speak to that?

2 **--- PRESENTATION BY DR. JUDITH SAYERS:**

3 **DR. JUDITH SAYERS:** Yes, thank you.

4 Judith Sayers, coming to you today from the Coast
5 Salish territories, and I am pleased to be able to talk to you
6 about Indigenous jurisdiction.

7 And I'm going to talk about First Nations in
8 particular. Indigenous people, as you know, includes Métis and
9 Inuit. My expertise is First Nations, so I'm going to talk
10 about First Nations.

11 And First Nations have been here since, in our
12 language, (Native word) or time immemorial, longer than any mind
13 can know. Our governments have been in place that long as well,
14 and were the first governments on these lands known as Canada.

15 We had in place our own laws, protocols,
16 communications, and looked after and protected our own lands and
17 resources.

18 All of the lands in Canada have First Nations
19 title on them. They are within the territories of the over 633
20 First Nations across this land.

21 Many different kinds of First Nations, there are
22 number of treaties which are -- a lot of them are historic and
23 shared their land to the depth of the plow. There are
24 Aboriginal title lands in British Columbia which have never been
25 subjected to treaties or session or discovery.

26 Then there are modern treaties where the issue of
27 lands and laws have been negotiated.

28 Yet, as important as First Nations governments on

1 these lands, the title and the role of First Nations in Canada,
2 neither the *Emergencies Act* or the *Emergency Management Act*
3 mentions First Nations as governments. Everyone else gets
4 noticed, the provincial governments, municipal, but not First
5 Nations, so there's no formal role to play when emergencies
6 arise.

7 Yet, when emergencies happen, it is First
8 Nations' lives at stake, their lands, resources, and their
9 ability to carry out their section 35 protected rights.

10 The danger, of course, in not mentioning First
11 Nations jurisdiction in the *Emergencies Act* is that other
12 governments would assume authority over the lives and lands of
13 First Nations without their consent and without the proper
14 background and knowledge, and usurp the authority of First
15 Nations.

16 As a first recommendation, the federal government
17 must amend the two *Emergencies Act* to include First Nation
18 governments. This amendment process must be inclusive of all
19 First Nations in Canada as to what role First Nations will play
20 in emergencies, how they are involved in decision making, what
21 information they are provided, ensure that their people, rights,
22 lands, and resources are protected.

23 Canada has now in place a law called the *United*
24 *Nations Declaration on the Rights of Indigenous People Act* and
25 it's now law and needs to take into consideration and make their
26 laws consistent within their emergency law. And so this is
27 something that has to take place because this is now legislated.

28 And in particular, Article 30 of UNDRIP talks

1 about:

2 "Military activity shall not take place in
3 the lands or territories of Indigenous
4 people unless justified by relevant public
5 interest or otherwise freely agreed with
6 or requested by the Indigenous people
7 concerned, and state shall undertake
8 effective consultations with the
9 Indigenous people concerned through
10 appropriate procedures, and in particular,
11 through their representative institutions
12 prior to using their lands, territories,
13 for military activities."

14 So if by any chance in emergency the military is
15 called in, we have to define what does that procedure look like?
16 What say do First Nations have in that?

17 While Oka was not considered an emergency, no one
18 will forget the tanks rolling onto the Mohawk lands, called in
19 to stop the First Nations people from defending their lands.

20 UNDRIP and the changes that need to be made to
21 federal law and policy to reflect these commitments must be done
22 and it must be consistent with all the articles in UNDRIP.
23 There is a duty on the federal government to report to and
24 engage First Nations.

25 First Nations need to be able to help define what
26 an emergency is, and not just the decision of the federal
27 government. We must be able to determine what is critical
28 infrastructure and services. Often, remote or small communities

1 are not considered critical infrastructure because it only
2 affects a small number of people or a smaller community that's
3 critical to them.

4 During the big fires in British Columbia a couple
5 of years ago, I was meeting with a minister, and I got a call
6 from one of our First Nations and the fire was just coming down
7 the hills quickly to their community. I had to plead with the
8 minister to send in helicopters and to consider that critical
9 infrastructure, but that wasn't what they had thought. But
10 thankfully, they did send in the helicopters to stop the fire.

11 These are the kind of critical situations that we
12 need to talk about.

13 Or during the flooding in British Columbia where
14 gas wasn't being brought into the province due to all of the
15 transportation corridors being shut down. We were all limited
16 to 30 litres per car. Had to negotiate with the government to
17 increase that for our remote communities because you can't get
18 very far in communities on 30 litres. You can't get in to get
19 your food and necessary supplies on that.

20 So it's very critical that there is an amendment
21 to the *Emergencies Act* and *Emergency Management Act* so we can
22 clearly lay out what is needed in First Nations communities.
23 Thank you.

24 **DR. JOCELYN STACEY:** Thank you, President Sayers.

25 So I think maybe what we should do is move on now
26 that we have this sense of the different jurisdictions that are
27 involved in emergency management to talking about mechanisms for
28 facilitating consultation, coordination, and cooperation, and

1 see if we can get into some examples of what kinds of mechanisms
2 have facilitated successful interagency and intergovernmental
3 coordination in past emergencies.

4 And so I'll turn it over to Mr. Teschner to start
5 us off with that, and then we'll bring in some others as well.

6 **--- PRESENTATION BY MR. RYAN TESCHNER (CONT'D) :**

7 **MR. RYAN TESCHNER:** Thank you. People that I
8 work with will understand me when I say that I use a Pee Wee
9 Soccer analogy to talk about how I view emergency management
10 sometimes. And those who are intimately familiar with it may
11 not quite see it that way, but I think there are many, including
12 those in government, who perhaps don't understand that there are
13 different responsibilities at different levels and different
14 methods of engagement. And so to some, I think it does seem a
15 lot like Pee Wee Soccer, where the whole team is chasing the
16 ball and no one is respecting the position that they're supposed
17 to play.

18 I think in the context of emergency management,
19 we have to avoid two things. We have to avoid the assessment
20 and response depending on personalities as opposed to structure
21 and good governance, and we have to avoid what would have been
22 known as stove pipes or silos to information sharing.

23 I believe that we need to update, to some extent,
24 our multijurisdictional infrastructure and approach to better
25 align with the principles of cooperative federalism I mentioned
26 earlier.

27 In the context of policing specifically, there
28 are some examples where this is done well operationally. And if

1 you think back to the G20 Summit and to the 2010 Winter
2 Olympics, you did have the RCMP, the provincial police of
3 jurisdiction, at least in the case of Ontario, and municipal
4 police services in Toronto in an integrated security unit, where
5 there was plans that were codeveloped, codesigned, where
6 everybody understood, more or less, of course, the Morden Report
7 spoke to some of the gaps, but where they went in, at least
8 among themselves, understanding who was responsible for what,
9 and everybody understood how the information was supposed to
10 flow. It facilitated the coordination of both the
11 interjurisdictional planning and response to those public order
12 events and emergencies.

13 Of course, lots of lessons to be learned from the
14 Morden Report, that that was the same structure that was used in
15 the 2010 Olympics.

16 In the context of national security, there are
17 integrated national security enforcement teams that operate,
18 with the RCMP being given primacy because it's matters of
19 national security, where you have federally led investigative
20 teams that are comprised of the RCMP, Canada Border Services,
21 Citizenship and Immigration, CSIS, but also provincial and
22 municipal police services. And so even though the RCMP have
23 primacy, interwoven within the relationship is a joint forces
24 integrated environment where police share the operation
25 responsibilities that flow from the national security needs and
26 the decision-making process is structured in a more shared way.

27 My suggestion here is that emergency management
28 could potentially benefit from an upgrading, if you will, to its

1 governance structure when it comes to interjurisdictional
2 responses.

3 And I take some of my inspiration from the U.K.
4 Emergency Response and Recovery, a 2013 document that provides
5 non-statutory guidance that accompanies the U.K. *Civil*
6 *Contingencies Act*.

7 And I think that a modernized emergency
8 governance structure would have five key components. The first
9 would be -- well, the premise would be that you would have an
10 interjurisdictional coordinating group, a superstructure of
11 sorts, that would be designed and that would operate based on
12 five elements.

13 The first is an understood structure and
14 hierarchy with a sufficient role for, yes, the local level, and
15 to President Sayer's point, the First Nations and Indigenous
16 Communities that are impacted by that particular emergency.
17 Clear roles, clear responsibilities, a clear mission statement,
18 as part of that structure. Each organization or entity would be
19 represented and would retain their own command authority but
20 would exercise control over their own operations in a
21 coordinated and facilitated fashion and could rely on discussion
22 and consensus, for the most part, and it would allow for a
23 common operational picture, and more efficient response in
24 deployment when you have multiple levels or orders of government
25 involved. It would promote a full information exchange between
26 the partners, where no local entity that is impacted is placed
27 at a disadvantage. And of course, it would help ensure
28 interoperability.

1 The second is to include, yes, the formal actors
2 I mentioned, but also informal actors. A hybrid structure that
3 would involve outside of government actors that may be impacted,
4 or may be able to lend a hand in terms of the development and
5 implementation of the response.

6 And the 2014 Ebola outbreak in Sierra Leone was
7 an example where that kind of structure was used to mobilize
8 community groups, volunteers, religious groups, all involved in
9 the response to that particular emergency.

10 The third, and I'm sure Cal Corley will speak
11 about this, is the importance of joint exercises and trust
12 building through those exercises, that this interjurisdictional
13 coordinating group should engage in long-term planning among the
14 partners, but also modeling, table topping, and exercise in
15 advance of any emergency so that they understand better how to
16 operate within that context, and so that they know what to do
17 when you're in the grey zone of a plan that doesn't necessarily
18 speak to precisely the circumstances that you're facing.

19 The fourth would be a transference of duties as
20 appropriate. Emergencies generally cause people to revert to
21 institutional lines, but that can sometimes cause fragmentation
22 and doesn't necessarily result in the best resource being
23 deployed to address that particular circumstance.

24 So looking for opportunities within the structure
25 to properly, and with consent, redistribute duties in a way that
26 still respect jurisdiction, but is premised on a functional or
27 capacity approach.

28 And the fifth is communication and the importance

1 of the structure allowing communication to work over all phases
2 of an emergency to ensure that the multi-agency approach with
3 respect to communication functions well, and that it satisfies
4 the communication needs of all of the people around the table,
5 because those needs may be different.

6 I would even urge exploring some kind of national
7 communication mechanism for law enforcement agencies that
8 balance the intragroup, the intergroup, and public
9 communications that law enforcement often have to engage in in
10 the context of emergency so that we minimize confusion, optimize
11 consistency, and make sure that everybody has the ability to get
12 a message out to the public.

13 Thank you.

14 **DR. JOCELYN STACEY:** Thank you.

15 Mr. Corley, you have some examples that you'd
16 like to add around coordination, cooperation, consultation?

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

18 **MR. CAL CORLEY:** Yes, indeed. And thank you for
19 that, Jocelyn.

20 Thank you, Commissioner Rouleau and team, for
21 inviting me to participate in today's panel again.

22 As mentioned, I'm a former Assistant Commissioner
23 at the RCMP with experience some years ago in both protective
24 operations and national security investigations here in the
25 National Capital Region, as well as time spent on secondments at
26 both Public Safety Canada and at the Privy Council Office within
27 the Security Intelligence Secretariat.

28 I'm calling in today. Unfortunately I've got a

1 bit of a chest cold. Calling in from the National Capital
2 Region, and I acknowledge being on the traditional homeland of
3 the Algonquin Anishinaabe Nation.

4 I've been asked to pick up on a couple of area of
5 focus today, principally around -- picking up on my comments
6 yesterday at the round table on public protest policing, with
7 particular attention to three areas: how to institute stress
8 testing and multi-day, multi-agency training exercises that
9 support an effective eco system response to public order events
10 and emergencies.

11 Number two, to pick up on -- and it actually
12 picks up nicely on Ryan's comments a moment ago about how Major
13 Case Management can work to ensure coordination while allowing
14 to address local context.

15 And finally, how the *Security Offences Act* and
16 the *Foreign Missions and International Organizations Act* operate
17 in practice insofar as police operations and cooperation are
18 concerned.

19 I'll turn first to joint agency exercises. I'll
20 try not to be too repetitive to what I said yesterday, but in my
21 view, it should have been clear yesterday, but I'll be explicit.
22 This type of training, in my judgement, is a critical success
23 factor going forward. And I'll, again, note, Ryan, in his
24 proposed five-point plan.

25 These exercises in the National Capital Region
26 used to be commonplace during the 1990s. Similar ones, of
27 course, were also instituted in advance of events such as the
28 1997 Apex Conference, G20, and other planned events, but that's

1 a distinction with those in the NCR. These were a standard
2 practice. They were not in preparation for any specific event.
3 These exercises were often two days or so in duration, and they
4 were coordinated at that time by the then Solicitor General
5 Department, now Public Safety Canada.

6 These are not alternatives to other local
7 training or educational efforts, including tabletop exercises,
8 as important as they are. And as we've heard today from
9 Chief Ramer, that often much of that local training can be
10 rather piecemeal in many cases.

11 These exercises typically involve the full range
12 of police agencies in the NCR on both sides of the river, CSIS,
13 Public Safety Canada, PCO, and relevant departments and agencies
14 from the City of Ottawa, City of Gatineau, and the Province of
15 Ontario. In a contemporary context, of course, as I mentioned
16 yesterday, they should also involve Indigenous government
17 representation, as well as the private sector actors. Both of
18 these issues, again, are a matter of record from yesterday.

19 The principal focus on these exercises back when
20 I was involved was largely around the full range of national
21 security issues, and served to stress test all aspects of the
22 enterprise from governance, policymaking, information-sharing,
23 and other protocols, leadership, tactics, and operations.

24 As I mentioned yesterday, assuming that we had
25 national provincial standards in place, supported by appropriate
26 agreements between governments, and as between governments and
27 as between police agencies, it's crucial that these standards
28 and elements of those agreements be stress tested and practiced.

1 Because even the best laid plans typically survive first
2 contact, so this is really around getting around that to ensure
3 the effective application of previous intent.

4 Not only did these improve individual and
5 collective capacities and capabilities, but it really helped
6 iron out kinks in the system, developed a good understanding of
7 agreed-to procedures, improved information flows and
8 responsiveness, nimbleness, and allowed leaders and
9 practitioners from these different agencies to develop closer
10 relationships. Something that's highly important where the
11 rubber hits the ground.

12 As mentioned yesterday, I've learned recently
13 that such in-depth exercises have not been undertaken in the
14 National Capital Region in the manner that I have spoken of for
15 some years. I can't speak to what's happening in other centres
16 across Canada, but it certainly speaks to the NCR.

17 It would seem to me that looking forward, with
18 the realities of start-up limitations, that a training regimen,
19 if it was to be reignited or reinitiated, should first focus on
20 the National Capital Region and then build outwards to other
21 major centres across Canada based on ongoing risk scanning
22 assessments. In the absence of such exercises, the risk that is
23 the formal standards protocols and agreements will fall short
24 when it comes to implementation.

25 So what would be required to initiate such
26 training exercises? I'd obviously defer to legal colleagues,
27 but it strikes me, based on my experience, that initiating such
28 an endeavour should not require legislative or regulatory

1 change. Rather, it would require it in the form of policy
2 decision, supported by a somewhat modest funding envelope to
3 enable Public Safety Canada and/or Emergency Preparedness Canada
4 to consult, develop, and implement appropriate and ongoing
5 sustainable regimen of joint training, and joint learning.

6 A commitment from the agencies and departments to
7 participate in such exercises is also important. Today,
8 certainly within policing with the challenges on finite police
9 resources, it's important that this be seen as something that's
10 important for the collective good and that resources be assigned
11 to these types of exercises.

12 The other area that I should touch on briefly
13 that I didn't touch on yesterday has to do with police/military
14 training, joint training as pertaining to aid the civil powers.
15 This is another opportunity that today, from my understanding,
16 today only a limited number of mid-level and senior police
17 leaders have occasion to undertake jointly with their military
18 counterparts.

19 And the experience I had in that type of joint
20 training with the military was invaluable, again, in
21 understanding their capacities, their capabilities. And
22 logistic superiority in many cases is of tremendous value and
23 probably should be explored.

24 Just closing off on this section. If it was
25 fully implemented I am confident, based on my experience, that
26 such a regimen of ongoing joint learning would serve the
27 security and community safety ecosystem and/or communities well
28 for years to come.

1 I'll turn now to Major Case Management. I was
2 asked to pick up on comments yesterday in terms of the MCM model
3 as an exemplar, I suppose, for lack of a better term. And I
4 think picking up on Ryan's comments a few moments ago, really
5 what he described in his proposed five-point plan really is what
6 Major Case Management model is about.

7 Like public -- like major public order events and
8 emergencies, major criminal investigations are typically complex
9 and multi-faceted. Those investigations often cross multiple
10 jurisdictions, and involve more than one investigative agency,
11 in many cases, many investigative agencies. The stakes are
12 high, the cost of failure of not following proper methods or
13 standards and not respecting evolving jurisprudence can result
14 in breaches of *Charter* rights, wrongful convictions, and other
15 miscarriages of justice.

16 Major Case Management provides a flexible, yet
17 standardised framework and supporting tools, that enable
18 skillful leadership and structured coordination required of
19 these complex matters.

20 Emphasising accountability in a multi-
21 disciplinary approach, Major Case Management provides sound
22 structures for the investigation, including, importantly, a
23 centralised leadership and coordinating body, similar to Ryan's
24 first point, at the national level as pertaining to the present
25 matter; clear and unambiguous standards; standardised training;
26 and common technologies. It establishes clear lines of
27 responsibility and decision-making. It supports the idea of
28 unified, inter and multi-agency leadership. Rigorous approaches

1 in infrastructure in the case of Ontario, for example, even the
2 technology that's used across police services in Ontario to
3 support Major Case Management is one particular software.

4 I could go on with other benefits or what Major
5 Case Management intended to do, but suffice to say it's the
6 centrepiece of effectively undertaking these types of complex
7 endeavours. The Province of Ontario developed its regulation
8 and corresponding Major Case Management manual, which is
9 administered and maintained by the Solicitor General, in the
10 wake of the Paul Bernardo investigation. British Columbia, in
11 its case, its particular framework, it evolved from the Missing
12 Women Commission of Inquiry.

13 Note in both of those cases, this was an outside-
14 in directive to policing. And the evidence over, you know, big
15 changes to policing tend to come from the outside, the evidence
16 to that is clear.

17 MCM is a proven technology. National standards
18 that are overseen by an advisory group of senior police experts,
19 and the Canadian Police College's Major Case Management course
20 is the standard for training in Canada.

21 How might a comparable methodology support more
22 effective responses to Public Order Emergencies? Well, I could
23 walk through that -- an adapted list that's based on the Major
24 Case Management mode that I just referred to, but I think it's
25 pretty clear to anyone listening that that transference, and in
26 the spirit of time, I won't go through it, but it's pretty clear
27 to me that there's a really good example there of how this can
28 be done much more effectively.

1 Finally, I'll turn to the *Security Offences Act*
2 and *Foreign Missions and International Organizations Act* that I
3 was asked to speak to.

4 The issues here are how relevant aspects of these
5 pieces of legislation operate in practice, and what rules do
6 other police agencies, that being non-RCMP agencies, what roles
7 do they have when these Acts are invoked. Excuse me.

8 The implication under each Act is quite similar,
9 but for the purposes of brevity, I'll speak only to the *Security*
10 *Offences Act*. Of course, this Act deals with the enforcement
11 investigation of certain national security related offences as
12 currently set out in section 2 of the *CSIS Act*.

13 When the *SOA* is invoked by the Attorney General
14 of Canada on the belief that an offence under the Act has been
15 committed or likely to occur, section 6(1) stipulates that the
16 RCMP will assume lead responsibility for an investigation.
17 Importantly though, subsection 6(2) deals with the practical
18 reality of the conduct of these investigations. In essence,
19 that subsection states that to facilitate consultation and
20 coordination in relation to the undertaking of related duties,
21 the Minister of Public Safety and Emergency Preparedness can
22 enter into agreements with the provincial governments affected.
23 Experience has largely been, in practice, that the RCMP
24 recognized that they cannot successfully undertake these types
25 of investigations on their own. At a minimum, they often lack
26 all forms of local knowledge. But local agencies also, beyond
27 just specific local contextual knowledge, they also bring
28 tremendous value in terms of complementary capabilities and

1 know-how that can be beneficial to the investigation, hence, the
2 greater good.

3 Now in practice, this is part of why the
4 regimental stress testing standards, protocols and such
5 bilateral and multilateral agreements that we spoke about become
6 highly important. The transitioning of leadership in such
7 instances, and I'd suggest here and I think Ryan touched on it
8 as well, whether we're speaking about the implication or the
9 application of the *Security Offences Act* or the *Emergencies Act*,
10 these tend to be investigations that evolve, and that transfer
11 of leadership or transference of responsibility and
12 accountability often occur at times when tensions are often
13 already stressed, by virtue -- by the very nature of the
14 incident that's at play, and the overall situ at hand. So these
15 can be awkward at the best of times. Beyond that, personalities
16 and egos, both institutional and individual cannot be
17 discounted.

18 So having arrangements formalized and in place
19 that are tested, exercised earlier as a matter of course can pay
20 huge dividends in terms of that seamless transition. The
21 example -- one example yesterday was in relation to back in
22 1986, a hostage taking at the Bohemian High Commission in
23 Ottawa. And, of course, this predates these types of exercises,
24 but it really featured two senior police leaders from two of our
25 organizations on the sidewalk engaged in a heated debate over
26 who had jurisdiction. We don't need -- that doesn't endure
27 trust or confidence in policing and something that can be
28 avoided through mechanisms such as have been mentioned.

1 And now finally just would like to come back on a
2 comment yesterday as well. In Quebec, the province of Quebec,
3 of course with its six-level model of policing, has largely
4 overcome these issues. And by -- and it was referred to earlier
5 today I think by Christian Leuprecht, but I recall a
6 conversation with the former chief of the Gatineau police, Mario
7 Harel, and in speaking in this example it was about murder
8 investigations. So if his team is at a murder scene and they're
9 the police of jurisdiction, but once they realize, perhaps
10 because of the amount of drugs, money, weaponry that's there,
11 that this involves organized crime, they no longer have
12 jurisdiction on organized crime investigations. And they are
13 now protecting a crime scene and the Sureté du Quebec become the
14 police of jurisdiction on that investigation.

15 The six-level model in Quebec has been in place
16 for years. It took a bit of time early for this to become
17 normalized within police culture. But today, if I listen to
18 leaders in -- police leaders in Quebec, they like it. They
19 don't have to prepare for events or investigations that are
20 beyond their reasonable capacities based on the size of the
21 police agency, and they can prepare and do very well within the
22 scope of things that they can do. So clear, unambiguous models
23 and protocols have become just part of the way business is done
24 in that regard in Quebec.

25 Thank you for the opportunity to share these
26 views, and, Jocelyn, I look forward to the rest of today's
27 conversation.

28 **DR. JOCELYN STACEY:** Thanks, Mr. Corley. Those

1 are -- it's great to have those examples.

2 And, President Sayers, I wonder if you might like
3 to join in on this part of the conversation. Any examples that
4 come to mind for you of successful coordination, cooperation
5 between First Nations and Crown governments?

6 **--- PRESENTATION BY DR. JUDITH SAYERS (CONT'D) :**

7 **DR. JUDITH SAYERS:** Thank you. Yes, I would.
8 Judith Sayers here.

9 One of the government-to-government memorandums
10 of understanding that we reached was during the COVID crisis.
11 And as governments, we weren't able to make decisions because
12 critical data was being kept from us. We didn't know how many
13 COVID cases were in surrounding communities. We didn't know if
14 it was okay to tell our members to go into those communities
15 because we had no idea of how many COVID cases. So we went to
16 the provincial government and we said, "Hey, we really need to
17 know this." It took us seven months to negotiate that, which,
18 you know, COVID was still relevant. So it's important that
19 these kind of protocols be entered into prior to, but in order
20 to make decisions during emergencies, First Nations need to have
21 access to information. And I know that there's confidentiality
22 and we did deal with confidentiality in our agreement, but it
23 was important to do that.

24 It's also important in this data to ensure that
25 we have specific data for First Nations on reserve, off reserve
26 if we possibly can have that information, and so any kind of
27 information happening during an emergency makes it important to
28 First Nations, so they know where the fire's coming from. Of

1 course, flooding happens pretty quickly, but just knowing the
2 information that is required, so we can manage emergencies, we
3 can manage what is happening, our responses.

4 Another example would be when Canada closed its
5 borders to the U.S. No doubt, it needed to be done. I'm not
6 questioning that. But by doing so, it also separated our
7 communities that are on both the Canadian and American side.
8 And had we been able to have conversations with Canada, we might
9 have been able to put in some provisions to allow that kind of
10 cross-border activity. Maybe not, I mean, but I think it should
11 have been talked about. And then Canada opened its borders
12 again and let people come in, and in the waterways in
13 particular, some of our communities are remote, on islands and
14 pleasure crafts were coming in and, of course, trying to enter
15 the communities. And, you know, we're trying to exercise
16 jurisdiction and asking people to stay out and on the waterways
17 it was difficult. So you know -- and that's Transportation
18 Canada, kind of people that we're working with.

19 So I think if we can look forward into the future
20 to see what it is that we need, what are the kind of
21 conversations that we need to have in order for us all to
22 respond to emergencies, what roles can we play. And I think the
23 government-to-government coordination needs to be defined. It
24 needs to be put into the *Emergency Act*. You know, how much time
25 does First Nations have to respond to emergencies. Provinces
26 get seven days. Should be the same for First Nations.

27 I think that in order for us to be able to do
28 things properly, we need to be coordinated with, for example,

1 bring in the military to help with forest fires. It's become a
2 common issue in British Columbia. And we should, and I think
3 Ryan talked about this, we need to have that communication, that
4 coordination. We're all working for a common cause, respecting
5 each other's jurisdiction and abilities to do that.

6 I think a financial aid is also something that
7 can be negotiated, what happens after a national disaster, how
8 do we rebuild and replace what was destroyed or damaged. One of
9 our communities that was in a fire that was destroyed still
10 hasn't been rebuilt.

11 One of the other tools that we have is
12 reconciliation and the calls to action. There is a Bill C29
13 before Parliament right now to put in place a body to deal with
14 reconciliation. And having these kind of understandings,
15 dialogues, agreements with federal government is all part of
16 reconciliation. Reconciliation is about making things in the
17 past right, and having been kept out of emergencies, not having
18 a good role, needs to be set right. We need to have those
19 conversations. It's a lot of work. It's a lot of work that's
20 ahead of us, yes. I definitely agree to that, but it's
21 something that has to be done.

22 And I also think the federal government needs to
23 encourage and support protocols between First Nations and the
24 RCMP in time of emergency. How do we work better together?
25 What is the understanding? And I realize this wasn't an
26 emergency but, you know, we all watched in British Columbia,
27 Northern British Columbia, with the Wet'suwet'en, the RCMP just
28 went in and took down all of the land defenders' camps, and it

1 wasn't -- it wasn't done properly.

2 Can we not find better ways to work together so
3 that we can avoid those kinds of situations? And, you know,
4 that's just one example of, you know, what people might call a
5 protest, other people are calling them land defenders. But, you
6 know, these are the hard, hard conversations we need to have.
7 Yes, emergency are federal jurisdiction, but yes, First Nations
8 have rights, and First Nations need to be able to manage to
9 those emergencies in our lands, and we need to have capacity
10 built. How do we fight fires? How do we fight things on the
11 water if we don't have the proper resources to do that.

12 And so those are -- capacity building is a huge
13 area that we need to enter into protocols with. So I thank you
14 for your time.

15 **DR. JOCELYN STACEY:** Thank you for that. A lot
16 of -- I'm hearing a lot of sort of consistency in what the
17 experts are saying so far, right, the importance of
18 communication, entering into agreements and protocols, training,
19 and resourcing, and so in some way it's really no mystery,
20 right? These things all have to happen outside of the actual
21 emergency response.

22 Professor Lindsay, we haven't heard from you yet,
23 and so I'm hoping to bring you into the conversation here to
24 hear a little bit about what tools the federal government has
25 and maybe where there are gaps in terms of what's available
26 outside of the *Emergencies Act*, maybe, to do some of these
27 things that the other experts have set out for us already.

28 **--- PRESENTATION BY MR. JACK LINDSAY:**

1 **MR. JACK LINDSAY:** Thank you for that, Stacey,
2 and thank you very much, Commissioner, for having me here.

3 I want to start, though, by saying it's important
4 to note that emergencies are not crimes. Hazards are not
5 criminals, and our emergency management practices are far
6 broader than policing. While this use of the Emergencies Act
7 was focused on a security issue, we should not frame our future
8 as a policing function.

9 The *Emergencies Act* is only one tool in the
10 national emergency response kit. It is a crucial component of
11 the rule of law. The laws, at the provincial and federal level,
12 allow citizens to know in advance the range of powers and the
13 limits on those extraordinary that governments will exercise
14 during emergencies.

15 The *Emergencies Act* is also not the only outdated
16 tool in what has become a somewhat rusty toolkit. Thank you.
17 It was passed in 1988 alongside the *Emergency Preparedness Act*.
18 That Act, for the first time in law, set out how the Government
19 of Canada would organize and undertake its emergency management
20 responsibilities. It created Emergency Preparedness Canada,
21 answering to its own minister, and reporting annually to
22 parliament, a requirement that was quietly dropped in 1995.

23 Prior to this, the federal government's emergency
24 management function had been restructured or moved between
25 government portfolios over a dozen times over the course of
26 about 40 years, a trend that's continued with several more
27 arrangements before disappearing as a distinct government agency
28 when it was subsumed in Public Safety Canada by the Department

1 of Public Safety and the *Emergency Preparedness Act*.

2 The *Emergency Management Act* that was passed in
3 2007 to replace the *Emergency Preparedness Act* again revised the
4 approach to how responsibilities were distributed within
5 government. It created a more balanced responsibility for
6 emergency planning sitting with every government minister while
7 the minister responsible for the Act is tasked with setting the
8 standard, providing coordination, and ensuring an appropriate
9 level of preparedness. This is approach determines how
10 government agencies are, or at least should be, ready to meet
11 the demands of all four types of emergencies.

12 The *Emergency Management Act* requires all the
13 ministers to have emergency plans for their portfolios that
14 include any programs, arrangements, or other measures to assist
15 provincial governments, and through the provincial government's
16 local authorities, and any federal/provincial/regional plans.
17 It is unclear to me if any such plans existed within the federal
18 departments that may have included programs or arrangements to
19 assist provincial governments with kind of public order
20 disruption, or if there were federal/provincial/regional plans
21 for Ottawa, or for other sites. I accept that such plans may
22 have been in place but not publicly available.

23 The organizational structure that we have
24 remained in place from 2007 to 2021, something of a record for
25 emergency management in Canada, when the Prime Minister the
26 *Emergency Managements Act's* ministerial function and placed it
27 with the new Minister for Emergency Preparedness. The
28 implications of that change have not been fully resolved.

1 Public Safety Canada has developed the policy
2 documents that form a loose hierarchy under the mandate of the
3 *Emergency Management Act*. Many of these policies tools were in
4 response to the 2008 Report of the Standing Committee on
5 National Security and Defence. That Senate report was titled
6 "Emergency Preparedness in Canada: How the fine arts of
7 bafflegab and procrastination hobble the people who will be
8 trying to save you when things get really bad". The report was
9 not positive. The Senate Committee concluded they did not
10 believe the Canadian Government have been doing their job in
11 preparing for kinds of major national emergencies that are bound
12 to confront Canadians in the coming years.

13 Time is too short to explore each of the policy
14 documents in depth, and I must also, again, say that, as a
15 citizen, I can only see what Public Safety Canada puts forward
16 on its websites. You've already heard of the emergency
17 management framework for Canada, the
18 federal/provincial/territorial agreement on its principles.
19 There's also the emergency management strategy for Canada and
20 its associated interim action plan that sets fairly aspirational
21 goals for the portfolio over the upcoming decades, but there are
22 many other policies that are -- where the polish is fading.

23 The federal policy for emergency management 2012
24 simply paraphrases the obligations created by the *Emergency*
25 *Management Act* into a police statement.

26 The National Emergency Response System, 2011,
27 describes how the federal/provincial/territorial relationship in
28 coordination systems should be in place while also placing the

1 principles of emergency management into a federal policy.

2 The Emergency Management Planning Guide from 2010
3 was intended to assist all federal government institutions to
4 develop their all-hazard strategic emergency management plans,
5 each of which should establish the federal government's
6 objectives, approach, and structure for protecting Canadians and
7 Canada from threats and hazards in that minister's area of
8 responsibility and sets out how the institution will assess a
9 coordinated federal emergency response.

10 Also in 2010, they brought out the Federal
11 Emergency Response Plan. Again, the website says it was last
12 update in 2010. It's designed to harmonize federal emergency
13 response efforts with those of the provinces and territories,
14 non-government organizations, and the private sector, and it
15 includes in it the Federal Emergency Response Management System
16 which provide governance structure and the operational
17 facilities for the Government of Canada to respond to
18 emergencies. It establishes emergency response functions and
19 assigns tasks to different departments.

20 I'm not aware of how any of this planning has
21 progressed in the past decade or if any of those plans developed
22 or implements were done so in regard to the 2022 public order
23 emergency. However, Deputy Minister Stewart, the Deputy
24 Minister from Public Safety Canada, testified to you on Monday,
25 November 14th, and he said:

26 "In general, we did not treat the
27 protests as an emergency management
28 issue and that the framework that we've

1 designed and agreed with the provinces
2 and territories to deploy does
3 typically apply to issues of public
4 security in defence of law enforcement.
5 It deals with natural disasters and the
6 like.”

7 This is an interesting distinction that does not
8 seem to reflect the laws and policies I have just discussed.
9 For example, the *Emergency Management Act* requires each minister
10 to include measures to support the Canadian Armed Forces in case
11 of war. This should raise the question of which national
12 emergency is the *Emergency Management Act* and all its downstream
13 plans and policies were meant to address, if not all of them.

14 Of course, each time of national emergency has
15 associated policies and procedures that fall into many different
16 portfolios, yet every federal government department is required
17 by the *Emergency Management Act* to identify the risks to their
18 area and the express policy of the government is to take an all-
19 hazards approach, which includes addressing vulnerabilities,
20 both natural and human-induced hazards and disasters, and all-
21 hazards approach takes in human-induced disasters that concern
22 emergency management including intentional events that encompass
23 part of the spectrum of human conflict and the disruption of
24 critical infrastructure.

25 Again, this makes me question the relationship
26 between the *Emergency Management Act* and the *Emergencies Act* if
27 not all hazards and not all four types of emergencies are to be
28 considered in planning.

1 That flurry of policy writing around 2010 may
2 have seemed out of date, but Public Safety Canada joined the
3 National Emergency Management Team late in the game.

4 Prior to 1988, Canada had no emergency management
5 legislation, while all the provinces had passed their own laws,
6 starting back in the 1950s. So there's now a lack of
7 consistency across Canada's legal landscape with regards to
8 emergency management. The provinces and territories each have
9 their own statutes that combine features of both the *Emergencies*
10 *Act* and the *Emergency Management Act*, but do not necessarily
11 contain all the same requirements, nor are the provinces
12 consistent in where their emergency management function is
13 located.

14 I also wanted to point out that there is another
15 -- I'm just going to move ahead -- challenge that we have that
16 the *Public Safety Act* of 2004 amended various federal acts after
17 the September 11th attacks. It inserted emergency director
18 powers to Ministers responsible for certain acts to allow for
19 urgent action for the purpose of public safety.

20 For example, the *Aeronautics Act* was amended to
21 allow the Minister to make interim orders to deal with
22 significant risk direct or indirect to aviation safety.

23 The power for Ministers to exercise these
24 emergency directives added to the federal toolbox 15 years after
25 the *Emergencies Act* was passed could resolve many potential
26 situations without recourse to a national emergency. This
27 highlights that the *Emergencies Act* does not reflect the
28 intervening decades of policy and legislative change within the

1 Federal and Provincial Government.

2 And so I'll just make one recommendation type
3 comment now.

4 In line with the tiered approach that we have,
5 the sections of the *Emergencies Act* on public welfare emergency
6 and/or the public order emergency could incorporate a reference
7 to the use of such federal director powers at the request of a
8 province when it is a question of exceeding the Province's
9 jurisdiction.

10 This can be done by incorporating a reference in
11 the *Emergencies Act* to section 7(c) of the *Emergency Management*
12 *Act*, where declaring a provincial emergency to be of concern to
13 the Federal Government could then trigger use of those federal
14 directives.

15 Thank you.

16 **--- OPEN DISCUSSION:**

17 **DR. JOCELYN STACEY:** Thank you, Professor
18 Lindsay.

19 One of the things that came up in the roundtable
20 yesterday was about the role of the private sector. And so Mr.
21 Corley, you had a chance yesterday to talk about the important
22 role that you saw for private security and policing responses,
23 at least.

24 And I'm wondering if there's anything you'd like
25 to add to the comments yesterday about the role that private
26 security, you see private security playing in sort of
27 interagency and interjurisdictional responses to emergencies?

28 **MR. CAL CORLEY:** Well I suppose, picking up on

1 yesterday's conversation, it seems to me that in a contemporary
2 context, the private sector and private sector security are an
3 essential and core part of the community safety eco-system, in
4 terms of provision of services.

5 If we think in terms of the spaces that we cover
6 in the course of a day, whether in a mall, private business,
7 property of private businesses, often the first line of security
8 support comes from the private sector.

9 This is well established. The 2014 Council of
10 Canadian Academies Report on 21st century policing spent a lot of
11 time speaking about the eco system of providers, of which
12 they're a central component. There's lots written on that.

13 In very practical terms, the private sector bring
14 with them know-how knowledge and legislative tools that the
15 public police typically don't have. In terms of the
16 legislation, of course, they often bring with them private
17 property owner rights in terms of trespass and other things like
18 that.

19 Secondly, they're a lower cost provider. So I
20 think the example yesterday, and I won't go through the math,
21 but if you think of the non-central functions that the police
22 perform, particularly in the Ottawa case, where we had over, at
23 least based on other testimony yesterday, over 100 barricades
24 around the external perimeter of the red zone in Ottawa, and you
25 can imagine the number of police officers manning each of those.
26 And if those were, at least in part, supported by private
27 sector, it not only comes at a lower price point, but it also
28 allows the fully trained, fully sworn, fully equipped police

1 officers to be deployed to greater purpose.

2 So the private sector can be a tremendous asset
3 here.

4 As we saw in the G20, in that case, of course we
5 have three types of events, generally. Those types of events,
6 which allow for months and months of preplanning, and in the
7 case of G20, the private sector was intimately involved at all
8 levels of governance, joint leadership, and in terms of tactics
9 and operations, but that was on the basis of months and months
10 of planning, and as I understand it, an agreement between those
11 private sector groups and the Toronto Police Association.

12 So in the second type, which is more along the
13 lines of what we experienced here in Ottawa, in the events of --
14 in the absence of having pre-established protocols, et cetera,
15 in place, that in this case, for these purposes, would involve
16 the private sector, there may not, often, be time to establish
17 those sort of protocols when one considers provincial police
18 legislation, *Police Services Act*, where the adequacy standards
19 often stipulate that what the sworn police will do and that
20 others can do where there's agreement.

21 So in the type of protest we saw in Ottawa, the
22 limited time, if these aren't arranged and planned for in
23 advance, they're unlikely to happen in the course of the third
24 type of incident is those that are unanticipated and don't allow
25 for planning. So they're more spontaneous, at least as it
26 pertains to police and other security apparatus.

27 So it's important, these are two potential
28 barriers that need to be addressed and would form part of that

1 overall approach we've spoken extensively about over the last
2 two days around national standards, prearranged agreements, and
3 such.

4 And Judith Sayer's addressed it nicely in her
5 comments as well, in terms of the time it takes to get these
6 things in place and when time's short, these are often
7 overlooked, and as we saw, I would propose, in the cases here in
8 the National Capital Region, not engaging the private sector and
9 not having these arrangements in place in advance and tested and
10 exercised, we saw tremendous pressure on finite police
11 resources.

12 And of course, in Canada, my final comment is the
13 private sector security outnumber police in Canada by a
14 considerable factor.

15 **DR. JOCELYN STACEY:** Thank you.

16 Mr. Teschner, do you have any thoughts from your
17 experience on the appropriate role for the private sector in
18 interjurisdictional responses to emergencies?

19 **MR. RYAN TESCHNER:** Sure. I'll start just by
20 piggybacking off a bit of what Cal said on the private security
21 piece, and then I want to talk about the private sector more
22 broadly.

23 Cal spoke about the G8/G20 in Toronto. There was
24 also the PanAm Games, which depended heavily on private
25 security.

26 I haven't done a jurisdictional scan to see
27 whether or not the Ontario model, where you have, within the
28 Ministry of the Solicitor General, a private security section

1 that's responsible for essentially the regulation of private
2 security in the province to ensure that applicants meet a
3 certain standard in order to be given a license to operate as a
4 private security person, and that there's additional standards
5 in terms of training, has been emulated or not. But certainly I
6 think that provides a little bit of confidence in the security
7 apparatus.

8 That said, if private security is going to be
9 engaged, and if you have the benefit of either planning for a
10 specific event or recognizing that you're going to need to
11 depend on private security resources for future events writ
12 large, you need a structure. You need a structure that allows
13 it to seamlessly, and in a coordinated way, plug in to the other
14 security and policing resources that are going to be deployed.
15 You need to ensure training standards. You need to ensure lines
16 of accountability and clarity with respect to roles,
17 responsibilities, and command and control.

18 These are things that can be, to Cal's point, be
19 put in place in advance, can be tested, can be exercised, so
20 that you know that it works when it needs to work.

21 And so that's the piece that I'll say about
22 private security.

23 But outside of private security of the private
24 sector, and I think when we talk about the way in which
25 emergencies get responded to, there can be no doubt from the
26 comments that are made today that a myriad of stakeholders,
27 based on the geographic location and the nature of the emergency
28 are impacted in relation to that particular emergency. And so

1 looking for mechanisms and ways to engage maybe on a sector
2 basis, these representatives, both in the planning and in the
3 actual response to an emergency, I think, is vital. The
4 stakeholders of interest can help monitor and help crystallize
5 the issues, can help in relation to planning, can help with
6 respect to public communication and awareness, and can help in
7 the recovery period that follows.

8 These are groups like local business improvement
9 areas, chambers of commerce, community hubs that are hubs for a
10 variety of community organizations that serve the public,
11 residents' associations, municipal service providers.

12 And from the Toronto convoy experience, it
13 includes the healthcare sector and hospitals. Hospital role was
14 a priority in order to ensure that whatever was going to happen
15 in the city over the course of that weekend was not going to
16 impede the access of patients, physicians, nurses, hospital
17 staff, or families from getting in and out of hospitals. And so
18 I think that's a good example that illustrates the importance of
19 looking at the sector-based response to emergencies, the sector-
20 based impacts, and determining an appropriate structure to
21 engage them so again, they can be part of the planning process
22 and can mobilize in accordance with those plans if and when the
23 time comes.

24 **DR. JOCELYN STACEY:** Thank you.

25 So as much as I'd like more discussion on the
26 points that have been raised, I'm going to move us along to the
27 *Emergencies Act*, and to pick up on some comments made earlier
28 around the importance of thresholds and procedures for

1 escalation.

2 And in particular, I want us to look at the
3 question of when can the federal government declare an emergency
4 arising from a failure of another level of government to
5 exercise their ordinary jurisdiction?

6 And Professor Newman, I'm hoping you can start us
7 off with how to think about the answer to that question.

8 **DR. DWIGHT NEWMAN:** Sure. Well, it's certainly a
9 thorny question and it's actually important to think about how
10 that question is asked because to suggest the federal government
11 can grade the passing grade or failure of another government
12 when it acts in its ordinary jurisdiction or chooses not to act
13 in an outwardly visible way could actually risk going beyond the
14 powers of the federal government.

15 Another government not acting in an outwardly
16 visible way may actually be the policy choice of that government
17 acting within its area of jurisdiction.

18 This could be very difficult to judge in some
19 situations as to just what is happening. But we could think of
20 a lot of different scenarios that might actually have different
21 answers to this question.

22 So certainly, if the federal government were
23 acting within an area of its own unambiguous jurisdiction, then
24 -- but it was somehow affected by a province not acting, well
25 then, it's unproblematic for the federal government to act
26 because it's acting within its jurisdiction.

27 The more challenging situations are well, what if
28 a provincial government seems unable to do something or if it's

1 unwilling to do something that matches with what the federal
2 government is hoping? Well then, where do we go?

3 The situation with provincial government rendered
4 unable to act in some way is actually a thorny one in relation
5 to the *Emergencies Act*. If a provincial government's cabinet
6 were, for some reason, unable to meet and unable to communicate
7 in a worst-case scenario, in the section 25(2) in the context of
8 a Public Order Emergency, there is a way in which the federal
9 government can proceed, even without consulting with that
10 province in advance of it acting.

11 In section 14(2), in relation to a Public Welfare
12 Emergency, there actually -- or section 14, I should say, not
13 just 14(2) in relation to a Public Welfare Emergency, the
14 consultation and consent requirements of a province in relation
15 to the emergency just within that province actually would pose a
16 problem for the federal government being able to act in that
17 scenario under the *Emergencies Act*.

18 So there may actually be situations that are
19 really difficult to catch and to entrench perfectly within the
20 *Emergencies Act* in a way that's responsive to the needs.

21 And I guess I'd say there is always the
22 possibility of the federal government passing emergency
23 legislation outside the *Emergencies Act* based on the POGG
24 emergency power, but crucial for that would be that the federal
25 government be able to convene Parliament and that Parliament be
26 able to function.

27 One of the disturbing incidents in what occurred
28 in Ottawa this year, to my mind, was that Parliament's ability

1 to carry out its review of the use of the *Emergencies Act* was on
2 a particular day actually blocked by what was going on in
3 Ottawa. And it's essential that there be ways sought of
4 ensuring that government can continue to meet as required,
5 particularly if it were in a situation where it might need to
6 pass additional legislation on an emergency basis.

7 So that would be a situation, depending on a lot
8 of different things. If a provincial government were actually
9 unable to act, well, that would justify the federal government
10 acting, conceivably, but it might actually be blocked by current
11 provisions of the *Emergencies Act* in some situations, so
12 complicated scenarios.

13 The really challenging situation here though is,
14 if a provincial government took a clear policy view in an area
15 of its own jurisdiction, in its ordinary jurisdiction, and there
16 weren't a clear federal stake in that, it might be that the
17 federal government doesn't have simply a chance to jump in on
18 that.

19 And so the question, when can they and when can't
20 they really depends a lot on the context, and of course, some
21 contexts will mix together these different considerations.

22 So I think it's really important to think about
23 the range of scenarios as between a provincial inability to act
24 and a deliberate policy choice by a province not to act in an
25 outwardly visible way, and to think about the degree of impact
26 on other members of the federation as a factor that could come
27 into things.

28 And when I was thinking a bit about these types

1 of issues in advance, I was thinking well, the solution might be
2 in improving the consultation provisions within the *Emergencies*
3 Act further. And I still think there are improvements that
4 could be made there in terms of defining additional types of
5 scenarios and the types of consultation that should occur.

6 But I also think it may actually be very
7 challenging to capture all of those scenarios in a way that
8 keeps clear legislation that doesn't make things worse. And I
9 do think it's very important to ensure that steps are taken to
10 ensure the ability of the federal Parliament to continue to meet
11 in some way even in the context of more challenging emergencies,
12 and that that actually is necessary, given the possible need to
13 pass additional emergency legislation in some situation that
14 might not be captured by the existing Act.

15 The other thing I'll just throw in as one further
16 wrinkle is that it's also important to think about the term
17 "emergency" and the concept of emergency, both in terms of
18 what's an emergency in -- versus what's a set of simultaneous
19 emergencies, and whether they're linked or not bears on how some
20 of these provisions on consultation and consent by the provinces
21 actually play out.

22 And it's important to think about what an
23 emergency means in temporal terms. So if someone's just
24 thinking about the emergency that needs to be responded to this
25 afternoon because there's a pressing emergency, something
26 genuinely urgent, well, that's one scenario, but what if a
27 government has weeks or even months to think about the situation
28 that's to be dealt with under emergencies legislation, or the

1 cleanup efforts after a natural disaster extend well beyond the
2 moment where there can't be any consultation or any discussion?

3 This is something that actually has been written
4 on the Indigenous context. A scholar named Courtney Kirk, who's
5 published a -- or who's produced a thesis on emergency
6 management in the context of First Nations, points to this issue
7 where sometimes if you talk about creating all kinds of
8 exceptions for emergencies, if one is thinking about the
9 situation where there is no time to do anything other than just
10 to react. Well, that's one thing, but if you're talking about
11 using emergencies legislation to carry out reconstruction
12 afterwards, which is what has happened at the provincial level,
13 for example, in the context of certain kinds of natural
14 disasters, well then it's actually much more feasible to carry
15 out all kinds of consultation and discussions that might not be
16 imagined in the context of something that needs to be done this
17 afternoon.

18 And so it's really important to break down these
19 concepts a lot further, and I'd say to improve the -- my
20 recommendation would be to try to improve the consultation
21 provisions of the *Emergencies Act*, but also to recognise that it
22 may not be possible to capture everything about that. And to
23 ensure that there's an ongoing ability of the Federal Government
24 to function, even conceivably to pass additional legislation in
25 response to emergencies in some situations, and that means
26 Parliament may need to be able to meet in some innovative ways.
27 And there was that unfortunate incident during this year's
28 events where there were actually concerns about that.

1 So I'll stop there and say that those would be a
2 few comments in response to that question.

3 **DR. JOCELYN STACEY:** Thank you, Professor Newman.
4 Professor Lindsay ---

5 **MR. JACK LINDSAY:** M'hm.

6 **DR. JOCELYN STACEY:** --- do you have thoughts on
7 this question?

8 **MR. JACK LINDSAY:** I do. I certainly agree with
9 the point about why that failure has occurred, whether it was a
10 choice or whether there was some uncertainty or if it's simply
11 the inability of a provincial or local jurisdiction to exercise
12 a power.

13 But I think another issue should come up is when
14 that failure occurs research shows that impacts of natural
15 hazards like flooding may result from a failure of jurisdictions
16 to act decades earlier, for example, in exercising local land
17 use planning tools. So it's unclear to me if a declaration
18 under the *Emergencies Act* to impose federal powers when a
19 province or a local authority has chosen not to exercise a power
20 that's within its jurisdiction would violate the aim of
21 preventing a conflict between provincial and federal orders.

22 I also want to mention that the consultation
23 required by the *Emergencies Act* is not the only time, nor the
24 appropriate time to have discussions about what to do, who
25 should be doing it, or many of the other points raised. All of
26 the planning and strategic tools that I mentioned earlier, and
27 have been in place for over 15 years, should have addressed most
28 of that consultation.

1 There's also a challenge across the country in
2 the provincial legislation that the provincial legislation is
3 not consistent in the powers that it gives the lieutenant
4 governors in council or mayors, but also between the
5 legislation. So let me give one quick example from Ontario.

6 The Ontario's *Forest Fire Prevention Act* says
7 that:

8 "For the purpose[s] of controlling and
9 extinguishing a fire, an officer may
10 use any privately-owned equipment and
11 may employ or summon the assistance of
12 every able[bodied] person over the age
13 of eighteen, except persons providing
14 essential services and persons
15 physically unfit, and on private lands
16 may take such action as he or she
17 considers advisable to control and
18 extinguish a fire."

19 Whereas Ontario's *Emergency Management and Civil*
20 *Protection Act* says:

21 "...the...Governor in Council [can]
22 make orders in respect of...
23 Authorizing, but not requiring, any
24 person, or...a class of persons, to
25 render services of a type that that
26 person...[can] reasonably [deliver]."

27 And I know from my own research in Manitoba, we
28 probably have seven or eight Acts that grant very similar powers

1 to different civil servants in different circumstances other
2 than the *Emergency Measures Act*. Like the Ministerial
3 Directives, I feel that we should be doing a much better job of
4 first coordinating and informing the public of the kinds of
5 powers that a government may exercise in these sorts of
6 emergency situations.

7 Also, you know, the powers available to the
8 Federal Government under the public welfare emergency, in
9 particular, overlap with the powers of the provinces, mostly
10 because the provinces all took their powers from the Defence of
11 Canada Regulations in 1939, played with them for 50 years,
12 amending and adapting them, and then in 1988, when the Federal
13 Government wrote the *Emergencies Act*, perhaps naturally they
14 gave themselves the same powers as the provinces had been giving
15 themselves for the previous decades.

16 So we need to be taking, I think, a threshold
17 approach to defining disasters. We need to be able to make sure
18 we have a clear escalation from routine local emergencies to a
19 local state of emergency at a municipal level, to provincial
20 declarations, and the provincial emergency measures legislation
21 takes this into account.

22 So therefore, that question of exceeds the
23 capacity should -- we look for in the *Act*, should indicate one
24 of two situations: the province and its local governments do not
25 have sufficient resources to carry out its own emergency orders,
26 or, as was suggested just a moment ago, the impact has rendered
27 that province incapable of mounting an organised response under
28 its own legislation, and therefore requires the Government of

1 Canada to exercise those same powers as a replacement. That
2 latter scenario is very unlikely, but it's a reasonable approach
3 to the risk of catastrophic failure of a provincial and local
4 emergency.

5 That is what the United States went through with
6 Hurricane Katrina. New Orleans and the State of Louisiana,
7 their emergency management system collapsed as well. And so in
8 the U.S., they have recognised that there could be times for
9 catastrophic failures where the systems we put in place to deal
10 with disasters fail as well. We don't have that in Canada.

11 The other issue that I should just point out as
12 well, if I may, contrasting us with the United States, is that
13 in Canada, all of our resources can move between federal,
14 provincial, and local governments without a declaration. We
15 don't have to declare a state of emergency for Federal
16 Government departments to help a provincial department, or for a
17 provincial department to help out a municipality.

18 That is why in the States, where they have to
19 have the declaration, they declared in 2019, they declared 61
20 major disasters because they have to declare them in order to
21 have the money flow. We don't have to have that, and so again
22 our plans are more important because we could be doing a lot of
23 this work without having to declare a state of emergency.

24 So I guess it comes down to somewhat
25 philosophical element in Canada's entire emergency management
26 system that it presupposes that emergencies cannot be avoided,
27 and therefore, our governments rely on these laws of last resort
28 as their normal practice. This reinforces that misconception

1 that our emergency management system is only working when it is
2 responding, and this is, again, contrasted by other nations, and
3 I heard New Zealand mentioned this morning, that see avoiding
4 the need for extraordinary actions as the purpose of
5 comprehensive emergency management.

6 Thank you.

7 **DR. JOCELYN STACEY:** Thanks for that,
8 Professor Lindsay.

9 This is an important question, and one where from
10 the answers already I can see there's a lot of complexity. So
11 I'm just wondering, we've got a little bit of time on this, if
12 others want to contribute.

13 Yeah, Mr. Teschner?

14 **MR. RYAN TESCHNER:** Sure, I'll add a few
15 thoughts. First, to agree with my colleagues, and in
16 particular, I want to pick up on Professor Lindsay's point that
17 we live in a federation and we have to respect the spheres of
18 jurisdiction and the constitutional divide, but some
19 harmonisation across the provinces, to back up
20 Professor Lindsay's point when it comes to the approach taken to
21 provincial declarations of emergency and the provincial
22 approaches, I think would serve us well. And essentially, the
23 lens that should be applied is they should plug in well to the
24 federal sphere to the extent that that's necessary. I think
25 they need to be designed for purpose that way.

26 I'll also say that in addition to local
27 governments not having the capacity, or the second option, being
28 rendered incapable by virtue of the emergency at hand, I would

1 add a third piece for consideration. And that is where the
2 Federal Government's stake or interest is engaged, because there
3 are emergencies happening across the country, and some form of
4 coordination that can only be brought to bear by the Federal
5 Government is required, I think unpacking that a little bit more
6 in light of what we've seen more recently in terms of events
7 would potentially be helpful.

8 Of course, in addition to the provinces and the
9 territories, to President Sayers' point, we have to also think
10 about First Nations in that context as well. And so those are
11 some of the points I would make there.

12 The other thing that I will say, though, is
13 presumably when a province or a territory or a First Nation is
14 consulted in the context of a discussion with the Federal
15 Government on emergencies, they should be informed by what is
16 happening locally on the ground at a municipal level. I think
17 making sure that provinces and territories understand that, and
18 putting some meat on those bones, would perhaps be helpful.

19 But related to that, municipalities are not
20 always going to necessarily know what the threat picture looks
21 like, and so promoting information-sharing, threat risk
22 assessments that might be conducted by provinces, might be
23 conducted by the Federal Government, and ensuring that
24 municipalities impacted or likely impacted have access to that
25 information so that they can properly and in an informed way
26 make a determination about what their capacity actually is or
27 isn't, I think is vital.

28 **DR. JOCELYN STACEY:** Thank you.

1 Other thoughts on this question?

2 So I wonder if we can just keep going with that
3 response, Mr. Teschner, around sort of questions about optimal
4 mechanisms for consultation when declaring a national emergency.
5 And so what might that consultation look like, recognising the
6 points that have already been made, that it's maybe not just
7 about the consultation happening at that exact moment, that we
8 need to take a broader temporal view of that.

9 So what should those mechanisms for consultation
10 look like when declaring a national emergency? And how should
11 disagreement between levels of governments on the use of federal
12 powers, emergency response powers, how should that kind of
13 disagreement be reflected in federal decision-making?

14 And so Professor Newman, can we go back to you on
15 that question? You brought this up earlier.

16 **DR. DWIGHT NEWMAN:** Sure. And I'll just preface
17 it saying I agree entirely with the notion that there ought to
18 be discussions well in advance of any particular emergency
19 arising, and that the opportunities for coordination between
20 governments start well in advance of the need for emergencies
21 legislation years in advance, as has been suggested.

22 But in the context of an emergency-type situation
23 arising where there's contemplated use of the *Emergencies Act*,
24 currently there are a number of provisions in the *Emergencies*
25 *Act* on consultation. One could mention section 14, section 25,
26 section 35, and section 44. And of course, as has been
27 highlighted a couple of times now, the *Emergencies Act* was
28 drafted in a period prior to the Federal Government properly

1 recognising Indigenous rights, not just of First Nations, but of
2 Métis rights holders, and the Inuit as well.

3 And I guess I would just say here that there
4 needs to be an updating of the Act around Indigenous
5 consultation, at minimum, simply to meet existing constitutional
6 obligations on the duty to consult, for example, but also in
7 relation to the further-reaching dimensions that consultation
8 needs to have in that context in light of Indigenous
9 jurisdiction, as has been highlighted by President Sayers. But
10 this legislation is years and years behind the development of
11 law in the fact that there hasn't been any kind of updating in
12 relation to Indigenous governments.

13 In terms of consultation with provincial
14 governments, I would say there could be things actually learned
15 from the duty to consult jurisprudence in the context of
16 Indigenous governments, interestingly enough, because the word
17 "consultation" appears in the *Emergencies Act*, but with
18 relatively limited -- a relatively limited sense on what that
19 might mean in the Act.

20 And thinking about what makes for meaningful
21 consultation, which is the standard in the context of the duty
22 to consult Indigenous peoples, thinking about that sense of
23 meaningful consultation, if consultation in the *Emergencies Act*
24 is there to ensure in part that the Federal Government doesn't
25 act in a way that's problematic vis-à-vis the provinces, and I
26 think that's one of its central roles within the Act as it
27 exists, then the idea that the consultation ought to be
28 meaningful, ought to be providing an exchange of information and

1 response, ought to be recorded in a meaningful way to show how
2 the Federal Government considered acting differently in light of
3 the information or perspectives received from provincial
4 governments, that would be a preferable means or a preferable
5 form of consultation. And it may be possible to add language to
6 the *Act* to reflect that, or it may be possible to engage in more
7 meaningful consultation, even without amendment of the language
8 of the *Act*, but based on different practices.

9 And I think that's an area where there could be
10 some learning, even from this context that the *Act* itself has
11 unjustly and illegally excluded over the past number of years
12 and decades. So I guess I'll say that much.

13 Another issue, of course, that arises is in
14 relation to the role of municipalities. And this is complex in
15 terms of whether the Federal Government ought to be consulting
16 municipalities has some real delicacies to is because
17 municipalities, of course in constitutional terms, are creatures
18 of the provinces and it's within the constitutional jurisdiction
19 of provinces to create municipalities and to shape
20 municipalities. And were the Federal Government simply to be
21 acting in a way that ignored that principle, there would be some
22 problems in terms of jumping past levels of government.

23 At the same time the Federal Government certainly
24 wants to be informed by what's occurring in municipalities at a
25 local level where that knowledge is held. And it might be
26 appropriate to include language in the *Act* that at least permits
27 the Federal Government to consult municipalities.

28 That obviously has already occurred in the

1 context of the recent use of the *Emergencies Act* in 2022. The
2 consultation record reflects that the Federal Government
3 actually was in contact with the mayors of some municipalities.
4 Language that would specifically authorise that in the Act might
5 be appropriate.

6 Language that would actually encourage that might
7 well be appropriate, subject to that delicacy, in relation to
8 the federal/provincial interaction here and the provinces'
9 fundamental constitutional role in relation to municipalities.
10 But in terms of getting information from larger municipalities
11 or directly affected municipalities, it certainly would be
12 helpful to the Federal Government to have that.

13 And so I think there is room to recommend a
14 number of possible changes in the consultation provisions or
15 practices simply to say it's essential that there be
16 incorporation within the Act of appropriate consultation
17 provisions in relation to Indigenous rights-bearing communities
18 or a constitutional standard is not being met there. This goes
19 further in relation to the *UN Declaration on the Rights of*
20 *Indigenous Peoples Act* in terms of what provisions should be
21 there in terms of consultation with Indigenous nations and
22 Indigenous peoples.

23 It would be appropriate to consider at least
24 practices or possibly statutory language related to making
25 consultation with the provinces more meaningful, or ensuring
26 that it's meaningful, and it could be appropriate to offer some
27 specific authorisation or even encouragement in relation to
28 engagement of the Federal Government with municipalities in some

1 situations subject to some complex delicacies on that vis-à-vis
2 the provinces.

3 Those would be some initial thoughts in terms of
4 some possible changes in relation to consultation.

5 **DR. JOCELYN STACEY:** Thank you, Professor Newman.
6 President Sayers, do you want to come in on this
7 point about consultation and optimal mechanisms for consultation
8 when declaring a national emergency?

9 **DR. JUDITH SAYERS:** Yes, for sure.

10 So you know, the consultation pre UNDRIP, you
11 know, is a bit different than what it is under UNDRIP because,
12 you know, in some cases, you need consultation and collaboration
13 leading to the free, prior and informed consent of Indigenous
14 peoples, and there are certain specific areas within UNDRIP
15 which that is required, such as the legislation. So if the
16 *Emergency Act* is being amended it should be with leading to the
17 consent of Indigenous people.

18 In British Columbia, the *Emergency Act* is now
19 being amended, and should be, and is working with First Nations.
20 I know the question is often asked, how do we consult with 633
21 plus First Nations across Canada? And that's a good question.
22 But oftentimes, if you work with Indigenous people, some may
23 want to do it on their own, some may want to do it regionally or
24 provincially. But I think what's really important here to
25 remember is that the rights holders are the ones that have the
26 say and that the federal organizations can be talked to, but in
27 the end, it should be the rights holders that make final
28 decision about what that should be.

1 There needs -- sit down and work out a process
2 with First Nations on how consultation should take place under
3 the *Emergency Act*.

4 Another tool the Federal Government has, of
5 course, is in their *Universal Declaration on the Rights of*
6 *Indigenous Peoples Act*, they have to put together an action
7 plan. So over five years, they can define what needs to be done
8 in that action plan, and then go about and do it. And right
9 now, they're collecting from First Nations what it is that we
10 need to do.

11 So it really is important to sit down now and to
12 start talking about what's happening. But if an emergency is
13 happening on specific First Nation's lands, they should be the
14 ones that are talked to. If it's one, or 10, or whatever, they
15 should be talked to first. If it's a national emergency, of
16 course everybody has to be included. So just remembering that
17 the duty to consult goes beyond consultation. And just working
18 out these protocols with First Nations is, I think, one of the
19 best kinds of things that you can do.

20 And in particular, what is important that I
21 haven't mentioned yet, is that First Nations know their lands,
22 their resources, and they have the best knowledge of the land.
23 So if we're talking about fires, if we're talking about
24 flooding, they're the ones that know their lands the best. And
25 that sort of knowledge is invaluable in some of these
26 emergencies that we talk to, and that also could be part of
27 those protocols that could be used.

28 So I think the opportunity, you know, in this new

1 era of UNDRIP and reconciliation is it's time to do dialogue,
2 you know, and take advantage of First Nations willingness, as
3 well, to sit down and do this and not to be excluded, because I
4 think those kinds of days are over and it's time to open up and
5 to figure out how we can work together in all kinds of
6 emergencies.

7 Thank you.

8 **DR. JOCELYN STACEY:** Thank you, President Sayers.

9 So I wonder if others want to come in on this
10 question of consultation, and particularly thinking about where
11 we started, thinking about maybe the superstructure that's
12 there, and sort of having mechanisms in place for escalation.
13 And so when we're at that stage in which escalation is going to
14 happen, what kind of consultation needs to be taking place?

15 Professor Lindsay, please?

16 **MR. JACK LINDSAY:** If -- yeah, if I can. And I
17 think this is very much speaking from my practitioner hat, and
18 not my professor's hat. The provincial emergency management
19 systems are designed to coordinate the priorities during an
20 emergency response. And it may be that the desires of a large
21 city do not match the needs of the wider province, or the needs
22 of one community don't match the needs of a neighbouring
23 community or First Nation. But I feel that that consultation
24 piece, maybe if we replace the word "consultation" with the word
25 "coordination" or "discussion", because all of the who does what
26 when piece should have been decided beforehand. And the
27 *Emergency Management Act* obligates the Minister responsible to
28 have those consultation processes in place beforehand.

1 I feel that what we should be looking at is
2 making sure that when the Federal Government does consult with
3 the Lieutenant Governor in Council, that that provincial
4 perspective has brought together all of the local perspectives.
5 And I don't want to wander any further into the question of the
6 Indigenous consultation, but we should have that clear process
7 within the response system to make sure that affected
8 municipalities are integrated into the provincial perspective
9 that's going to the federal government. That is the emergency
10 incident management system that we have in place, different
11 municipalities will be trying to achieve different things, and
12 they don't always have all of the same goals. So I would add
13 that though, as an alternative in terms of the local government,
14 right now, the Federal Government has the ability, it's under
15 the *Emergency Management Act*, to recognize a provincial
16 declaration of emergency as being a declaration of concern to
17 the Federal Government.

18 This really came out of the ice storm, where the
19 ice storm wasn't shutting down the Federal Government across the
20 country, it was just shutting the government down here in
21 Ottawa, and in parts of southern Ontario and Quebec.

22 So the Federal Government wanted to know, when
23 would a province likely be struck by a disaster that's going to
24 have an impact on our ability to do our job? Not our
25 jurisdictional issue, but just our business continuity issue.

26 And the *Emergency Management Act* covers all of
27 that. The question about -- that was raised earlier about how
28 the Parliamentarians get in during the convoy, the *Emergency*

1 *Management Act* requires all of the provincial departments to
2 have business continuity plans. So the fact that things didn't
3 go well doesn't necessarily mean that the framework wasn't
4 there, just that it hadn't been operationalized fully.

5 So I think there's alternatives.

6 As I said, because the Federal Government can
7 identify a provincial declaration of being concerned, perhaps in
8 the preplanning stage, in consultation and discussion with the
9 municipalities and the provinces, certain larger cities, I'm
10 thinking of a city like Vancouver with a port, or Halifax with
11 its port, could be identified, likely in regulation so that it
12 can be changed, that says that a declaration of an emergency,
13 say in Vancouver, or downtown Toronto, would also be a
14 declaration of concern to the Federal Government, without
15 necessarily bypassing the fact that Municipalities are under the
16 Provinces. It's just saying that if a big event happens in a
17 big city, the Federal Government wants to be ahead of the game,
18 not waiting to hear about it from the Province. That doesn't
19 have to mean that the Federal Government talks to every single
20 Municipality, but that there's a system for the Federal
21 Government to talk to the Province, and for the Province to have
22 coordinated that wider ask. So.

23 **DR. JOCELYN STACEY:** M'hm.

24 **MR. JACK LINDSAY:** Thank you.

25 **DR. JOCELYN STACEY:** Yeah, good points.

26 Others on this?

27 Yeah, Mr. Corley, I see you online. Go ahead.

28 **MR. CAL CORLEY:** Yeah. And perhaps I'm coming at

1 this from a bit different angle, and we seem to be talking,
2 which is important, talking about consultations prior to
3 invoking the *Emergencies Act*, any of the parts of it.

4 As it pertains to part two specifically, I would
5 like to encourage us to, you know, think about this more
6 upstream from that.

7 In essence, if at the federal -- at the FPT,
8 Indigenous, and municipal levels, there's intentional proactive
9 measures that support the development of a highly functional and
10 effective national framework that addresses public order
11 protests and emergencies, that is properly executed and properly
12 implemented, it should, in most cases and circumstances,
13 establish conditions that negate the need for governments to
14 even consider invoking the *Federal Emergency Act* part 2, as it
15 is today.

16 The same we see in Major Case Management, Major
17 Case Management, applied with the kind of order that we see in
18 Ontario and several other provinces, has had a huge impact on
19 the quality of the investigations that are brought forward for
20 prosecution, et cetera. And one needs only to reach out to
21 different Crown prosecutors that are operating in those areas
22 and talking about pre- and post-implementation of Major Case
23 Management and how it's matured. It's a significant difference.

24 So I think that proactivity and all of the issues
25 we talked about earlier in terms of national framework could go
26 a long way to preventing or even needing, in many circumstances,
27 taking and considering this.

28 Thank you.

1 **DR. JOCELYN STACEY:** Thank you. So we have about
2 10 minutes before the break, and I think in your responses,
3 you've covered the things that we've discussed in preparing for
4 this, and so I think I'll just open it up to all of you experts
5 to see if there are points that you haven't raised yet that you
6 would like to raise, if there are things you'd like to elaborate
7 on or clarify, maybe more specifics around changes that you
8 might like to see to the *Emergencies Act* flowing from this
9 conversation that we've had so far?

10 **COMMISSIONER ROULEAU:** Yes.

11 **DR. JOCELYN STACEY:** President Sayers?

12 **DR. JUDITH SAYERS:** Yes. I just wanted to -- I
13 don't know that timelines and legislation is the best thing.
14 But the urgency of emergencies, especially in health, the
15 pandemic's not over and we know that there'll be more coming;
16 the changing in the weather due to climate change; the flooding;
17 the tsunamis; the -- there's just so much happening in this
18 world, and I think that we need to act sooner than later in
19 putting in place protocols and working together, roles,
20 responsibilities.

21 Let's be clear that so we're not fooling around
22 at some time and trying to decide if it's a provincial
23 jurisdiction or federal jurisdiction or a First Nation
24 jurisdiction. We just need to -- I would just like to see us be
25 really clear and doing things very quickly so that we can
26 address things that are going to affect our people, our rights,
27 our lands. And I just wanted to add that to the conversation.
28 Thank you.

1 **DR. JOCELYN STACEY:** Thank you. Okay. A
2 possibility of timelines to keep things moving along.

3 Other thoughts?

4 Mr. Corley?

5 **MR. CAL CORLEY:** Thank you. Just picking up
6 again on the conversation or the inputs that Ryan and I had with
7 respect to the private sector, private security, principally.

8 And Ontario's new comprehensive *Police Services*
9 *Act* yet to come into force lays out in very nice fashion how
10 when the private sector security are engaged, they fall under
11 the umbrella of the Police Services Board, and that the
12 requirements in terms of adequacy standards in that is well
13 established.

14 I don't know, Ryan, if you wanted to pick up on
15 that, because I think there's an important element of local
16 governance here that really applies.

17 **MR. RYAN TESCHNER:** Sure. It's Ryan Teschner
18 jumping in.

19 I'm a big proponent of all things governance, Mr.
20 Commissioner, if you couldn't tell from the last session and
21 from this one.

22 And so I think where we're going to mobilize
23 local resources, we need to ensure that there's a framework in
24 place so that everybody knows their responsibilities, their
25 obligations, and who's in charge, and who picks up the tab, and
26 you know, other issues that are related.

27 And so I think certainly, what is in the Ontario
28 legislation is an important step, and I think it comes back to

1 something that I said earlier. Where policing is being
2 mobilized to respond to a particular emergency, the policing
3 response, when it's in a municipality, comes under the legal
4 statutory responsibility of a local police services board or a
5 commission. And that legal reality cannot be a fiction.

6 And so whether we're talking about how private
7 security comes into the fold and how that needs to be part of
8 the governance web that a police board provides locally or
9 whether we're talking about consultation, as we just did in the
10 previous conversation where those impacts need to be assessed at
11 a local policing level, boards and commissions need to be part
12 of this fabric as well.

13 So I think that's a point not to be lost.

14 **DR. JOCELYN STACEY:** Thank you.

15 Professor Lindsay?

16 **MR. JACK LINDSAY:** Well, I was just going to pick
17 up on that opening analogy that you presented me with the idea
18 of the *Emergencies Act* being a tool. And there is that saying
19 that if all you have is a hammer, every problem looks like a
20 nail.

21 That's what we've had in our system. We have
22 legislation that has very strong powers to use in response, very
23 few obligations to reduce risk or to prepare our communities or
24 to have proper recovery. And with all due respect to all of my
25 emergency management colleagues, we have filled our emergency
26 management system to use the hammer with welders and
27 stonemasons, but no carpenters. The *Emergency Management Act* is
28 what lays out the tasks. The *Emergencies Act* is one tool. But

1 what's really lacking in Canada is a strong professional
2 emergency management cohort, a strong profession where the
3 emergency managers are trained in emergency management and are
4 practising that all the time throughout their careers.

5 And again, I started my career in emergency
6 management at 25 as an emergency manager. I've never worked in
7 a fire department or I was never a police officer. I have been
8 an emergency manager the whole time. And that, I feel, is
9 making a big difference.

10 And that's what other countries are moving
11 towards as well, really pushing higher education for emergency
12 managers and seeing it as a separate profession, which is
13 something that we need to do more of in Canada. Thank you for
14 that.

15 **DR. JOCELYN STACEY:** Thank you.

16 Commissioner, we have about six minutes before
17 the planned break. Do you have questions that you'd like to
18 pose now or would you like us to break early?

19 **COMMISSIONER ROULEAU:** Well, maybe I'd like to --
20 just a little bit more follow up to some of the comments made by
21 Professor Newman about federal jurisdiction. Towards the
22 beginning, he spoke about the issue of whether it was a -- an
23 emergency would be within federal jurisdiction or not.

24 And he made a couple of comments that I'm not
25 sure if they were intended to deal with this situation or not,
26 but he spoke that if it related to borders or the National
27 Capital Region, it may be federal and not be related to -- or in
28 provincial jurisdictions.

1 And the evidence in this case is certainly that
2 the borders were an issue, not technically the blockade at the
3 border, but rather the blockade that in effect, blocked the
4 border.

5 And similarly, the National Capital Region, the
6 occupation, as it's rereferred to on some cases, was in the
7 National Capital Region.

8 And I'd just like him to, if he can, to elaborate
9 on what he was referring to and whether it's in fact related to
10 the -- or could be tied to the events such that it was within
11 federal jurisdiction or not.

12 **DR. DWIGHT NEWMAN:** Okay. Thank you for the
13 question. I'll say, I wasn't trying to refer specifically to
14 the present situation because I understood the purpose of these
15 roundtables as to reflect on matters in a more forward-looking
16 way, but simply to say that parts of the *Emergencies Act* are
17 grounded in federal jurisdiction without the use of the POGG
18 emergency power, without the emergency branch of the Peace,
19 Order, and Good Government power.

20 And one could give other examples simply in
21 relation to an international emergency or a war emergency being
22 largely within federal jurisdiction to start with, although with
23 pieces in provincial jurisdiction.

24 That said, I mean, the response in relation to
25 something with provincial elements could have elements where
26 there would be a natural federal jurisdiction, but there would
27 also be room for the federal government to deal with that
28 legislatively in some way outside the *Emergencies Act*.

1 And so I guess obviously, in referencing the
2 National Capital Region, I was affected by seeing the
3 vulnerability of Canada's National Capital this year, as I think
4 probably many Canadians were in seeing that Canada's National
5 Capital is humiliatingly vulnerable to all kinds of problems, in
6 some ways.

7 And I guess the response doesn't necessarily need
8 to be the use of the *Emergencies Act* in future. The response
9 could readily be subject to all of the discussions that need to
10 take place on this, and the disadvantages that there could be,
11 but it could be in the form of federal legislation taking
12 further steps in regulating the National Capital Region and
13 assuming a larger federal role in the National Capital Region as
14 occurs in some other capital regions of other countries
15 elsewhere in the world.

16 And so it's just a generic point about
17 jurisdiction, in some ways, to say there can be bases for
18 federal jurisdiction that don't rely upon the POGG power in
19 relation to some kinds of emergencies, and that also says that
20 in relation to some kinds of vulnerabilities, there may be good
21 legislative responses that are outside a future use of the
22 *Emergencies Act*, or outside an amendment of the *Emergencies Act*
23 to try to cope with something that the federal government hasn't
24 dealt with through other kind of legislation that it could use
25 to deal with those same types of issues. So I hope that makes
26 it clear.

27 I wasn't trying to comment on this particular
28 situation, although, obviously, at a general level, as all

1 Canadians, I saw some things about the situation, but obviously
2 your Commission has engaged in extensive hearing of evidence and
3 extensive fact -- will engage in extensive fact finding in
4 relation to situation so I speak only relation to the most
5 generic of understandings that the National Capital Region was a
6 place whose vulnerability was revealed by the situation this
7 year.

8 **COMMISSIONER ROULEAU:** Thank you.

9 **DR. JOCELYN STACEY:** Would you like to take a
10 break? Yeah.

11 **COMMISSIONER ROULEAU:** I think we're now at the
12 time for the break so we're going to take a break until 4:30 and
13 see what questions come in and how we're going to trouble you
14 with further and seek further thoughts when we come back at
15 4:30, so a half-hour break.

16 **THE REGISTRAR:** The Commission is in recess for
17 30 minutes. La Commission est levée for 30 minutes.

18 --- Upon recessing at 4:01 p.m.

19 --- Upon resuming at 4:29 p.m.

20 **THE REGISTRAR:** The Commission is reconvened. La
21 Commission reprend.

22 **DR. JOCELYN STACEY:** Okay, so we have a few
23 questions for the experts that we'll try to get through in the
24 next 30 minutes. All right, so, Mr. Teschner, I'm going to put
25 you on the spot for the first question. So there's some
26 interest in the UK model of Emergency Preparedness Committees
27 that you had brought up earlier, sort of this idea of having
28 kind of -- or the need for multi-jurisdictional committees in

1 order to sort of set -- for jurisdictions to set themselves up
2 for a coordinated emergency response.

3 I guess we're interested in learning a little bit
4 more about that and, in particular, whether and how that model
5 accounts for challenges of personalities that a couple of you
6 have referred to, and politics, and sort of, is there something
7 built into that that if you've got the parties at the table and
8 they come to an agreement about how to coordinate response, that
9 it's more than just a discussion, that they are -- sort of walk
10 away and then they implement that agreement. So I wonder if you
11 could elaborate on that UK model with that in mind.

12 **MR. RYAN TESCHNER:** Yeah, and as I understand
13 that model, it brings together all of the relevant players
14 around one table. It still operates with respect for each of
15 those partners' areas of jurisdiction, but it facilitates -- we
16 talked earlier about consensus, and we talked about
17 consultation.

18 You can view this as an ongoing consultative body
19 where, both in advance of and during an emergency and thereafter
20 through the recovery phase, you ensure that you're tapping into
21 the expertise, the perspectives of all of the players,
22 ultimately trying to build a consensus, certainly ensuring full
23 visibility with respect to one another's actions, and
24 operations, and perspectives, and, as I mentioned earlier, also
25 providing some visibility with respect to a threat assessment so
26 that where all orders are engaged -- federal, provincial,
27 territorial, Indigenous rights holders, and, you know, through
28 the province's municipalities, everybody is starting to

1 appreciate what the national picture looks like and what role
2 they play with respect to that national picture. And so that's
3 what I understand these bodies to help facilitates.

4 Now, the role that, let's say, the federal
5 government could take around that body may differ depending on
6 both the nature of the emergency, the scope and magnitude, and
7 its reach. Sometimes it might be more of a monitoring role.
8 Sometimes it might be more of a leadership role. And I think
9 that goes back to what we were talking about earlier. What are
10 the escalation points? How do we better articulate when that
11 federal government interest is actually engaged such that it has
12 more than a monitoring role and actually can play the role of
13 coordinator, or even sometimes decision-maker?

14 **DR. JOCELYN STACEY:** Thank you. I don't know if
15 other have thoughts on that question?

16 **DR. JACK LINDSAY:** I -- if I may interject.

17 **DR. JOCELYN STACEY:** Yeah, Professor Lindsay.

18 **DR. JACK LINDSAY:** I just wanted to point out,
19 though, that emergencies happen in the context of the country,
20 countries like the UK and New Zealand that are unitary
21 governments that doesn't have provinces that also have their own
22 legislation have different systems than us. And so there's
23 emergency management principles that could be transferred but we
24 have to tailor them to our situation and not just -- not just
25 see one solution.

26 This morning, there was a mention of New Zealand
27 having a Minister of Police. The police is a national service,
28 so of course they have a National Minister, not -- so again, we

1 have to respect that different, too.

2 **DR. JOCELYN STACEY:** M'hm. I think that's a good
3 point, though the more jurisdictions that are involved, that
4 would sort of speak to the need of ---

5 **DR. JACK LINDSAY:** More coordination.

6 **DR. JOCELYN STACEY:** Yeah, more coordination,
7 right, making that type of multi-jurisdictional consensus
8 building even more important. Thank you.

9 I think, actually, there's another question
10 that's sort of related to this and I think we'll bring a few
11 more of you into the conversation. So one of the points that
12 came up earlier was around the importance of sharing information
13 across jurisdictions, and I wonder if some of the experts here
14 might be able to elaborate on the challenges that might be
15 involved in sharing information, particularly when there's
16 sensitivities involved in the type of information that could be
17 shared, whether it's national security, maybe, but maybe it's --
18 you know, it could even be inventory-type things, or it could be
19 personal health information like the example that President
20 Sayers brought up earlier.

21 So I think it would -- we'd just like to hear a
22 little bit more about some of the challenges and barriers to
23 information sharing that would be encountered in bringing about
24 one -- this kind of structure where you've got everybody at the
25 table.

26 **MR. RYAN TESCHNER:** Were you looking for anybody?

27 **DR. JOCELYN STACEY:** Anybody, so I'm looking for

28 ---

1 **MR. RYAN TESCHNER:** Sure.

2 **DR. JOCELYN STACEY:** --- non-verbal cues here of
3 who might like to ---

4 **MR. RYAN TESCHNER:** Here's one.

5 **DR. JOCELYN STACEY:** Thank you, Mr. Teschner.

6 **MR. RYAN TESCHNER:** I'll say that, while I
7 respect that exchange of information can often raise concerns
8 about legislative impediments, privacy impediments and the like,
9 I think we sometimes get bogged down in that more than we
10 perhaps need to. There are constructs and mechanisms that allow
11 for sharing of information if the willingness is there and then
12 you put the infrastructure in place. INSET, the example I
13 talked about earlier, is one such example. The way in which
14 police chiefs share information with police boards is another
15 example. The Provincial and Federal Security Advisor regime is
16 both an example and an opportunity. I don't know, again, I
17 haven't canvassed every province and territory across the
18 country, but certainly Ontario has a Provincial Security
19 Advisor. We know the federal government has a federal -- or a
20 National Security Advisor. That might be a mechanism through
21 which a lot of this information can be shared easily with that
22 infrastructure already embedded and put in place. And so I
23 think we have to look for vehicles and avenues to do it as
24 opposed to reasons not to do it.

25 **DR. JOCELYN STACEY:** President Sayers?

26 **DR. JUDITH SAYERS:** Yeah, I would think that, you
27 know, in the case of the COVID sharing information, the province
28 pleaded the *Freedom of Information Act*. And, you know, we kept

1 on asking, well, at what point does the national emergency or
2 some -- you know, the collective rights of individuals, the
3 collective people have rights over the individual person. And I
4 just didn't see how saying that there were 10 COVID cases that
5 we would actually say the 10 individuals. We wouldn't even know
6 who they were. So I think sometimes there is far too much
7 caution put into that, and maybe that needs to be defined in the
8 *Emergency Act* when, you know, critical information needs to get
9 to various jurisdictions, that that can be done as opposed to
10 not being done. And I just feel that not only in health, but in
11 some of the related issues that we've been having, and flooding,
12 you know, incidents in the ocean, like, there are some things
13 that just need to be known. I guess I'm not sure how we define
14 that, but it's something that, you know, became a real -- and I
15 think that's why it took us seven months to negotiate that was
16 trying to get around those privacy -- and we actually brought a
17 complaint to the Privacy Commissioner, and he just said he
18 didn't any tools in the Freedom of Information. So we need to
19 tools to be able to access the kind of information that we need
20 during emergencies.

21 **DR. JOCELYN STACY:** Yeah, thank you for that.

22 And, Professor Newman, I'll turn to you, but do
23 you have any thoughts on where President Sayers just left off,
24 that would be helpful; right? I do think that when these
25 challenges come up, they're often legislative barriers that
26 public officials can point to, and so are there legislative
27 changes or specific legislative changes that need to be made to
28 allow for sharing of information in these -- in emergency

1 contexts.

2 Please go ahead, yeah.

3 **DR. DWIGHT NEWMAN:** I was going to build directly
4 upon the comments just offered. I mean, the first comments I
5 think suggest that there may be times where some government
6 officials are too risk averse in relation to decisions on that
7 kind of legislation. But the easy solution in one way is
8 actually to put in amendments to the legislation. Those don't
9 need to be in the emergencies legislation. They could be in the
10 privacy legislation itself. I'm not an expert on that area. I
11 can't speak to specific amendments to specific Acts, but I just
12 wanted to highlight that it may be very appropriate for
13 different pieces of privacy legislation to have better developed
14 emergency exceptions.

15 **DR. JOCELYN STACEY:** Thank you.

16 Mr. Corley?

17 **MR. CAL CORLEY:** Yes, thank you. There's other
18 examples within community safety realm that issues of
19 information sharing have -- the barriers to information sharing
20 have come up, and one that comes to mind is the risk driven
21 community safety wellbeing interventions in Ontario. They'd be
22 known as situation tables, that pull together, you know, 15 or
23 16 different agencies from across the public health, criminal
24 justice, and social and human services sectors, to look at
25 individuals at acute and elevated risk. When these first got
26 off the ground in Saskatchewan in about 2010, it was fraught
27 with issues of concerns around information sharing and privacy.
28 But what we found was working with the provinces and with the

1 federal Privacy Commissioner, largely -- these were largely
2 overcomable and appropriate processes put in place in terms of
3 the handling and the control over such exchanges.

4 And I'd also just comment on the *Security of*
5 *Canada Information Sharing Act*. It too evolved out of concerns
6 with the sharing of information even within the federal realm.
7 So I think a starting point moving forward is to recognize that
8 there are potential inhibitors, but likeminded and thoughtful
9 people, fully respecting privacy legislation, the rights of
10 individuals can find appropriate solutions to break through some
11 of this. Thank you.

12 **DR. JOCELYN STACEY:** Thank you.

13 Other thoughts? Yeah, Professor Lindsay.

14 **MR. JACK LINDSAY:** And it has been addressed in
15 the opposite direction. The federal government is able to
16 collect proprietary information from, say, private critical
17 infrastructure providers, and that information is specifically
18 not available under freedom of information. The government
19 needs to know aspects of private business of telecoms and
20 others, but they also appreciate that once they know it, it
21 shouldn't go any further than them. So there have already been
22 examples of how we've dealt with privacy in both directions that
23 way.

24 **DR. JOCELYN STACEY:** Thanks. Okay. Continuing
25 on with this theme of sort of sharing, coordination and then
26 specifically about consultation, and we had a good conversation
27 earlier about meaningful consultation. And so I guess on that
28 note, should the notion of meaningful consultation, if the

1 *Emergencies Act* is reformed, should that notion of meaningful
2 consultation be specifically about the question of whether to
3 invoke the *Emergencies Act*, or does meaningful consultation mean
4 consultation about the underlying circumstances, the issues and
5 the possible solutions. So just looking for a little bit more
6 discussion on this idea of meaningful consultation specifically
7 in this context of invoking the *Emergencies Act*.

8 So is there anyone that would like to start with
9 this?

10 Yeah, President Sayers.

11 **DR. JUDITH SAYERS:** Yeah, I think that if there's
12 enough time before an emergency -- you know, when things are
13 building up and it looks like you might have to invoke the
14 *Emergency Act*, then, yeah, there should be consultations,
15 meaning -- beyond meaningful -- we've had bad luck with the
16 government on what meaningful consultation means. But if
17 there's no time, like, you know, some war -- you know, I mean,
18 war is different, but if there's something that hit
19 automatically, then I think that we do need that timeline to
20 talk to people afterwards, you know, whether it's seven days, or
21 three days, or whatever is reasonable, because I think -- I just
22 think sometimes that you just won't be able to do the
23 consultation, but I think that should be limited.

24 **DR. JOCELYN STACEY:** Thank you.

25 Professor Newman?

26 **DR. DWIGHT NEWMAN:** I'd just say that I hope I
27 didn't define this too narrowly in my remarks on meaningful
28 consultation before. Certainly, thinking about the present

1 statutory provisions about whether to invoke the *Emergencies*
2 Act, yes, there should be meaningful consultation there. But to
3 the extent that consultation can help in determining other
4 possible solutions, that would be a very appropriate part to a
5 better form of consultation, and I think more enriched
6 consultation, which I acknowledge the point that this hasn't
7 happened consistently with the federal government and Indigenous
8 communities, but the case law is there to say there's meant to
9 be meaningful consultation. Well, concepts of consultation guided
10 by that could lead to a richer range of options than just a
11 binary invoke, not invoke choice.

12 **DR. JOCELYN STACEY:** Yeah, thank you.

13 Mr. Corley?

14 **MR. CAL CORLEY:** To your question in terms of
15 whether meaningful consultation should involve a very limited
16 and narrow interpretation or more fulsome, I'd reflect back on
17 discussions yesterday afternoon as well as today, and I'd
18 suggest that implementing a national framework such as a few of
19 us have suggested would establish the foundation for trust and
20 understanding across various levels as pertaining to this
21 subject matter, and a common understanding of goals and
22 objectives, et cetera.

23 In other words, setting a foundation for
24 meaningful consultation when events come, such as have been
25 described by Judith, which may be much constrained time frames
26 that allow themselves to allow for appropriate consultation. It
27 strikes me that key stakeholder groups will expect, and should
28 be consulted with, even in the shortest of time frames, but that

1 by instituting and implementing a framework such has been
2 described, and I think the particular five-point model that Ryan
3 suggested is quite appropriate as a starting point, would really
4 lay the foundation for trustful relationships as pertaining to
5 emergencies and public order protests. So when we get to the
6 time where there is a very short order, that sets the foundation
7 for even in a very short order of time that's available for
8 consultation to be more meaningful.

9 **DR. JOCELYN STACEY:** Maybe I'll put this question
10 in a slightly different frame. Is it -- if a government is not
11 direct about the question that -- about invoking the *Emergencies*
12 *Act*, does that mean that it's not meaningful consultation, even
13 if the conversations that have happened have explored a range of
14 -- the range of underlying causes and a range of solutions? I
15 think that's -- because, I mean, one of the things that we're
16 sort of -- we've canvassed in this conversation is the
17 importance of bringing a number of different governments and
18 stakeholders to the table, but also that might create a
19 challenge in terms of how forthcoming, I guess, and the kinds of
20 information that can be shared in those conversations.

21 And so, yes, we want to have a lot of smart minds
22 at the table so that you're exploring solutions, but I guess if
23 there's going to be a decision made around invoking the
24 *Emergencies Act*, does that need to be directly part of the
25 conversation in order for that to be a meaningful conversation
26 and meaningful consultation?

27 Yeah, Mr. Teschner?

28 **MR. RYAN TESCHNER:** I would tip on the side of,

1 yes, the ultimate issue or the ultimate decision needs to be put
2 forward. Obviously, you know, the Government doesn't have to
3 reveal, necessarily, to the table, all of the considerations
4 it's going to take back in formulating its ultimate decision,
5 but there needs to be some transparency as to what is being
6 considered. And in part, that's because the underlying facts
7 and context, exploring that is obviously important in order to
8 identify whether there are alternatives or other options.

9 But importantly, if the government doesn't put on
10 the table what invoking means, what are the specific regulations
11 that they may put in place as a result of invoking the Act?
12 What are the impacts of those regulations on some of the actors
13 who are going to be impacted? I don't know how you can have
14 meaningful consultation in the absence of exploring those
15 dimensions.

16 And so from the ultimate question of whether or
17 not to invoke, there flow impact questions that have to be part
18 of, I would say, not consultation at a point in time, but
19 ongoing consultation, because there's also a decision to be made
20 about whether to continue having the declaration in place.

21 And so there needs to be a constant feedback
22 loop, if you will.

23 **DR. JOCELYN STACEY:** Thank you.

24 Okay. So I have two questions here about other
25 agencies that -- one that has been part of the conversation so
26 far, and then a new one.

27 So we've talked a bit about private security.
28 And Mr. Corley, in particular, you gave the example of how

1 private security could have been used with respect to the events
2 in Ottawa, for example, to man checkpoints, right, on the roads.
3 And so I guess the question is, should police have the power to
4 hire private security for specific functions during emergencies?
5 And if so, do we need legislation to enable that? And what
6 kinds of duties would you see private security appropriately
7 assuming during an emergency?

8 **MR. CAL CORLEY:** Great questions.

9 **DR. JOCELYN STACEY:** Thank you.

10 **MR. CAL CORLEY:** First and foremost, and I'd have
11 to take a look at the legislation across jurisdictions across
12 Canada, but just using Ontario's legislation, it already allows
13 for that.

14 The challenge, as we've heard earlier, is -- has
15 to do with time scales. So in the face of the PanAm games is
16 one I mentioned, or the G20/G8, where there was months of
17 planning enabled, the private sector security were engaged
18 because it allowed time to develop and implement those
19 agreements under the appropriate legislation and, as I
20 understand it, together with an agreement with the Toronto
21 Police Association, for example.

22 So the legislation, at least in Ontario, is
23 there.

24 The inhibitors, in my mind, come into play on the
25 two different -- the short order types, the spontaneous issue
26 that arises, or those with very short time scales that allow for
27 appropriate planning.

28 And it's just a matter of the time it takes to

1 get these in place, or go -- and back to our suggestion in terms
2 of national framework protocols and arrangements that are there
3 in advance so these can be mobilized.

4 In terms of the types of duties that private
5 sector security agents could provide, I'd suggest that they're -
6 - they fall in a couple of different buckets, but typically
7 they'd all be lower risk to harm endeavours or duties than the
8 public police are prepared, trained, et cetera, to undertake.

9 So manning of barricades, other back office,
10 middle office roles that support front line policing.

11 I mean, today the private sector security is so
12 far advanced from what we typically, or many people often think
13 of, you know, the security guard that's sitting outside a store
14 monitoring and providing a modicum of security there. They're
15 very advanced, very well trained, I won't get into naming
16 different companies, but they bring a lot of capacity at lower
17 cost, and can be a very meaningful complement to the public
18 police with its more finite and high-cost resources.

19 **DR. JOCELYN STACEY:** Thank you. Do others have
20 thoughts on this question?

21 Okay. Mr. Lindsay, I have a question that I
22 think you're well positioned to answer here. So -- but others
23 are free to jump in as well.

24 So one of the agencies that we haven't talked
25 about is the Canadian Armed Forces. And so under our model of
26 emergency management, provinces can make requests for assistance
27 to the Federal Government and I think we have a bit of a pattern
28 now of when those requests for assistance come in, it's often

1 the military that responds, whether it was during COVID and
2 staffing long-term care homes, or during floods or wildfires.

3 Are there other models that we should be
4 exploring, rather than assuming that the military is going to be
5 there to fill these requests and is well positioned to fill
6 these requests when they come in? Are there alternate models
7 that we should be thinking of?

8 **MR. JACK LINDSAY:** Yes. First of all, I think
9 the question of whether the military is well suited to some of
10 the jobs is debateable.

11 The fact that when a community is facing an
12 emergency, that their local resources and capabilities have been
13 exceeded, we need to look to where we have extra capability.
14 And within the Federal Government, the Armed Forces are a large,
15 trained, human resource and they have some equipment that's
16 appropriate to get into rough terrain or other things, but we
17 could be doing much of the same work if we were working with
18 community groups or others without, as you've suggested, just
19 assuming that when things get too bad, we'll turn to the Armed
20 Forces.

21 I believe in the media recently there have been
22 discussions about the fact that that's not also what the
23 Military would like to see its role as.

24 Having said that, other countries do have other
25 citizen preparedness models that engage more of the citizens
26 into that task.

27 The other challenge is that we now face, compare
28 to, say, 1950, when the Army came into Winnipeg to help with the

1 flood, or when Mel Lastmen asked for the Army. We now have to
2 face the workplace health and safety issues. We can't send a
3 soldier to do a task like sandbagging if they haven't been
4 properly trained to do that, or if they don't have the proper
5 safety equipment. And we face the same thing with volunteers.

6 So one of the underlying questions, I think, is
7 that are the special powers that the Provinces and the Federal
8 Government have claimed in times of emergency are they really
9 the powers that we need? Or should we be able to in a state of
10 emergency say we are suspending some aspect of the privacy
11 legislation? Or are we suspending some aspect of workplace
12 health and safety, recognising that volunteers are going to be
13 working in a dangerous situation which is the entire community?

14 So it's about having more tools than just that
15 hammer that we're always looking to use those extraordinary
16 powers. Extraordinary powers that we felt were inappropriate
17 even in the Second World War when we used them, and they're
18 still the same powers that we have on the books today. So I do
19 feel there's a lot more that can be done within the emergency
20 management community to offer more alternatives.

21 **DR. JOCELYN STACEY:** Thank you.

22 Do others have thoughts on that question around
23 the role of the military in responding to provincial requests
24 for assistance? President Sayers?

25 **DR. JUDITH SAYERS:** Yes. You know, in some of
26 the fires in 2017 in B.C., First Nations were asked to leave
27 their communities and homes, and they refused. And you know,
28 like the military, well, who is trained to be doing this?

1 And so I guess that's my question, is how can we
2 better prepare in our communities for these emergencies because,
3 as was stated, the military is not always the best option. And
4 you know, if we're going to using the military in some
5 situations I think that's another area that there could be
6 protocols between governments, First Nations on how that
7 happens, and that the, you know, within the lands of the First
8 Nations, of course, they should be the people managing the
9 emergency.

10 So you know, I think we really do need to be
11 looking at better ways of preparing ourselves for emergencies,
12 capacity building equipment, et cetera, as opposed to, you know,
13 maybe the military would be something, but maybe it would d be
14 further down the line if we can actually find local help.

15 **DR. JOCELYN STACEY:** Thank you.

16 Okay. Commissioner, do you have other questions
17 or clarifications?

18 **COMMISSIONER ROULEAU:** No. I think it was a
19 excellent panel. Oh, we have another question here. Hang on.

20 **DR. JOCELYN STACEY:** Sorry, Cal. You get the
21 last word.

22 **MR. CAL CORLEY:** Thank you.

23 I apologise, Commissioner. I was just reflecting
24 on the last question asked in terms of some of the specific
25 duties that private security could attend to, and I thought it
26 might be useful to whoever the questioner was to give a bit of a
27 sense of some of those low risk to harm duties, what they might
28 be.

1 And I think they could range from onsite
2 detention processing. So this is something that's common in
3 some jurisdictions in the UK. It allows police officers to be
4 at the frontline, and whether it's taking control and custody of
5 people, either to be taken to hospitals or to detention
6 facilities, that's the role where the private sector can play.
7 Manning barricades has been discussed.

8 Patrolling other parts of a city while the public
9 police are busy with a public emergency. Traffic control, and
10 there I'm speaking about the lower risk ends of traffic control.
11 Crowd control in non-violent aspects of a protest. So we --
12 there has been discussion, certainly yesterday, in terms of
13 alternative sites where, you know, the -- those with legitimate
14 purposes may wish to go there's an opportunity there to engage
15 the private sector in support of that. Crime scene protection
16 is another very common role that they can take on, as well as
17 supporting the forensic identification side, photography and
18 those types of things onsite.

19 That's not exhaustive, but it gives us a bit of
20 a, you know, a bit of a range of the scope if that helps. Thank
21 you.

22 **DR. JOCELYN STACEY:** Yeah, thank you for those
23 examples.

24 All right.

25 **COMMISSIONER ROULEAU:** Okay. So I'll -- not
26 seeing anymore hands I'm going to now thank my panelists, and in
27 particular, I thank those who have come from afar to
28 participate. Professor Newman from England, and

1 President Sayers from the west. So thank you all for joining in
2 this very interesting panel.

3 Ce fut un grand plaisir de vous écouter et de
4 voir les réflexions, les pensées, et, vraiment, un peu les idées
5 que vous avez avancées. C'est très apprécié de ma part et de la
6 part de la Commission, et on a certainement besoin de l'appui de
7 gens comme vous pour des remue-méninges, pour trouver des idées,
8 des pensées et comprendre les problèmes dont fait face la
9 Commission et, en fin de compte, la communauté canadienne.

10 So thanks very much for everything, for all the
11 thoughts and contributions. And in particular, thank you for
12 presiding over the group, Jocelyn, that was -- I'm sure there
13 was a lot of background work that went into this, and also from
14 the members, I'm sure, and that's very appreciated.

15 So with my thanks, we're going to adjourn for the
16 day, and resume tomorrow morning at 9:30. Thank you.

17 **THE REGISTRAR:** The Commission is adjourned. La
18 Commission est adjournée.

19 --- Upon adjourning at 5:01 p.m.

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C E R T I F I C A T I O N

3

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