



**Public Inquiry Into Foreign Interference in Federal
Electoral Processes and Democratic Institutions**

**Enquête publique sur l'ingérence étrangère dans les
processus électoraux et les institutions démocratiques
fédéraux**

Public Hearing

Audience publique

**Commissioner / Commissaire
The Honourable / L'honorable
Marie-Josée Hogue**

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Ottawa, Ontario

--- The hearing begins Monday, October 21, 2024 at 9:01 a.m.

COMMISSIONER HOGUE: [No interpretation].

This morning we begin the policy phase of our work with a view to eventually formulating recommendations to better protect our democratic processes. In order to benefit from as many points of view as possible, we have opted for a roundtable format with the participation of experts who have already given thought to the issues that will be under discussion.

Some come from the academic world, while others are practitioners who have worked for many years in a relevant sector, and each roundtable will be monitored by a member of the Research Council. As such, we'll benefit from the input of nearly 40 experts who will take part in seven roundtables with five or seven experts per roundtable.

We will hold two roundtables per day on Monday, Tuesday and Wednesday, and last one on Thursday morning.

Each roundtable will last more or less three hours and a half. The first two hours will be spent moving through the question already identified and then there will be a 30-minute break during which Commission counsel and the moderator will look into the new questions received from the parties. They will identify those that are the most relevant and useful and will be asked -- they will be asking the -- in the last hour discussed.

I may also ask questions at any time during

1 each roundtable as well as the lead counsel.

2 The topic and the question to be addressed at
3 each of these roundtables have been determined in
4 collaboration with the participants, and I want to thank them
5 for their help.

6 Our first roundtable this morning is entitled
7 "Building Democratic Resilience Amid Value Conflict", and
8 will be moderated by Nomi Claire Lazar, who is a professor in
9 the graduate School of Public International Affairs at the
10 University of Ottawa.

11 We have also with us -- actually, two are on
12 the screen and three are with us in the room. I would like
13 to thank them as well, as well as Ms. Lazar, for taking part
14 to this first roundtable, and I will leave it to Ms. Lazar to
15 introduce the panellists more -- at more length.

16 So Ms. Lazar, you have the floor.

17 **--- ROUNDTABLE: BUILDING DEMOCRATIC RESILIENCE AMID VALUE**
18 **CONFLICT:**

19 **--- PANEL MODERATED BY DR. NOMI CLAIRE LAZAR:**

20 **DR. NOMI CLAIRE LAZAR:** [No interpretation].

21 ...looking at political options to fight
22 foreign interference on top of legal and governance measures
23 to punish and dissuade actors on carrying out foreign
24 interference. We will look at resilience to protect Canadian
25 institutions and reinforce individual's capacity, as well as
26 businesses' and communities' capacity to resist attempts for
27 foreign interference.

28 This first roundtable will introduce some

1 themes and challenges for building democratic resiliency amid
2 ambiguities and value conflicts. Our theme stems from the
3 following observations.

4 For elections to serve their intended
5 purpose, eligible participants, and only eligible
6 participants, must choose a representative through a trusted
7 process which is free, fair and well informed. It is partly
8 because foreign interference can impact freedom, fairness and
9 the information environment of elections and trust in that
10 process that foreign interference is a cause for concern.
11 But foreign interference is a complex problem, and an
12 effective strategy cannot be limited to legal tools to
13 detect, deter and punish because foreign interference can be
14 ambiguous, making a precise legal definition challenging.

15 Modes of foreign interference may shift shape
16 to evade the boundaries of law, evidence of foreign
17 interference gathered in intelligence contexts is difficult
18 to use in court, and foreign interference can be difficult to
19 prosecute when interferers act from abroad, and even where
20 legal violations are detected, competing political pressures
21 and incentives may complicate responses.

22 These factors make democratic resilience
23 critical so we can repel and not just deter foreign
24 interference.

25 Typically, whole-of-society approaches that
26 aim to build resilience include raising public awareness,
27 building community capacity to support those targeted and to
28 detect and counter mis- and disinformation, and encouraging a

1 robust Canada-based media to support a healthy information
2 environment and, finally, reducing exposure of people deemed
3 vulnerable to foreign interventions.

4 Still, many of these mechanisms to reinforce
5 resilience could themselves negatively effect democracy. For
6 example, efforts to safeguard the information environment may
7 risk limiting access to diverse perspectives that enrich that
8 environment. Efforts to support reliable Canada-based media
9 may lead to claims that that media is biased.

10 Efforts to call out instances of foreign
11 interference may also raise suspicion in and toward Canada's
12 diasporas, and raising civic awareness about the dangers of
13 foreign interference may contribute to a loss of confidence
14 in the very democratic institutions we hope to protect.

15 Furthermore, ambiguity around what counts as
16 interference, the so-called "Grey Zone", can make civic
17 education challenging. Not only what counts as interference
18 but what counts as foreign can pose challenges as interests,
19 ideas, funds and strategies flow across borders for diverse
20 political reasons and in opaque ways. So resilience may
21 depend precariously on clarity around the idea of foreign
22 interference.

23 So our panellists today will raise these
24 challenges and consider how insights from neighbouring fields
25 of law, policy and practice may inform a fair and effective
26 approach. These themes will also carry over into subsequent
27 panels over the coming days.

28 So we will have five speakers today. The

1 first speaker, Professor of Philosophy Quassim Cassam from
2 the University of Warwick, followed by Hoi Kong, who is Right
3 Honourable Beverley McLachlin Professor of Constitutional Law
4 at the University of British Columbia, followed by
5 Distinguished University Professor Richard Moon from the
6 University of Windsor. Then we will hear from Mr. Stephen
7 Maher, who is a journalist, and finish off last, but
8 certainly not least, with Professor Dr. Tanja Börzel, who
9 directs the Contestations of the Liberal Script Cluster of
10 Excellence at the Freie Universitaet in Berlin in Germany.

11 So I'll now invite Professor Cassam to start
12 us off.

13 **--- PRESENTATION BY DR. QUASSIM CASSAM:**

14 **DR. QUASSIM CASSAM:** Thank you very much.

15 So I want to begin with what I believe to be
16 an obvious point, which is that we can't develop strategies
17 for building resilience to foreign interference if we don't
18 have an accurate definition of foreign interference, or at
19 least an accurate description.

20 So in my remarks, I just want to reflect on
21 some of the challenges of defining foreign interference,
22 which I'll abbreviate as FI.

23 When we defined a term like foreign
24 interference, we may have a mental picture of what it is. So
25 for example, we might imagine a scenario in which a person
26 acting under the direction of a foreign power engages in
27 clandestine, coercive or corrupt operations for the purpose
28 of benefiting the interests of that foreign power.

1 So that would be an example of what you might
2 call traditional foreign interference, and indeed, a recent
3 CSIS public report uses that label and gives many examples of
4 traditional foreign interference.

5 A satisfactory definition of FI must, of
6 course, cover traditional foreign interference, but it also
7 faces the challenge of covering many less traditional forms
8 of foreign interference such as foreign-led disinformation
9 campaigns on social media.

10 I think it's helpful to think of definitions
11 as analogous to fishing nets. We want our fishing nets to
12 catch the fish we want to catch and not catch the fish we
13 don't want to catch. In the same way, we want our definition
14 of foreign interference to latch onto genuine cases of FI but
15 not to catch what is not foreign interference.

16 So if you have that picture of foreign
17 interference, then there are a couple of ways in which a
18 definition of FI can go wrong.

19 One possibility is the definition is too
20 broad. It classifies as foreign interference activities
21 which should not be so classified. So for example, think
22 about the legitimate influence activities of foreign
23 diplomats. We don't want a definition of foreign
24 interference to cover those sorts of activities. If they do,
25 then these activities would be false positives of the
26 definition.

27 Another way in which a definition of foreign
28 interference can go wrong is if it fails to classify as

1 foreign interference what it should classify as foreign
2 interference. So those sorts of cases would be false
3 negatives for the definition.

4 So these are two ways in which the definition
5 can go wrong. It can be too broad, that is to say, give us
6 false positives. It can be too narrow, that is to say,
7 generate false negatives. And a perfect definition would
8 presumably be one that generates neither false positives nor
9 false negatives.

10 Maybe a perfect definition is like a fishing
11 net that catches exactly the right fish and nothing else.

12 I have a couple of observations about that
13 ideal of perfection. The first is that it's simply not
14 realistic. Very few terms have perfect definitions. That's
15 one lesson of the philosophy of definition. And certainly
16 the sheer complexity and variety of foreign interference
17 techniques entail that any definition of FI is bound to
18 generate false positives and false negatives. They're just
19 unavoidable.

20 My second observation is that this may not
21 matter as much as we think it does. Our objective, after
22 all, should be to frame a good enough definition of foreign
23 interference, an approximately correct definition rather than
24 a perfect definition.

25 And what I mean by "good enough definition"
26 is a definition that is easy to understand so the public can
27 understand what foreign interference is, and it covers both
28 traditional foreign interference and non-traditional foreign

1 interference, it won't generate harmful false positives or
2 false negatives, and it will be practically useful for legal
3 and national security purposes.

4 The point I'm trying to make here is that
5 definitions are not academic exercises, certainly definitions
6 of terms like "foreign interference". They're not academic
7 exercises. We need to think of them as useable by the people
8 who need them.

9 So bearing these points in mind, I now want
10 to turn to this Commission's own initial report dated 3rd of
11 May, 2024 and to its characterization of foreign
12 interference.

13 So at one point, the initial report describes
14 foreign interference as follows:

15 "...clandestine and deceptive or
16 personally threatening activities by
17 a foreign state or those acting on
18 its behalf which are detrimental to
19 the interests of Canada."

20 So I'll read that again:

21 "...clandestine and deceptive or
22 personally threatening activities by
23 a foreign state or those acting on
24 its behalf which are detrimental to
25 the interests of Canada."

26 So my question is whether that definition
27 generates problematic false positives or false negatives, and
28 I think it's helpful to have an example, so here's one. And

1 I should emphasize this example is completely fictional.

2 So imagine a person called Boris. Boris has
3 moved to Canada from the country of Ruritania, and he's
4 engaged in personally threatening Canadian citizens who are
5 publicly critical of the government of Ruritania. However,
6 and this is the key point, he has no connection with the
7 government of Ruritania or its foreign intelligence services.
8 He's acting entirely on his own initiative. He is self-
9 appointed.

10 Nevertheless, he's acting on behalf of
11 Ruritania in the sense that he intends his actions to benefit
12 Ruritania. It's possible to act on someone else's behalf
13 without their knowledge.

14 And let's suppose also that his actions harm
15 Canadian interests.

16 So is this foreign interference?

17 Arguably, yes, at least according to the
18 account of foreign interference given in the initial report.
19 Specifically, it's a case of what might be called contactless
20 foreign interference.

21 So in this case, Boris is engaging in
22 detrimental and personally threatening activities on behalf
23 of a foreign state with which he has no contact, hence the
24 label contactless foreign interference.

25 So one question is whether that's a false
26 positive per the definition of foreign interference in the
27 initial report and, if so, does it matter.

28 So in traditional FI, the agent of foreign

1 interference has a substantial connection with a foreign
2 power. He's a foreign state actor who is employed by foreign
3 power, is funded by it or acts at its behest; not merely on
4 its behalf, but at its behest.

5 If, in my example, Boris has no substantial
6 connection with Ruritania and Ruritania has no knowledge of
7 what he's up to, then I think it's arguable that it should
8 not be classified as foreign interference and it's a false
9 positive for any definition that implies otherwise.

10 Now, faced by a case like this, one response
11 would be to say that they don't really matter, so this would
12 be the response that says it's really up to the authorities
13 to decide whether or not to pursue or to prosecute someone
14 like Boris. And they have the discretion not to do so.

15 The fact that someone can be held accountable
16 for foreign interference does not mean that they should be
17 held accountable, at least in these sorts of cases. I think
18 there's something to be said for that approach, but I prefer
19 a different one.

20 I think we could simplify and clarify matters
21 by explicitly requiring that when a person is said to be
22 acting on behalf of a foreign power, it's not enough that
23 he's acting with the intention of benefiting the foreign
24 power. He must also have a substantial connection with that
25 power. And I'm going to call that the "substantial
26 connection condition", SCC.

27 So the person must have a substantial
28 connection with the foreign power on behalf of which they're

1 acting in order for it to be foreign interference. And I
2 think a person satisfies this condition, they have a
3 substantial connection, only if their conduct is directed,
4 funded or supervised by a foreign power.

5 So if this version of the substantial
6 connection condition is adopted, then it would mean, for
7 example, that a Canadian resident who secretly spreads
8 disinformation about Russia with the intention of benefiting
9 the government of Ukraine is not guilty of foreign
10 interference unless he's directed, funded or supervised by
11 the government of Ukraine or any of its agencies.

12 Now, in a recent lecture in London, Jonathan
13 Hall, who is the UK's independent reviewer of state threat
14 legislation, drew attention to one of the potential drawbacks
15 of this demanding condition on foreign interference. The
16 drawback is that it can be hard to prove that someone is
17 funded or supervised by a foreign power.

18 And here, we see the tension between the
19 accuracy of a definition of foreign interference and its
20 practicality, and we may have to decide which we think is
21 more important.

22 Before closing, I want to comment briefly on
23 the issue of false negatives in relation to the idea that
24 foreign interference is clandestine, deceptive or personally
25 threatening.

26 So imagine a foreign media organization,
27 perhaps like *Russia Today*, that makes no attempt to disguise
28 itself and spreads disinformation that is plainly designed to

1 benefit a particular candidate in an overseas election. Now,
2 that would surely be foreign interference even though it's
3 not clandestine, personally threatening or deceptive as to
4 the identity of the spreader of disinformation. We know
5 perfectly well who it is.

6 So this looks like a false negative, and it
7 looks like a case of foreign interference, of genuine foreign
8 interference, that's not covered by the definition, and yet
9 it's an extremely important form of foreign interference.

10 Now, of course, the fact that a definition of
11 foreign interference generates false positives and false
12 negatives may not be a decisive objection to it. Maybe it
13 can be dealt with by sharpening the definition, maybe along
14 the lines that I've been suggesting, or alternatively, by
15 just living with it. One might take the view that some false
16 positives and false negatives don't matter because they
17 aren't seriously harmful. Maybe what we should be focusing
18 on is simply the question whether the definition is
19 practically useful.

20 And I think this again is an important
21 discussion and we need to be very clear about the potential
22 harms, if any, of false positives or false negatives.

23 Now, in my view, the definition of foreign
24 interference suggested by this Commission in its May 2024
25 Interim Report can be improved, and indeed should be.
26 However, we also need to be realistic and remember that
27 definitions, like, fishing nets, can be imperfect, but good
28 enough.

1 I think the challenge we face is to balance
2 the natural desire for a perfect definition of foreign
3 interference with a need for a definition that can be used in
4 practice to detect, deter, and punish the most salient forms
5 of foreign interference that we face today. And I think it's
6 essential that we collectively rise to this challenge.

7 Thank you very much.

8 **DR. NOMI CLAIRE LAZAR:** Thank you, Professor
9 Cassam.

10 We will now turn to Professor Hoi Kong, who
11 is Rt. Hon. Beverley McLachlin Professor of Constitutional
12 Law at the University of British Columbia.

13 **--- PRESENTATION BY MR. HOI KONG:**

14 **MR. HOI KONG:** Thank you so much. And thank
15 you to the Commission and the Commissioner for the invitation
16 to present as part of this roundtable.

17 In my remarks, I will address two issues and
18 make two recommendations with respect to each of these
19 issues. The first issue, which has been raised already by my
20 colleague, Professor Cassam, is related to the problem of
21 definition of foreign interference, and in particular, in
22 electoral processes.

23 Now, in my remarks, I will focus in
24 particular on interference that takes the form of
25 disinformation. That is, information that is knowingly false
26 and spread for the purposes of achieving specific ends.
27 Because I'm addressing this subset of interference, foreign
28 interference, I'll address a second set of issues. The

1 second set of issues relates to the regulation of speech
2 during elections and the challenges that that kind of
3 regulation raises. And I know that my colleague, Professor
4 Moon, will also address that question.

5 So two questions: the definition of foreign
6 interference, and the challenges raised by regulating speech
7 during elections.

8 So let me start with a point of disagreement,
9 I think, between me and my colleague.

10 So Professor Cassam said that we need
11 definitions in order to have effective strategies for
12 countering foreign interference. And we've already heard
13 that framing a definition of foreign interference is
14 incredibly challenging for the problem -- because it gives
15 rise to problems of overbreadth and under-inclusiveness.

16 So I want to suggest that we don't need a
17 definition of foreign interference to address the problem of
18 foreign interference. Instead I suggest we need to first
19 define what is the purpose of regulating foreign
20 interference? And then we need to specify particular
21 activities that can be regulated in order to advance that
22 purpose.

23 So let's turn to the purpose of regulating
24 foreign interference. Now, I think generally what we can say
25 is that foreign interference in electoral processes
26 undermines the capacity of a policy to achieve and exercise
27 self-determination.

28 So through elections in democracies, citizens

1 make free and informed choices about how they will be
2 governed. The problem of foreign interference is, at least
3 in the electoral context, is that it undermines this ability
4 to make free and informed choices.

5 So the point of regulating foreign
6 interference is to protect this capacity of a policy and its
7 members and only its members to participate in this exercise
8 of self-determination. That's the purpose of regulating
9 foreign interference.

10 So what kind of activities should we regulate
11 in light of this purpose?

12 I want to suggest that there are two general
13 kinds of categories that we would want to regulate.

14 First, there are activities that interfere
15 with free and informed choice, irrespective of the identity
16 of the person doing the interference.

17 So we have examples of this in the
18 legislation in the *Canada's Election Act*. So for example, in
19 section 92, there's a prohibition on making false statements
20 about a candidate's withdrawal. That manifestly -- that kind
21 of statement manifestly interferes with an elector's ability
22 to make a free and informed choice.

23 And I note that's objectional interference
24 irrespective of the identity of the person engaged in that
25 interference. That could be a Canadian citizen or it could
26 be a foreign actor. So that's the first category of activity
27 to regulate in order to achieve the purposes of regulating
28 foreign interference.

1 Let's assess now a second category of
2 activities to be regulated.

3 The second category of activities to be
4 regulated specifically target the foreignness of the actor.
5 So an example in the *Canada Elections Act* is in 287.4(1).
6 And in that provision, we have a prohibition on undue
7 influence by a foreign actor. And undue influence is defined
8 as any expense to directly promote or oppose a candidate, a
9 registered party, or a leader of a registered party.

10 Now, that kind of activity specifically
11 targets the foreignness of the actor because, of course, a
12 Canadian citizen could expend, under the limits set by the
13 law, could engage in expenses to support or oppose a
14 candidate, a party, or a leader of a party. That kind of
15 category, right, targets specifically the foreignness of the
16 actor.

17 Okay. So this is the first point I wanted to
18 make; right? The first point I want to make is that we do
19 not need a definition of foreign interference. What we need
20 is the purposes of regulating foreign interference; an idea
21 of core activities and two specific types of core activities
22 that we want to regulate in order to achieve those purposes.

23 And that leads me to my first recommendation.
24 I suggest that the Commission not spend an inordinate amount
25 of time trying to offer a definition of foreign interference.
26 Instead, I suggest that the Commission look to the purposes
27 for which we regulate foreign interference and identify
28 activities that advance those purposes. And as I say, the

1 core purpose is to protect the ability of a policy and its
2 members and only its member to engage in a specific exercise
3 of self-determination, and that is the free and informed
4 choice exercised during an election. That's my first point.
5 My first point and my first recommendation.

6 Let me turn now to my second issue, which is
7 the challenges around regulating speech during elections.
8 Right, so if we want to regulate disinformation, we want to
9 regulate inaccurate speech. And I want to say that in the
10 regulation of the content of speech, there are a couple of
11 challenges; right?

12 So consider one set of challenges that
13 relates to why people speak during an election. So some
14 kinds of speech during an election campaign are the kind of
15 expressions we can think of as just having a purely
16 expressive function, a rhetorical function. There is no
17 intent specifically to make a factual claim.

18 There's a second kind of speech, which is
19 grounded in facts, right, and which, if accurate, would
20 inform elector's choices about the options available to them.

21 So there are two kinds of expression in
22 election campaigns, and the risk of regulating the content of
23 expression is that you inadvertently regulate expressive
24 expression, right, taking it to be an instance of regulation
25 and intent to inform. That's one challenge of regulating the
26 content of speech during elections. It's overbroad -- you
27 run the risk of overbroad regulation and targeting speech
28 that does not purport to make accurate statements of fact.

1 Let me turn now to a second challenge of
2 regulating speech during elections. Now, imagine a situation
3 in which an authority identifies a speech during an election,
4 right? Labels it as false. And that labelling has an impact
5 on the outcome of the election. Of course it's always
6 difficult to trace the causal links, but let's assume this to
7 be the case. Or these give rise to a perception that there
8 was an effect on the outcome of an election.

9 Now, imagine further that in our
10 hypothetical, after the election it becomes clear that the
11 authority made an error, right? So this gives rise to the
12 second kind of problem that arises with regulated content of
13 speech during an election. It's a problem I call error and
14 backlash. The authority makes an error, it is subsequently
15 revealed, and the legitimacy and the authority of that actor,
16 that actor of the state, is put into question. And by
17 extension, the electoral system itself is put into question.

18 So we have challenges of speech during
19 elections. There are two kinds of challenges; challenges of
20 over-regulation, writing expressive speech as if it were
21 speech that intends to convey content, accurate information;
22 and second, the problem of error and backlash which has the
23 potential to undermine the legitimacy or call into question
24 the legitimacy of the electoral system itself.

25 That brings me to my second recommendation.
26 And my second recommendation is to say if we are to regulate
27 speech, the content of speech for its truth value; that is,
28 if we want to prohibit false speech, we should draw the range

1 of speech that is prohibited very narrowly, right? So we
2 have examples of this, again, in the legislation, right? So
3 I gave one example about -- from section 92 about the false
4 statements of withdrawal, right? There are other provisions
5 that speak to impersonating the Chief Electoral Officer,
6 right? Or statements that specifically misrepresent a
7 candidate's citizenship or profession, right?

8 So these are narrowly drawn instances of
9 inaccurate speech. And I think that that narrowness is a
10 virtue, because it reduces the risk that the kind of speech
11 that is prohibited and that would give rise to sanctions
12 would either give rise to a category error, an error that
13 characterizes, that punishes speech that is expressive as if
14 it were about facts, and it also reduces the risk of error
15 and backlash. It is pretty easy to establish whether someone
16 has made a false statement about a candidate's citizenship.

17 So to conclude, these are two general
18 problems that arise in the regulation of foreign interference
19 in electoral process. The first problem is a problem of
20 definition. I suggest that that it is a non-problem. We
21 should not aim at clear and perfect definitions, we should
22 regulate in light of purposes of regulation of foreign
23 interference, and we should specify conduct. And as I said,
24 those are two general ranges of conduct.

25 Second, the regulation of election speech.
26 Because there are risks of regulating election speech, in
27 particular the problem of overbreadth and the problem of
28 error and backlash, any regulation of election speech should

1 be drawn -- especially prohibitions, should be drawn narrowly
2 and carefully to avoid those risks.

3 I'd now -- those are my remarks, and I turn
4 the floor over to the Chair.

5 **DR. NOMI CLAIRE LAZAR:** Thank you very much,
6 Prof. Kong. I'll now turn the floor over to Prof. Richard
7 Moon, who is Distinguished University Professor of Law at the
8 University of Windsor.

9 **MR. RICHARD MOON:** That's okay.

10 **DR. NOMI CLAIRE LAZAR:** Thank you.

11 **--- PRESENTATION BY MR. RICHARD MOON:**

12 **MR. RICHARD MOON:** Well, thank you, and thank
13 you to the Commission for this invitation to participate in
14 its important work.

15 I guess I should not be so surprised that
16 Professor Kong and I have significant overlap in our remarks,
17 and I'm happy that significant agreement in our remarks. But
18 I will start in, and I think you'll recognize the ways in
19 which we're in agreement.

20 So when foreign intervention in politics
21 takes the form of speech or expression -- and I tend to use
22 these terms interchangeably -- intervention that, for
23 example, takes the form of disinformation, and disinformation
24 that may spread online during election campaigns in
25 particular, any attempt to regulate it raises issues under
26 the *Charter* of freedom of expression.

27 Section 2(b) -- and I know most of you will
28 be entirely familiar with this, so I apologize for that, but

1 section 2(b) protects, among other things, the individual's
2 freedom of expression. And the Court has defined expression
3 very broadly as any act that's intended to convey a message
4 or convey meaning.

5 The freedom of expression, like other rights
6 in the *Charter*, can of course be subject to limits, provided
7 these limits, in the language of section 1, are reasonable
8 and demonstrably justified in a free and democratic society.
9 And in a case called *Oakes, Regina and Oakes*, the Supreme
10 Court of Canada set out a multipart test for determining
11 whether or not a particular limit on the right was justified.
12 All right.

13 The free expression right under section 2(b)
14 extends to everyone, as it said, whether or not they are
15 citizen or ordinarily resident in Canada. And, as well, the
16 right is not just a right of the speaker, it's a right of the
17 audience, the potential audience.

18 Now, disinformation, we have come to now
19 recognize, is a rather significant problem. It spreads
20 quickly and widely on social media platforms of different
21 kinds, and it is a concern, whether or not its source is
22 foreign or domestic. Foreign actors may have particular
23 motivation for spreading false news, certainly non-state
24 foreign actors sometimes are engaged in spreading foreign
25 news simply as a source of personal revenue. But foreign
26 actors of different kinds may seek to affect voting behaviour
27 or to shape public opinion on certain policies or issues, or
28 they may simply want to sow confusion and encourage distrust

1 in political and other institutions such as the traditional
2 media.

3 It is not, at least ordinarily, the role of
4 the state to censor speech that it considers to be false. As
5 early defenders of the right to free speech, such as John
6 Stuart Mill, argued there are too many costs and too many
7 risks to leaving it to the state to decide what community
8 members should be allowed to hear. The censor may get it
9 wrong; they may be attempted to suppress speech with which
10 they disagree, and of course, within any so-called false
11 statement there may in fact be a grain of truth. And
12 following Mill's argument most importantly, perhaps,
13 citizens, if they are to develop the capacity to make
14 judgments, to distinguish truth from falsity or wisdom from
15 foolishness, they must be allowed to hear and assess
16 different views.

17 Speech that is judged to be untrue, then,
18 should be restricted only in very limited situations, when
19 the ability of the audience to assess the merits of the
20 speech is limited or when more speech -- I put that in
21 quotation marks, when more "Speech" is likely to be not an
22 effective response. Situations like this under our current
23 law include defamatory speech, false statements about
24 someone's reputation, or false advertising.

25 Now, of course, disinformation or deceit is
26 different when the speaker knows that what they're saying is
27 untrue. When their purpose is to mislead the audience,
28 there's a good argument that their speech should not be

1 protected under the free speech right. Deceit undermines the
2 communicative relationship. The liar, the promoter of
3 disinformation, seeks to deceive or manipulate his or her
4 audience. Lying also undermines general trust in
5 communication.

6 The problem, though, is that it can be
7 difficult to determine not just when speech is untrue, but
8 also when the speaker is lying, when the speech amounts to
9 disinformation. There is always a risk that we will decide
10 that a speaker is lying when we think the speech is false, or
11 plainly false, as we might say. And of course,
12 disinformation is often reposted, spread, by individuals who
13 believe it to be true.

14 Even greater caution is needed when
15 attempting to regulate political or election campaign speech
16 that may include false claims or disinformation. Political
17 speech is said to lie at the core of our commitment to free
18 speech. It is also said that it is also speech that state
19 authorities may sometimes be tempted to suppress for
20 political reasons, for partisan reasons. It is this reason -
21 - it is for this reason that the principal form of campaign
22 speech regulation has, in fact, spending limits, limits on
23 the amount of speech, amount of money that can be spent in
24 support of speech, but, more generally, on the amount of
25 speech rather than on its content. Because spending ceilings
26 do not target the content of political expression they are
27 understood as representing a less troubling form of
28 restriction on expression than one that is, in fact, based on

1 content.

2 Now the justification for spending limits on
3 candidates, parties and so-called third parties during an
4 election campaign is said to -- the justification is said to
5 be to ensure that the voices of some do not drown out the
6 voices of others, but there is an awful lot buried in this
7 metaphor of drowning out. If spending inequality -- and I
8 can't make this case here, but I think it's fairly plain --
9 if spending inequality are differences in the amount of
10 advertising put out by different candidates, if that's unfair
11 or distorts the democratic process, it is because campaign
12 communication has increasingly come to resemble commercial
13 advertising. This is why message petition matters so much.
14 Spending difference matter because most campaign speech
15 treats voters as consumers of images rather than as citizens
16 who must make decisions about public issues. Campaign ads
17 rely on soundbites, slogans, and short visual clips. They
18 emphasize image and impact rather than idea and persuasion.
19 And it's worth noting, as my colleague Professor Hoi pointed
20 out, in the definition of undue influence by a foreign actor,
21 it doesn't include speech that involved the expression of an
22 opinion about or about the outcome of an election, the
23 desired outcome of an election, or even about the merits of a
24 particular candidate. Our concern about foreign interference
25 then seems to be limited either to disinformation or also
26 image-based advertising that, again, is most powerful or
27 effective when we have significant spending or spending
28 inequalities.

1 Now, the harms of speech, disinformation,
2 hate speech, and other forms of harmful speech have certainly
3 become much greater online. Hate speech and disinformation,
4 for example, spread quickly and widely through different
5 networks. As well, the manipulative potential of advertising
6 has become far greater. Drawing on personal data gathered by
7 search engines and platforms, political and commercial
8 advertisers can now micro target their ads, tailoring them to
9 the fears and biases of particular individuals, and they are
10 able to do so, at least until recently, outside of public
11 general view.

12 At the same time, traditional forms of legal
13 regulations seem less able to address these harms. They are
14 simply too slow and too cumbersome. And we've seen a
15 recognition of the limits of these traditional forms of
16 regulation, with the introduction of the Online Harms Bill,
17 which recognizes that any form of regulation of hate speech,
18 for example, requires the involvement of platforms, the
19 placing of a duty on these platforms to design their systems
20 in such a way as to limit the posting and spread of unlawful
21 material. But online -- the Online Harms Bill does not
22 address disinformation and instead focuses on unlawful forms
23 of speech such as hate speech and child pornography. And
24 this decision is understandable given the challenges and
25 risks in seeking to regulate false speech and disinformation
26 in particular.

27 The law currently restricts particular forms
28 of disinformation during an election campaign, and Professor

1 Hoi gave some examples of this restricting false claims about
2 a candidate's qualifications, birthplace, education, and so
3 forth. Experience may, in fact, reveal other kinds of false
4 claims about candidates and parties that generate but mislead
5 voters and have an impact on voter behaviour, and we need to
6 think about what those might be and maybe expand the list to
7 some extent, but I agree with Professor Kong that our focus
8 should be on specific types of or forms of disinformation
9 rather than a more general attempt to regulate disinformation
10 within the context of an election.

11 A commitment -- another step, I should add
12 too, has been to include election ads in online registries
13 so, in fact, others can know what parties and candidates are,
14 in fact, saying to potential voters, although the recipients
15 of these ads may not, in fact, know, you know, what other ads
16 are saying and so forth. Another step then may be to
17 preclude political advertisers from making use of user data
18 when designing and distributing their ads. In other words,
19 to limit the ability of micro target -- of supporters to
20 micro target their ads in ways that play to the very
21 particular fears and biases of individual voters.

22 A commitment to free speech means that the
23 audience, members of the community should be left to decide
24 for themselves whether they agree or disagree with what
25 others may say to them. It's up to the audience to decide
26 the merits of the speech, whether they think it's true or
27 false. Underlying this commitment to freedom of expression
28 is a belief that humans are substantially rational beings,

1 capable of evaluating factual and other claims, and an
2 assumption that public discourse is open to a wide range of
3 competing views that may be assessed by the audience.

4 The claim that bad speech should not be
5 censored but instead answered by better speech depends on
6 both of these assumptions, the reasonableness of human
7 judgment and the availability of competing perspectives. We
8 know that these assumptions about the audience's agency,
9 judgment, which underly the protection of speech may not
10 always hold and, indeed, never hold perfectly. But now in
11 the online world, false and misleading claims are unimpeded
12 by media filters and spread quickly and widely to individuals
13 who are often not in a position to assess their reliability
14 or the trustworthiness of their source, and indeed, may have
15 been encouraged by partisan actors to distrust traditional
16 sources of information. As a consequence, disinformation has
17 become a much larger and much more serious problem for public
18 discourse, but we have to be very thoughtful and careful
19 about how we respond to it. Thank you.

20 DR. NOMI CLAIRE LAZAR: Thank you very much,
21 Professor Moon. We'll now turn to Mr. Stephen Maher.

22 **--- PRESENTATION BY MR. STEPHEN MAHER:**

23 MR. STEPHEN MAHER: Thank you very much.
24 It's a pleasure for me to be here.

25 I'd like to use my time to discuss two issues
26 that I think are important to developing a greater democratic
27 resilience to resist foreign interference, rules around
28 participation in nomination and leadership contests, and the

1 proactive disclosure of financial information about
2 elections.

3 I've been working as a journalist since 1989
4 and for many years have taken a keen interest in electoral
5 wrongdoing, to the point that it's kind of a hobby for me to
6 keep track of it. I started out being motivated by a sense
7 of righteous indignation at cheating in the election system,
8 and that's given way over time to something more like an
9 anthropological sense of detachment because excitability is
10 not a good quality in an investigative journalist. I have
11 long-established confidential sources with insight into
12 what's going on behind the scenes in our political system,
13 and I've been closely following the foreign interference
14 story and writing commentary on it, typically, informed by
15 confidential sources in the political system and the
16 intelligence community.

17 This year I published a book, *The Prince: The*
18 *Turbulent Reign of Justin Trudeau*. To research it, I spoke
19 at length with senior officials and other sources, groping to
20 have a -- develop an understanding of the interplay between
21 foreign interference, international relations and diaspora
22 politics. The last decade has been a period of great and
23 growing difficulty in our relationship with China and India
24 in particular, and I wanted to understand why. I came to
25 believe that diaspora politics is preventing Canada from
26 pursuing its national interest in these relationships. I was
27 informed of that by people who have been involved at the
28 highest levels in the Government of Canada, off the record.

1 I believe the most important relationship --
2 or most important controversies in our relationship with
3 India, for example, ought to be the export of chickpeas, not
4 the politics around regional separatism, and that's not the
5 case now. I'm not convinced that a change of government
6 alone will end the problems we face because the forces that
7 act on this government will act on future governments as
8 well.

9 I think this is an important problem for
10 Canada, not existential, but serious, and it is distorting
11 our policy making processes and there are things we ought to
12 do to reduce it to make our economy -- our democracy more
13 resilient and safeguard our independence.

14 To deal with this, we have to talk about
15 diaspora politics. New Canadians are enthusiastic
16 participants in nomination and leadership contests, which is
17 their right, and something in which Canadians can take pride.
18 One of the reasons so many people want to come here is
19 because of our open political system, freedoms guaranteed by
20 the *Charter of Rights and Freedoms*. The system depends on
21 volunteers, people show up to meetings, canvas, pound signs,
22 and that has a great positive value, this kind of
23 participation.

24 Nomination and leadership contests, however,
25 as the Commissioner has noted, are a gateway to foreign
26 interference.

27 I talked to a long-time organizer this week
28 who told me that there are likely more non-citizens than

1 citizens participating in nomination contests in the Liberal
2 Party of Canada. That may not be true. I don't believe the
3 Liberal Party of Canada would be able to tell you one way or
4 another.

5 We're talking about a Grey Zone here.
6 Participants in diaspora politics, it's normal that they're
7 often more interested in events in their home countries than
8 in Canada. Yann Martel described Canada as "The greatest
9 hotel on earth." It should not surprise us that guests in
10 this hotel are often preoccupied by events in their home
11 countries.

12 We have a higher percentage of foreign-born
13 citizens in Canada than in most countries, and the percentage
14 of foreign-born citizens and non-citizens who are active in
15 nomination races and leadership contests is much higher
16 still. This gives them outsized influence over our politics
17 and opens the door to foreign interference.

18 I believe that in a sense, we have a flashing
19 neon "open" sign over these contests now and we are inviting
20 foreign interference.

21 I want to talk briefly about the political
22 economy of nomination contests. To understand them, you have
23 to think about the tremendous drive motivating the
24 participants.

25 Some years ago it was credibly alleged that
26 one would-be candidate for a provincial party paid a bribe of
27 more than \$10,000 for the opportunity to win the nomination
28 in an unwinnable riding. You are dealing -- you are not

1 dealing with *homo economicus*. You are dealing with -- you
2 are not dealing with *homo economicus*, rational actors
3 rationally pursuing rational ends, but with people who are
4 often driven by vaulting ambition and a desire for status.

5 Imagine a car dealer in a big city who wants
6 to be a member of Parliament. You've spent many years making
7 money and doing good works in the community, you're well
8 regarded, and you dream of a life in politics. The incumbent
9 MP retires, opening up a nomination contest. Like many
10 ridings in Canada, the outcome is all but assured. Whoever
11 wins that nomination will be the next member of Parliament.
12 You are vetted by the Party, you're approved, and you have a
13 good chance of winning, depending on whether you can get more
14 people to a nomination meeting than your opponents. This is
15 a fork in the path of your life. If you win, you will
16 proceed to the life you dreamed of as a politician and
17 perhaps end up at the right-hand of the Prime Minister. If
18 you lose, you're back at the car lot.

19 If a proxy for a foreign power offers to line
20 up a few hundred votes for you, you will likely win. Foreign
21 students, members of a religious community. This is the kind
22 of position that people find themselves in.

23 There's often money, sometimes cash,
24 sometimes a second bank account used to pay for the off-book
25 expenses for organizers who sometimes pay for memberships.
26 Sometimes organizers are put on the payroll of a company that
27 supports a candidate. Organizers are highly motivated to win
28 because there's no second prize in these contests. They're

1 often ruthless and they do not have to account for themselves
2 publicly.

3 I should say that I am aware that many of the
4 people -- or most of the people who are engaged in this kind
5 of work are honourable, and honest, and regard cheating as
6 not only undesirable, but dangerous to them, and they don't
7 want to do it. But it is happening, and I believe that this
8 is the avenue through which we're seeing foreign
9 interference.

10 And I think -- so the one key step that I
11 think is necessary or helpful to cutting down on this is just
12 eliminating voting by non-citizens and young people. Voting
13 should be confined -- voting in these contests should be
14 confined to people who are eligible to vote in the subsequent
15 election.

16 I want to point out that I've come to suspect
17 that foreign actors are motivated not just by a desire to
18 exert influence over our politics, but by the fear that if
19 they do not, others will. If it gets harder, if we are able
20 to greatly limit it by limiting voting by non-citizens, for
21 example, that may take down the "open" sign that is
22 motivating foreign actors to participate.

23 The big parties, through their
24 representatives in the House of Commons get to decide on the
25 legislation that governs these contests. They are jealous of
26 their power over these processes. They want to approve who
27 they like, disqualify who they like, sometimes by setting
28 nomination cut-off dates retroactive so that they get the

1 money without having to allow people they don't want to win.

2 I don't like a lot of these practices. I
3 find them somewhat sleezy, but it doesn't jeopardize the
4 national interest, and that's the traditional promise of
5 political parties. I don't think it's wise to interfere with
6 that. But I believe it is possible to ask them to stop non-
7 citizens from voting. I'm not sure that it would be easy to
8 change, because the parties get to decide, and if one party
9 excludes non-citizens from participating, they will be giving
10 up an advantage, they can't act in unison, but they might
11 agree to legislate a limit.

12 The other thing I want to talk about is
13 greater transparency, which may cut down on foreign
14 interference and other skullduggery.

15 I want to discuss the crucial role of
16 journalists in covering foreign interference and other
17 electoral cheating.

18 Journalistic scrutiny, imperfect though it
19 may be, is a vital part of a resilient information eco-
20 system.

21 I would point out that this Inquiry appears
22 to have come about because of journalistic scrutiny.
23 Investigative journalism can play a crucial role in closing
24 the gap between the official reality and the ground truth by
25 bringing facts to light that officials and politicians are
26 forced to confront.

27 I think one important example in this story
28 was a story in *The Globe and Mail* that revealed that there

1 had been threats to a family member of a respected
2 parliamentarian and that he -- the Government of Canada had
3 somehow not managed to make him aware of that.

4 So I talk about this to emphasize the
5 importance of investigative journalism.

6 I should add it varies in quality. The
7 Commissioner, who has access to secret material, will have a
8 better sense than I do as to which stories in this whole
9 business have been accurate and which have not been accurate.

10 I will point out though that inaccurate
11 stories, although they can be difficult and damaging to
12 individuals and institutions, also play a role in
13 highlighting an important issue, because they provoke
14 responses like a pool ball -- a cue ball hitting a rack of
15 balls on a pool table. They set forces in motion.

16 As Albert Camus said:

17 "La presse libre peut sans doute être
18 bonne ou mauvaise, mais assurément,
19 sans la liberté, elle ne sera jamais
20 autre chose que mauvaise"

21 A free press is ultimately the most important
22 safeguard of our democracy, but the business of journalism is
23 struggling. Journalistic organizations are becoming weaker
24 and poorer. Changes to the advertising business are part of
25 the problem, but research also shows that a significant
26 percentage of Canadians and citizens in similar countries are
27 turning away from the mainstream media, paying more attention
28 to partisan and activist media that may include

1 disinformation.

2 Mainstream media still has a significant
3 audience and investigative journalism remains vitally
4 important. It is difficult, best handled by experienced
5 journalists working with good editors and lawyers.

6 Unfortunately, few of the journalists now
7 doing this work have roots in the multi-cultural communities
8 where greater scrutiny is warranted. They may feel squeamish
9 about reporting on it, as if they are sniffy about newcomers
10 participating.

11 Because of business issues, there are fewer
12 teams capable of doing in-depth investigative work and normal
13 beat reporting than there were, and there will likely be
14 fewer still in the future.

15 This is worrisome because journalists are
16 often the people who uncover cheating by domestic or foreign
17 actors, or make the public aware of it when it was uncovered
18 by investigators.

19 In practice, I have come to believe that
20 official investigators and journalists often off one another,
21 not through collusion, but one process aiding another.

22 Do not expect cheaters to be forthcoming
23 about it. Don't expect Party officials to help journalists
24 or investigators to uncover cheating. In my experience, they
25 are as likely to attack the journalists and investigators
26 trying to uncover wrongdoing as to help them. They may be
27 dishonest, and they will almost certainly be secretive. I
28 expect this behaviour may become more common as effective

1 polarization increases.

2 A growing number of Canadians hold hostile
3 feelings not just for politicians they oppose, but also for
4 supporters of other Parties. In this environment, partisans
5 fear the other Parties and long for victory. I believe this
6 will increase the likelihood of cheating and make it harder
7 for journalists and investigators to uncover it.

8 This dynamic, the watchdog function of
9 journalism, is imperilled, but because the nature of
10 appropriate government funding for journalism is the subject
11 of a healthy partisan debate, I don't think it's appropriate
12 for an inquiry to propose funding journalism. I do think,
13 though, that more robust rules around proactive disclosure
14 can be helpful.

15 I don't think it's -- I have time at the
16 moment to get into the details, which are sort of the work
17 for specialists, but it's very helpful to create official
18 records that journalists and others can examine. Who are the
19 organizers? How much are they being paid? Have they signed
20 contracts stipulating that they will act in an ethical
21 manner? Can we see those contracts? Can we see the
22 receipts? When can we see them?

23 The Parties can rightly say that bureaucratic
24 requirements should not be so strict as to discourage
25 participation, which is a virtuous and necessary part of
26 politics. That is no doubt correct, but merely publicly
27 reporting the movement of money should not be an
28 insurmountable barrier.

1 Laying out a more complete record of money
2 spent helps keep everyone honest. Memories change, people
3 find ways to prevaricate, documents are eternal and
4 unchanging. Giving journalists access to more documents will
5 be of great assistance.

6 When I was doing investigative work on
7 electoral wrongdoing, I spent many long hours poring over
8 databases maintained by Elections Canada, examining documents
9 and receipts, combining tiny scraps in the public record with
10 reporting with confidential sources. If you increase
11 proactive disclosure, you will increase the scrutiny on the
12 system, which helps keep everyone honest.

13 The origin of this kind of public disclosure
14 of electoral financing is in the United States at the time of
15 the Watergate scandal. Public scandals help to lead to
16 reforms that increase accountability and transparency. I
17 hope that will be the case in this instance as well.

18 Thank you very much.

19 **DR. NOMI CLAIRE LAZAR:** Thank you, Mr. Maher.

20 We will now turn to Professor Dr. Tanja
21 Börzel from the Freie Universitaet in Berlin, Germany.

22 **--- PRESENTATION BY DR. TANJA BÖRZEL:**

23 **DR. TANJA BÖRZEL:** Thank you very much. And
24 I really deeply regret that I can't be with you to
25 participate remotely.

26 My colleagues focused on regulating foreign
27 interference and its perils, and I pretty much share all
28 their concerns and have not much to add, so what I will do

1 instead is I will adopt a more society-centred approach to
2 foreign interference and democratic resilience building. And
3 that, I think, is appropriate because, after all, I am a
4 social scientist.

5 So a society-centred approach would, first of
6 all, not only focus on hostile states as sort of, you know,
7 those who interfere from abroad in democratic elections, but
8 also on non-state actors. This is just a remark I wanted to
9 sort of use as a preface to what I really want to focus on in
10 my remaining 14 minutes and 15 seconds. But I think you're
11 all aware that it's not only hostile states such as Russia or
12 China, but also non-state actors, terrorist networks, for
13 instance, or intellectual circles, think tanks that actually
14 can significantly undermine the integrity of democratic
15 institutions and processes.

16 And what I would like to do from a society-
17 centred approach is to talk about certain threats that
18 emanate from foreign interference that have not received as
19 much attention as those my esteemed colleagues already talked
20 about, and these threats pertain to attempts of foreign
21 agents to fuel what I call polarization. I'll come back to
22 that in a minute, but before, I would like to briefly share
23 my definition of democratic resilience.

24 We talked a lot about what foreign
25 interference is. We haven't really clarified what we might
26 mean by democratic resilience.

27 And so -- and again, there are many
28 definitions, and I find one definition particularly helpful

1 that does not reduce democratic resilience to simply
2 resisting, but actually to the capacity to adapt, right. And
3 so it's also -- it's not static. It is about adaptation to
4 external threats by not compromising fundamental democratic
5 principles and values. And I think my colleagues have
6 already elaborated on the kind of ambivalence of democratic
7 resilient building mechanisms in terms of compromising
8 certain democratic values we seek to protect, after all,
9 against foreign intervention.

10 So coming back to the type of foreign
11 intervention -- interference I would like to focus on, and
12 that differs from a lot that has been talked about and also
13 that is the main focus in the main report of the Commission
14 so far, and it pertains to attempts of foreign actors, both
15 state and non-state, to undermine the trust of Canadian
16 citizens, on the one hand, in government, in their
17 government, and on the other hand, in each other.

18 So it is about strategies by which foreign
19 agents fuel mutual dislike and hostility, particular between
20 social groups and political groups, and that is in the
21 literature I come from refer to as polarizations.

22 Citizens increasingly take extreme views
23 towards controversial issues such as migration and also
24 towards groups who do not share their own views. Now, why is
25 polarization a threat to democracy?

26 Polarization has a profound effect on our
27 everyday life and also social life, from choosing our friends
28 and partners to deciding where to live, in which province, in

1 which part of the city, which clubs to join, even which bars
2 and pubs to frequent, right. And there is a tendency that
3 people withdraw from groups in which others do not share
4 their own views and opinions.

5 So by doing this, polarization undermines the
6 willingness of citizens to compromise. It makes them more
7 inclined to accept violations of democratic freedoms of those
8 who do not share their own views and opinions.

9 So overall, polarization threatens the social
10 cohesion of democracies, and foreign agents have been very
11 apt in manipulating and fueling this kind of polarization
12 pretty much using the same strategies my colleagues already
13 talked about. They denounce certain positions on critical
14 policy issues as morally wrong, right, e.g. on social media,
15 but also in community newsletters. People are told that
16 whatever stance you might have on migration, you know, if you
17 take a different view, this is actually not only a political
18 disagreement, but actually a moral issue, which turns them
19 from political rivals into enemies that can be and should be
20 excluded, if not prosecuted.

21 And the second strategy the foreign agents
22 pursue is they align political and social identities, so
23 essentially arguing if you belong to a particular ethnic or
24 sexual minority, you must not vote or you must only vote for
25 a particular political Party so that social identities become
26 aligned with political identities, which then makes it very
27 difficult to have a kind of differentiated discussion about
28 different, even controversial, policy issues.

1 Now, to address this threat of polarization
2 fueled by foreign agents, a whole government approach is not
3 enough. It needs to be complemented, I would argue, by a
4 whole of society approach focusing on trust of citizens in
5 their government institutions, but also in each other as the
6 backbone of democratic resilience, right.

7 So then protecting democratic institutional
8 processes from foreign interference is then not only about
9 regulating and strengthening the capacity of security and
10 intelligence agencies to detect and deter and to punish for
11 foreign interferences, it should also involve the
12 strengthening of the resilience of democratic societies, and
13 this resilience very much rests on political and social
14 trust, as I just learned. The good news is that Canada is a
15 high trust society still. If you look at OACD data it shows
16 that trust both of Canadians in their government
17 institutions, but also in each other is quite high in
18 international comparison. So that's good news. You have
19 something you can draw on in strengthening the resilience of
20 the Canadian society. And some of the strategies you have
21 identified in your report are also conducive to strengthening
22 trust of citizens in government institutions and in each
23 other, or to prevent, put it that way, foreign agents from
24 undermining this trust.

25 However, there are, as we already heard,
26 these resilience building strategies are ambivalent; right?
27 They can also negatively effect democracy. So my
28 recommendation would be to think about not only to exercise

1 restraint, as my colleagues have already argued, but also, to
2 think about more -- I wouldn't say positive strategies, but
3 strategies that actually focus on strengthening the
4 resilience rather than detecting, deterring and punishing
5 foreign interference. So, you see, the approach turns a
6 little bit around the perspective and focuses on
7 strengthening the capacity of Canadian citizens to resist
8 these attempts.

9 And just to conclude with two pretty general
10 recommendations, but I've been an exchange student to Canada
11 some time ago, and I was always impressed by the strong
12 narrative of Canada being a multicultural society, right, of
13 the three frowning peoples, and of many other racial and
14 ethnic groups, and I think this is a positive narrative that
15 is very conducive to preventing polarization attempts. And a
16 second strategy is to encourage cross-party dialogues,
17 particularly on critical issues, including abortion,
18 migration, and, arguably, foreign interference. So to make
19 very clear that you can have different views on these issues,
20 irrespective of which social group you belong to.

21 In sum, democracies requires not only strong
22 democratic institutions, but also, a democratic culture in
23 which -- so with citizens being willing to respectfully
24 disagree, and which compromise through deliberation and
25 majority voting. And for this, citizens have to have trust
26 in their government institutions, in democratic institutions,
27 as well as in each other. And it's this trust which hostile
28 foreign agents try to destroy and which I think, you know,

1 strategies should try to protect and strengthen. Thank you
2 very much.

3 **--- OPEN DISCUSSION:**

4 **DR. NOMI CLAIRE LAZAR:** Thank you very much.
5 I will now ask whether any of my esteemed colleagues would
6 like to reply to anything they have heard or add anything or
7 pose questions to one another.

8 Professor Kong?

9 **MR. HOI KONG:** Could I do an erratum? I
10 cited to 287.4. I meant 282.4 That's just terrible
11 handwriting.

12 **DR. NOMI CLAIRE LAZAR:** Okay. Thank you.
13 No? Any responses? Okay. Go ahead,
14 Professor Cassam.

15 **DR. QUASSIM CASSAM:** Just a couple of quick
16 observations about the issue, whether we need a definition or
17 not. I think one question is whether foreign interference is
18 to be an offence or is an offence or not. So thinking about
19 the UK, there's a new criminal offence of foreign
20 interference, and that means that a definition is absolutely
21 necessary. And, of course, because it's a complex matter,
22 the definition that's offered in the UK is an extremely
23 complex definition, but we need one if we are to treat it as
24 an offence.

25 The other observation is just about the idea
26 of the core purpose of regulating foreign interference. So,
27 certainly, we might think of issues like interference in the
28 elections and disinformation, but I think it's worth noting

1 that, actually, it's quite problematic to talk about the core
2 purpose of regulating it because there are actually many,
3 many purposes of -- for regulating foreign interference. So,
4 for example, there's interference in elections, but there's
5 also attempts by agents of foreign states to intimidate
6 members of diaspora communities, for example, and there are
7 many other forms that foreign interference could take.

8 So we can talk about -- you know, we can talk
9 about foreign interference in the context of elections and in
10 the context of social media, but there's also in the --
11 foreign interference in the context of national security and
12 many other matters as well. So I'm slightly skeptical about
13 the idea of the purpose of regulating it, but in any case, I
14 think we -- I'm not persuaded that we don't need at least a
15 working definition of what it is that we're talking about
16 here when we talk about foreign interference. Not a clear
17 and perfect definition, but as I was emphasizing, a good
18 enough working definition. Thank you.

19 **DR. NOMI CLAIRE LAZAR:** Professor Kong, do
20 you want to reply?

21 **MR. HOI KONG:** Sure. So just on the question
22 of the core purpose, I specified core purpose of foreign
23 interference in electoral processes. That's why I identified
24 a specific purpose. On the question of foreign interference
25 as an offence, of course, if you're going to define an
26 offence with respect to a term, you need to define the term.
27 My point is that you don't need to define an offence as
28 foreign interference. You can identify a bunch of instances

1 of foreign interference and specify what interests you're
2 trying to protect and what conduct you're targeting. So,
3 yes, if you define an offence as foreign interference,
4 there's -- you probably need some working definition. I just
5 don't think you need to do that.

6 **DR. NOMI CLAIRE LAZAR:** Others?

7 Well, in that case, I will invite the
8 Commissioner to pose any questions you might have at this
9 juncture.

10 **COMMISSIONER HOGUE:** I have a few, actually.
11 I'm not sure to whom I should ask the question, so it's going
12 to be directed to all of you, and those that thinks they may
13 have something to say, I invite you to do so.

14 One thing that in my mind is puzzling is how
15 do we cope with disinformation, especially disinformation
16 online. And I'm going to be very honest, I'm not the most
17 familiar one. I'm not using social media at all, but my
18 understanding is that it's becoming more and more and more
19 difficult even for those that are well informed to detect
20 what is sometimes false information, or even worse,
21 completely fake news. And I listen at what you -- especially
22 what you said, Mr. Moon, about, you know, the risk of -- and
23 I think you said the same thing, the risk of having a too
24 important impact on the freedom of speech. What I'm
25 wondering, are we naïve if we want to protect the freedom of
26 speech at all cost, or is there a way of finding an
27 equilibrium between both, especially given what is going on
28 on the social media?

1 **MR. RICHARD MOON:** Well, I agree entirely. I
2 consider disinformation to be a huge problem, and, in fact,
3 I've sort of made the claim that it may be a much greater
4 threat to public discourse than censorship. You know, we --
5 our focus when we talk about free speech is always on state
6 or even, if we adopt a broad understanding of free speech,
7 private censorship. But if anything, there is so much
8 information available out there, although it circulates
9 through networks, and so some have greater access to some
10 views, and facts, we'll put it in that way or factual claims,
11 and other networks may be circulating other ideas, but, you
12 know, I'm somewhat pessimistic about our ability to regulate
13 or control disinformation. I would love if there were some
14 simple or straightforward way to identify claims that were
15 untrue and were motivated -- and the speaker knew were
16 untrue, then, yeah, I don't think such claims, as I mentioned
17 in my remarks, should be protected under free speech. I
18 think they undermine the communicative relationship and the
19 communicative project more generally.

20 So the real question is, you know, do we have
21 the ability to identify claims that are false and are known
22 to be false by the person who originates them. And there
23 certainly are -- and I believe, you know, Meta, social media
24 companies believe they can identify some things, certain
25 kinds of deep fakes and so forth, you know, falsely generated
26 images of different kinds. And for the most part, as I
27 understand it, their strategy has been to simply flag these
28 claims or this disinformation and to direct the viewer to

1 perhaps other sources.

2 They also have a power which is a troubling
3 power because it is not so different from censorship, and
4 that is simply to suppress the, I don't know, the presence of
5 certain posts. But, you know, others -- there's so much
6 stuff online that we rely on automated means and the various
7 platforms rely on automated means for identifying speech that
8 is harmful. That's already difficult.

9 I don't have a good sense, and again, you
10 know, my grey hair indicates my limited grasp of, you know,
11 contemporary technologies, of how easy it is going to be to
12 identify this kind of disinformation.

13 But you may be right that we inevitably will
14 have to put in systems that have certain false positives,
15 false negatives, you know, et cetera, that don't get
16 everything they should get and get some stuff that they
17 shouldn't get. And that may be the inevitable -- that may be
18 inevitable if we're going to both protect free speech, while
19 at the same time dealing with this massive problem of
20 disinformation.

21 I'm sorry, I rambled bit there, but hopefully
22 something came out.

23 **COMMISSIONER HOGUE:** Mr. Kong?

24 **MR. HOI KONG:** So I think there are a couple
25 of challenges in regulation in this area. So I think one set
26 of challenges is about what's effective regulation.

27 So there's literature about fact checking,
28 and it's not clear that -- and to pick up on the remarks of

1 Professor Börzel, it's not clear that fact checking actually
2 helps, for example; right? Especially if you have hardened
3 partisan preferences and you're a motivated -- you're engaged
4 in motivated reasoning.

5 So I think one set of questions is about if
6 we're going to regulate, what is effective regulation that's
7 actually going to resolve the problem of disinformation? So
8 that's one, I think, general problem; right? And it's not
9 clear to me that prohibitions backed with penalties are
10 necessarily the best way of addressing that kind of issue,
11 those kinds of questions of effectiveness; right?

12 So you can imagine a range of regulatory
13 instruments. So one set of instruments can be focused on
14 civic education. And we have those initiatives in Canada,
15 teaching people digital literacy; right? Making people aware
16 of their own biases and their risks of falling prey to
17 disinformation; right?

18 So that's one kind of regulation; right?
19 It's about education, rather than coercive regulation.

20 Second kind of regulation could be
21 commitments and principle by social media companies; right?
22 Guided -- and this also exists in Canada; right? To commit
23 to acting on disinformation.

24 Now, of course, there's all the problems of
25 enforcement and the profit motive; right? But I think that
26 kind of cooperative regulatory instrument is also another
27 possibility.

28 So I want to be clear, I'm not against

1 regulation as such for freedom of expression, for freedom of
2 expression reasons. I want to say that there are risks of
3 regulation, in particular prohibitions, back to penalties,
4 and I think we should consider the full range of regulatory
5 instruments with an eye to the effectiveness of those
6 instruments.

7 **DR. NOMI CLAIRE LAZAR:** I see the hands of
8 Professor Cassam and Mr. Maher.

9 So Professor Cassam?

10 **DR. QUASSIM CASSAM:** Yes, I just wanted to
11 comment briefly on this issue of disinformation versus
12 misinformation. I mean, so the thought is that, you know,
13 perhaps what we should be trying to regulate are cases of
14 people knowingly and intentionally spreading falsehoods. So
15 it's not just the fact that someone says something that's
16 false that's the problem. It's the fact that they knowingly
17 and intentionally circulate falsehoods.

18 And I think -- although I completely see the
19 attractions of that, I mean the problem is that it can be
20 very hard to determine what the person themselves actually
21 believes. I mean, if you think about conspiracy theorists or
22 people who were making comments about President Obama's place
23 of birth, I mean one question that we often faced at that
24 time was do these people really believe it? Do they really
25 think this is true or not? And that can be an extremely
26 difficult question to determine. And certainly when people
27 start, you know, retweeting other people's observations
28 around such matters, the question of what they do or don't in

1 fact believe becomes even more problematic.

2 So the line between disinformation and good
3 faith misinformation is clear enough in theory, but actually
4 quite a difficult one to draw in practice.

5 **DR. NOMI CLAIRE LAZAR:** Mr. Maher?

6 **MR. STEPHEN MAHER:** Thank you. It is a
7 difficult line to draw. I think that it may be helpful
8 though to consider whether there are some disinformation
9 where the lines are easy to draw.

10 I was speaking with a family friend in his
11 80s yesterday who asked me about Jagmeet Singh, had seen an
12 article saying that his speech recently was interrupted by
13 people from the Bank of Canada. He sincerely believed this.

14 There is this -- some kind of a commercial
15 advertisement that we're seeing on newspaper websites that
16 sometimes uses is Jagmeet Singh, sometimes Pierre Poillievre,
17 for some financial product, I'm not sure what it is, but it's
18 reaching tens of thousands of people and convincing them of
19 events that are not true. So there ought to be some kind of
20 very low-level test where you can get rid of a lot of this
21 stuff easily, I would think, and then there's other things
22 where it is harder to draw the lines.

23 I would -- one concept I want to bring up
24 that I've found useful at the time of the revelations of
25 Russian interference in the 2016 election is dark
26 advertising. When we are -- normally, with traditional
27 print, or television, or radio advertising, we are aware of
28 what our neighbours are learning, what messages are being

1 sent to them.

2 With targeted online misinformation, actors
3 are able to send messages to micro-targeted groups secretly
4 using comparatively small amounts of money, reaching large
5 numbers of people with divisive messages often having to do
6 with identity issues. In the 2016 case, it was often African
7 American communities being delivered messages linking Hillary
8 Clinton to tough on crime messages.

9 I find that a problem worth thinking about.
10 How do we detect micro-targeted dark advertising where the
11 recipients may not, and are likely not, aware of who the
12 actual message is coming from? I think it's worth thinking
13 about.

14 **DR. NOMI CLAIRE LAZAR:** Professor Börzel?

15 **DR. TANJA BÖRZEL:** Yes, thank you. Very
16 briefly, again, when we talk about how do we actually cope
17 with disinformation, I think there's kind of two approaches.
18 There's the state-centred approach that looks at regulation.
19 So you can ask how do we identify false claims? How do we
20 detect particular messages? And who is "we" here? I mean,
21 how about thinking a little bit about the recipients of those
22 messages and ask how can we strengthen their capacity to, you
23 know, to identify false claims? How do we strengthen their
24 capacity to detect these targeted divisive messages?

25 So I guess I just want to emphasize, state
26 regulation is super important, but there are also strategies
27 that strengthen the capacity of citizens, right, to cope with
28 this. And so raise the awareness of citizens that such

1 things are going on. Educate them on what we call critical
2 media literacy; right? I mean, I think these are super
3 important issues that we should not overlook.

4 **DR. NOMI CLAIRE LAZAR:** I'll just add there,
5 before handing the floor back to the Commissioner, that one
6 of our panellists this afternoon, Professor Morgan, pointed
7 out to me that during the Cold War, all of the propaganda
8 from the Soviet Union was widely available and widely
9 circulated and that just to emphasize Professor Börzel's
10 point, there was an expectation and an assumption that
11 society was able to handle that.

12 So it might be worth thinking about this
13 shift where it's not that we suddenly have certain kinds of
14 information coming at us that is potentially destructive, but
15 rather that the issue lies more with the permeability and
16 resilience of society in terms of how to handle that
17 information.

18 Commissioner, did you want to move on or do
19 you want to ---

20 **COMMISSIONER HOGUE:** No, we'll move on.

21 **DR. NOMI CLAIRE LAZAR:** Okay.

22 **COMMISSIONER HOGUE:** I know that we'll have
23 another opportunity ---

24 **DR. NOMI CLAIRE LAZAR:** Correct.

25 **COMMISSIONER HOGUE:** --- to discuss
26 disinformation, but it's clearly food for thought.

27 The next question I have is I listened
28 carefully to what Professor Kong and Professor Cassam said

1 about having a definition or looking at the purpose of
2 something, of an activity. The question I have is, what can
3 we do with an activity that in itself can be a very
4 legitimate activity, but at the same time, be an illegitimate
5 activity depending on the purpose because it's almost
6 impossible to know what is the real purpose behind something
7 like -- and I'm going to give you an example. We -- there
8 have been a lot of comments about gathering information about
9 a potential candidate or about an MP. And, again, some said,
10 you know, gathering information in itself is not something
11 that is problematic, but if you're gathering the same
12 information with a view to threaten, for example, family
13 members of this candidate, or this MPs, it becomes something
14 much more objectionable. What can we do vis-à-vis these type
15 of conduct? Because if it's done by a foreign agent or a
16 foreign state, clearly, this is something that we should
17 prevent or try to prevent, but how can we identify and make
18 the distinction between these two situations, because it's
19 the same conduct that is concerned.

20 **MR. HOI KONG:** It's a great question. So I
21 think one way of thinking about it might be what is the
22 probability that this on its face legitimate conduct will
23 lead to illegitimate conduct; right? And so you may say that
24 you're going to prohibit that conduct of gathering
25 information as a prophylactic against subsequent misuse, you
26 know? And so that's an assessment, I think, on the
27 probability of that's how it's going to be used. And if it's
28 a foreign actor, we might also think that, actually, that

1 activity in and of itself is a problem, right, because we
2 think that maybe that's the kind of activity that should be
3 limited to Canadian citizens. So the example I had of undue
4 influence, right, expenditures to strongly oppose or support
5 a candidate. In and of itself, that's not a problem. It's a
6 problem because of the identity of the actor.

7 So I think there are two possibilities. One
8 is to think of the measure as prophylactic, and, therefore,
9 prohibit it if we think that there's high risk that's it's
10 going to be misused. And second, to ask if there's anything
11 about the foreignness of the actor engaging in this activity
12 that makes this activity that is otherwise legitimate
13 illegitimate.

14 **DR. NOMI CLAIRE LAZAR:** Professor Cassam?

15 **DR. QUASSIM CASSAM:** Yes, I think it's a
16 great question that the Commissioner is asking. So one issue
17 I think is how do we distinguish between foreign intervention
18 and foreign influence. So a lot of the activities that are
19 undertaken by the foreign embassies are information gathering
20 activities. A foreign embassy might attempt to gather
21 information about the voting records of MPs, for example, and
22 that seems to be a legitimate activity for a foreign embassy,
23 and there are various ways in which they might even seek to
24 influence political debate in Canada. And, again, that is
25 not in and of itself problematic.

26 So if one is then going to say, well, look,
27 there are -- that's fine, but there are other activities that
28 are undertaken by foreign embassies that cross the line

1 between foreign influence and foreign interference, we need
2 then to have some idea of what that line is. I mean, so we
3 need to have some clarity about how to draw the line between
4 these two things. And, of course, one can acknowledge the
5 existence of grey areas, but one does need to have some
6 conception of how somebody goes over the line. And I think
7 it's not so much that they're doing the same thing in both
8 cases that's the issue. It's just in the one case
9 information is gathered for the purposes of exercising
10 legitimate influence, and in the other case, it's gathered
11 for the purpose of, for example, coercing legislators or
12 using corrupt measures to influence them.

13 So I think we're sort of now getting back to
14 this whole issue of the need for some general conception of
15 what we're talking about when we're talking about foreign
16 interference. In the absence of that, it's going to be very,
17 very hard to draw a line between influence and interference.

18 **DR. NOMI CLAIRE LAZAR:** Professor Moon?

19 **MR. RICHARD MOON:** Yeah, sure. I mean, I'm
20 just trying to think a little bit about why something would
21 be -- a particular action or behaviour would be acceptable
22 for a resident or a citizen of the country but not for a
23 foreign actor. And, you know, there aren't many things we
24 can come up with which would think, you know, if it would be
25 wrong for someone living in the country to do this just as it
26 would be wrong for someone outside the country to do it. And
27 Professor Kong again I think in his remarks pointed to one of
28 the ways -- one of the kinds of activities that we say, no, a

1 foreign actor can't do it while a domestic actor can, and it
2 does have to do with the expenditure of money in the context
3 of an election campaign.

4 And, again, why should that be so? And I
5 really do think that it stems from, to some extent, our
6 ambivalence about the expenditure of money in the context of
7 election campaign. That if election campaigns were simply
8 about politicians and parties putting forward their platforms
9 for the, you know, potential voters to be assessing, we might
10 not be concerned whether that speech was supported from
11 outside or inside the country. The problem is that that
12 speech generally is not of that form. It's generally very
13 much in the form of lifestyle advertising, image-based,
14 slogan-based communication.

15 And so I think that within the scope of our
16 own jurisdiction, when talking about domestic actors, we say,
17 okay, our response to that is we can't get into regulating
18 exactly what people say, so we'll just limit how much they
19 can spend on it. But it is our ambivalence about the
20 character of that speech, which is what leads us to say, and
21 foreign actors shouldn't be able to do it at all. And so I
22 do think that, ordinarily, I'm not sure about how significant
23 the distinction is between a foreign actor doing it and a
24 domestic actor doing it, except in these very particular
25 situations where we feel ambivalent about the activity in the
26 first place.

27 **DR. NOMI CLAIRE LAZAR:** Commissioner, did you
28 want to follow up?

1 **COMMISSIONER HOGUE:** Yeah, I have many
2 questions actually. I --

3 **DR. NOMI CLAIRE LAZAR:** We have time.

4 **COMMISSIONER HOGUE:** -- don't know if we'll
5 have the week for, for that.

6 Another thing that I find difficult to cope
7 with is privacy. We are very, very -- we want to protect our
8 privacy, and I think it's very a high value in the Canadian
9 society. What we see is that foreign states or foreign
10 actors -- let's say foreign actors are using new means of
11 communicating with Canadian citizens. Sometimes something
12 that can be labelled as being a private conversation or
13 private forum is becoming much more a public forum, given the
14 number of citizen that are involved into the -- this forum
15 and this discussion. Is it something that we should be worry
16 about, how to -- and I'm not suggesting at all that we should
17 look at everything that people are saying amongst themselves.
18 It's not my proposition at all, but I'm just trying to figure
19 out how can we cope with this new way of communicating with
20 the Canadian citizens? Again, it's on various social
21 platforms, but what should we do in that respect? Because if
22 it becomes, like, they can say anything they want and we have
23 no way of knowing what is going on, it may becomes also
24 problem so ---

25 **DR. NOMI CLAIRE LAZAR:** Professor Kong, do
26 you want to start?

27 **MR. HOI KONG:** Sure. I'll try. So I think
28 it might be helpful to think about what kinds of privacy

1 interests we're talking about. And so some kinds of privacy
2 interests you might say are about control over your personal
3 information; right? And so in those -- in the internet
4 context, right, the ability of social media to gather
5 information about you, right, that might be a problem because
6 we think that's an invasion of the information that you
7 should hold exclusively. So that's one kind of privacy
8 interest that's engaged, and that might be a particular
9 problem that might require disclosure in the social media
10 context if that information gets used by foreign actors for
11 nefarious purposes; right? So that's one kind of privacy
12 interest.

13 The second privacy interest that I think
14 you're identifying, which is this idea that there are certain
15 modes of communication that happen through online means,
16 right, that may be harmful, right? And the question is do we
17 characterize that as private or public speech.

18 I think maybe rather than thinking about the
19 characterization it might be helpful to think about why we
20 would want to regulate that kind of speech, right? So
21 imagine that you have speech that is notionally private but
22 gives rise to -- you know, is like a conspiracy to cause a
23 crime, right? I don't think the characterization of it as
24 private speech particularly matters. The concern there is
25 how that speech might affect public interests. Similar you
26 might say if you have a notionally private communication
27 online that has the risk of being disclosed publicly, right?
28 So you can imagine any kinds of photographs taken of

1 individuals in violation of their privacy interests that is
2 shared in a private network, but there's nonetheless the risk
3 of public exposure, right? There again I think there's a
4 public interest in regulation.

5 So generally speaking, I think, I'm not sure
6 that the characterization of the communication as private or
7 public should be determinative; I think it's the public
8 interest in regulating that speech, and I think there are
9 different kinds of privacy interests that are engaged in this
10 context. Some of them are about protecting one's data, for
11 instance, and that, I think, is particularly relevant in this
12 context because of the risks that were identified around
13 micro-targeting.

14 **MR. RICHARD MOON:** I don't know if I have
15 much useful, you know, to add. But I do think about
16 something like a hate speech regulation in which there is
17 every reason to think that the spread of hatred through
18 smaller, narrower networks of different kinds is as dangerous
19 as when it's spoken to a much larger audience. And yet we
20 make a choice in regulating to confine it -- confine the
21 restriction, the criminal restriction in particular, which we
22 have in place now, to that which is other than in private
23 conversation; that is, has a publicness to it. And I don't
24 know whether that is really about the harm is greater or not,
25 or whether it is simply a judgment that there are privacy
26 interests, and we have to trade those off with our concern
27 about the spread of hatred in the community. The same thing,
28 perhaps, may be said about conspiracy theories or

1 disinformation as well.

2 **COMMISSIONER HOGUE:** Thank you.

3 In the context of the electoral process we
4 know that, to a certain extent, time is of the essence. And
5 as such, someone who is subject to, let's say, it could be
6 disinformation, it could be just misinformation; it can be on
7 the social media, it can be media, it could be in various
8 forums, actually, that that may happen. Have you ever think
9 about the idea of having a neutral organization where someone
10 will be able to go if there's these type of concerns and
11 these type of activities going on? A neutral organization,
12 or -- I heard about something in France that is doing that
13 type of work, you know, looking at what has been said and
14 sometimes correcting things, just making sure that the facts
15 are straight.

16 Again, the risk is to become the truth teller,
17 and it's in my mind probably a risk that we have to keep in
18 mind all the time, but what about a neutral organization in
19 charge of doing something like that during electoral
20 campaign?

21 **DR. NOMI CLAIRE LAZAR:** Professor Börzel?

22 **DR. TANJA BÖRZEL:** Yeah, I just want to
23 mention that the European Union has actually such a neutral
24 institution, which actually monitors, you know, national
25 public media for disinformation campaigns and then it's a
26 fact-checker, so to speak, right? And then correct the
27 facts.

28 But it is an ambivalent issue because for

1 some member states that are very sensitive when it comes to
2 their national sovereignty, right, they must be very careful
3 as not seeing -- being a foreign agent interfering, right?

4 But, I mean, there are institutions out there
5 that do exactly what you are -- I think what you are
6 suggesting. So it may be worthwhile having -- taking a
7 closer look at the European Union. They have actually
8 invested quite substantial resources in that. I don't know
9 what they call it, an agency -- I'm not sure, but you could
10 certainly look into that.

11 **DR. NOMI CLAIRE LAZAR:** Singapore as well has
12 both -- might be worth looking at because it does have such
13 an agency. And in addition, although some people might
14 question whether anything is really neutral in Singapore, as
15 well as a very active public education campaign that is run
16 through schools and libraries, et cetera, to build civic
17 capacity around mis- and disinformation. So that might be
18 worth a look.

19 Professor Cassam?

20 **DR. QUASSIM CASSAM:** Yes. I think that for a
21 neutral organization or neutral, as it were, fact-checker to
22 be effective, not only would it actually have to be neutral,
23 it would have to be perceived as neutral. And the problem is
24 that, going back to Professor Börzel's earlier remarks, I
25 mean, if you are operating in the context of very, very high
26 degree of polarization, the chances of this neutral body's
27 neutrality being accepted by all sides, I think, are
28 practically nil.

1 I mean, imagine a few years ago an
2 organization, the US that declared that President Obama
3 really was born in America, "And this is our neutral
4 judgment". I mean, I don't think that would have had much
5 impact on people who thought otherwise in that context. And
6 I think that the Singapore example is actually also really
7 helpful because I think what it really points to is that
8 these sorts of mechanisms may be very effective in countries
9 or systems where there's, you know, a high degree of unity,
10 they're not effective in highly divided -- highly divided
11 along ideological partisan lines societies.

12 So I think my own view is that they're not --
13 this sort of measure isn't really going to be very useful in
14 the context in which we are now operating in many Western
15 countries.

16 **DR. NOMI CLAIRE LAZAR:** Professor Moon?

17 **MR. RICHARD MOON:** Yeah, I want to agree with
18 that, and say once we imagined that the media, the
19 traditional media could play such a role. And it isn't just
20 that we are polarized, part of that process of polarization
21 is that partisan actors have worked very hard to discredit in
22 the minds of those who may be sympathetic to their views,
23 discredit the trustworthiness of what many of us thought were
24 traditional, reliable sources of information or expertise, or
25 whatever it might be.

26 That also potentially spreads to or creates
27 problems even for, you know, the answer of education because
28 if you have people who are already persuaded that they should

1 be sceptical of the authorities of traditional media of
2 expertise, then it is really hard to penetrate that and turn
3 that around. I hate to be so pessimistic.

4 **DR. NOMI CLAIRE LAZAR:** Mr. Maher?

5 **MR. STEPHEN MAHER:** I feel I should speak for
6 my Libertarian-minded colleagues in the newspaper business
7 and suggest that any suggestion like that would be greeted by
8 them as being an affront and an attempt to create an official
9 reality which would be counterproductive, and I agree with
10 Professor Cassam's observation about the limited utility in
11 such a polarized society.

12 **COMMISSIONER HOGUE:** And it will be also your
13 view even if we think about, for example, an organization
14 where the people will be completely known as being
15 independent and neutral? Because I can easily understand
16 that those that are -- the journalists, for example, are
17 playing, to a certain extent, such a role. But I'm not sure
18 if they are viewed anymore as being completely neutral and
19 independent. And I don't want to offend anyone in saying
20 that, but I think it's a reality that people are much more
21 sceptical than they were in the past vis-à-vis what they read
22 in the newspapers.

23 So do you think there will be something to
24 gain from having people completely independent and neutral
25 doing something like that?

26 **MR. STEPHEN MAHER:** I find it hard to imagine
27 that such an organization would be able to play a helpful
28 role because any sort of official reality that they agreed on

1 would be the subject of contention. You know, if you think
2 about something -- right now there are people strenuously
3 objecting to the idea of a law around residential school
4 denialism and saying this is rightly the subject of public
5 discussion, so that's -- if that's not beyond dispute, then
6 what would be beyond dispute? What could the -- an
7 organization like that assert that would be useful, if you
8 know what I mean.

9 **DR. NOMI CLAIRE LAZAR:** Professor Cassam?

10 **DR. QUASSIM CASSAM:** Yes. No, I agree with
11 that. I mean, I think it's helpful to think back to the
12 pandemic. I mean, that was a case where, you know, you might
13 have thought that we could hope that, you know, a body of
14 august medical experts with no political ax to grind, they
15 would have been in the position to make these, as it were,
16 neutral factual pronouncements about vaccines and masks and
17 so on, but they weren't -- I mean, the statements of these
18 sorts of bodies were not accepted by vaccine sceptics and
19 mask sceptics. They weren't accepted as neutral.

20 You know, even if they were neutral and even
21 if everything they said was true, they were not perceived in
22 that light by the people that we might be most -- you know,
23 we might be most concerned about. And I think this just goes
24 back to kind of two fundamental themes here.

25 I mean, one is the breakdown of trust in
26 highly polarized societies and the other is, again, going
27 back to something that Professor Börzel said, which is that,
28 you know, we have to look at not just the supply of this sort

1 of misinformation. We also need to look at the receptivity
2 to it. And if people are receptive to the idea that these
3 neutral bodies are really not neutral, if they're receptive
4 to that idea and they don't trust these bodies, it's going to
5 be very difficult to combat that simply by insisting that
6 they -- well, they really are neutral.

7 **COMMISSIONER HOGUE:** Your light was on.

8 **MR. RICHARD MOON:** Yeah, I don't have much to
9 add.

10 Certainly fact checking is really, really
11 important. I'm just sceptical that a -- some kind of
12 appointed body that is -- you know, that may, in fact, be
13 neutral will be perceived as such by the people for whom it
14 really does matter.

15 **COMMISSIONER HOGUE:** And since we have Mr.
16 Maher with us, a question I have is also what can we do -- we
17 heard during the various testimonies that were given at the
18 audience that one easy way for a foreign country to
19 disseminate information that will be -- disinformation or
20 misinformation that doesn't -- it's not necessarily
21 important, is to do it through the medias that are published
22 in the foreign language because, very often, that's the only
23 newspapers that some members of the community will read. So
24 it's very difficult for others to counter the information
25 that can be disseminated in these newspapers because, you
26 know, if you have a newspaper published only, let's say, in
27 French or in English and nobody in this community can
28 understand the French or the English language, then they are

1 limited to what they can read in the newspapers that are
2 published in this foreign language.

3 What can be done in that respect for making
4 sure that we do not have groups that are limited in terms of
5 the sources of information they have access to? Should it be
6 done by, I will say, the main players in the field that
7 should make sure to find a way of informing these communities
8 or do you have any ideas in that respect, or...?

9 **MR. STEPHEN MAHER:** I wish I had more ideas
10 about this. I have observed this that, you know -- I've, for
11 instance, interviewed Kenny Chiu about the WeChat
12 disinformation in his riding. And looking at it from
13 outside, you think, well, this is horrible that this is
14 happening, but I'm not sure that it's hugely different in
15 degree than all kinds of disinformation about vaccines or all
16 kinds of things that are going in our society, and we have to
17 sort of hope that people will find ways to separate good
18 information from bad information and know that they won't
19 always.

20 But I'd be interested in hearing from people
21 who are in new Canadian media organizations. I know that
22 it's -- that a lot of them are doing good work and providing
23 journalistic scrutiny all the time in their communities and,
24 in a sense, maybe we have to put our faith in those
25 journalists.

26 **DR. NOMI CLAIRE LAZAR:** Any last questions,
27 Commissioner, before we break?

28 **COMMISSIONER HOGUE:** No, I think I'm good.

1 **DR. NOMI CLAIRE LAZAR:** Okay. Well, then, we
2 will now take our break for 30 minutes in order to gather
3 questions from the parties with standing.

4 **COMMISSIONER HOGUE:** Thank you.

5 So 30 minutes.

6 --- Upon recessing at 10:56 a.m.

7 --- Upon resuming at 11:37 a.m.

8 **COMMISSIONER HOGUE:** Ms. Lazar, it's for you.

9 **DR. NOMI CLAIRE LAZAR:** Thank you very much,
10 Commissioner.

11 All right. We've now had a chance to look at
12 some of the questions that have come in for the panel's
13 consideration. So we are going to start by addressing a
14 question to Professor Börzel, who is -- oh, yeah, I'm just
15 wondering if we have lost the Zoom connection here?

16 **DR. TANJA BÖRZEL:** I can see and hear you.

17 **DR. NOMI CLAIRE LAZAR:** You can see -- oh,
18 there you are. Wonderful. Okay. So the first question that
19 we have in fact amalgamates several questions that have come
20 in from different participants who are wondering if you might
21 have some concrete examples from various jurisdictions about
22 how to build democratic resilience?

23 **DR. TANJA BÖRZEL:** This is, of course, a huge
24 question, and I really want to be short here. And drawing
25 very much on my experience with the European Union, but also
26 with the U.S., those are the two areas I'm working on.

27 So let me give you the general strategy and
28 then try to come up with a concrete example for each.

1 So the first point, and it's already
2 mentioned in the Commissioner's initial report, is
3 essentially make citizens aware of what foreign interference
4 is about. What is the purpose; right? What is it aiming at?
5 What does it try to do? So educate citizens about these
6 threats and activities. And here, very important is already
7 -- is sort of at the educational institutions; right?
8 Schools and universities, where you start educating -- we
9 start educating our students in what we call critical media
10 competence. They learn how to critically evaluate what we
11 call truth claims, statements about how the world is; right?
12 And so that they are able to critically question. That's
13 what science is about. Critical inquiry; right? That they
14 have this critical mind, because we want our citizens to be
15 critical and not believe everything the government or foreign
16 agents say.

17 So this competence of critical inquiry,
18 particularly when it comes to social media, how do -- you
19 know, how do you use ChatGPT, for instance? How do you deal
20 with Wikipedia? Where do you get your information from? I
21 think this is a very important strategy in educating
22 citizens. That is my first point. My second point is -- and
23 that relates more to the government. We've talked a lot
24 about government regulating foreign interference to, you
25 know, to detect and deter and to also punish these
26 activities. And I think it is super important to strengthen
27 people's, citizen's trust in these government measures by
28 being transparent and also inclusive. You know, make not

1 only citizens aware of the dangers, but also explain to
2 citizens how you -- how the government actually means to
3 address these dangers. What are the specific regulations?
4 What kind of institutions has the government set up to deal
5 with specific threats? That is very much a sort of a public
6 information campaign.

7 And finally, and this is something I think is
8 the most challenging one is to sort of make citizens sort of
9 resilient against attempts to sow mutual dislike, hostility,
10 create societal division; right? And again, I think this is
11 very much about awareness raising. Use examples of agents,
12 domestic or foreign, that deliberately try to sow division
13 between social groups that polarize; right? They try to push
14 people to extreme positions and always showing there is not
15 only black and white. There's a lot of grey in between. And
16 again, here, I believe academia, science, schools,
17 universities have a very important role to play, not only in
18 the classroom, but also in public debates by trying --
19 particularly when it comes to controversial issues, to sort
20 of make evidence-based, differentiated arguments, right, and
21 not try to push people towards taking extreme positions.

22 This is not easy, but I think it is something
23 that we as citizens, as scientists have a great
24 responsibility in. And here I will end with being a
25 scientist myself, I have -- I see the tendency of science
26 itself contributing to polarization and undermining the trust
27 in science by not distinguishing between being -- giving a
28 scientific statement and being, you know, an advocate for a

1 particular political decision or position. And I think I
2 stop here.

3 **DR. NOMI CLAIRE LAZAR:** Thank you very much.
4 Do any of our other panellists want to step in on this
5 question?

6 All right. Then we'll move to the next
7 question. So we -- oh, sorry?

8 **COMMISSIONER HOGUE:** Can you just speak a bit
9 more slowly?

10 **DR. NOMI CLAIRE LAZAR:** Slowly, yes.

11 **COMMISSIONER HOGUE:** I think it's the
12 interpreters that are asking for that.

13 **DR. NOMI CLAIRE LAZAR:** Apologies. I should
14 know better.

15 **COMMISSIONER HOGUE:** That's fine.

16 **DR. NOMI CLAIRE LAZAR:** Okay. So we'll then
17 move to our next question. So we have been asked to address
18 what strategies can be implemented to counter foreign
19 interference but also encourage participation in our
20 democracy? And on that question, I'll invite Professor
21 Cassam to begin.

22 **DR. QUASSIM CASSAM:** Thank you very much. So
23 just a bit of background here, I mean, it seems to me that a
24 key issue is whether the erosion of trust and confidence that
25 we are allegedly facing now is the result of foreign
26 interference or is it rather that foreign interference is
27 exploiting a kind of pre-existing erosion of trust and
28 confidence in democratic institutions. So I think that's a

1 really fundamental question.

2 So, I mean, one way to think about it is to
3 think of the body politic as something like a human body,
4 which has different levels of resistance. And you could
5 think of foreign interference as a kind of virus, and you are
6 more likely to succumb to the virus if your levels of
7 resistance are low. So kind of, like, the crucial point is
8 to have high levels of resistance to foreign interference and
9 not to buy into the idea that the erosion of trust and
10 confidence in democratic institutions is entirely caused by
11 foreign interference. I mean, it seems to me there are much
12 deeper factors here that are at play, which are then
13 exploited by malign of foreign actors.

14 So I think in terms of practical strategies,
15 I kind of have two suggestions, I mean, one of which is more
16 reflective and the other is more practical. So starting off
17 with the kind of more reflective end of the spectrum, I think
18 that actually what is needed is to have a period of serious
19 reflection about when and why trust in democratic
20 institutions really kicked in. I mean, it hasn't just -- it
21 didn't just happen at the point at which, you know, foreign
22 actors started to interest themselves in our affairs. I
23 mean, this erosion of trust in democratic institutions has
24 much deeper roots. And I think what's needed is a period of
25 kind of serious reflection about why and how this has
26 happened.

27 But then in terms of a kind of practical
28 measure, here, I, in a way, want to just build on what

1 Professor Börzel said, which is that the response has got to
2 be partly educational. I mean, I think we need an electorate
3 that is educated in, for example, critical thinking. And the
4 way to educate in critical thinking is not just to teach
5 courses on critical thinking, but, actually, for example, to
6 -- you know, to ensure that, you know, students study the
7 humanities where critical thinking is actually integral to
8 what they study. So there's that dimension.

9 And then there's another sort of educational
10 dimension which is more -- I mean, much more controversial, I
11 think, but I'll mention it anyway. So in the UK, there was
12 considerable concern 15 years ago about the political
13 radicalization of certain communities in the UK, and their
14 vulnerability to certain kinds of malign political influences
15 originating overseas. And the government imposed a duty on
16 public institutions in the UK to actively promote values such
17 as democracy, and free speech, freedom of religion, and the
18 rule of law. And this was known as the prevent duty in the
19 UK and it's very, very controversial. But I do think it
20 addresses one thing that's kind of really, really important,
21 which is that these questions that we're discussing are
22 really questions of values. They're questions about what are
23 people's values? I mean, do they -- are our values such as
24 to make us more vulnerable to certain kinds of malign
25 interference from foreign actors or not. And I think that
26 unless people are actually, as it were, committed at some
27 deep level to the democratic system, committed at some deep
28 level to the rule of law and free speech and freedom of

1 religion and so on, unless they're actually committed to
2 these values, they are going to be, I think, more vulnerable
3 to foreign actors promoting alternative visions of the good
4 life. So I think we, you know, we need to address this --
5 you know, these issues at this sort of really, really
6 fundamental level and think about what sorts of values are
7 our citizens being brought up to believe in, and to endorse,
8 and to employ in their own thinking.

9 So I think it's a sort of twin tract
10 strategy. One is, you know, the promotion of democratic, or,
11 if you'd like, Canadian values, whatever they are, but
12 presumably they're democratic values, and the other is to
13 promote education in thinking skills, the sorts of critical
14 thinking skills that are needed to, you know, to distinguish
15 between genuine information, for example, and disinformation.

16 So I think those are the practical measures,
17 but I do want to say that they need to be underpinned by much
18 deeper reflection on what made us vulnerable in the first
19 place to foreign interference. I don't think that foreign
20 interference is the fundamental cause of the so-called crisis
21 of trust in democracy. I think it -- foreign interference
22 just exploited what was already a burgeoning crisis of trust,
23 and we need to think very hard about when and why and how
24 this crisis of trust actually began.

25 **DR. NOMI CLAIRE LAZAR:** Thank you very much,
26 Professor Cassam. We'll now turn to Mr. Mayer -- Mr. Maher,
27 I apologize, to address the question of how the media can
28 best play a role in terms of supporting efforts to counter

1 foreign interference. And along with that question goes the
2 -- an additional question. So given the decreasing level of
3 confidence that the public has in the media, are there ways
4 that the media itself can engender further trust in order to
5 play those roles in countering foreign interference?

6 **MR. STEPHEN MAHER:** So I think the most
7 important thing that the media can take from this moment of
8 failing trust, the most important thing the media can do is
9 be aware of the limits of its influence and focus on
10 providing accurate information that's unbiased.

11 We are in an era of declining trust in the
12 news. I'm looking at the 2024 Digital News Report on Canada,
13 which shows that somewhere around 40 percent of Canadians
14 agree with the statement "I think you can trust news most of
15 the time." That number has gone down significantly in the
16 last decade.

17 Making the situation challenging is that the
18 people who are least likely to -- who are most suspicious are
19 least likely to pay attention to the news media. So the
20 people who are most skeptical about the news media, who might
21 be most prone to conspiracy theories, are the least likely to
22 pay attention to the news media. So I think it's incumbent
23 upon people in the media to be humble about the extent of
24 their influence. I often find that critics of the media will
25 say no wonder people believe so many foolish things. The
26 media isn't correcting the record all the time.

27 It's important to take note of the fact that
28 many of the people who may believe foolish things are not

1 paying attention to the media. And if you become -- if the
2 media becomes doctrinaire and seems to be propagandistic,
3 then you run the risk of further losing the trust of viewers.

4 I want to quickly reference a paper from
5 Rasmus Kleis Nielsen at the time of the 2024 Digital News
6 Report in *Zeit Online*. I thought there was a quote that
7 caught my attention at that time.

8 "...journalism still has a strong
9 connection with older, affluent,
10 highly educated, politically moderate
11 people. But it is losing touch with
12 much of the rest of the public. It
13 is at ever-greater risk of being for
14 the privileged few, not for the
15 many."

16 So this is -- we see a continued weakening of
17 the media, in a sense, in Canada of a downward spiral, in
18 that the models are starved of money, because they're starved
19 of money, the quality of the work diminishes, and there's
20 more money in alternative sources of information,
21 disinformation, and activist media.

22 I often think that it might be useful to have
23 a bit of a historical perspective. We are in -- we appear to
24 be at the end of an era of broadsheet newspaper dominance
25 that was heavily influenced by wire service reporting, where
26 we say, "Well, we have two views of the world from one
27 political party and another political party and we're going
28 to give you, according to a formula, a boiled down version of

1 the news." That's what most of us who are now alive have
2 grown up with.

3 That was not always the case. There used to
4 be -- I'm from Nova Scotia. There used to be five daily
5 newspapers in Halifax, each reflecting a different partisan
6 or religious view of the world.

7 We appear to be reverting to a somewhat less
8 orderly and more diverse media environment so that our -- the
9 sense of arriving on an official version of the news that's
10 shared by everyone, I think we can maybe just accept that
11 that's not the world that we're going to be living in any
12 longer.

13 I'm somewhat worried about what's going to
14 happen to the mainstream media as the quality diminishes and
15 the money is gone, but there's new things happening and we
16 have to hope that people will want to know the truth and seek
17 it out.

18 **DR. NOMI CLAIRE LAZAR:** If I could just
19 briefly follow up on that? So if, hypothetically we hope, it
20 were the case that the mainstream media can't save itself, or
21 that we can't save it, you sort of alluded to the fact that
22 these things aren't static to begin with, that the way in
23 which people get and process information can shift over time
24 with these different media sources. Do you have any ideas
25 about how -- or what might take the place of the mainstream
26 media, given the -- given society as it is, rather than as it
27 might be? So something realistic that could take on that
28 role that you are playing right now? I hope that's clear

1 enough.

2 **MR. STEPHEN MAHER:** Well I'm encouraged by
3 some of the foundation models, *The Narwhal*, for example, but
4 there's different more partisan or ideological media
5 organizations on the left and the right that are doing
6 original reporting that I think add value, certainly, to the
7 people who agree with them.

8 I also think that there's business-based
9 subscription models, like *allNova Scotia*, *The Logic*, that
10 they appear to have found a business model. But it's not a
11 sort of media for everyone. It tends to just be reaching
12 people in the business community and driven by that.

13 I personally believe that public broadcasting
14 is very helpful and very useful, but that's a subject of
15 partisan debate and there's deep profound disagreement about
16 that in Canada. So it's kind of -- we have to take our cues
17 from the politicians on that, I suppose.

18 **DR. NOMI CLAIRE LAZAR:** Thanks very much.

19 Do any other panellists want to jump in here?

20 Okay. Then we will move to the next
21 question.

22 So does the panel agree that by seeking
23 freedom of expression and avoiding censorship, we might harm
24 freedom of expression by allowing thousands of bots, for
25 example, to flood the online space and take over the
26 conversation?

27 So I'm going to address this question in the
28 first instance to Professor Moon.

1 **MR. RICHARD MOON:** And my answer is yes, we
2 should be concerned about that. We should be concerned about
3 disinformation spread through bots and so forth. I mean, as
4 I said in my remarks in my answer to the Commissioner, yeah,
5 public discourse is severely damaged by disinformation and it
6 may be a much larger problem than censorship at this point.

7 So the challenge again is how do you regulate
8 it? How do you bring it under control in some way? And
9 there's a judgement about what the costs and risks are to,
10 like, an open political discourse. So others may be in a
11 better position to make assessments or judgements about, you
12 know, the strategies, techniques that governments and social
13 media platforms can adopt. And so I -- you know, I don't
14 have any simple answer to this. You know, as I say, I don't
15 think disinformation itself should count as protected speech,
16 but the whole question is how do we identify it? How do we
17 determine what counts as disinformation and what are the
18 risks involved when we make those sorts of determinations to
19 free speech?

20 So I think we need to think about different
21 strategies to bring disinformation under control. And to
22 this point, you know, both Professor Kong and I were talking
23 about focusing at least within the context of an election
24 campaign on very particular kinds of claims that may
25 circulate, claims that, you know, are verifiable in some way
26 and can more easily be identified and brought under control.

27 But in terms of larger strategies, yeah, I
28 would like to think there could be ways to identify

1 disinformation.

2 And I guess part of the question, as I
3 understand it then, was about anonymous sources of different
4 kinds. And again, sure, I think focusing on the source may
5 be a valuable thing to do. Again, others who will be
6 participating in subsequent panels are probably in a better
7 position than I am to talk about and consider how realistic,
8 how practical trying to identify that is online. It's not
9 really within my expertise.

10 **DR. NOMI CLAIRE LAZAR:** Thank you very much.
11 Does anyone else want to jump in here? Professor Kong?

12 **MR. HOI KONG:** Sure. So I think that maybe
13 one way of thinking about the problems of bots and the
14 problem of automatically generated things that just flood the
15 marketplace of ideas is to think by analogy, as you said
16 earlier, to something like spending. The reason spending is
17 a problem is because it gives greater voice to one set of
18 people who have the capacity to flood the marketplace of
19 ideas.

20 So I think that doctrinally speaking, there's
21 at least a possibility of making that kind of argument.

22 I think the more difficult question is how do
23 you effectively regulate that kind of activity? And I think
24 that's a matter of technological capacity and other issues
25 that I think may be developed over time and then once we have
26 an idea of how to effectively regulate these things, then we
27 can decide whether the state has a role. But I think that
28 the general concern expressed in the question is a concern

1 about freedom of expression being undermined by permitting
2 certain kinds of speech to flood the marketplace of ideas.
3 And I think that's a concern that we already have within
4 constitutional law and that we've already addressed in some
5 respect. The question is, can we extend that set of
6 analytical tools to this phenomenon and can we do it -- can
7 we regulate effectively?

8 **DR. NOMI CLAIRE LAZAR:** Thank you. I think
9 it's worth pointing out before we turn to Professor Cassam
10 that this notion of having the technology to regulate things
11 like bots, it might be actually a space in which the
12 government might intervene, because of course the platforms
13 themselves, given the business model, don't have any
14 incentive to develop those tools. So you know, if the
15 problem is ineffective technology, then perhaps changing the
16 incentive structure around the development of those
17 technologies could be one mechanism that might be helpful
18 there.

19 So Professor Cassam? We can't hear you. I
20 think you're muted.

21 **DR. QUASSIM CASSAM:** Sorry. Just a quick
22 observation about the idea of regulating disinformation. So
23 as one of the previous speakers just said, the key challenge
24 is how do you identify what counts as disinformation? So if
25 you look at the definition of disinformation, so mostly it's
26 defined in terms of false or misleading information with the
27 intent to mislead or the intent to deceive.

28 So clearly, I mean, a key challenge is going

1 to be how do you identify or establish the intent to deceive,
2 rather than somebody just believing something outlandish?

3 And if you think about trying to design a
4 kind of -- an algorithm or something that's actually going to
5 screen out or control disinformation, I mean, the most
6 straightforward way of doing it is just going to be -- to
7 tackle misinformation; right? And to try and deal with that,
8 on the assumption that at least some of that is going to be
9 disinformation.

10 But that's also going to result in genuine
11 misinformation that isn't disinformation being screened out
12 as well. And then there are going to be concerns about
13 freedom of expression and so on.

14 So I think if we're talking about
15 disinformation, we're really thinking about something where,
16 you know, the key to this phenomenon is a kind of malign
17 intent. I think we really need to take seriously the
18 practical difficulties of distinguishing cases where, for
19 example, someone promoting a conspiracy theory about, you
20 know, Sandy Hook or something like that, you know, cases
21 where they have -- you know, they have this malign intent,
22 which makes it disinformation, versus cases where they, you
23 know, generally believe what they're saying and there's no
24 intention to deceive. And that's a -- it's a theoretical --
25 theoretically reasonably clear distinction, but a very hard
26 distinction to implement in practice.

27 **DR. NOMI CLAIRE LAZAR:** Thank you.

28 **COMMISSIONER HOGUE:** I have a question on

1 this.

2 **DR. NOMI CLAIRE LAZAR:** Yeah, please go
3 ahead.

4 **COMMISSIONER HOGUE:** Do you believe it's
5 easier to identify the intent when it's coming from a foreign
6 actor? Like, a foreign state?

7 **DR. QUASSIM CASSAM:** I think -- sorry, if
8 that's addressed to me, yes. I mean, I think that it is
9 easier in those cases, particularly where we can identify a
10 clear rationale for disinformation. I mean, so a question
11 that you might ask in these cases is why would they be doing
12 this? And if you can think of a way in which the promotion
13 of misinformation promotes or advances the political agenda
14 of a hostile foreign power, then I think it's a reasonable
15 hypothesis that they're doing this intentionally. In other
16 words, that it's disinformation.

17 But if you're talking about, you know,
18 disinformation as a broader problem, and thinking just about
19 Canadian citizens and what they tweet about or make comments
20 about on social media, I mean, in those cases, I think it is
21 much harder to be sure what one's dealing with.

22 **COMMISSIONER HOGUE:** Thank you.

23 **DR. NOMI CLAIRE LAZAR:** All right. We will
24 then move in a moment to the fifth and last question.

25 I did just want to flag the interesting
26 potential distinction between the idea of a person directly
27 promoting disinformation and the use of a bot or of bots,
28 which may have interesting parallels, as Professor Moon

1 pointed out, to the amplifying capacity of money.

2 And so it might be -- or was that Professor
3 Kong? Apologies.

4 So there may be some room in there that helps
5 us get around this -- you know, this necessity to identify
6 the intention, if we think about bots in that specific way.
7 So that -- I do think that that's worth further thought.

8 So we'll now turn to the fifth question. So
9 this question pertains to Canada's plan to protect democracy.
10 As part of this plan, there is what is known as the Panel of
11 Five, civil servants whose -- one of whose roles is to raise
12 the alarm, shall we say, if it comes to their attention that
13 there is a credible -- or credible evidence of an instance of
14 foreign interference.

15 So we have a couple of questions about the
16 Panel of Five. One of them is whether it might be a good
17 idea for the Panel of Five to address Canadians before there
18 is an emergency, imagining a situation in which Canadians do
19 not know who this Panel of Five are or what it is that they
20 do, should we hear from them about foreign interference
21 before there is a particularly fraught situation?

22 And the second part of that question is
23 whether -- you know, whether these are the right body, the
24 right people to be speaking in the first place, given their
25 role as public servants.

26 So on those two questions, I am going to
27 invite first Professor Kong, and then Professor Maher to
28 address the questions. Go ahead.

1 **MR. HOI KONG:** Great. So I think this
2 question raises issues that are related to the Commissioner's
3 earlier question about neutral entrusted bodies. And so I
4 think that a good -- it's a good idea for these kinds of
5 bodies to explain why they are entrusted with these
6 functions.

7 And so you might imagine the Panel explaining
8 why they have particular expertise or access to expertise in
9 assessing risk. You might say -- you know, explain why they
10 and really only government can have access to the kinds of
11 sensitive information that's necessary to make the kind of
12 determination as to whether or not there should be a public
13 announcement.

14 But I think almost as important as those two
15 things, explaining why a particular body is able to do
16 something and why they're the preferred body to do something
17 is to explain the process of decision-making.

18 So in particular, for the Panel of Five,
19 right, when they have to explain what the considerations that
20 they are taking into consideration, when they decide whether
21 or not to make this kind of announcement of a critical
22 incident, right, it might be helpful for them to explain well
23 how do they give weight to the relevant factors? That is,
24 the degree to which the incident undermines Canadians'
25 abilities of a free and fair election, the potential of the
26 incident to undermine the credibility of the election, and
27 the degree of confidence officials have in the intelligence
28 or information.

1 So I think it might be helpful to explain how
2 they would apply these criteria, what weights do they give to
3 these additional factors, and what the justification is for
4 any kind of threshold they set? So one of these factors has
5 a threshold built into it, the degree of confidence officials
6 have in intelligence or the information, what determines the
7 threshold they set, what is the threshold? Is it beyond a
8 reasonable doubt? Is it on a balance of probabilities?

9 And so I think that these kinds of bodies are
10 in a good position to counter kind of radical skepticism
11 about expertise and institutions by explaining, as
12 transparently as they can, the criteria by which they assess
13 confidential information, even if they can't disclose the
14 nature and the confidential information, the nature of that
15 information or the confidential information itself.

16 **DR. NOMI CLAIRE LAZAR:** Thank you.

17 Mr. Maher?

18 **MR. STEPHEN MAHER:** I think this idea likely
19 has some merit, that if I was still a member of the
20 Parliamentary Press Gallery, I would find a presentation from
21 the Panel to be interesting. But I think it's also fair to
22 expect members of the opposition and the media to be somewhat
23 skeptical of a panel of public servants. And this kind of
24 goes back to the discussion earlier about having a neutral
25 body opining about various matters.

26 There's some question, I think, in the minds
27 of members of the Opposition and the media about whether
28 public servants are neutral, or are they not, in fact,

1 serving at the pleasure of the Prime Minister.

2 One key report was written by a public
3 servant who had previously played a role in the Trudeau
4 Foundation named after the father of our current Prime
5 Minister, and where there was a significant amount of money
6 from Chinese state-linked entities. To my way of seeing
7 things, the Opposition is justified in being somewhat
8 sceptical about that kind of thing, particularly where you
9 have a largely Western Canadian based Opposition Party that
10 is sceptical of self-dealing by Laurentian elites.

11 And this is -- it seems to me we ought to
12 take that kind of view of the world seriously if we want to
13 have an institution that is trusted by members of the
14 Opposition who may have good reason to be suspicious of
15 Laurentian institutions about opining about a matter that
16 goes to the legitimacy at the heart of our democratic
17 process.

18 And so I thought, when I earlier examined in
19 a journalistic way this organization, that it ought to have
20 somebody who was truly at arm's length from the government.
21 I understand that the CEO of Elections Canada would not
22 perhaps be appropriate because of their role later in the
23 electoral process, and I can see the wisdom of that. But
24 having a former CEO of Elections Canada play an advisory
25 role, I think that the idea of having some representation on
26 that organization who are not part of the mechanics of
27 government and answering to the Prime Minister might help to
28 establish greater legitimacy.

1 **DR. NOMI CLAIRE LAZAR:** Thank you.

2 Do any of the other panellists want to step
3 in here?

4 In that -- oh, go ahead.

5 **MR. HOI KONG:** Can I just follow up?

6 So I think that's a -- I think that's really
7 important. I think that's a really important comment. And I
8 think that part of the introduction of something like a Panel
9 of Five might be to say, look, here are the range of possible
10 options for dealing with this problem. Each of them has
11 costs and benefits, and we've landed on this one for these
12 reasons, right.

13 I think that kind of clear reasoning about
14 why you choose a particular institution and why you choose a
15 particular process can help to at least -- if you can't
16 answer the scepticism or the criticism, you can at least say
17 we consider all the relevant factors, including the ones that
18 you quite legitimately raise.

19 **DR. NOMI CLAIRE LAZAR:** Commissioner?

20 **COMMISSIONER HOGUE:** No, I'm okay.

21 **DR. NOMI CLAIRE LAZAR:** Well, then, in that
22 case, unless any of the panellists have a final note they
23 would like to insert in the record, then I will hand it back
24 to you to ---

25 **COMMISSIONER HOGUE:** Yes, just to thank you
26 all. It was very, very instructive. I think we have a lot
27 of work to do, that being said, and think about all these
28 issues, but I'm quite confident we'll succeed in at least

1 having some good ideas, being enlightened by all of those
2 that have accepted to come this week and share with us some
3 of their ideas.

4 So thank you very much for coming, and we'll
5 come back at 1:30.

6 Yes, 1:30.

7 --- Upon recessing at 12:14 a.m.

8 --- Upon resuming at 1:30 p.m.

9 **COMMISSIONER HOGUE:** [No interpretation].

10 So the roundtable this afternoon is entitled
11 "Diplomatic Perspectives on the Foreign Intervention 'Grey
12 Zone'".

13 [No interpretation]. Alex, and I hope I'm
14 going to pronounce it correctly, Himelfarb. Good. Who is a
15 former Clerk of the Privy Council as well as a former
16 ambassador.

17 The other on his right is Henri-Paul
18 Normandin, [no interpretation] Université du Québec à
19 Montréal [no interpretation].

20 Daniel Jean, good afternoon. Former National
21 Security and Intelligence Advisor to the Prime Minister, and
22 also former Deputy Minister for Global Affairs Canada.

23 Mrs. Anne Leahy, who is also a former
24 ambassador, and Mr. Michael Morgan, who's Associate Professor
25 of History at [no interpretation] of North Carolina. So it's
26 now for you to introduce them in a better way than I did.

27 **--- ROUNDTABLE: DIPLOMATIC PERSPECTIVES ON THE FOREIGN**
28 **INTERVENTION 'GREY ZONE':**

1 **--- PANEL MODERATED BY DR. NOMI CLAIRE LAZAR:**

2 **DR. NOMI CLAIRE LAZAR:** I think you did an
3 excellent job, Commissioner.

4 Good afternoon, Madam Commissioner, dear
5 analysts, and members of the public.

6 This morning during the roundtable our
7 experts dealt with foreign interference by underlining the
8 conflict of values and the problems with definition. But
9 this afternoon we will deal with a specific aspect of this
10 complexity, the Grey Zone of what is acceptable in terms of
11 foreign intervention.

12 In her initial report, Commissioner Hogue
13 mentions common concerns about distinguishing foreign
14 influence, understood as legitimate or acceptable behaviour
15 from foreign interference understood as problematic.
16 Influence may become interference, the report notes, when it
17 is clandestine, deceptive, or personally threatening. Yet
18 the report also notes that this distinction can be difficult
19 to draw. Indeed, many reports and observers have described a
20 substantial Grey Zone of ambiguous behaviours that deeply
21 concern members of some areas of government, while striking
22 others as business as usual for diplomacy.

23 And this ambiguity can produce three
24 potential difficulties. First of all, the ambiguity makes it
25 more difficult to identify correctly what is correctly
26 appropriate in terms of political behaviour, while risking to
27 be a problem for legitimate political activities.

28 Secondly, the problems between the various

1 components of a government with respect to what is really
2 concerning or illegal can put an obstacle when the government
3 tries to act appropriately at the right moment.

4 And, thirdly, the individuality and the
5 difficulty can cause confusion in the public, which can
6 reduce the probability for citizens to be able to recognize
7 foreign interference or interventions as possibly of concern.
8 And that, again, could lead to a lack of confidence, a lack
9 of trust in our institutions.

10 Yet those ambiguities, some of our panellists
11 will note this afternoon, may also be critically important to
12 Canada's undertakings abroad. Any attempt at fully defining
13 or legalizing the Grey Zone would have to manage genuine, not
14 just semantic ambiguities. For example, could any definition
15 capture the contextual complexities of diplomacy? If it
16 turns out definitions cannot be made specific enough to be
17 workable while remaining abstract enough to capture real
18 ambiguities, are there other ways to guide citizens and
19 officials?

20 So with these questions in mind, we will now
21 turn to our first panellist, Professor Michael Morgan, who is
22 associate professor and a scholar of the history of diplomacy
23 at the University of North Carolina.

24 **--- PRESENTATION BY DR. MICHAEL MORGAN:**

25 **DR. MICHAEL MORGAN:** Good afternoon, Madam
26 Commissioner. It is a great honour to be here to [no
27 interpretation].

28 [No interpretation], as a historian, the

1 first point that I'd like to make is that Canadians should
2 not be surprised by the foreign interference that we've seen
3 in recent years, because this is simply the latest example of
4 a very old phenomenon. Canada and other Liberal democracies
5 have plenty of experience dealing with foreign interference
6 and dealing with the Grey Zone between foreign interference
7 and foreign influence.

8 As we heard from some of the speakers this
9 morning, the concept of interference is difficult to define.
10 There's a wide Grey Zone between influence, which we are
11 willing to accept, and interference, which we're not.

12 I'd like to make two main arguments this
13 afternoon. First, it's misguided to try to draw a sharp
14 distinction between influence and interference, not just for
15 conceptual or legal reasons, but also for practical ones that
16 are rooted in the way that diplomacy and state craft work.
17 Authoritarian states themselves, like Russia, like China,
18 don't necessarily pay much attention to the distinction
19 between influence and interference when they plan their
20 activities. They use whichever tools, legal, or illegal,
21 overt, or covert that they think will be most useful in
22 pursuing their objectives.

23 At the beginning of the Cold War the American
24 diplomat George Kennan described this wide spectrum of action
25 as "political warfare". This included, as Kennan put it, the
26 employment of all the means at a nation's command, short of
27 war, to achieve its national objectives. For the Soviet
28 Union, he said, and here he was speaking in the mid-1940s, no

1 holds are barred. There are no rules of the game. They can
2 do anything that they think is in their interests and their
3 choice is limited by only one thing, and that is their own
4 estimate of the consequences to themselves.

5 Political warfare obviously stands at odds
6 with many of the norms of international relations. It
7 violates the UN Charter's commitment to non-interference. It
8 violates the 1961 Vienna Convention, whose article 41 obliges
9 diplomats not to interfere in the internal affairs of their
10 host states. It violates the United Nations 1970 Declaration
11 on Friendly Relations Between States, which stipulates that
12 no state may "intervene, directly or indirectly, for any
13 reason whatever in the internal or external affairs of any
14 state."

15 And yet -- and this is my second argument --
16 foreign interference can sometimes be a useful tool that
17 serves Liberal democratic purposes. It can be sometimes in
18 Canada's interest to preserve the Grey Zone rather than try
19 to eliminate it. There are some practices that we may
20 welcome when friendly states engage in them, and yet we may
21 object to those same practices when they're undertaken by
22 unfriendly states.

23 Despite the prohibitions that I mentioned a
24 moment ago in the UN Charter and so on, Western governments
25 faced political warfare throughout the Cold War. Let me give
26 you some examples. At one end of the spectrum of legality,
27 Soviet diplomat's practiced traditional, open, peaceful,
28 state to state diplomacy. Communist newspapers and

1 broadcasters like Pravda and Radio Moscow, among others,
2 disseminated pro-Soviet versions of events and tried to bring
3 Western audiences, including in Canada, around to Moscow's
4 point of view.

5 Towards the Grey Zone, the Soviet Communist
6 Party liaised with, and advised, and sometimes funded
7 Communist parties in Western states. Some Western
8 legislatures, including in Canada, included elected members
9 who were Communists and worked, to varying degrees, with
10 Moscow. The Soviet government also supported and funded
11 Western NGOs that presented themselves as grassroots groups
12 but that often followed Moscow's line and tried to promote
13 Soviet policies. Soviet and Eastern European intelligence
14 agencies launched disinformation campaigns targeting Western
15 countries. For example, spreading the false rumour that HIV,
16 the virus that causes Aids, had been created by the American
17 government as part of a biological warfare program. This was
18 obviously a false rumour that Western officials worked
19 vigorously to debunk. And, of course, the Soviets also
20 recruited Western officials to spy for them.

21 Now Canada was on the receiving end of these
22 efforts for decades. Most dramatically, the defection of
23 Igor Gouzenko from the Soviet embassy here in Ottawa revealed
24 that the USSR had built espionage networks in Canada, in the
25 United States and in Britain. Representatives of the
26 Canadian Communist Party travelled to Moscow to meet the
27 senior Soviet officials. Canadian citizens could read Soviet
28 newspapers, listen to Soviet radio broadcasts. And these

1 overt and covert efforts attempted to sway Canadian public
2 opinion and Canadian politics, but it's worth emphasizing
3 that their impact was marginal. What this examples -- or
4 these examples suggest is that Canada can successfully resist
5 attempts at foreign interference.

6 During the Cold War, Western governments
7 themselves engaged in forms of political warfare. The
8 strategy of containment, which Canada supported, which was
9 crucial to NATO, tried to bring about the ultimate collapse
10 of the Soviet political system by blocking the expansion of
11 its influence. And it used diplomatic and political and
12 economic and military tools to achieve that goal.

13 Western officials, including Canadian
14 diplomats, pressed Soviet and other Eastern European
15 officials to change their domestic practices, to change their
16 laws. They demanded that the USSR and its allies relax state
17 censorship and stop preventing their citizens from traveling
18 abroad.

19 Western governments reasoned that if they
20 could cajole communist governments to loosen their domestic
21 restrictions on which state-control depended, they could
22 erode the foundations of communisms.

23 Western diplomats offered support to Soviet
24 and Eastern European dissidents, both overtly and covertly.

25 Western diplomats sometimes sheltered people
26 who were trying to flee their countries, such as the
27 Pentecostal Christians, the so-called Siberian Seven who took
28 refuge in the American Embassy in Moscow in the late 1970s

1 and early 1980s, or the East Germans, who crowded the West
2 German Embassy in Prague in the summer of 1989.

3 West broadcasters beamed television and radio
4 signals into the Communist Bloc, trying to bring uncensored
5 news to the Bloc's citizens. Some of these broadcasters,
6 like the BBC or Deutsche Welle operated openly as parts of
7 Western governments. Others, like Radio Free Europe and
8 Radio Liberty operated -- were ostensibly independent, but
9 operated in covert cooperation with the CIA.

10 The Soviets and their allies denounced these
11 Western efforts as "ideological subversion". And one could
12 make a pretty strong case that in fact these were attempts at
13 ideological subversion. They also denounced them as
14 violations of their sovereignty, which was more debateable
15 and Western governments took issue with that claim.

16 Western political warfare against foreign
17 adversaries didn't end with the Cold War. I'll give you a
18 couple of examples.

19 During the Obama Administration, the American
20 Government built a version of Twitter for the citizens of
21 Cuba which aimed to circumvent Cuban state censorship and to
22 foster a dissident movement there.

23 In 2013, the Canadian Government sponsored a
24 global dialogue on the future of Iran, which had similar
25 goals *vis-à-vis* Tehran.

26 Now, these were both peaceful efforts, and
27 they were certainly in line with liberal democratic values,
28 but one could reasonably describe them as foreign influence.

1 Western governments have also intervened, you
2 may say interfered, in the domestic affairs of fellow liberal
3 democracies. For decades during the Cold War, the CIA
4 secretly funded centrist political parties in Italy and in
5 Japan.

6 Other efforts at interference have been more
7 open. One could argue, for example, that in 1967 when French
8 President Charles de Gaulle visited Montreal and declared
9 from the balcony of the l'hôtel de ville, "Vive le Québec
10 libre", he was intervening, interfering in an illegitimate
11 way in Canadian domestic politics.

12 Some of the greatest achievements of Canadian
13 diplomacy also sit squarely in this Grey Zone between
14 influence and interference.

15 In the 1980s, the Canadian Ambassador to
16 Washington, Allan Gotlieb, lobbied American Senators and
17 Members of Congress, especially on trade policy. This might
18 have been construed by Americans as a violation of the *Vienna*
19 *Convention*, which requires that:

20 "...all official business [...] shall be
21 conducted with or through the
22 Ministry of Foreign Affairs."

23 Not through legislators.

24 But there's no denying that Gotlieb's
25 approach was successful. And in fact, it provided a
26 blueprint that Canadian diplomacy subsequently followed with
27 great success in dealing with Washington, including more
28 recently during the Trump Administration when the Canadian

1 Government launched a full-court press to save NAFTA, working
2 with American politicians at the federal, and state, and
3 local levels to build support for continued free trade.

4 It's also worth noting that from time to
5 time, Canadian politicians have also invited foreign
6 influence in Canadian domestic politics.

7 During the 1995 Quebec Referendum campaign,
8 for example, with the encouragement of the Chrétien
9 Government, U.S. President Bill Clinton spoke out twice in
10 favour of Canadian national unity.

11 And during the 2021 Federal Election, some
12 leading federal politicians sought and received the
13 endorsements of American politicians like Barack Obama and
14 Senator Bernie Sanders.

15 Now, it's debateable whether these examples
16 count as foreign interference, but they do indicate that some
17 Canadian leaders in certain circumstances welcome foreign
18 involvement in our domestic politics when it's in line with
19 either their political goals or the Canadian national
20 interest.

21 So what do these examples tell us about how
22 the Canadian Government could think or should think about
23 foreign interference today? I'd highlight five main points.

24 First, we can use the Grey Zone to our
25 advantage.

26 Second, if the government were to launch a
27 diplomatic initiative to rally international support to ban
28 foreign interference, it's unlikely to succeed if it's a

1 stand-alone initiative. As the example of Western policy
2 during the Cold War suggests, it's most likely to work if
3 it's part of an integrated wide-ranging strategy that spans
4 the spectrum of activities, not just -- instead of just
5 concentrating on one treaty or one element of policy.

6 Third, regardless of what recommendations
7 this Commission makes, or what actions the Government of
8 Canada takes, it's likely that foreign powers will continue
9 to look for ways to intervene and to interfere in our
10 political system and to undermine it. The states whose
11 interference we're most concerned about would be unlikely, I
12 think, to respect the content of any new treaty because
13 they're already violating long-standing rules on that
14 subject.

15 This doesn't mean that the government should
16 do nothing to the contrary, but it does mean that the
17 government must operate on the assumption that it will not
18 single handedly persuade foreign governments to desist.

19 Fourth, the openness of our society makes it
20 easy for foreign governments, adversarial governments, to
21 target us. This means that the government must strengthen
22 Canada's resilience to political warfare. And the core
23 challenge there, I would suggest, is addressing the crisis of
24 legitimacy that Canada and many other Western governments are
25 currently facing in their domestic politics. That means
26 rebuilding citizens' trust in our democratic system,
27 rebuilding faith in the *Constitution*, strengthening national
28 unity, shoring up social cohesion, reinvigorating public

1 belief in the Canadian political project. This is a gigantic
2 task.

3 But finally, and this is my fifth point,
4 history offers plenty of examples of ways to handle and not
5 to handle this challenge. So there's great wisdom in looking
6 to the past to look for solutions for the future.

7 Thank you.

8 **COMMISSIONER HOGUE:** Thank you very much.

9 **DR. NOMI CLAIRE LAZAR:** Thank you. We'll now
10 turn the floor over to Anne Leahy.

11 **--- PRESENTATION BY MS. ANNE LEAHY:**

12 **MS. ANNE LEAHY:** Thank you, Madam
13 Commissioner, colleagues.

14 I have a presentation which is completely
15 different. It reflects my own experience as a head of
16 Internal Affairs in the USSR during the Cold War in '80 to
17 '82. I was declared *persona non grata* in 1988, and I was
18 Ambassador to Russia at the end of the 1990s.

19 I want to show how our diplomatic presence
20 through our mission and embassies contributes to the defence
21 of our democratic institutions.

22 I would like to bring the Commission's
23 attention on the relevance of several recommendations of the
24 report of the Senate's Committee on Canada's Foreign Service,
25 tabled in December 2023. The government can kill two birds
26 with one stone by considerably reinforcing our diplomatic
27 capabilities, which will contribute directly to achieving the
28 Commission's objectives.

1 Diplomacy is just one of the tools available
2 to the head of state. It is not a concept that includes
3 everything. First and foremost, it characterizes the conduct
4 of relations between States represented by diplomatic agents
5 in accordance to the rules of the Vienna Convention for
6 diplomatic or consular relations.

7 Diplomacy is exercised in the context of the
8 state's responsibilities: defending its sovereignty and
9 territory, and protecting its citizens' sovereignty and
10 territory, citizens and the rights and freedoms. Those
11 principles could be in contradiction with national
12 imperatives and bring to justifying the extraterritoriality
13 of laws which is, in some cases, a bit of interference. This
14 Grey Zone exists.

15 Global Affairs is the mandated department
16 where this professional expertise resides, and where
17 interdepartmental credibility rests on the quality of its
18 presence in the field. Our allies criticize us, rightly so.
19 Our weak diplomatic presence abroad, and this ultimately
20 undermines our credibility.

21 What is the advantage in the field? Let's
22 look at some disparate elements that are well covered these
23 days; India, China, and Iran, all pursuing their national and
24 supranational interests in Canadian soil. Their interests
25 converge with those of Russia in its war of reconquest
26 against the Ukraine, and conflicts in the Holy Land. Other
27 past, latent, or active conflicts in Africa are relevant to
28 us because of their diasporas in Canada. And what's

1 happening in Africa, example, the involvement of armed groups
2 exploiting its resources to support Russia's war in Ukraine
3 also have an impact on us.

4 In our embassies, various security and
5 intelligence agencies are represented and they are involved
6 collegially in embassy businesses. It ensures that our
7 diplomatic missions already have a well-informed and enriched
8 by different skills and approaches to complex issues. The
9 results will help Global Affairs to do its mission. Global
10 Affairs brings the benefits to Ottawa's security and
11 intelligence community from an outside perspective that is
12 broader, reflecting reality on the ground and situated in the
13 context of relations between state.

14 I would like to talk about three sections of
15 the Vienna Convention. They are founding principles, the
16 respect for state sovereignty, non-interference in the
17 affairs of state, and reciprocity.

18 Section 41 stipulates the privileges and
19 immunities, as well as duties and responsibilities of --
20 accredited to a host country and of host countries towards
21 them.

22 Canadian diplomats are bound by Article 41,
23 and also several codes of ethics and conduct that apply to
24 our civil servants, diplomats, and also heads of mission.
25 Also, parliamentarians and Ministers, current or past, must
26 follow the "Open and Accountable Governments" directive from
27 2015.

28 Duly accredited foreign representatives, if

1 not governed by national codes of ethics, must comply to the
2 foreign country's laws.

3 So can an action be both legal and
4 illegitimate? You can look at the individual or the state.
5 When a foreign diplomat is seeking to strike a relationship
6 with a person of interest in Canada, this person must wonder
7 why they seem to be interesting, unless it's public or
8 obvious. Above all, they must bear in mind that the diplomat
9 may be interpreting what is "legitimate" in his or her own
10 culture, which is not customs that are acceptable in Canada.
11 For a gesture that violates our laws, the diplomat enjoys
12 immunity from Canadian laws, and it would be somewhat legal.
13 The same gesture could be seen by Canadians as not
14 legitimate, as contrary to the cultural and ethical norms of
15 our society.

16 A State can have legal activities that are
17 not legitimate. For example, official media being used, like
18 RT, *Russia Today*, to fabricate disinformation that are
19 distorting the outcome of a popular consultation or fuel
20 currents of racial hatred.

21 Section 9, the expulsion of diplomats. As
22 strange as it can be, there are rules that have to be
23 followed. It's the section that India did not comply with in
24 2023 by taking privileges and immunities from 22 Canadian
25 diplomats that were kicked out of the country, and they were
26 therefore vulnerable to various measures.

27 Section 3 describes the functions of a
28 diplomatic mission: representation, protection of interests,

1 negotiation, information, and promotion of relations and
2 consular access. You can see why it's essential to maintain
3 a diplomatic presence, mostly when there's tensions. It's
4 here that you find the difference between a spy and a
5 diplomat. The diplomat should not act in a clandestine way,
6 despite what my colleague said. They have to be informed of
7 conditions and the state of affairs in the country and
8 report to their own country are specifically the tasks of a
9 diplomat. But here's a Grey Zone.

10 Acting openly is not without risk for a
11 diplomat and local citizens. The more the state is
12 authoritarian, the more there's surveillance, and the line
13 between what's allowed and not allowed is not well defined.
14 According to the quality of relations between two countries,
15 the host country could express its displeasure by being more
16 or less tolerant of the contacts of the diplomat in this
17 country.

18 I would also say that the detention of some
19 of our diplomats in China show that there's confusion on the
20 nature of the activities of a diplomat. And it's important
21 to clarify, to not confuse what is clandestine and diplomatic
22 work in an open manner.

23 Do the Vienna Conventions have to be
24 updated?

25 It seems obvious; there's been in existence
26 for 60 years. There's more to lose than winning if we update
27 these agreements. The common interest of all states,
28 whatever their importance, is that the rules apply to all.

1 The principle of reciprocity is fundamental, even for
2 Superpowers. The states are to apply the Convention and are
3 the protagonists, even with the proxies or non-state actors.
4 The behaviour of the powers is based on the balance of
5 strength and would not change if we updated the Conventions.
6 They are written to take into consideration the evolution of
7 technology. It would increase differences, rather than
8 support the realities that underpin them.

9 I would like to give you a scale to measure
10 diplomacy, from benign to most severe, that governments can
11 use to show their displeasure or to answer to actions that
12 are not accepted.

13 They can be very slow in their approval for
14 visas for diplomatic staff; refusal to approve visas for
15 diplomatic staff. The state could also be slow or not
16 approve the visas for heads of mission and military attachés.

17 That government could also refuse to grant
18 accreditation to a proposed head of mission. The government
19 could also withdraw or ask the withdraw of local staff in a
20 foreign mission. A government could also declare PNG
21 personnel that was already approved but which is not already
22 in post. The government could expulse -- the PNG -- existing
23 staff. Could also temporarily cut the number of diplomatic
24 posts allowed to the mission; could also ask or expulse
25 personnel and cut the quota. Could also close a consulate,
26 or offices or embassies.

27 Quickly -- if you'll allow me a few seconds
28 more. It could exert its influence -- exerting influence is

1 in the nature of relations between states. Its purpose,
2 transparency, the means and timing chosen, the duration over
3 time, the degree of consultation between the actors are
4 criteria that allow us to decide if it's a benign,
5 ambivalent, harmful or hostile action to our values,
6 interests, and institutional integrity.

7 I saw in Mr. Johnson's report from May 2023,
8 I saw a very interesting reference to an Australian expert
9 who doesn't use the zone concept, but the continuum, to go
10 from interference to influence. She looks at factors,
11 identifying Grey Zones in the military and the civil sectors.
12 And puts legal limits, plausible deniability to go from
13 influence to interference, because influence, in itself, if
14 it's not hostile, it is not what we're dealing with here,
15 which is rather interference and not influence.

16 So one could argue about the limits in the
17 guidelines or the criteria that are adjustable, but what is
18 needed is human resources, first and foremost; qualifications
19 and budgets for human resources; "synaptic capacities," that
20 I call them, knowledge and experience to link events and to
21 have sources of information of various types.

22 I would add that the technological methods
23 that we have, the more advanced they are, the more human
24 reality check is important. The most important thing of all
25 that is credibility of risk analysis on which decision-making
26 rests.

27 When I joined Foreign Affairs, the rule to
28 access sensitive information was that it was solely on a

1 strict necessity basis, the need-to-know basis, if you will.
2 Sharing of this information has to be done only if strictly
3 necessary for a specific case, notwithstanding the status of
4 the person reading the information, and whatever their
5 security clearance, which they must have, even though this
6 level is adequate for the document. Our security clearances
7 had to be updated constantly, and renewed every five years.
8 It's a very wise practice.

9 We dealt earlier with society's resilience,
10 civil and political society. Many recommendations were made,
11 I don't need to repeat them, but I like the slogan that I've
12 been hearing; you can't avoid it when you're in a subway in
13 Toronto, "If you see something, say something". But to do so
14 you have to know why; you have to be motivated to do so; you
15 have to understand that non-action can be harmful, not only
16 for us or family or our surroundings, but for national
17 security. We said it earlier, Canada cannot act alone on the
18 international scene. We have to be in cooperation with other
19 countries. And if we drop our guard, our allies will suffer,
20 they will blame us for it, and we will have more difficulty
21 reestablishing our credibility.

22 So we have to be aware in this environment
23 that we're not the only ones at stake. There's our
24 reputation vis-à-vis our allied countries.

25 So I think that I can conclude on that.

26 Thank you.

27 **DR. NOMI CLAIRE LAZAR:** Thank you.

28 Mr. Jean?

1 --- PRESENTATION BY MR. DANIEL JEAN:

2 MR. DANIEL JEAN: Thank you.

3 Madam Commissioner, thank you to the
4 Commission for inviting me. I'm so happy to be here.

5 Today's panel topic is very important,
6 because I've been in that subject for 35 years. My
7 assignments, mainly five years in Washington, where we worked
8 relentlessly to protect and advance Canada's interest, like
9 my colleague said. My responsibilities as Deputy Minister
10 Foreign Affairs for three years, my role as National Security
11 and Intelligence Advisor to the Prime Minister allowed me to
12 work closely with both national security and international
13 affairs colleagues to get a better appreciation on how to
14 promote a country's interests versus clandestine and
15 deceptive activities by states that either interfered in
16 internal affairs or even violate laws.

17 Before I broach the subject more directly, I
18 think it's important to underline that the debate on foreign
19 interference and the current proceedings of this Commission
20 have highlighted the lack of awareness among Canadians on
21 national security as a whole, and foreign interference, which
22 is not new, like Michael said.

23 For example, prior to the 2015 election when
24 the Department of Foreign Affairs sent a diplomatic note to
25 foreign missions accredited to Canada, to remind them not to
26 interfere in elections in compliance with the Vienna
27 Convention. There were very few reactions, except the
28 comments of a few Canadian retired diplomats in one media

1 article who described the measure as rude. Of course maybe
2 they did not know that we were trying to prevention.

3 In 2016, when GRU Russian spies, who
4 interfered a few months later in the US elections, this same
5 group cyber-attacked the World Anti-Doping Agency in Montreal
6 and its Canadian partner, the Canadian Centre on Ethics in
7 Sports, and released confidential medical information of
8 Olympic athletes including Canadians, as part of a
9 disinformation campaign in retaliation for the sanctions
10 imposed by the Olympic movement, not a single media
11 organization in Canada initially covered the incidents. *The*
12 *New York Times*, *The Guardian*, and many other foreign medias
13 did.

14 I'm talking about national security culture,
15 the debate that has followed those leaks of classified
16 information and led to the current Commission, initially put
17 a lot of attention on the risks of foreign interference in
18 elections.

19 I do not wish in any way to minimize the
20 importance of protecting the integrity of our democracy, both
21 during and in between elections. I think that we all agree
22 to say that democracy is wider than just elections. However,
23 I think that we will agree today that there are two criminal
24 procedures in Canada, one with an active member of the RCMP
25 and a retired member that have shared information to two
26 countries, Rwanda and China countries, publicly criticized by
27 well-known human rights groups for monitoring and
28 intimidating members of their diasporas abroad. And we're in

1 the middle of a diplomatic crisis with India, serious
2 allegations that they would have sponsored third-party
3 criminal actions for intimidation to extortion, and even
4 murder.

5 Understanding better tension between the
6 national security and the foreign relations interest. First,
7 the definition of *CSIS Act* describes the foreign interference
8 as activities that have done to the detriment of Canada, and
9 they have deliberate and covert activity undertaken by a
10 foreign state. The relevant reference, the Vienna
11 Convention, indicates without prejudice to their privileges
12 and immunities, that you give all persons enjoying such
13 privileges and immunities to respect the laws and regulations
14 of receiving states. They have a duty also not to interfere
15 in the internal affairs of that state.

16 **MS. SHANTONA CHAUDHURY:** We could ask you,
17 please, if you would slow down for a moment.

18 **MR. DANIEL JEAN:** [No interpretation].

19 **MS. SHANTONA CHAUDHURY:** [No interpretation].

20 **MR. DANIEL JEAN:** There's very little debate
21 between the relevant security and diplomatic experts on what
22 constitutes activities that are clearly normal diplomatic
23 relations to influence versus the more egregious cases of
24 foreign interference. Of course the challenge resides in the
25 Grey Zones. Based on experience, I believe the best way to
26 manage this healthy tension around Grey Zones is to enable
27 frank, regular exchanges between the relevant organizations,
28 as our Australian colleague pointed out. This allows us to

1 advance the understanding of the judgment that should be
2 applied to these situations with a heavy dose of diligence,
3 where arguments at the heart of the tension with the national
4 security and foreign relations can be examined.

5 For example, in 2017 when I was the National
6 Intelligence Security Advisor, I wanted to sensitize the
7 Prime Minister and the government on growing concerns by CSIS
8 around some activities that could be construed as foreign
9 interference. However, the reports were a mix of normal
10 diplomatic activities, and some activities that could
11 suggest, possibly, an interference attempt. I raised my
12 concern with CSIS Director, and he suggested a meeting -- I
13 think it was an excellent suggestion, of a meeting between
14 his experts on the possible threats under consideration and
15 the foreign policy advisor and myself.

16 Now, this meeting was mutually beneficial to
17 better address these grey areas and improve the quality and
18 credibility of the intelligence on those activities that
19 created concerns and could represent a threat.

20 In addition, we also took advantage of an
21 interagency meeting with representatives of National Security
22 and International Affairs to get a better sense of how threat
23 manifest itself through specific situations and explore
24 options to counter this.

25 I think it would be very difficult to develop
26 a more precise definition than the one in the *CSIS Act* that
27 could eliminate these grey areas, and we must recognize that
28 some degree of ambiguity can be helpful in the choice of

1 actions if necessary and possible that a state can take. For
2 example, a Grey Zone that represents barely smoke and a
3 limited impact could be countered through better awareness of
4 the population or the relevant actors or groups that are
5 targeted or a démarche to the diplomatic mission that may be
6 involved.

7 Something that would amount to bigger
8 interference could lead to more serious measures, going from
9 a possible threat reduction, possibly charges or sanctions if
10 the laws have been violated, or, if it's a diplomat that are
11 involved, diplomatic measures.

12 With regards to the possibility of amending
13 the Vienna Convention to try to identify more clearly the red
14 lines that states should not cross, it would be a substantial
15 effort that is not without risk. After all, the Convention
16 continues to serve relatively well its objective in general,
17 and even if such amendments could be made, as Michael has
18 mentioned, it would be unlikely that we would be either
19 ratified or complied by the states that are the most
20 susceptible to enter in the behaviour that we wish to deter.

21 However, I believe that Canada could inspire
22 itself from the leadership that it has demonstrated in the
23 elaboration of an initial endorsement -- initially 60 states,
24 there's now 78 states -- of the declarations against
25 arbitrary detention in state-to-state relations launched in
26 February 2021. It could consider rallying a critical mass of
27 likely minded states to design a declaration that could,
28 relying on existing principles that guide diplomatic

1 relations, describe unacceptable foreign interference
2 behaviours by states that should be deterred. In fact, the
3 declaration against arbitrary detention relies on the
4 existing principles of international instruments, namely, the
5 Universal Declaration of Human Rights, the International
6 Covenant on Civil and Political Rights, and the Vienna
7 Convention on Consular Relations.

8 Building on the unendorsed commitment of
9 likely-minded states, the initiative through a partnership a
10 bit like what is currently pursued in state-sponsored cyber
11 attacks consider collective attribution and common
12 complementary sanctions when a state crosses the line. Such
13 an initiative could likely draw interest.

14 The analysis of foreign interference trends
15 in other countries, particularly when it comes to the
16 intimidation of diasporas, shows that the targeted
17 communities vary between states, depending on the source of
18 their immigration. It would also build on the leadership
19 that Canada exercised in the establishment of the G7 Rapid
20 Response Mechanism at the 2018 G7 summit in Charlebois, a
21 measure designed to strengthen the coordination between G7
22 countries to identify and respond to diverse and evolving
23 threats in democracy.

24 Let's take a good study of what was a very
25 good comprehensive response by a state. The management of
26 the United Kingdom response to the serious extra-territorial
27 transgression that was the chemical poisoning by Russian
28 agents of the Skripals, father and daughter, is one of the

1 best case studies in terms of responses in recent history.

2 We have to remember that when they were
3 informed first, some members of the Opposition in Parliament
4 expressed scepticism when Prime Minister May initially
5 attributed the chemical agent poisoning attack to Russia. A
6 fast forensic identification of the chemical agent and of the
7 suspects, and a comprehensive engagement, rallied rapidly the
8 international community, including Canada, in joining on the
9 attribution and concerted efforts to sanction Russia.

10 This concerted attention even led Russia to
11 make a mistake, compromising themselves even more when some
12 of their agents were arrested by the Netherlands law
13 enforcement authorities trying to bring technical tools to
14 attempt to spy on the ongoing investigation by the
15 organization for the prohibition of chemical weapons in The
16 Hague.

17 Of course, it's easier to act when the
18 culprits are countries like Russia, who are already in the
19 penalty box, but we've encountered these same concerns and
20 the same responses by some states of not rocking the boat
21 with China in 2017 in the context of the efforts that we had
22 started on economic security, trying to prevent sensitive
23 technology.

24 For a country like Canada, favouring a
25 concerted approach with many countries is more likely to have
26 a greater effect and protect the risk of unilateral
27 retaliation. With regards to deter interference by foreign
28 states in Canada, the upcoming creation of a foreign agents

1 registry in the context of C-70 will bring more transparency,
2 a bit like existing measures on lobbying, on the activities
3 of intermediates that represent foreign countries in Canada.
4 As for illicit activities of foreign diplomats or their
5 proxies that would operate in the shadow of the foreign
6 agents registry, it's critical that public institutions, for
7 example, parliamentarians, be more aware of the threat
8 through regular updates on the threats and tactics used.

9 These institutions should also consider
10 updating their relevant code of conduct to adapt to the
11 threat.

12 As for political Parties, given that unlike
13 other countries, for example Australia, it appears that
14 nomination process in Canada will not be subject to the new
15 legislations and that political Parties that express a desire
16 to self-regulating themselves, it would be both in the public
17 and their own interests to adopt transparent rules of conduct
18 in this area that can reassure Canadians vis-à-vis some of
19 the concerns identified in this Inquiry. And I would argue
20 that this paragraph relates very much to what you said about
21 restoring trust.

22 Allow me once again thank you for the
23 invitation, and I look forward to exchange with my fellow
24 panellists and the representatives of the Commission.

25 [No interpretation].

26 **COMMISSIONER HOGUE:** [No interpretation].

27 **DR. NOMI CLAIRE LAZAR:** [No interpretation].

28 Mr. Normandin.

1 **MR. HENRI-PAUL NORMANDIN:** Thank you,
2 colleagues, ladies and gentlemen.

3 Thank you very much, first for inviting us to
4 this table to talk about diplomacy and interference. And as
5 has been pointed out a number of occasions, it's in fact a
6 grey area, shade. The object of my presentation is to try
7 and shed some light on this shade, without claiming for a
8 moment, I think we've reached a situation where we have a
9 clear line between the two.

10 Could we have the support of the technicians,
11 please, to get this started? It was working earlier.

12 **MR. DANIEL JEAN:** Ah, it's foreign
13 interference.

14 **(LAUGHTER)**

15 **MR. HENRI-PAUL NORMANDIN:** [No
16 interpretation].

17 **COMMISSIONER HOGUE:** [No interpretation].

18 **MR. HENRI-PAUL NORMANDIN:** Voilà.

19 **COMMISSIONER HOGUE:** There we are.

20 **--- PRESENTATION BY MR. HENRI-PAUL NORMANDIN:**

21 **MR. HENRI-PAUL NORMANDIN:** So first I think
22 we want to make a distinction, the first thing we have to do
23 is to define what we're talking about here; diplomacy and
24 interference. As regards interference, there are a number of
25 definitions; we'll come back to them. As regards diplomacy,
26 there aren't that many definitions on that subject.

27 So specifically now what I want to do is to
28 try and develop a useful definition of diplomacy and

1 interference, and also present a tool to try and make a
2 distinction between the two. And then I'll conclude with a
3 few recommendations. But first, a few words, if I may, about
4 influence.

5 In my view, influence is used right and
6 wrong, in all different ways. Sometimes we use influence as
7 a synonym for interference; however, sometimes we use the
8 term influence as meaning interference. And there's
9 something else also, something different, which is called
10 interference. In my view, influence is at the very hard of
11 both of these, there is influence, which is legitimate and
12 acceptable, for example, through diplomacy or generally
13 speaking through soft power. But there's also influence
14 which is illegitimate and unacceptable. Now, that's
15 interference.

16 So my first suggestion is, therefore, when we
17 use the term influence we shouldn't use it as a synonym of
18 one or the other, but rather see it as being at the very core
19 of both these notions.

20 Now, this leads me now to the definition of
21 diplomacy. As surprising as it might appear, because we've
22 been practising diplomacy for so long, but unfortunately
23 there is no universally accepted definition of diplomacy. If
24 you look at the literature, the writings, you'll see lot of
25 definitions but there's not just one that everyone accepts.
26 So following various definitions, and based on my personal
27 experience also as a diplomat, I tried to come up with a
28 definition of diplomacy, and that's what you can see on the

1 table here, and I'll read it.

2 "Diplomacy consists in the deployment
3 of specific and legitimate means by a
4 government in order to promote its
5 objective and defends its interests
6 in the global arena as it strives to
7 influence the positions, the
8 decisions, and the actions of other
9 stakeholders." (As read)

10 So I'll draw your attention to two things in
11 this definition; first, we use the term "Influence"; yes,
12 diplomacy does seek to influence people. And also the notion
13 that diplomacy is there to promote objectives and interests.

14 Now, a few complementary notes, if I may,
15 additional notes on this.

16 First, most of the time when we talk about
17 diplomacy, we refer to national governments, but there are
18 also governments at other levels, such as the provinces, for
19 example, they can conduct diplomacy.

20 And also the means used must be legitimate,
21 transparent, and peaceful, such as dialogue, information,
22 persuasion, et cetera. And then, as you pointed out in your
23 report, Madam Commissioner, diplomacy can also be aggressive,
24 for example, exerting pressure, even coercion sometimes. For
25 example, use of economic sanctions or customs duties,
26 tariffs; this could be an instrument of diplomacy. So
27 diplomacy, therefore, is a preferred instrument for
28 implementing government's foreign policy, but it's not the

1 only mechanism of influence.

2 So this leads us now to interference.

3 Before coming up with a definition here, I
4 just have one or two points. First, if I ask the Government
5 of Canada what is the definition of interference, I wouldn't
6 get just one answer, I'd probably get several answers because
7 interference is defined and is explained in a different way,
8 according to various pieces of legislation and various
9 documents. There's a certain consistency here, and I also
10 recognize it's difficult, for example, for election purposes,
11 information purposes, I understand that you can define
12 interference and explain it differently. But it's surprising
13 that the Government of Canada has not set out anywhere that
14 our definition of interference is this or that.

15 Second point, the definition which is most
16 often used is that which you can find on the CSIS. So I'd
17 say it's rather incongruous that that this definition does
18 not even include the word, "Interference". So this is rather
19 unusual.

20 Now, one other point, the Vienna Convention
21 -- we talked about this this morning -- it follows the
22 following principle; it doesn't define what interference is,
23 so to try and understand what interference is, the Conference
24 of Vienna really is really of limited use.

25 Now, the third point that I make here, and
26 this is absolutely fundamental to my argument, is if you
27 really want to define or to explain the difference between
28 diplomacy and interference, I think it's very useful to make

1 a distinction between action and intention; I'll come back to
2 that in more detail in a moment. But this leads me now to a
3 generic definition of interference.

4 I use the term, "Generic" because I'm not
5 saying that you have to disregard all the other definitions,
6 including that of CSIS. But I think it's also, therefore,
7 useful to have a generic definition which makes a distinction
8 between intention and action. You've got it in French and
9 English here:

10 "Interference is conducted by a
11 country or foreign entity or
12 intermediary when it attempts to
13 exercise undue influence on a foreign
14 country, either (1) through
15 illegitimate actions and/or (2)
16 through actions with a maligned
17 intent, often in a clandestine
18 manner." (As read)

19 Now, you'll find some of the points that you
20 find elsewhere, such as acting in a clandestine way, but I draw
21 your attention to two things. First, the word, "Influence" is
22 used here, but it's qualified, "Undue influence". And also the
23 definition makes the distinction between action and intention.

24 Now, this leads me to present the following:
25 I tried to create a tool, an analysis grid to enable us or to
26 help us in order to make this distinction between the two of
27 them; therefore, I analyzed all of this action, intention, and I
28 got this as follows:

1 First, in terms of action, you've got two
2 columns there, one on the left, one on the right. The column on
3 the left presents what I would say is really legitimate form of
4 action, which is really dependent on diplomacy. So you've got a
5 list here; I won't read everything to you, just a few points.
6 Building relationship, that's obvious. Holding private and
7 public meetings. Of course present arguments, and see the
8 legitimate consequence of decision by the host country. All of
9 this, first and foremost, at first sight this is legitimate
10 action, but -- unless it's linked to an intention that is
11 illegitimate. I'll come back to this in a moment, but before
12 that, let's look at the column on the right, what I call the
13 illegitimate zone here; that is, what is interference.

14 Let's stop by the top one, concealing
15 identity and intentions. This comes back to the current
16 definition, which stood for misleading activities. Once you get
17 into this, once you're dissimulating, hiding your intention, I
18 think in that case you're dealing with interference.

19 Now, once more there's a long list; I won't
20 read everything, but disinforming, using threat and intimidation
21 against individuals, and the very last one, engaging in illegal
22 activities. So as long as you are doing this, this is
23 illegitimate, and we can talk about interference.

24 Now, what about intentions? Again, on the
25 left you have intentions and at first they might appear to be
26 diplomatic initiatives. For instance, to advance objectives and
27 different interests, to mitigate criticism, and even seek to
28 change perceptions and positions of the host government. Yes,

1 it looks like acceptable action from a diplomatic point of view,
2 except if it is combined with illegitimate action, as we saw
3 just a few minutes ago.

4 Now, on the right side, the illegitimate
5 zone; malicious intent, and this is interference. Once more you
6 have a long list, just a few examples. To undermine the social
7 cohesion we talk a lot about foreign states that encourage
8 polarization to undermine the country's sovereignty, the rights
9 and liberty, to intrude in processes, to disrupt events, to
10 suppress dissent and criticism, all of this are in the zone of
11 interference, in my opinion.

12 So in short, I think that if we want to make
13 an analysis of a situation to distinguish between interference
14 and influence, we have to look at action and intention, and
15 there are three or four possibilities. If there is a legitimate
16 action with a legitimate intention, it's okay. Otherwise, if
17 there's a malicious action, just as I just submitted, this is
18 interference.

19 And finally, if -- and it's the most
20 difficult case, if we have an action that at first appears to be
21 legitimate, but that is accompanied by a malicious intent as
22 described here, then I think that, once more, you are in to the
23 interference zone.

24 So you have to make a distinction between
25 legitimate and illegitimate in order to look at the whole, and
26 this is how we'll be able to identify the zone in which we are.

27 So that's what I had to share with you, and I
28 will conclude with two recommendation. The first one, the

1 Canadian government should have a look at a generic definition
2 of both concept, and I'm not meaning here that these definitions
3 should be legally accepted, but they could be useful for
4 political purposes for internal and communication purposes,
5 particularly in terms of diplomacy. We never tried to define
6 what diplomacy means and to explain it.

7 Now, in terms of interference, I think that
8 it would be useful to have something that could distinguish
9 between action and intention.

10 Finally, my second recommendation, but I'm
11 not the first one to make such a recommendation, I think that
12 the Canadian government should have a tool to train and educate,
13 in order to reach various audiences in order to explain what is
14 legitimate and acceptable, and to distinguish between what is
15 not legitimate and what is unacceptable.

16 That is what I had to submit today.

17 **COMMISSIONER HOGUE:** Thank you very much.

18 **DR. NOMI CLAIRE LAZAR:** [No interpretation].

19 And now if we could hear from Dr. Himelfarb?

20 **--- PRESENTATION BY DR. ALEX HIMELFARB:**

21 **DR. ALEX HIMELFARB:** Thank you. And thanks
22 to the Commission for the invitation.

23 There's a particular challenge and advantage
24 in going last, and mostly all of the good stuff has been
25 said, so I'm just going to highlight a few of the themes with
26 which I agree, and ignore the themes with which I don't.

27 And I think it's pretty clear that we are not
28 going to be able to define away the Grey Zone, that there

1 will be a Grey Zone. We've always lived with it. We'll
2 continue to live with it. That's not to say that it's not
3 advantageous to renew our understanding of the principles
4 that underpin the Vienna Convention, or even to understand
5 more deeply the continuum between legitimate influence and
6 interference, but we're not going to find a consensus about
7 that that holds up for a variety of reasons. As Michael
8 said, some countries will simply ignore the distinction and
9 have no interest in maintaining it. But there will be --
10 even those like-minded countries may well disagree by virtue
11 of cultural differences and differences in circumstances
12 about just how hard and when to draw the line. And every
13 country will try to guard its capacity to influence, to
14 exercise influence, and won't want it to be unreasonably
15 contained. So we're going to live with the Grey Zone.

16 And it's really useful -- I really enjoyed
17 all the presentations, but I really enjoyed the history. A
18 reminder that this isn't new, that we have lived with this,
19 that we have managed with it in the past. And interference
20 is something we know it when we see it, but only if we're
21 looking. And so the greater awareness we have of it now is
22 actually a very positive thing.

23 Notwithstanding the value of the history, the
24 world of influence and interference has changed, and I think
25 it has changed in a couple of ways that have also affected
26 diplomacy. Two things I would highlight: the change in the
27 information and communications technology, the information
28 ecosystem is different; and the proliferation of non-state

1 actors in the influence business.

2 And those things, I think, have changed the
3 dynamic of the ways in which to interpret the *Vienna*
4 *Convention*.

5 With respect to, for example, the new
6 information environment within which we live, in, I think it
7 was 2016, the Oxford Dictionary coined the word -- or named
8 the word of the year "post-truth". "Post-truth" was the word
9 of the year.

10 Just a few years later, the Webster
11 Dictionary said the word of the year was "gaslighting".
12 There's a great understanding that we are living in a
13 different information environment. That also means that the
14 ways in which influence is exercised and interference occurs
15 have also changed.

16 So -- and I'll give the example; I led a
17 panel on misinformation in science and health and the -- we
18 were going to stay away from anything political, anything
19 terribly controversial, but this was right in the midst of
20 the COVID pandemic, when we were looking at the controversies
21 around vaccinations, and masking, and distancing. What we
22 found was that there was an awful lot of disinformation,
23 deliberate disinformation, much of it foreign driven, that on
24 the face of it has nothing to do with elections or politics,
25 but in the end, has everything to do with elections and
26 politics, that we discovered that disinformation got
27 intertwined with issues of identity and ideology, that it
28 became exploitable for political purposes.

1 This was happening quite independent of the
2 writ period, long before elections, but is an indirect way of
3 influencing elections, and certainly of influencing and
4 undermining democracy.

5 I mean it's, I think, instructive that Sweden
6 developed an institute similar to what you were recommending
7 we do for education and promotion of some of the values that
8 underpin the difference between influence and interference.
9 They created an agency called the Psychological Defence
10 Agency. And they look at interference that is material, that
11 is really consequential, malign in their interpretation of
12 malign.

13 And election interference is a subset of
14 that, because they understand that the impact on elections
15 doesn't happen during the writ period and can happen
16 indirectly and in very subtle ways. And so they look at the
17 interference on democracy writ large, including
18 disinformation, with elections as a subset of that, and
19 there's more intense and specific set of guidelines during
20 the writ period. But that's just one piece of a larger
21 puzzle.

22 So I think the other thing that this changed
23 environment of multiple actors and information environment
24 has done is it has blurred the line between foreign and
25 domestic.

26 And one of the things that we have seen just
27 recently is at least allegations that foreign interests that
28 are trying to influence or interfere in our democracy use

1 domestic influencers. And it's not just that these domestic
2 influencers are puppeteering foreign lines or speaking
3 points, it's that in fact the foreign influencers -- the
4 foreign interests are amplifying domestic messaging.

5 So the flow is not one way. The flow isn't
6 from foreign to domestic. The flow is two ways. And it
7 suggests that the Grey Zone has become even greyer and that
8 the line of foreign influence versus domestic influence, pre-
9 election influence versus election influence, is blurrier
10 than ever. And what that suggests to me is that any
11 comprehensive strategy is going to have to look at this as a
12 layered issue, that it's going to have to look at the issue
13 of foreign influence on our democracy that includes but isn't
14 solely about elections.

15 Then electoral influence, influence that is
16 much more direct on the institution of elections, and
17 disinformation whether, in fact, it's foreign or not,
18 whatever the source, because, quite frankly, very often we
19 don't know the source or we don't know the source with
20 absolute confidence.

21 And that suggests, I think, two other broad
22 strategic issues for consideration. One of them is what
23 almost everyone around this table said, is no country's going
24 to deal with this alone, and working with like-minded
25 countries to find some shared framework for how to approach
26 it, but also some processes like the G7 has for concretely
27 tackling misinformation, for example. That working with
28 like-minded countries is a really important element of this,

1 but the more demanding one, and I'm going to end where
2 Michael as well ended, and that is trust building, social
3 trust and political trust. That what we need to do if we are
4 truly going to increase democratic resilience and truly
5 address our vulnerability to interference, we are going to
6 have to -- and so when we build the institutions, they have
7 to be institutions that win trust.

8 They have to be seen as free from political
9 influence. They have to be seen as institutions of people
10 who have come to distrust government and public institutions
11 can learn to trust. And all of our remedies have to have in
12 them, I believe, the commitment to rebuild two kinds of
13 trust, social trust, because so many of our interventions can
14 actually exacerbate differences between diaspora communities
15 and other communities, so we have to build social trust in a
16 way that doesn't damage already damaged social cohesion, and
17 we have to build political trust and ensure that our
18 institutions are transparent and engage the community and are
19 built with the community.

20 And I'll stop there.

21 **--- OPEN DISCUSSION:**

22 **DR. NOMI CLAIRE LAZAR:** Thank you very much.

23 We would now like to offer the panellists an
24 opportunity to respond to one another.

25 Okay. You're like my graduate seminars, the
26 silence.

27 Go ahead, Professor Morgan.

28 **COMMISSIONER HOGUE:** Usually there's one

1 starts.

2 DR. NOMI CLAIRE LAZAR: And there he is.

3 DR. MICHAEL MORGAN: Thanks very much.

4 Thanks to my colleagues for fascinating presentations.

5 I'd like raise or come back to a couple of
6 points, one raised by Henri-Paul, Mr. Normandin, and one by
7 Dr. Himelfarb.

8 So Mr. Normandin, in your presentation, you
9 emphasized the importance of distinguishing between
10 legitimate and illegitimate activities. And you suggested
11 that the government should seek to craft a definition of
12 diplomacy and interference that I assume would turn on that
13 distinction between legitimate and illegitimate activities.

14 The difficulty with that approach, to my
15 mind, in thinking about the international situation, is that
16 different states have different concepts of legitimacy, and
17 so actions that Canada and other liberal democracies might
18 regard as quite properly legitimate like defending the human
19 rights of persecuted minorities in other countries, standing
20 up for the Tibetans, let's say, in China, or the Uyghurs,
21 arguing for the preservation of liberal democracy in Taiwan,
22 the government in Beijing would insist those are illegitimate
23 actions.

24 So then that raises a difficulty with the
25 idea of the government stipulating a clear definition because
26 if the government simply says we endorse everything that's
27 legitimate and reject everything that's illegitimate, that
28 would simply invite the Chinese or the Russians or the

1 Iranians to criticize the defence of human rights and liberal
2 democratic values as illegitimate, which in turn could raise
3 domestic dissent within Canada about the Government of
4 Canada's own policies and increase distrust, damage the
5 legitimacy of our own institutions.

6 So I wonder if -- as much as I appreciate the
7 grid that you put before, if it's not simply a way of dodging
8 the underlying problem.

9 And for Dr. Himelfarb, I think we agree that
10 rebuilding trust, political trust and social trust, is
11 crucial, and this is a question that I've been wrestling
12 with. I think it's easy to say that in principle, it's easy
13 to say that in the abstract, but I've been struggling myself
14 to devise or to propose, to think of concrete ways of doing
15 that, and certainly to think of ways of doing that that could
16 be achieved on any reasonable time horizon because when I
17 think of rebuilding political trust, that strikes me as a
18 generational project, not simply a matter for one piece of
19 legislation.

20 **DR. NOMI CLAIRE LAZAR:** [No interpretation].

21 **MR. HENRI-PAUL NORMANDIN:** Yes, thank you.

22 Michael, two things. First of all, once
23 again, the definitions that I was proposing, I was not
24 proposing that they be legal definitions. It's more of a
25 political statement. That's the first thing.

26 Second thing is that I'm suggesting this for
27 Canada's purposes, and I can only simply entirely agree with
28 you that different countries will have different -- a

1 different understanding of what is legitimate and what is
2 illegitimate. It's a fact.

3 And that's why, interestingly enough, I think
4 there is a consensus around this table that trying to reopen
5 or add something to the Vienna Convention is unlikely to lead
6 us to anything that would be useful precisely because of
7 that. There will be differences of points of views, and
8 we'll never get there.

9 So that's what I'm suggesting. I'm
10 suggesting this for Canadian purposes, acknowledging that it
11 has its limits just like any definition has its limits. It
12 cannot cover all the -- we cannot cover all situations.

13 But I would like to rechallenge you and, at
14 the end, when you were saying putting this in the definition
15 or such a definition is a way to dodge the issue, how does it
16 dodge the issue? I think you can say that it's
17 unsatisfactory as an attempt to address the issue, but it
18 certainly doesn't dodge the issue. It attempts to address it
19 head on.

20 **DR. MICHAEL MORGAN:** I take your point, but I
21 would say that it dodges the issue insofar as any definition
22 that simply says we endorse legitimate practices and disown
23 illegitimate practices leaves open the question of what is
24 legitimate. And we may say we endorse practices that are in
25 line with the *Charter* or in line with liberal democracy, in
26 line with Canadian values, but there again, that leaves huge
27 questions in the same way that, if you look at American
28 practices through the Cold War, there are plenty of cases in

1 American foreign policy -- and I'm not endorsing any of them;
2 I'm simply listing them -- where the government, either
3 overtly or covertly, pursued policies for democratic ends
4 using means that were sometimes less than democratic, like
5 covertly funding non-Communist political parties like the
6 Christian Democrats in Italy, for example.

7 So I think the Grey Zone -- and perhaps we
8 are agreeing violently with each other. The Grey Zone seems
9 to be inescapable.

10 **DR. NOMI CLAIRE LAZAR:** Madam Leahy?

11 **MS. ANNE LEAHY:** Yes, two points.

12 The United States also funded *Solidarność*
13 that led to the fall of the Communist Party in Portland. Was
14 that legitimate or illegitimate? It was on our side.

15 See, you don't get out of that argument.

16 Legitimate also, to Henri-Paul's point --
17 legitimate in the context of a given culture, let's say in
18 Canada -- that's the example I use -- we should know what's
19 legitimate, what's acceptable or not. You know, beating your
20 husband when you come back because you're frustrated at the
21 end of the day, that's neither legal nor legitimate, right.
22 Maybe it is elsewhere, but in Canada, anyway, if foreign
23 diplomat starts doing that, that's a case for going back
24 home.

25 Then there is the international community,
26 international law. The question of state sovereignty being
27 eroded by the principle of the duty to intervene, this whole
28 exercise like by Lloyd Axworthy at the turn of the century,

1 the 21st century, that we were very enthusiastic, we, a
2 certain international community. But it reached a point
3 where it didn't go any further because if you made a poll
4 today, you would find dozens of countries who don't agree
5 with the encroachment of the principle of state sovereignty.

6 So what we consider legitimate
7 internationally, there is no consensus, so that's why we're
8 getting, I think, in more -- on more dangerous or fragile
9 ground if we go beyond trying to deal with what's an
10 understanding in Canada. This is where we want foreign
11 diplomats, or spies, or other agents of influence to be well
12 aware of what's acceptable and legal here and what will get
13 them into trouble if not.

14 **DR. NOMI CLAIRE LAZAR:** Thank you.

15 Dr. Himelfarb, do you want to reply?

16 **DR. ALEX HIMELFARB:** I agree with you,
17 Michael, entirely that not only is it befuddling, but it's at
18 least generational, the issue of rebuilding trust, the issue
19 of building social trust, cohesion, and trust in our
20 institutions. It took us generations to screw it up and it's
21 going to take us generations to screw it back on.

22 But -- and there's no question that the
23 agenda goes well beyond what this Commission could hope to
24 address. But the Commission should at least recognize that
25 it's a huge constraint in anything it does. So, at minimum,
26 it shouldn't make things worse. Err on the side of
27 transparency, for example. Err on the side of engagement.
28 Err on the side of anything that strengthens people's trust

1 in the institutions that are built and recommended. So at
2 least don't make things worse.

3 In the longer term, the solutions are
4 questions of fundamental public policy. There's a good
5 literature that says more equal societies are more trusting
6 societies. There's a huge literature that says more
7 inclusive societies are more trusting societies. We could
8 look at what Finland's doing in its education system on
9 preparing people for a world of misinformation, how you build
10 the education system. Those are obviously far beyond the
11 mandate of this Commission, but there is no solution without
12 addressing those issues, in my view.

13 **DR. NOMI CLAIRE LAZAR:** Thank you.

14 Mr. Jean?

15 **MR. DANIEL JEAN:** My comment is on this issue
16 of trust, and in particular on the -- sorry, I thought they
17 were automatic. Particularly, that comment that Alex made
18 that state sponsored may amplify messages that may actually
19 feed into distrust and undermine cohesion. I'll use the two
20 practical, recent practical examples that I've referred to
21 that were very much about that and talk about the importance
22 of knowing our vulnerabilities as a country and our
23 vulnerabilities -- our biggest vulnerability may not be
24 election.

25 So, for example when the Russians made the
26 attack on the medical files of the WADA, what they wanted was
27 to basically show that some athletes, so, for example, Simon
28 [sic] Biles, one of the most decorated athlete, takes a

1 focus-enhancing drug. And you're a gymnast, so that may give
2 you an advantage. So their narrative that they were playing
3 into their propaganda machine was that, obviously, you have
4 your way of cheating. You've created -- you, the West,
5 you've created your own way of cheating. Of course, what
6 they did not say is she was taking that medication ever since
7 she was a child because she was diagnosed. There were other
8 medical files that were released.

9 If you compare it, same group, same people,
10 in fact, the indictment in the U.S. target some of the same
11 GRU officials. In the U.S., what they did is they basically
12 showed the divisions between Clinton and Sanders to try to
13 undermine the Democratic Party. Our reaction looking at it
14 here in Canada was to right away focus a lot of attention on
15 our elections. And I'm not saying it's not important, that
16 we should not focus this, but many of us who were looking at
17 this actually felt that in Canada we had areas of
18 vulnerability that were probably much bigger. Quebec
19 identity, for example, Western alienation. Would be a lot
20 easier to do state-sponsored operations like they've done on
21 WADA on the U.S. election in using these amplifiers to
22 undermine this issue or trust them. And, in fact, when the
23 pandemic occur, at the time I was retired, but on
24 conversations with former colleagues we saw some of this
25 trying to create this distrust on vaccines and on some of the
26 medical responses. So my point on this is you need to be
27 aware of it; you need to know where your vulnerabilities are,
28 you got to make sure that your prevention and your tools,

1 you're well equipped to be able to deal with this, on top of
2 whatever you're going to do on elections and other democratic
3 process.

4 **DR. NOMI CLAIRE LAZAR:** Thank you.

5 Dr. Himelfarb?

6 **DR. ALEX HIMELFARB:** Dr. Himelfarb. Yeah, I
7 want to get back to this discussion in particular. One of
8 the challenges for Western democracies is that their strength
9 is their vulnerability. Our commitment to freedom of speech,
10 our commitment to open dialogue is our vulnerability. And
11 whatever solutions we have, we have to protect that
12 vulnerability. We can't do it at the expense of our
13 fundamental values, but that creates a particular dilemma
14 because a lot of the amplification of messages happens
15 through social media, personal messaging apps and social
16 media. And we have had a huge reluctance, understandable,
17 even commendable reluctance to legislate, regulate those
18 mediums.

19 At the same time, they are, in many ways,
20 public utilities. And I think we have to start examining our
21 reluctance, and to do it in a way that respects freedom of
22 speech, and there are ways of doing that. So, for example,
23 to demand much greater transparency from social media, to --
24 and one of the advantages of demanding transparency from
25 social media on the use of bots, or on their algorithms and
26 the logic of their algorithms, and what monitoring they do
27 and with what results, one of the advantages of transparency
28 is that we will learn a lot. We will actually learn a lot

1 about how these tools are being used against us. That's not
2 a bad place to start. But I think we have -- and it's
3 related, Michael, to your question on trust building. I
4 think it's going to be very hard to build trust without
5 addressing social media because people live now in these
6 self-affirming bubbles. They only hear what is within their
7 virtual platoons. And we have to find ways of opening up and
8 addressing that.

9 **DR. NOMI CLAIRE LAZAR:** Professor Morgan?

10 **DR. MICHAEL MORGAN:** That's an excellent
11 point. Fundamentally, there is an asymmetry between Western
12 liberal democracies, the authoritarian countries that are
13 seeking to damage our political systems. Broadly speaking,
14 it's the difference between open societies and closed ones.
15 This is a -- this was at the root of the Cold War. This is
16 something that is an old phenomenon. And what I would
17 suggest, again, drawing on that history, is that it's
18 possible to regard open societies, that openness, not simply
19 as a vulnerability and not simply to respond to this problem
20 defensively, but actually to begin to see that openness as a
21 source of strength in dealing with authoritarian societies.
22 I think that was crucial to -- to put it very crudely,
23 crucial to the Western success in the Cold War, turning that
24 openness into a source of strength rather than simply
25 treating it as a source of weakness. And the asymmetry by
26 the -- let's say the 1970s or the 1980s, that asymmetry
27 tipped the balance in favour of the West in dealing with the
28 Soviet Union and I think contributed through groups like

1 Solidarity to the outcome that we saw in 1989, 1991.

2 **DR. NOMI CLAIRE LAZAR:** [No interpretation].

3 **MR. HENRI-PAUL NORMANDIN:** On the question of
4 disinformation through social media, I have something to
5 add. It's a very difficult, delicate situation. In my
6 opinion, foreign states or their representatives, who are
7 fabricating misinformation, disinformation, or who are
8 creating bots or trolls who will reproduce and disseminate
9 this disinformation, this is clearly a case of interference.
10 Can we intervene? That's another issue, but that's
11 interference. But if citizens in Canada take this
12 disinformation and without being an accomplice, without being
13 malignant, reproduce this disinformation, this we can't
14 touch, we can't do anything. So it's extremely difficult
15 because go try to find who is behind these trolls, it's very
16 difficult. But if you create, if a foreign state creates
17 disinformation and uses something to propagate, this foreign
18 state is committing interference.

19 **DR. NOMI CLAIRE LAZAR:** Madam Leahy?

20 **MS. ANNE LEAHY:** Yes, of course we can do
21 something if it's done through influencers, semi-willingly or
22 not. And that's resilience, civil resilience. If you look
23 at the Global Affairs structure, we have units that didn't
24 exist 10 years ago. There's anti groups who work with other
25 departments to unbuild slogans and disinformation campaigns.
26 We have civic education campaigns, doubt things. Yes, of
27 course we can do something. We can't take them and jail
28 them, but we can help them understand. That's one of the

1 things that I was saying for political leaders and their
2 staff who are the first people who are approached when this
3 happens, to let them understand how you have to be doubtful
4 and why, and we're doing it in a thought-out way. So yes, we
5 can do something.

6 **DR. NOMI CLAIRE LAZAR:** Anybody else? Any
7 other questions or comments for the moment?

8 In that case, Commissioner, shall we take our
9 break?

10 **COMMISSIONER HOGUE:** I think we'll take the
11 break. We'll look at the questions that -- what I've
12 received from the participants. I myself have quite a lot of
13 questions, honestly. So -- but we'll take the break right
14 now. I think it will be more convenient to do that this way.
15 And the break is -- will be a bit longer because we need to
16 canvass all the questions, and so for about 30 minutes.

17 So we should be back around 3:35. Thank you.

18 --- Upon recessing at 3:03 p.m.

19 --- Upon resuming at 3:47 p.m.

20 **DR. NOMI CLAIRE LAZAR:** Welcome back
21 everyone. So we're going to begin with a question for Daniel
22 Jean.

23 What is GAC's general -- or sorry, I should
24 say Global Affairs Canada's general toolkit to counter
25 foreign interference and how does that toolkit shift in the
26 lead up to and during the writ period? And then as a follow
27 up, is there more that Global Affairs can do to enhance
28 understanding among missions, regarding what is and what is

1 not acceptable for diplomatic missions in Canada?

2 **MR. DANIEL JEAN:** So as we've discussed this
3 morning, as a start, giving general awareness to diplomatic
4 missions that are headed to Canada that we expect them to
5 respect Article 41 of the Vienna Convention. It's a good
6 probably general awareness refresher, reminder of issuing a
7 diplomatic note.

8 We did that in 2015, was probably in recent
9 history one of the first times we did it because we felt
10 there was some smoke. Not a lot of fire, but some smoke, and
11 we needed to remind and put people on notice. That's the
12 first step.

13 Then since that time there have been a lot of
14 things happening in Canada, in the U.S. and elsewhere in
15 Europe with regards to elections. So -- and as our
16 conversation this morning has shown, there is probably a need
17 to go a little further and define a little bit what are the
18 red lines that should not be crossed. What are the
19 behaviours that should not be acceptable.

20 So it may be a good idea, and I understand
21 the Deputy Minister of Foreign Affairs, Mr. Morrison, has
22 mentioned that in previous testimony of developing some
23 materials, some briefing tools, some conversations with
24 missions, still in general, of what are the expectations both
25 in during a writ, and also outside writ.

26 Now, at one point you've got to go from the
27 more general to the more specific when you see behaviours
28 that are repeated behaviours by missions, I think you have to

1 start using the -- more in the sequence of tools that Anne
2 described well in her presentation, you have to start having
3 conversations, having démarche, maybe more formal démarche,
4 reminding them what is acceptable, not acceptable.

5 And at some point, and as you've also seen,
6 and I mentioned that in our presentation, GAC has also
7 developed some tools in the context of the G7 work, which is
8 rapid response mechanism where they're monitoring some of the
9 information that is going -- attempts that could be going in
10 terms of trying to undermine elections or democracy.

11 Now, if you get to a point where clearly, and
12 we're talking about really the missions that are the most
13 problematic, where it's a repeated behaviour, you've got an
14 issue, you're going to have that conversation -- GAC is going
15 to have a conversation with the departments in the security
16 intelligence and they're going to have to decide what kinds
17 of measures are appropriate given the behaviours.

18 People have a tendency to go very rapidly to
19 one of the most extreme measures which is PNG. Yes, it's a
20 possible measure. You also have to decide when you're going
21 to apply these measures. Like, for example, like I refer to
22 the case study of the Skripals, when we PNG four Russian
23 diplomats in the context of the Skripals, in the press
24 release the government was very clear that they had been
25 engaged in disinformation campaigns being present in Canada.

26 That did not mean that we PNG them when we
27 started to have concerns about this. That means that we
28 built information and when there was an opportunity and a

1 good timing in terms of imposing a consequence to Russia, we
2 were able to come up with this. So I think that's very
3 important.

4 The reason why I'm saying got to be careful
5 not to jump to PNG very quickly is consistent with what Anne
6 said this morning. In most missions abroad we are usually,
7 from a number perspective, underrepresented compared to many
8 of these countries that are more problematic. So if you go
9 into the number games, at some point you're going to lose.
10 So you've got to find in your toolkit some other means that
11 may be a way to impose consequences.

12 It also speaks about the need to work --
13 Michael also talked about that, I spoke about that -- the
14 need to work with friendly states, allies to try to apply
15 consequences that are not just one country, but more, because
16 it's got more impact and also less risk for retaliation.

17 **DR. NOMI CLAIRE LAZAR:** Thank you very much.
18 Would anyone else like to step in there? All right. So
19 we'll move to our next question. Is there a mechanism within
20 government to modulate the different perspectives among
21 departments when it comes to intelligence and accusations of
22 -- or allegations of foreign interference? So how do we
23 modulate the different perspectives among departments to get
24 the best outcomes? And I'm going to address that question in
25 the first instance to Dr. Himelfarb.

26 **DR. ALEX HIMELFARB:** Thanks.

27 First of all, it's probably well to emphasize
28 that we are going to always have different perspectives about

1 what constitutes interference, about the level of risk and
2 the nature of the risk. And that comes from the different
3 functions of the agencies and departments involved.

4 So you would expect for example, a security
5 agency to be more concerned about false negatives and missing
6 a risk. You'd expect foreign affairs ambassadors or
7 diplomats to be more concerned about false positives that
8 might damage the relationship with the country or might harm
9 a diaspora community. You would think that the enforcement
10 agencies would be looking at it from the perspective of what
11 meets the standards of legal evidence and would have yet a
12 different perspective.

13 That's all to the good as long as those
14 perspectives are integrated for the decision-makers. I think
15 as Anne said in her presentation, at the level of the mission
16 every head of mission has that around their table. They have
17 the security, the law enforcement, the foreign policy, and
18 their job it to integrate it at the receiving country level.

19 In Canada before advice goes to decision-
20 makers, it is integrated at PCO, at the Privy Council Office,
21 by the National Security Advisor. That's the role of the
22 National Security Advisor. Now, you know, I wasn't there in
23 PCO in the late 1800s and so I'm not sure how rigorous that
24 process is today, and it's always worth making sure that that
25 process is fed in from all of the key elements.

26 But there's also a public-facing element of
27 integrating this for determining government's wide action and
28 for communication to the public about risks and their own

1 responsibilities. And we do have a committee of deputies
2 that currently does that work, but one of the things that
3 would be very worthwhile to look at is the extent to which we
4 could build on that mechanism in a way that would maximize
5 public trust and ensure that the integration of that is seen
6 as in the public interest.

7 **DR. NOMI CLAIRE LAZAR:** Would anyone else
8 like to jump in there? Mr. Jean?

9 **MR. DANIEL JEAN:** I agree with Dr. Himelfarb
10 that this convergence is useful, and comes from different
11 mandates, with (indiscernible). And as I've seen also, in
12 procedures by the Commission a number of people have said
13 that it's a very healthy, and it's important that there
14 should be a certain space for this, an opportunity for these
15 earlier stakeholders to be able to discuss and weigh the
16 interests, the political interests, economic interests, also.
17 And in fact, yes, normally this is done through the Privy
18 Council Office, independent opinion to Prime Ministers,
19 advice to Cabinet Ministers, which is really a role for
20 coordination to make sure there's consistency, a coordinated
21 approach in terms of development of policy, and also in terms
22 of operations.

23 With the Westminster Parliament we have, the
24 role of National Security Advisor is to mirror the PCO. He
25 has the moral authority to deal with these discussions, and
26 consistency of action. And it's the role, in fact, which is
27 normally played by the person -- the person playing this role
28 is a senior civil servant. Often that person has worked very

1 closely with officials. We're talking about in terms of
2 security and national interests. This person respected, and
3 this person can, you know, bring some added value to the
4 discussion so that he can actually play this role.

5 Now, my experience with that role is this
6 role can be played very well but now when you come to the
7 phase that Alex mentioned, which is far more public; for
8 example, in the context of creating a panel, in the context
9 of elections or public statements have to be made, in those
10 case I think it's very difficult. We can see this, it's very
11 difficult for the officials. Given their wish to respect
12 non-partisanship principles, it's very hard to play this
13 role.

14 So I think Alex asked a very good question;
15 what happens beyond the public square? Well, probably
16 there's a question here, if you've got the right structures
17 in place.

18 Now, this leads to one other comment, because
19 a question which was raised by the Commission regularly,
20 should we really deal with the role, really, of national
21 security within legislation? This has been (indiscernible)
22 conferences. I have no objection to that. But, really, at
23 the end of the day, what you're going to have is a definition
24 which you're very close to, which is the mirror of the role
25 of the Privy Council Office.

26 Now, what's really important? If you want to
27 have a *modus operandi*, which will ensure these discussions
28 honest, open, be expressed with the best information

1 possible, and guide the best possible actions from the Prime
2 Minister, it's very important in those cases that you have
3 the right person, who's respected by his or her colleagues
4 and really has the ear of the Prime Minister. And that's not
5 something, really, that you can place in legislation.

6 **COMMISSIONER HOGUE:** I have a question also.

7 In your view, given the roles that you've
8 played, in your view, the fact of actually questioning and
9 even testing certain principles, or testing the analysis from
10 security agencies or the findings from security agencies, is
11 it something which is healthy, or in your view should you
12 think we really should rely more on the expertise of security
13 officers when they actually conduct analysis and make
14 conclusions or recommendations?

15 **MR. DANIEL JEAN:** Well, it's a very good
16 question, and it's a very healthy question. There's a
17 continuum here. Intelligence, really, is independence, the
18 collecting of this is independent also. That doesn't mean
19 that this has to be done in a vacuum away from all the other
20 audiences that will deal with that. In the same way as the
21 information itself, it's policy neutral, it informs the
22 policy, the people that actually work on this information
23 shouldn't be saying, "This is what should be done," or,
24 "There should be the new steps which will be taken."

25 Now, the problem that we have -- the problem
26 we have here is this: For a long time it was sequential,
27 without needing changes, but these exchanges are absolutely
28 essential. And I will give you an example. For many, many

1 years our security services were referring to a very
2 important Canadian company and they had been threatened by a
3 foreign entity about economic prospectives. Finally, when we
4 discussed with that corporation, they said, "Yes, we have
5 problems with this country," but not at all what was
6 described. And now many academics are talking about it. It
7 is an urban legend; the real problem is "This". And quite
8 interestingly, I was saying that their problem was not really
9 a problem, it was an issue of commercial policy. So their
10 toolbox did not include what could be referred to the World
11 Trade Organization. So it has to be operated outside of a
12 vacuum.

13 And as another example, Madam Commissioner,
14 if I might say so, so I will withdraw some of my remarks on
15 Wednesday. It's quite interesting because what you've done
16 until now -- you know, so many people have seen the very same
17 intelligence report, and then come to different conclusions.
18 And I refer here to the Parliamentarians Committee
19 conclusions and how some politicians have interpreted this.
20 A few days ago, another interpretation came, and it is quite
21 nuanced compared with what the parliamentarians said in their
22 report. As far as I'm concerned, it is a demonstration of
23 how we need to get our intelligence report more mature, and
24 experts in terms of intelligence have to understand in this
25 new reality the reports are not only targeted towards an
26 internal audience, it will be used for political purposes and
27 it has consequences, so they have to be accountable.

28 Now, the intelligence reports have various

1 levels of reliability. If you got a conversation on tape,
2 it's almost certified, but if it is, "Joe said so-and-so told
3 me," so the balance of probabilities is quite different, and
4 these reports have to be more documented. And having these
5 conversations would be very helpful.

6 So it is a continuum, but intelligence
7 remains policy-neutral, yes, but then the various audiences
8 must have conversations, and then intelligence is better and
9 our policy-making is better, more informed.

10 **COMMISSIONER HOGUE:** Question, another
11 question. From what you said -- and maybe other people will
12 want to add their version, from what you said we know that
13 intelligence reports from agencies refer to what they
14 consider reliable or not. According to you, is this
15 mechanism sufficient to communicate correctly? No, I'll use
16 another formula. This scale that is being referred, that is
17 being used now, is it enough in this new environment where we
18 live, where there are all kinds of imperatives in order to
19 allow the people who receive the information to really assess
20 the reliability of what was transmitted to them, or then
21 should we add something or make it better?

22 **MR. DANIEL JEAN:** Well, it is probably useful
23 to make these tools more sophisticated. And if I give, and I
24 do give, presentations to intelligence people, and of course
25 I say, look at what happened during the Commission, and look
26 at how many versions were made by people who looked at the
27 same documents. It is a lesson for them. When you are
28 drafting a report, they must understand that it must be very

1 clear, and the levels of reliability remain very important,
2 in terms of clarity.

3 Dr. Calvin, during the first few weeks of the
4 debate, in his open letter to *The Globe and Mail*, Dr. Calvin
5 said, what is intelligence? What is evidence? These are two
6 completely different things. If you have a verbal
7 communication that has been tapped, well, you hear the person
8 who said this or that, it's quite sure. But when you rely on
9 a source, it is sophisticated gossip, according to a former
10 consultant. So it has to be determined, and there's a lot of
11 progress needed.

12 Now, I don't say that these people are not
13 professionals. I love working with these experts, but their
14 culture must be adapted to the world we are living in now.

15 **COMMISSIONER HOGUE:** Well, I have another
16 question in the same line of thought. We are all formatted
17 in accordance with our training, with our experience, with
18 live experience and our professional experience, and in each
19 domain we have our own terminology, our own jargon, and we
20 can see that it's the same for security agencies. Now,
21 according to you, when a given terminology is being used, is
22 it another component that might make communications more
23 difficult between the various stakeholders?

24 **MR. DANIEL JEAN:** Well, you referred to
25 domain and jargon, two terms I like very much. Let's start
26 with domain.

27 More and more the jewels in the crown are not
28 inside of the government with the crown. The sensitive

1 research and reality in terms of information, controlling
2 information through information, it's all outside of the
3 government circles, but we still keep the culture that was
4 built according to the old system, to the old domain, and all
5 the jewels in the crown were inside of the government. Why
6 do I say this? That's why we have an inside baseball
7 language because for a long time it was appropriate. But now
8 it has to change. How are we training, recruiting,
9 encouraging and rewarding good work in terms of intelligence
10 and security? Well, these people have to understand that one
11 of their basic duties nowadays is not only to inform
12 politicians, but to inform the private sector and our
13 population so their language has to change in order to
14 achieve this goal. And there's of course a comfort zone when
15 you stick with your baseball terminology. I referred to many
16 examples today and I never had to say, "This is classified
17 information"; no, it's all open information. That's all I
18 referred to. So people are reluctant sometimes, they say, "I
19 won't take the classified information," but there's enough
20 information about the threat that we can have a conversation
21 with someone who doesn't have access to security clearance to
22 give them a good lecture of the threat and how they should
23 protect themselves. And it will be all the more important
24 from now on because with C-70, the CSIS will be -- Ottawa is
25 to do that. In the past it was different, and this culture
26 change has to be implemented.

27 **COMMISSIONER HOGUE:** Thank you very much.

28 **DR. NOMI CLAIRE LAZAR:** Would anyone else

1 like to jump in? Go ahead.

2 **DR. ALEX HIMELFARB:** Yeah, I just might add,
3 the -- first of all, the intelligence has always been
4 challenged. It's -- I mean, that is the nature of the PCO
5 role, so it's always been challenged. It needs to be
6 challenged. That is not a criticism of the intelligence
7 agency. It is a recognition that that information isn't
8 always mature and isn't always contextualized. And it isn't,
9 as well, a recipe for action. It is policy neutral. It's
10 very much the same tension that scientists often have when
11 they do science in government, that they're uncomfortable
12 that policy doesn't reflect their science. But the science
13 is the basis, and the policy is a much more complex decision-
14 making. So it is challenged.

15 But I think the future is to develop actually
16 new kinds of instruments, new agencies, agencies that work
17 with all of the organizations and agencies in Canada, all
18 levels of government, public and private sector. And
19 countries have been doing this. Countries have deliberately
20 created these institutions whose job it is to integrate all
21 of the various inputs and to deal with the public and build
22 trust with the public. And those institutions, those
23 agencies, as they've done in Sweden, as they've done in
24 France, those agencies are actually more effective at
25 changing culture of these other agencies involved than any
26 lecture would ever be because they are, in fact, educational
27 in that sense. They deal with each of these agencies and the
28 agencies suddenly recognize a very different kind of mandate

1 than they had up to that point. So there's --
2 internationally there are a number of examples, Australia,
3 France, Sweden, where such agencies have been developed with
4 the sole purpose of integration -- challenge integration, and
5 finding ways to deal with public and all of the affected
6 citizens, organizations and levels of government to increase
7 their resilience.

8 **COMMISSIONER HOGUE:** Thank you.

9 **DR. NOMI CLAIRE LAZAR:** Okay. So we'll move
10 to the next question. This is a question for Mr. Normandin.
11 You've referred to intent being an important element to
12 determine whether an activity constitutes interference or
13 else just a legitimate influence, so legitimate versus
14 illegitimate influence. How can you determine and consider
15 what the intent is?

16 **MR. HENRI-PAUL NORMANDIN:** Well, it is quite
17 a challenge. It is quite a challenge to determine the
18 intention. My only answer would be we try to determine the
19 intention from what information we can have, and sometimes
20 they are missing, but sometimes there are several components.
21 A few examples. Let's talk about the past experience in the
22 case of a given country, the pattern, if I might say so.
23 Let's say that a foreign state collects information in a
24 personal way about individuals and if we've seen in the past
25 that when this foreign government has obtained such
26 information, threats followed against the individual or his
27 family -- his or her family. So if we can take for granted
28 that there's a repeat offence about a private individual and

1 the information, it's probably because the intention is
2 malevolent, and it's probably interference. That's my first
3 example.

4 Second example. Let's say that foreign
5 agents are often sent to community meetings, let's talk about
6 the diaspora, for instance, and we saw that when a foreign
7 agent appears in a diaspora event we realize that actions or
8 positions in the whole community change. So we can suppose
9 that if this happens again and an agent is in those meeting,
10 it's because they want to interfere.

11 Another practice, let's say that a foreign
12 state is regularly meeting an individual; there are phone
13 calls on a regular basis, and the same person is always
14 alone, as opposed to someone taking part in a meeting. There
15 could be some suspicions, and there you have elements of an
16 intention, and you might hypothesize that there's
17 interference.

18 Other example, and they're sometimes
19 confidential or even public documents, some countries
20 indicate that they intend to repress any critical opinion or
21 to control the diaspora. It's almost transparent in the
22 documents coming from various countries when we look at these
23 publications and we take into account the behaviour of this
24 or that foreign state we say, "It is part of the intention."

25 So there are many components that allow us to
26 reach a conclusion. It's not easy but that's the first
27 thing.

28 Second thing, and legal experts here will

1 probably have understood that when I try to make a
2 distinction between action and intention, it's a bit like in
3 the penal world. If you want to determine, according to the
4 *Criminal Code*, if there's been an offence, you look at the
5 *actus reus*, the action, and then the *mens rea*, the intention,
6 and regularly it's only when you have both that there's a
7 criminal offence. It's a bit what I tried to say in my
8 parallel, but there are two important differences.

9 First of all, interference is first and
10 foremost a political phenomenon. You can decide that some
11 components are also criminal offences, but first of all it is
12 a political issue.

13 Second, and it is also a very important
14 difference, in terms of criminal law the standard is very
15 high to determine if you are dealing with an offence or not.
16 The standard, well, you need evidence beyond any reasonable
17 doubt, but in terms of foreign interference, a political
18 phenomenon, it's not the same standard. You must not try to
19 have evidence beyond any reasonable doubt before reaching a
20 conclusion that there is interference. But when you have
21 many components, many elements that allow us to pass judgment
22 and to say that it is probably interference and a nefarious
23 intention, you can reach that conclusion. So this parallel
24 with criminal law must include these two differences.

25 **COMMISSIONER HOGUE:** I want to make sure that
26 I won't ---

27 **MR. HENRI-PAUL NORMANDIN:** [No
28 interpretation].

1 **COMMISSIONER HOGUE:** --- miss this
2 opportunity.

3 You say that we don't need a standard beyond
4 any reasonable doubt before concluding that there's been
5 interference, but in terms of diplomacy, is it legitimate for
6 Canada to intervene with a foreign state or its
7 representatives here in Canada to advise them that some
8 behaviours will not be tolerated, even though we have not
9 reached a conviction that is quite certain, and certainly not
10 beyond any reasonable doubt? What is the threshold when you
11 can feel comfortable to intervene with a foreign state?

12 **MR. HENRI-PAUL NORMANDIN:** My answer is yes,
13 you can tell a foreign state, and say, "Listen, we see some
14 things that are unacceptable, and this is interference as far
15 as we are concerned." And I think that we can do that
16 inasmuch as we have enough information to reach this
17 conclusion and to pass judgment. So, yes, I think that we
18 should, and I think that it is possible to do so. I would
19 even add that -- because if we don't do it, we will always be
20 a step behind.

21 Now, I would also say that according to the
22 Vienna Convention we can expulse diplomats without having to
23 give any explanation, any reason. We are not forced to say
24 why so-and-so has to leave the country. In practical terms,
25 we can decide to do so; it is a choice that the government
26 can make. But yes, definitely I think that we can do
27 something, we can intervene if we have enough elements to
28 conclude that there's been a case of interference.

1 **MR. DANIEL JEAN:** With respect to your
2 question, the nature of the intervention has to do with the
3 seriousness of the impact and the behaviour.

4 **COMMISSIONER HOGUE:** [No interpretation].

5 **MR. DANIEL JEAN:** So if it is something that
6 is really, really serious and there's not only smoke but
7 fire, we have to tone down the threat and then we must have a
8 conversation.

9 **COMMISSIONER HOGUE:** So the seriousness of
10 the action ---

11 **MR. DANIEL JEAN:** [No interpretation].

12 **COMMISSIONER HOGUE:** --- has to be taken into
13 account, and the level of certainty as to the intention, they
14 have to be taken into account

15 **MR. DANIEL JEAN:** Absolutely.

16 **MR. HENRI-PAUL NORMANDIN:** I agree.

17 **DR. NOMI CLAIRE LAZAR:** Madam Leahy?

18 **MS. ANNE LEAHY:** [No interpretation].

19 **COMMISSIONER HOGUE:** It is always quite
20 complicated.

21 **MS. ANNE LEAHY:** Well, when comparing with
22 criminal law, because it was not done here, during our
23 session at least, but states do use -- not their diplomats
24 because they want to prevent any declaration of being a
25 *persona non grata*. Very often they use criminal networks and
26 other intermediaries, and I think that maybe more could be
27 done in that respect by combining the context coming from the
28 intelligence and taking into account diplomatic reality, but

1 referring to what can be detected as an intimidation campaign
2 to be able to accumulate evidence and to act very early
3 because the level is higher in terms of criminal activity.

4 And here I want to deal with the experts who
5 knew what was happening but who didn't have evidence that it
6 would be strong enough to resist the court. And that's where
7 we might be able to improve.

8 **DR. NOMI CLAIRE LAZAR:** Dr. Himelfarb?

9 **DR. ALEX HIMELFARB:** I was going to just
10 reinforce something that Daniel said, which is just
11 intervention has, in diplomatic terms, has a continuum of
12 meanings. You can intervene when you think maybe there's
13 some smoke, and you say to your counterpart, "I think there's
14 maybe some smoke, and the smoke is making it hard to breathe,
15 so anything you could do would be helpful." And then when
16 it's something stronger, the intervention is stronger.

17 So of course we intervene all the time with
18 partial information. We intervene early to make sure that
19 things don't become unmanageable.

20 There's another kind of intervention as well;
21 we can often intervene to equip targets to be more resistant
22 to a suspected problem. We don't need to know for certain,
23 we just need to give -- and we do it, we give the possible
24 target early warning so that they're equipped to manage it,
25 so that they know their own obligations and their own risks
26 and vulnerabilities. We don't need any kind of huge standard
27 of proof.

28 Just as I'm talking and my mouth keeps going,

1 I just also want to add just one comment on intent. For my
2 money, it's not a place I would spend a lot of my energy. If
3 the behaviour is secretive and contrary to our values and
4 interests, and consequential, that's good enough for me. I
5 don't know that we need to spend an awful lot of time on the
6 malignancy of the intent. That ends up becoming -- it tends
7 to become just a political and values argument.

8 **DR. NOMI CLAIRE LAZAR:** [No interpretation].

9 All right, then. Madam Commissioner, I'll
10 turn it back over to you, if you have further questions for
11 the panellists?

12 **COMMISSIONER HOGUE:** Yes, I have a few.

13 **DR. NOMI CLAIRE LAZAR:** I thought you might.

14 **COMMISSIONER HOGUE:** Let me -- I have one for
15 Professor Morgan.

16 You mentioned that foreign interference is
17 not a new phenomenon. We know, however, because we have all
18 noticed that the leaks that took place in 2023, gave rise to
19 a lot of comments and reactions. Can you explain why, in
20 your mind, based on history, why in this case the reaction
21 was of such a magnitude, if foreign interference is not a new
22 phenomenon?

23 **DR. MICHAEL MORGAN:** It's an excellent
24 question. I would suggest there may be two reasons. One has
25 to do with simply how long it's been since Canada understood
26 itself to be involved in an international political struggle.
27 In other words, it's been a long time since the Cold War
28 ended. I think during the Cold War, most, probably all

1 Canadian officials and most Canadian citizens would have
2 understood that the Soviets, the Chinese, the Cubans,
3 whoever, had an interest in interfering in Canadian politics,
4 and undermining the Canadian political system and undermining
5 confidence in that political system. That was no secret.
6 And so many people operated on that assumption. They
7 wouldn't have been surprised by foreign interference.

8 It's been a long time since that took place,
9 or since the Cold War ended. I think we are catching up to
10 the new reality, but it takes time to catch up to that
11 reality. And, obviously, this Inquiry is part of that
12 process of catching up.

13 The second factor that I would point to --
14 and this is more ambiguous, it's harder to pin down. This
15 may be a fact about Canadian political culture, which is that
16 many Canadians, either explicitly or implicitly, tend to
17 assume that international conflict happens to other
18 countries, it happens somewhere else, that Canada is a safe
19 place. We're far removed from difficult regions of the
20 world. We have a largely peaceful domestic history. And so
21 this is not a problem that really affects us, and so there's
22 not as much of a need to take it seriously. I don't think
23 that that's an accurate view of the world. I don't think
24 it's been an accurate view of the world. You know, the
25 phrase from the inter war period that Canada's a fireproof
26 house wasn't true at the time, it's not true now. But
27 political culture, again, may be slow to catch up with that
28 reality. I think Canadian officials, especially those

1 involved in diplomacy and security, have never had any
2 illusions about the reality. But as a matter of political
3 culture, the way that Canadians talk about debate,
4 international affairs, there has sometimes been, again,
5 either implicitly or explicitly a belief that we are somehow
6 immune from those currents of geopolitics or those currents
7 of history. And so, again, part of what's happening right
8 now in public debate is that we are losing our illusions,
9 catching up with reality.

10 **COMMISSIONER HOGUE:** Thank you. Anyone wants
11 to comment?

12 **DR. ALEX HIMELFARB:** I agree with everything
13 Michael just said. I think that's really accurate. But I
14 would just add two things. In an era of distrust of our
15 public institutions, this feeds into the sense that
16 governments aren't up to the task, and so there's a ready
17 audience to be angry with government. This feeds that. Add
18 to that a polarized political environment, these issues
19 become hot political buttons. You know, when people leak
20 these kinds of things, they leak knowing that they're leaking
21 it into an environment where these will become issues. And
22 so, yes, I think we've lived a false comfort in Canada that
23 it's good to be awakened from, but I also think that this
24 feeds into a climate of distrust in public institutions, or
25 the capacity of public institutions and a very polarized
26 political environment.

27 **MR. DANIEL JEAN:** I'm going to add to this.
28 First of all, echo both comments on the environment. That's

1 what I mean by national security culture, which also means
2 that we usually react when there's a crisis, and information
3 comes up like this.

4 Let's take the parallel with Australia. In
5 2017, Australia is deep into foreign interference, much more
6 serious than anything we've discussed so far in the
7 Commission here. But they're seized with it; still secret.
8 They bring John Garnaut, the lawyer, who's a sinologist, a
9 journalist. They bring him in. They give him full
10 classification and he works a little bit like that challenge
11 we were talking about, he works with ASIO, which is
12 equivalent of CSIS, in trying to develop the body of
13 evidence, so where is it that we've been infiltrated by
14 China. All that is public, so I can talk about that.

15 The -- this comes with a number of reforms
16 that Australia did after that. Ideally, when government
17 works well, it should happen this way, because when it comes
18 out because people are disabused and leak information -- and
19 I cannot support people leaking information. There are other
20 ways, in my view, to make your point. But when it comes like
21 that in a culture where we have no national security culture,
22 it becomes very, very active, and, in fact, so much of the
23 attention at the beginning of the debate was not on the right
24 threat when it comes to foreign interference because the more
25 we see what is the actual threat, it's not so much our
26 elections. Our democracy in general, yes, in some other
27 areas like the silencing of diaspora.

28 **DR. NOMI CLAIRE LAZAR:** Do you have further

1 questions, Commissioner?

2 **COMMISSIONER HOGUE:** Yes. A very broad
3 question. Many witnesses that came -- that testified in
4 front of this Commission, and I guess the same thing will be
5 said by many experts that will come this week, have said that
6 a good portion of the work will be to educate the Canadian.
7 Do you have any -- to educate on many aspect of foreign
8 interference. Do you have any suggestions to make as to how
9 we can do that, educating the population on foreign
10 interference? I know it's a very broad question, but I want
11 to give you the opportunity to give me some ideas, if you
12 have some. It seems to be key.

13 **MR. HENRI-PAUL NORMANDIN:** No panacea, no
14 magic recipe, but two things that are important, I believe.

15 On those public sites that give information,
16 the Canadian government should explain what is happening.
17 It's been doing so to a point but probably not enough, and
18 not useful enough for people of various group or ordinary
19 people. So on those public information sites I think that
20 the government should try to improve things and explain,
21 maybe, some things better. And I think that it also requires
22 targeted tools for targeted publics. I think that
23 parliamentarians need specific briefings. Academics, a world
24 in which I am, is having a lot of trouble with this issue of
25 foreign interference. I think that various government
26 services in Canada should be available for meetings to
27 explain what is working, what is not working. It also
28 requires targeted tools for various types of targets.

1 **DR. ALEX HIMELFARB:** I too have no panacea,
2 but I will just say just two or three things that are kind of
3 cautions. Number one, I think historical context would be
4 really helpful. I found Michael's intervention really
5 helpful. It says to people we're not in a crisis. We have a
6 serious issue that we have to take seriously, but we're not
7 in a crisis, and I think that's really important.

8 The second thing related to that is I would
9 not overhype this thing. The last thing we need is a
10 Commission that actually fuels more distrust in our democracy
11 and our electoral system. Of course we have to take it
12 seriously. We've always had to take it seriously, but we
13 shouldn't overhype it, and I think that's really important.
14 We should be reassuring people that there are mechanisms that
15 protect our democracy and that our job is to make them more
16 robust.

17 And then the third piece is I think education
18 has to be part of what you recommend, that the institutions
19 that you recommend, if indeed you do recommend institutions,
20 should have as part of their mandate education public
21 information, that you can't do it all as a Commission, but
22 you can actually make sure it's done.

23 **DR. NOMI CLAIRE LAZAR:** Madam Leahy?

24 **MS. ANNE LEAHY:** There are obstacles, like
25 Alex is saying, but I would target -- I would focus on
26 transparency. I would make a parallel with the extraordinary
27 decision that Americans made in the intelligence community.
28 The invasion is happening, it will happen next month, believe

1 us, and it happened. If it hadn't happened three or four
2 years ago, there would have been consequences.

3 Let's do it without being alarmist, the
4 debate on freedom of speech on campuses or what governments
5 are telling you, good or bad, but giving facts, telling
6 people what is happening in Canada. And if people don't
7 believe, they can go see the diaspora representatives that
8 will tell them what is happening.

9 But making it public, and not making it on
10 boring government sites; I would go elsewhere. I would take
11 classes if you need to, but telling people, and why it's
12 important.

13 You believe that a speech on China will have
14 less economic relationship with Russia will hurt us because
15 of human rights at 10,000 kilometres from here? It's good
16 theoretically but it has no impact on me. No, foreign
17 interference has an influence on children who are going to
18 school, on kids going to the park because there might be
19 proxies who come and solve their accounts in a park, and
20 they're proxies of a state. No, show the direct link, how it
21 impacts you directly. It's not just people elsewhere. Yes,
22 human rights in China. No, it has an impact here.

23 The trade-off is not just in the money that a
24 company can make, but it has some personal impacts. That's
25 for everybody, whether it's in the sports, political, or
26 civilian world, I would make the information public. Here's
27 what's happening, here's the risk. Like Michael said, we
28 were more sensitive to that in the Cold War; there was

1 advertisement everywhere.

2 Bring back CBC International; that would be
3 another thing. I saw that in the comments from some
4 diaspora, and they're right, they're saying that the best
5 defence is offence. So we should counter, go on the attack,
6 go on the offensive. Why is Canada so good? Why do hostile
7 forces want to divide a society? Some it's because they want
8 our natural resources, because it's for ideological reasons,
9 but we've got something good if they're attacking us. Do we
10 know what it is? Those are ideas.

11 **DR. NOMI CLAIRE LAZAR:** Professor Morgan?

12 **DR. MICHAEL MORGAN:** I agree entirely with
13 what my colleagues have said. I would add a couple of
14 points.

15 Thinking historically, the Cold War offers
16 good lessons in both what not to do and what to do. And
17 here, it's necessary to strike a balance, because as Dr.
18 Himelfarb suggested, it's important not to create the
19 impression that we're in a crisis because that can then
20 generate overreaction and make the political situation worse.

21 What we want to avoid, I think, is a repeat
22 of the McCarthyism of the 1950s in the United States. That's
23 dangerous. On the other hand, in the 1950s there were
24 communist attempts to infiltrate the American government.
25 And we do face threats today, so the challenge is to find
26 that balance between taking the threat seriously, but on the
27 other hand, not exaggerating it, not creating a sense of
28 immediate emergency.

1 The second point that I think also emerges
2 from this history is that we need to make clear to the
3 Canadian Government, to the Canadian public -- we have to
4 take steps to deal with this foreign interference, but also
5 -- and here it's a question of balance -- we need to be
6 realistic that this is not a phenomenon that we can hope to
7 eliminate. And the idea that we can squash it and get rid of
8 it for all time, I think that in itself is probably
9 dangerous, because it could lead to overzealousness,
10 overreaction.

11 In other words, this is a phenomenon that we
12 can deal with, we can live with, but we need to -- we need to
13 accept that it's almost a permanent fact of life in
14 international politics.

15 And then the final point I would make is that
16 Canadians have to understand that foreign interference is not
17 a standalone threat or standalone policy on the part of
18 foreign governments. Illegitimate, illegal actions are
19 simply one tool in their toolbox, in a very large toolbox,
20 one piece of an integrated grand strategy which seeks to
21 undermine liberal democracy and the legitimacy of Canadian
22 political institutions, and our social trust, and so on.

23 So there are plenty of things I think
24 Canadians need to understand that may be legal, that may be
25 overt, but are nonetheless dangerous. So in other words, to
26 address this problem we can't simply say we're going to
27 target the covert, illegal behaviour and then the problem is
28 solved. This a much broader struggle, and I think to Madam

1 Leahy's point, we need to make clear the advantages of the
2 Canadian system; why -- what the claims to legitimacy of this
3 country are, what the claims to legitimacy of liberal
4 democracy are; why those matter and why those are worth
5 defending. Not in a jingoistic way, but in a truly
6 democratic way.

7 **DR. NOMI CLAIRE LAZAR:** Mr. Normandin?

8 **MR. HENRI-PAUL NORMANDIN:** A very specific
9 point; I absolutely agree with what you're saying. On this
10 very specific issue, the way to act is openly. And in my
11 definition of interference, I ended by saying most often in a
12 clandestine manner, but it's not always done clandestinely,
13 and that's an important point. It makes the distinction
14 between definitions used by the Canadian government where
15 clandestine is an absolute necessity to invoke interference,
16 but some activities are not necessarily clandestine, but they
17 could still be interference.

18 **COMMISSIONER HOGUE:** Another question, which
19 results from all of that. If we want -- I don't want the
20 word, "Educated" it could be misunderstood, but if people are
21 properly educated, but I think this is very opaque, this
22 whole issue of foreign interference. It's less so for me at
23 the moment, fortunately, after studying this for some time.
24 But there are few people who are really familiar with what
25 foreign interference is. So we want to try to educate the
26 public about foreign interference. Now, to protect
27 themselves from the consequences it might have, don't we
28 really have to do this at the same time as we undertake

1 education programs to try and increase the trust in our
2 institutions? Because that's a difficulty here, how can you
3 think that you can succeed in educating people on foreign
4 interference if the mistrust which is expressed, at least by
5 some people, if that remains? In that case you'll be hitting
6 a wall. I don't know in that respect if you've got any ideas
7 that you'd like to share. I know it's a very open question,
8 I apologize for that, but it seems to me that's a very
9 important point, a very important knot that we have to untie.

10 **MS. ANNE LEAHY:** Just one which comes to
11 mind. When you're talking about Canada, about something
12 which you don't see very often in the world, and it's
13 something worth preserving. Have a lot more credibility if
14 there's an agreement which transcends parties. That's clear.
15 Now, the fact that not everyone thinks the same thing about
16 everything, nevertheless, you have to try and preserve
17 certain things, and we have to work on this. But this works
18 at all levels. If you've got trust, for example, in hockey
19 associations; if you've got trust in schools, your child is
20 learning the same values; if at municipal elections, for
21 example, if you behave with a modicum of politeness,
22 courtesy, we know it's a good thing to be able to elect
23 municipal representatives. Well, we can work that way.
24 Because we know that if there's a certain discomfort at the
25 federal level, in political terms, then coming from the
26 grassroots this might help. This might help to try and
27 moderate these differences.

28 When we're talking about Team Canada, you

1 really have to start right from the bottom when you're
2 talking about that, and you have to act at all levels, and be
3 as close as possible to people. If you move up from there, I
4 think that's the best approach, because it will have a
5 snowball effect.

6 **COMMISSIONER HOGUE:** [No interpretation].

7 **MS. ANNE LEAHY:** [No interpretation].

8 **COMMISSIONER HOGUE:** [No interpretation].

9 **MR. DANIEL JEAN:** The only comment I'd make
10 about that is people have said yes, you can do both of them
11 at the same time, but you have to find a way of popularizing
12 the message, you know? You understand what I'm getting at
13 here, they've never seen a capsule of Pierre-Yves McSween of
14 what tax evasion is, then how will you get the message
15 across?

16 It's a bit like the other one on financial
17 crimes. We make the message popularized and adapted to
18 history. But as the government it's not always credible. We
19 talked about confidence and trust, you have to find third
20 parties who would be more credible in transmitting this
21 message.

22 **DR. NOMI CLAIRE LAZAR:** Any last questions,
23 Commissioner?

24 **COMMISSIONER HOGUE:** I think there's a
25 comment.

26 **DR. NOMI CLAIRE LAZAR:** Oh, sorry.

27 **DR. ALEX HIMELFARB:** Just to add to that, I
28 mean, we all know that trust is more easily broken than

1 built, and so we're talking about a generational issue, a big
2 societal issue. But we also know that when we have multiple
3 partners, unlikely partners, speaking in one voice, they're
4 much more likely to be believed.

5 So if we had, say, levels of government
6 working together to send a message, Canadians will believe it
7 more. If you had municipal, provincial, and federal people
8 on a panel discussing this, it would be more believed. If
9 you have private sector, voluntary sector, and government
10 officials together speaking with one voice it may be less
11 likely in this moment to have this across political parties,
12 but you could certainly have it across jurisdictions.

13 And then I would add to that, one of the
14 reasons for cooperating with like-minded countries is what
15 we've seen with the India incident, when other countries join
16 on and speak, share our values, and reinforce those values,
17 Canadians are more likely to believe it. So you're talking
18 about intergovernmental, within Canada, intergovernmental
19 among like-minded, and across sectors. I think that's the
20 way to communicate in an environment of distrust.

21 **DR. MICHAEL MORGAN:** I would cite one further
22 example that reinforces this point about the value of
23 bringing together Canadians who are normally on opposite
24 sides of issues to speak with one voice. I think of the
25 Bouchard-Taylor Commission in Quebec, which I think was
26 powerful precisely because the two chairs of that Commission
27 had fundamentally different views about the place of Quebec
28 in Canada. So bringing together unlikely allies can be a

1 powerful tool in building trust, to make clear to Canadians
2 that this is a nonpartisan or cross-partisan question.

3 **DR. NOMI CLAIRE LAZAR:** Anything further,
4 Commissioner?

5 **COMMISSIONER HOGUE:** No, thank you.

6 **DR. NOMI CLAIRE LAZAR:** All right, then.

7 **COMMISSIONER HOGUE:** Thank you very, very
8 much. Again, I'm repeating myself, but it was very, very,
9 useful and I really appreciate the time you have taken and
10 how you have shared your experience with us. For me it's
11 invaluable, so thank you very much.

12 **MR. HENRI-PAUL NORMANDIN:** [No
13 interpretation].

14 **COMMISSIONER HOGUE:** So we will resume
15 tomorrow at 9:00. Thank you.

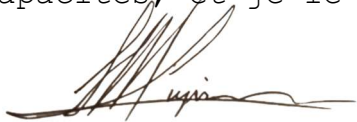
16 --- Upon adjourning at 4:47 p.m.

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C E R T I F I C A T I O N

I, Sandrine Marineau-Lupien, a certified court reporter,
hereby certify the foregoing pages to be an accurate
transcription of my notes/records to the best of my skill and
ability, and I so swear.

Je, Sandrine Marineau-Lupien, une sténographe officielle,
certifie que les pages ci-hautes sont une transcription
conforme de mes notes/enregistrements au meilleur de mes
capacités, et je le jure.



Sandrine Marineau-Lupien