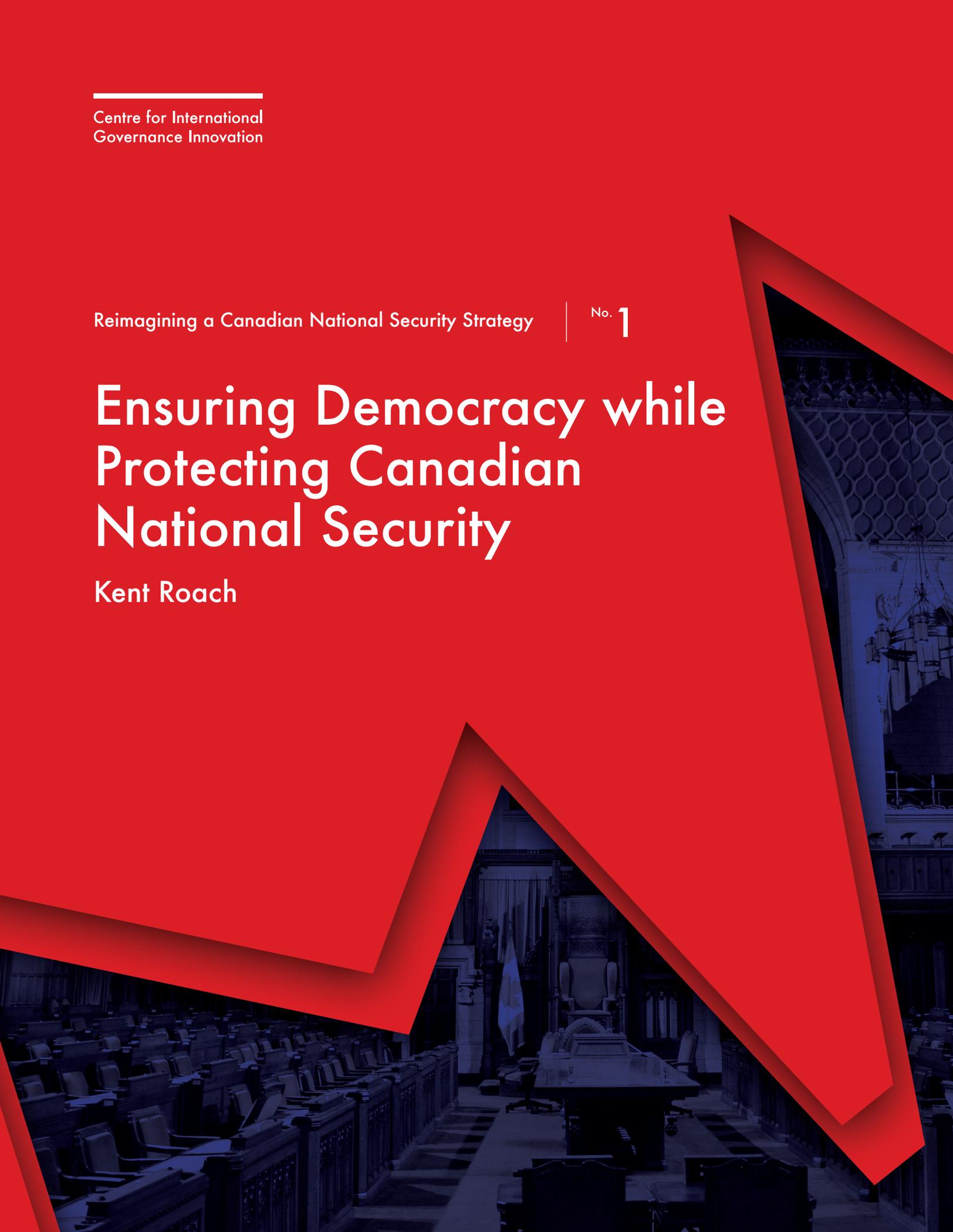

Centre for International
Governance Innovation

Reimagining a Canadian National Security Strategy

No. 1

Ensuring Democracy while Protecting Canadian National Security

Kent Roach



Reimagining a Canadian National Security Strategy

No. 1

Ensuring Democracy while Protecting Canadian National Security

Kent Roach

About CIGI

The Centre for International Governance Innovation (CIGI) is an independent, non-partisan think tank whose peer-reviewed research and trusted analysis influence policy makers to innovate. Our global network of multidisciplinary researchers and strategic partnerships provide policy solutions for the digital era with one goal: to improve people's lives everywhere. Headquartered in Waterloo, Canada, CIGI has received support from the Government of Canada, the Government of Ontario and founder Jim Balsillie.

À propos du CIGI

Le Centre pour l'innovation dans la gouvernance internationale (CIGI) est un groupe de réflexion indépendant et non partisan dont les recherches évaluées par des pairs et les analyses fiables incitent les décideurs à innover. Grâce à son réseau mondial de chercheurs pluridisciplinaires et de partenariats stratégiques, le CIGI offre des solutions politiques adaptées à l'ère numérique dans le seul but d'améliorer la vie des gens du monde entier. Le CIGI, dont le siège se trouve à Waterloo, au Canada, bénéficie du soutien du gouvernement du Canada, du gouvernement de l'Ontario et de son fondateur, Jim Balsillie.

Credits

Managing Director and General Counsel **Aaron Shull**
CIGI Senior Fellow and Project Co-Director **Wesley Wark**
Manager, Government Affairs and Partnerships **Liliana Araujo**
Publications Editor **Susan Bubak**
Senior Publications Editor **Jennifer Goyder**
Graphic Designer **Sami Choudhary**

Copyright © 2021 by the Centre for International Governance Innovation

The opinions expressed in this publication are those of the author and do not necessarily reflect the views of the Centre for International Governance Innovation or its Board of Directors.

For publication enquiries, please contact publications@cigionline.org.



This work is licensed under a Creative Commons Attribution – Non-commercial – No Derivatives License. To view this license, visit (www.creativecommons.org/licenses/by-nc-nd/3.0/). For re-use or distribution, please include this copyright notice.

Centre for International Governance Innovation and CIGI are registered trademarks.

Centre for International Governance Innovation

67 Erb Street West
Waterloo, ON, Canada N2L 6C2
www.cigionline.org



Table of Contents

vi	About the Project
vi	About the Author
1	Executive Summary
1	Introduction
2	Some Specific Challenges to Canada's Security and Democracy
4	Recommendations
10	Conclusion
11	Works Cited
12	Acknowledgements

About the Project

Canada's approach to domestic and international security is at a profound moment of change. The shock wave of COVID-19 and its looming future effects highlight the urgent need for a new, coordinated and forward-looking Canadian national security strategy that identifies emerging and non-traditional threats and considers their interrelationships. Complex interactions between foreign policy, domestic innovation and intellectual property, data governance, cybersecurity and trade all have a significant impact on Canada's national security and intelligence activities.

Reimagining a Canadian National Security Strategy is an ambitious and unprecedented project undertaken by the Centre for International Governance Innovation (CIGI). It aims to generate new thinking on Canada's national security, inspire updated and innovative national security and intelligence practices, and identify ways that Canada can influence global policy and rulemaking to better protect future prosperity and enhance domestic security.

CIGI convened interdisciplinary working groups, which totalled more than 250 experts from government, industry, academia and civil society, to examine 10 thematic areas reflecting a new and broad definition of national security. Each thematic area was supported by senior officials from the Government of Canada, designated as "senior government liaisons." They provided input and ideas to the discussions of the working group and the drafting of thematic reports.

The project will publish 10 reports, authored independently by theme leaders chosen by the project's co-directors. The reports represent the views of their authors, are not designed as consensual documents and do not represent any official Government of Canada policy or position. The project was designed to provide latitude to the theme leaders to freely express new thinking about Canada's national security needs.

A special report by the project's co-directors, Aaron Shull and Wesley Wark, will analyze Canada's new national security outlook and propose a security strategy for Canada.

About the Author

Kent Roach is professor of law at the University of Toronto Faculty of Law. He previously served on the research advisory committee of the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar and as research director of the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182. He also served as law clerk to Justice Bertha Wilson of the Supreme Court of Canada.

He is the author or co-author of 15 books including *September 11: Consequences for Canada* (McGill-Queen's University Press, 2003); *The 9/11 Effect: Comparative Counter-Terrorism Law* (Cambridge University Press, 2011) (co-winner of the 2012 Mundell Medal); *False Security: The Radicalization of Canadian Anti-Terrorism Law* (Irwin Law, 2015, with Craig Forcese) (winner of the 2016 Canada Law and Society Association Book Prize); *Canadian Justice, Indigenous Injustice* (McGill-Queen's University Press, 2019) (short-listed for the Shaughnessy Cohen Prize for Political Writing); and *Remedies for Human Rights Violations: A Two-Track Approach to Supranational and National Law* (Cambridge University Press, 2021). He is also the editor or co-editor of 13 essay collections. He has been editor-in-chief of the *Criminal Law Quarterly* since 1998.

Kent was elected a fellow of the Royal Society of Canada in 2002. In 2013, he was one of four academics awarded a Trudeau Fellowship in recognition of his research and social contributions. He was appointed a member of the Order of Canada in 2015 and was awarded the Molson Prize in 2017 for his contributions to the social sciences and humanities. He is a graduate of the University of Toronto and of Yale University.

Executive Summary

Ensuring democracy has been and will continue to be a central and challenging objective for Canadian national security policy in the future. Canadian democracy includes not only respect for parliamentary governance and electoral majorities but also respect for the rule of law and the rights of Indigenous peoples and minorities. The first part of this report identifies three particularly salient and interrelated threats to both Canada's democracy and national security: threats to elections and other basics of democracy; threats presented by disinformation and misinformation on digital platforms; and threats presented by foreign conflicts on Canada's diverse population, which rightly relies on high and increasing levels of migration from other countries. The following recommendations are made:

- An informed citizenry must engage with both governments and corporations on issues affecting national security and rights that are essential to democracy.
- Respect for equality and Indigenous rights, as well as privacy, liberty and due process, is necessary to sustain democracy. National security efforts should not threaten the security of the most vulnerable through either discriminatory profiling or discriminatory underprotection.
- Attention should be paid to a broader range of governing and policy instruments with due recognition of the limits of law. Legislation, especially criminal law, is not the answer to all threats to national security or democracy. There is a need for more attention to “softer strategies,” including publicity and education.
- Governments should avoid the temptation to define or see all elements of social and political life through a national security lens. This will be a danger in light of proliferating security threats, including those related to climate change, health and hate. Political parties should avoid taking crudely partisan, “wedge” or solely symbolic approaches to security.
- Schools, post-secondary institutions, the media, civil society and governments should make increased efforts to educate Canadians about

both security threats and security institutions, including review and complaints bodies.

- Whole-of-government responses to security should be matched by greater transparency of security institutions and whole-of-government accountability measures for both security excess and security failures, with a focus on the accountability of the prime minister.

Introduction

The need to ensure democracy has been a fundamental feature of Canadian debates about national security. Concerns about the fairness of Canada's response to Igor Gouzenko's spy revelations and to Front de libération du Québec (FLQ) terrorism in Quebec inspired post-World War II debates about rights and security. These debates contributed to the enactment of the 1982 Canadian Charter of Rights and Freedoms.

Debates after the September 11 terrorist attacks have featured questions of whether Canada struck the appropriate balance between protecting security and respecting equality, liberty and privacy rights. Recent cases of far-right terrorism such as the 2017 Quebec City mosque massacre and the attack that killed four members of the Afzaal family in London, Ontario, as well as the failure to prevent and effectively respond to the 1985 Air India bombing underline the need for a non-discriminatory use of national security powers, including measures to effectively counter hate and calls for political violence. They also raise pressing questions of who is protected and who is not protected by Canada's security efforts. In Canada, questions of equality are complicated by issues of historical and colonial discrimination against Indigenous peoples and racialized groups.

What is Canadian democracy? It includes respect for parliamentary democracy; respect for the wishes of the majority at the national, provincial and local levels; respect for rights, especially the rights of Indigenous peoples and minorities; and respect for the rule of law.¹

¹ Reference re Secession of Quebec, [1998] 2 SCR 217, online: <<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do>>.

The complex task of protecting these elements of democracy will remain central as Canadian national security policy evolves in response to new security threats. These threats are discussed more fully in other reports in this series. They include threats presented by foreign interference, the increased centrality of digital and cyber life, health security and climate change. Democracy itself is threatened by increased political polarization, lack of consensus about the desirability of democracy, and increased corporate power and inequality.

The task of ensuring democracy while countering security threats has never been easy. It will become more difficult and complex in the future. The first half of this report will provide a partial outline of some particularly salient threats to both national security and democracy. The second half will provide six recommendations. These recommendations focus on general governance concerns as opposed to the specific controversies of the day that will change over time. The recommendations are directed not only at governments but also at political parties, corporations, civil society and engaged citizens.

Specific Challenges to Canada's Security and Democracy

Many of these emerging security threats will be discussed in greater depth in other reports in this series. Some, however, need to be discussed here because of their direct relation to Canadian democracy.

Threats to Elections and the Basics of Democracy

A basic but not exclusive feature of Canadian democracy is the ability to hold free, fair and credible elections. Canadians have long assumed the integrity of their elections — Canada has been an international leader in the field. We cannot, however, be complacent.

Misinformation in the form of deliberately false information, including foreign interference and digital campaigning that does not abide by

spending limits and other democratic regulation of elections, is an emerging threat to Canada's national security and democracy. So, too, is misinformation in the form of various conspiracy theories and their connection to hate.

Canada has responded to threats to elections by having senior civil servants examine the Critical Election Incident Public Protocol in light of the 2019 general election (Government of Canada 2020). A broader approach to such an assessment might also include corporations that run digital platforms and civil society. Canadians need accurate information about elections and the politics that are an essential part of democracy.

There is also a need to maintain the basics of democracy in terms of proper legislative procedures and full debate in legislatures and committees. There are concerns that the public has largely accepted emergency legislation and regulation during the current coronavirus disease 2019 (COVID-19) pandemic. A rush to legislate and reliance on regulations and policies developed by the executive can undermine the need for full democratic debate and deliberation. Increased use of the notwithstanding clause also underlines the need to be attentive and vigilant about the treatment of rights and the rule of law, which, as discussed above, are essential elements of Canadian democracy. As will be explained in the section titled "Recommendations," governments should avoid the temptation to politicize national security and scapegoat any part of the population as potential security threats or threats to national values.

There is no international consensus on the desirability of democracy. China and Russia are two world powers capable of both foreign interference with democracy and elections and promoting ideologies that define democracy and checks and balances on government as strategic and economic weaknesses. These ideologies may be attractive to some Canadians and could undermine our common commitments to democracy. Increased political polarization can threaten both democracy and security, with the political polarization over vaccines and masks in the United States during the COVID-19 pandemic being an example. Just as Canada is not immune from terrorism, so, too, is it not immune from such polarization.

"Militant democracy" (Loewenstein 1937) techniques such as increased regulation of speech and political parties or candidates are

risky in a democracy. There probably should never be a consensus on the degree to which rights should be limited to protect a democracy. To some, this reveals an inherent weakness and vulnerability of democracy. In the author's view, the lack of consensus and the need for continued democratic debate and adjustments about how far freedoms should be limited to protect democracy or security are strengths of democracy.

Two general recommendations identified in this report are particularly relevant to the need to preserve the basics of democracy in light of increasing threats. The first is the need to not expand definitions of national security so broadly that all matters of political and social life are defined as national security matters. Peaceful democratic resistance to security policies should not be confused with threats to national security. The second relevant recommendation is the need for a citizenry that will demand to be fully informed about the security measures that both governments and corporations take or do not take. Democracy requires full and informed debates about the necessity, propriety and effectiveness of various national security measures.

Threats of Misinformation and Disinformation

Disinformation (defined as intentional mistruths) and misinformation (defined as false information that may nevertheless be conveyed in good faith) are increasing threats to both Canada's national security and democracy. This can be seen in the spread of mistruths about vaccines that are hindering the ability of some democracies to emerge from the current pandemic. Disinformation is being used by authoritarian governments to spread divisions in democracies. This is obviously a danger to both Canada's national security and democracy given its diversity and reliance on increased migration for a healthy economy.

Canada will not be able to combat disinformation and misinformation by itself. Canada should continue to leverage its role in the Five Eyes intelligence community, whose other members are Australia, New Zealand, the United Kingdom and the United States. It should also be more engaged in attempts or failures of the private sector to counter misinformation and provide information, for example, in relation to countering violent extremism on digital platforms. Corporations should be required to be more transparent about

what actions they take or do not take to regulate the digital environments they create. They should be encouraged to go beyond binary take down/leave up decisions. They should also be encouraged to build in credible, transparent and accessible appeal mechanisms when they employ takedowns.

The answer to "bad" speech may, in some cases, be counter speech; it may also be changing algorithms to downrank such content on the internet. These more subtle content interventions can be critical in addressing concerns about discrimination and equality. Consumer choice may also play a role, although this may be less of a restraint if political polarization increases and some companies can profit from serving a small but committed segment of the market.

Governments and citizens cannot afford to leave digital platforms unregulated, but they should be sophisticated in their choice of regulation. Canada's approach to freedom of expression and hate speech may provide an attractive alternative to the extremes of American libertarian exceptionalism and more heavy-handed regulatory responses used in Asia and Europe. There is a role for criminal offences against hate speech. At the same time, no criminal offence can solve the transnational problem of disinformation and misinformation.

Ensuring the proportionality of both government and corporate responses to disinformation and misinformation requires careful attention to the range of alternative policies. There is a need to address disinformation while also respecting competing values including privacy and fundamental freedoms. In some cases, digital blocking and takedowns may be justified. In other cases, subtler forms of regulation such as warnings and links to other material may be more appropriate because they better respect competing rights such as privacy and fundamental freedoms. As will be discussed in the "Recommendations" section of this report, both governments and corporations should deploy a wide range of governing instruments, including those that produce greater digital literacy. The art and success of governance will often depend on the choice of optimal instruments.

In the end, we cannot legislate our way out of a misinformation/disinformation problem that may get worse. Canadians need to become better educated consumers of the growing amount of information available to them. The public education

system, public libraries and post-secondary institutions need to play key roles in these processes. The promotion of Canadian content may also be necessary to counter information markets that remain dominated by American material that reflects increased polarization and cultural wars over matters such as mask mandates and attempts to ban critical race theory.

Threats Presented by Foreign Conflicts on Canada's Diverse and Immigration-Reliant Society

Canada is one of the most diverse and immigration-reliant democracies in the world. Section 27 of the Canadian Charter of Rights and Freedoms recognizes the importance of the country's multicultural heritage. Canada's economic success has relied on high levels of immigration. This reliance will increase in the future.

Canada prides itself on being a welcoming and open democracy. At the same time, increased foreign conflicts, at times driven by disinformation and political polarization, present threats to both Canada's national security and democracy. Migrants to Canada may need to be protected from foreign interference, and the Canadian government needs to be careful not to share information with other countries that may endanger migrants in Canada or their families and friends abroad. Migrants to Canada should be educated about all the elements of Canadian democracy.

At the same time, viewing migration and Canada's diversity through a national security lens may ignore issues of trauma that many refugees and other migrants suffer, including employment inequity and other forms of discrimination and hate crimes often focused on racialized people.

A key challenge to ensuring Canadian democracy will be to respond effectively to emerging security threats related to foreign conflicts, interference and terrorism that targets various minority groups in Canada. An effective response to these threats should avoid "securitizing" our migration, anti-discrimination and social cohesion policies, which are goods themselves and may be harmed, should security institutions such as the police and security agencies play key roles in defining and delivering these policies. Migrants and disadvantaged Canadians may fear or misunderstand Canada's security institutions. Defining migration and social cohesion as a

security policy could encourage discrimination and hate crimes against visible minorities.



Recommendations

The Need to Protect Democracy Requires Engagement with Both Governments and Corporations

It is no longer sufficient to focus on government to ensure democracy while countering security threats. The private sector is deeply implicated in debates about privacy, hate, terrorism financing, climate change and health security. Big private sector plays as important a role as big government in these issues. Corporations, like governments, can infringe rights essential to democracy, including equality, freedom of expression and privacy. Like governments, corporations should be required to justify infringements of these rights as reasonable and proportionate. Responsible and informed citizenship will need to be combined with informed "consumership."

Debates about the limits of freedom of expression that, as recently as the 2015 debates on Bill C-51, have focused on the dangers of state overreach today must include the critical role of social media companies in deciding which speech to allow and amplify and which speech to take down or otherwise regulate. Corporations, not the state, are now the frontline censors of speech.

Although Canada creatively and presciently provided for judicial warrants to allow takedowns of hate speech on the internet in the 2001 Anti-terrorism Act and extended this scheme in 2015 to speech that advocates terrorism, the real power and responsibility for takedowns is exercised by large social media companies. The reality of this corporate power is seen in the fact that social media companies, as well as countries such as Canada, signed the Christchurch Call to Eliminate Terrorist and Violent Extremist Content Online.² The decision of Twitter and Facebook to ban or suspend then

² See www.christchurchcall.com.

US president Donald Trump from their platforms following the US Capitol attack on January 6, 2021, was extremely important and controversial.

Governments have an important role to play with respect to corporate power, especially with regard to promoting transparency. This also fits into another broad recommendation to be discussed below: namely, the need for governments to take a more nuanced approach to their choice of governing instruments. With respect to social media companies, governments must attempt to promote greater transparency and proactive disclosure. The danger of reputational harms may be enough to persuade corporations to change their practices in ways that are more responsive to democratic values than the use of sanctions. These more subtle techniques are sometimes called “governing at a distance,” but this does not mean not governing.

Social media companies are now confronted with some of the same dilemmas as governments in balancing conflicting values. On the one hand, social media companies will be criticized by some for almost any infringement of free speech or privacy. On the other hand, they will be criticized for not quickly taking down material related to hate and terrorism. In a democracy, there will always be disagreement about such issues. That said, citizens need more information about what material is posted on the internet and the abilities and limits of technology, such as reliance on algorithms and the balance of false positives or overreach, in taking down harmful speech. Going forward, Canadians will need to make informed demands and criticisms of what both governments and corporations do and fail to do in their regulation of speech and the internet.

The corporate role is most prominent with respect to social media, but also emerges in other areas, including terrorism financing, terrorist travel, health security and economic espionage. For example, financial institutions play a key role in reporting transactions and freezing assets in relation to terrorism financing. Similarly, airlines play a key role with respect to preventing terrorist travel and now with ensuring health security. There will be a need for greater awareness of overlapping public and private national security responsibilities.

A huge challenge is that much corporate power is located outside of Canada. That said, Canada could play a middle-power role that mediates

between the relatively laissez-faire US approach to regulation and free speech and more heavily regulated and restrictive approaches seen in Asia and Europe. This potential of Canada to exercise moral and regulatory leadership, however, will not be realized without a more informed citizenry and public and private investment in research into the increased and changing role of corporate power in a broad range of national security matters. There is also a need to promote civil society groups that can also act as watchdogs with respect to corporate power. Such engagement can also encourage a more vibrant and grassroots form of democracy.

The Need for National Security Efforts to Respect Equality and Indigenous Rights as well as Privacy, Liberty and Due Process

As Ronald Dworkin (2002) famously observed after September 11, there is a need to factor in whose rights are being limited in the name of security. Equality rights cut both ways in terms of national security. Canadian officials wrongly labelled Maher Arar and Monia Mazigh, in part as being associated with al-Qaeda, in part because of their religion and skin colour. In a similar vein, Canada’s failure to prevent and effectively respond to the 1985 Air India bombing was, in part, because of a discriminatory lack of understanding about how a foreign conflict can harm Canadians. Respect for equality should be a fundamental pillar of national security policy. Equality cuts both ways; in other words, it is violated by both discriminatory profiling and by discriminatory underprotection.

Existing national security laws and enforcement patterns are skewed against Muslims both with respect to proactive enforcement against Muslims and with ineffective protection against far-right terrorism. Canada has not used its post-September-11 Anti-terrorism Act as a vehicle to prevent far-right terrorism. There are also concerns that Indigenous and environmental activists may be targeted for security efforts, especially if security is defined broadly to include economic security.

Respect for equality and Indigenous rights will be important features in ensuring that Canadian national security policy remains democratic. At the same time, there are many ways to achieve equality. One way is to apply existing security laws in a more even-handed manner that treats far-right violent extremism as terrorism. This,

arguably, has been done by laying terrorism charges as well as first-degree and attempted murder charges in the London attack.

At the same time, increasing equality in the use of the criminal law may not be sufficient. The vast majority of terrorism prosecutions and listed groups target Muslims. The use of the criminal law is also a limited strategy in the sense that proscription alone is neither a necessary nor a sufficient step to prevent far-right extremist violence. The charges laid against far-right extremists have all occurred after people have been killed, whereas terrorism offences are designed to prevent and disrupt terrorist acts of violence. The true test of equality will be if Canadian security and policing officials are able to use terrorism offences and prosecutions to disrupt acts of far-right violence before they occur. At the same time, security institutions must be careful not to place legitimate, albeit extremist, democratic movements under surveillance.

Equality can also be respected by rethinking security instruments such as proscription and the focus on terrorism financing and travel that may be ineffective in responding to terrorism, whether inspired by al-Qaeda and Daesh or the far right. One alternative strategy is to implement programs to counter all forms of violent extremism. Such programs are, however, controversial. There are concerns that they will not be applied in a non-discriminatory manner and could securitize educational and health matters.

Programs to counter violent extremism also raise governance issues in Canada. It is not clear that the federal government is in the best position to implement them. There may be benefits in allowing more local governments and community groups to play a role in the design, implementation and review of such programs. Even if this is done, there is a danger — to be discussed in greater depth below — of securitizing aspects of social life and of discriminatory application of such programs. There is also a danger of defining economic matters — such as the fossil fuel economy — as matters of national security.

There are no simple or uncontroversial answers to the question of what specifically should be done to ensure that Canadian national security efforts respect equality and Indigenous rights as well as other democratic rights associated with liberty, privacy and due process. Although a case can be made for prosecuting hate crimes, there

are also alternative ways to deal with these issues in the community that could potentially be more effective given the limits of criminal sanctions, especially with respect to crimes against property. The recent wave of violence directed toward Muslim citizens in the wake of the London attack and against Asians during the pandemic, however, affirms that Canada must confront hate crimes in a more effective manner. The choice of the relevant policy instrument to promote equality is inevitably contextual. Nevertheless, governments and corporations should respect equality and Indigenous rights in their national security efforts.

One aspect of equality is the need to reject unfair double standards. For example, why are Canadians fighting for Israel or in the Ukraine not necessarily being treated the same as Canadians who fought for Daesh? As with many security issues involving equality, this raises the question of whether to equalize the security response and apply watchlists and foreign fighter offences more equitably or whether the whole concept of criminalizing foreign fighters should be rethought. A factor that might support the latter approach is the lack of foreign fighter prosecutions and the difficulties associated with them given the need to collect evidence in what are often war zones. Added to this is the absence of effective rehabilitation efforts even if a person is convicted of a terrorism offence. In some contexts, respect for equality and Indigenous rights may require the Canadian state to abandon some security measures that are discriminatory and are of limited effectiveness.

The Need for Selectivity by Governments and Corporations in Choosing Governing Instruments

Governments and corporations need to be sophisticated and nuanced in their choice of governing instruments. Legal regulation in general and criminal sanctions, in particular, have a limited ability to change behaviour. Democracies cannot “legislate their way out” of the security threats they face.

Better education in schools and post-secondary institutions is necessary to make people less vulnerable to both intentional disinformation and misinformation, including the sort that can harm health security and inspire hate crimes.

All Canadians should be educated on the need to use reliable sources for information.

Canadian governments also need to support the traditional media so it can provide specialized and informed coverage of complex national security matters. Investigative reporting played a key role in responding to many national security abuses immediately after September 11. Unfortunately, the position of the traditional media has become much more precarious since then. There needs to be investment in informed reporting on an expanding range of national security matters. Universities can also fill some of these gaps by promoting accessible platforms for research. There also needs to be efforts by governments to promote and, if necessary, to subsidize Canadian content about national security matters. Canada's national security threats, efforts and institutions are distinct from those in France, the United Kingdom or the United States.

Education is also needed to produce a citizenry that can make informed demands on governments and corporations about security threats that may appear and evolve quickly. The current pandemic provides an opportunity to understand the successes and failures of attempts to make people more knowledgeable about their health security. More attention needs to be paid to ensuring that Canadians are prepared for the fact that security information may change as threats evolve and are better understood. As in other areas, care must be taken to recognize the diversity of the Canadian population and not to adopt a "one-size-fits-all" or "top-down" approach to any one policy instrument, including education.

Canada can leverage its ability to conduct reviews involving governments, civil society and academia to produce increased knowledge about both security threats and responses that respect democracy and diversity. Canada's penchant for in-depth reviews in the form of commissions of inquiry and other studies can be seen as a form of governing instrument and even "soft power." Canada could offer a middle-democratic way between more politicized and polarized American approaches and more technocratic approaches taken in the European Union. Both the 2001 Anti-terrorism Act and the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar are examples of a middle-Canadian way that have influenced countries beyond Canada. Knowledge production and knowledge exchange, including in universities, should be

respected as among the many instruments that can enhance both security and democracy.

Other policy instruments that should not be ignored are "soft" ways of demonstrating empathy and disapproval of politically inspired violence. Examples include the vigil attended by all federal political party leaders in London, Ontario, after the attacks or the New Zealand prime minister's refusal to use the name of the Christchurch attacker after 51 Muslims were killed at two mosques in the city. At the same time, there is a need to move beyond symbolic and short-lived displays of solidarity. New Zealand did this by also dramatically increasing gun control in the wake of the Christchurch massacre.

Canadians should encourage their governments and corporations to use the full range of tools and policy instruments at their disposal to respond to security threats. For governments, this may mean a form of governing at a distance by ensuring greater transparency and information about how all levels of governments and corporations respond to security threats.

New legislation should not be the answer to every new security threat or highly publicized harm. There are, and should be, high political costs to new national security legislation. The legislation itself should be properly studied and debated. At the same time, there is a need to replace outdated legislation that does not respond to new threats and technology. Outdated legislation can create uncertainty about both the extent of legal powers and the protection of rights.

The Need to Avoid Securitizing Everything and Politicizing Security in the Face of Growing Security Threats

Other reports in this series examine a variety of increasing security threats related to our digital lives, cybersecurity, health security and climate change. These threats are real and need more attention. Their growing and combined effects, however, present a temptation to view almost all matters of human life through the lens of national security.

The current pandemic has revealed that health security has a national security dimension. At the same time, Canadians remain rightly concerned with privacy and the quality of health care apart

from their national security dimensions. Climate change raises existential threats to the planet apart from its more particular national security threats to Canada's north and coastal communities or through forced migration. Reliance on emergency powers to deal with climate change may be necessary but it will not be sufficient to respond to climate change. The digital environment presents national security threats, but also threats to mental health that are not issues of national security.

A concrete Canadian example of oversecuring would be the surveillance of Idle No More and other Indigenous activists and the characterization of Indigenous and environmental protests as national security interests. Alberta has mimicked the approach of Hong Kong by holding an inquiry into the involvement of "foreign organizations and funding" into "anti-Alberta energy campaigns."³ The economics of the necessary transition from a fossil fuel economy should not be defined as a matter of national security or, in the case of Alberta, of provincial security. This does not mean that regional equity is not a legitimate political issue and concern. It means that governments and political parties should avoid the temptation of attempting to elevate issues by claiming national security. It will require balance and judgment not to ignore emerging security threats in the future without making everything a matter of national security.

Another danger of an overly broad approach to security is that it may give political parties an incentive to use national security for partisan gain. The American example reveals how political polarization can adversely affect national security efforts, especially when the dangers of misinformation and foreign interference are added to the toxic mix.

Traditionally, Canadian political parties have generally restrained themselves from using national security for political advantage. But there are regrettable recent exceptions. They include the Conservatives' use of Bill C-51 and the Zero Tolerance for Barbaric Cultural Practices Act in the lead-up to the 2015 general election and the Liberals' listing of far-right groups and introduction of vaccine mandates immediately before the 2019 and 2021 elections. In a democracy, political parties may have to compete over matters of national security but should take care not to

simplify matters, to oversell what governments can achieve, or to demonize groups including competing political parties or foreign countries.

Canada's diverse and multicultural population means that attempts to use national security for partisan gain, especially on issues involving foreign countries and conflicts, could be quite divisive. There is a need to tread a fine line between having politicians engage and be active on national security issues while minimizing crude partisanship and wedge politics around such issues. There is also a need for governments to recognize that while there is a place for communicative and symbolic politics as part of the full range of responses to security threats, we cannot protect security or democracy through exclusive reliance on symbolic gestures.

The Need for Greater Knowledge of Security Issues and Institutions but also Continued Skepticism

Canadians need to be better informed about both security threats and institutions. New whole-of-government oversight mechanisms, such as the National Security and Intelligence Committee of Parliamentarians (NSICOP) and the National Security and Intelligence Review Agency (NSIRA), have the potential to engage with both security institutions and Canadians on a broad range of issues. The committee of parliamentarians has the potential to foster a non-partisan and more informed approach to national security. Alas, it has not been immune during its short life from becoming embroiled in some partisan issues. Indeed, since 2015, national security matters have been more frequently politicized than in previous eras, such as in the response to FLQ terrorism in Quebec or the response to September 11.

Oversight institutions as well as the security institutions themselves should work with civil society, the media and academia to enhance Canadians' awareness of national security institutions. Ottawa's reliance on acronyms and its use of words such as "diaspora" and "Islamic" alienate some communities and present unnecessary barriers to greater knowledge and engagement. There is a need to communicate in plain and non-offensive language.

³ See <https://albertainquiry.ca>.

Increased knowledge about security threats and institutions may increase what some call “social licence.” Canadians may be misinformed (and even receive deliberate disinformation) about security institutions. For example, the Canadian Security Intelligence Service (CSIS) is not the Central Intelligence Agency. Security institutions should not be mired in a traditional “need-to-know” and siloed culture that inhibits greater public knowledge about what they do and the dilemmas they face. At the same time, there is a risk that such engagement will be superficial and symbolic.

More fundamentally, in a democracy, skepticism of security institutions is not something that should be eliminated. Security institutions in the recent past have not been fully candid with courts that oversee some of their activities. Ministerial responsibility has not always been present. A certain degree of skepticism about all government institutions and especially security institutions is healthy and necessary in a democracy.

Civil society groups sometimes have no alternative but to oppose security initiatives and activities because of a lack of information. Governments should brief all interested academics, media and civil society groups on security initiatives. They should not repeat the Bill C-51 experience where a small number of academics perceived to be sympathetic to the government received briefings weeks before the introduction of the controversial bill while other academics and civil society groups were left to scramble after the bill was introduced in Parliament. Fortunately, this process has changed and there have been more widespread briefings of academics, civil society and the press on subsequent security initiatives.

Even though it is unrealistic for governments to expect civil society groups to agree with all their security initiatives, they should be prepared to work with such groups to produce a better informed and focused public debate about the necessity and proportionality of security powers. In the author’s view, it was not helpful for a CSIS director to accuse a “partnership of single-issue NGOs [non-governmental organizations], advocacy journalists and lawyers” of seeking to create “a positive public image for anyone accused of terrorist links or charges” and of seeing “a certain romance to this” (Fadden 2009). A civil society that challenges governments and security institutions on security matters is a good thing for democracy. Those in security institutions and

in government should not seek to delegitimize democratic debate about security policy by playing the “if you knew what I knew” card.

Governments should not view critiques of their national security laws and activities as bad or politically damaging. A healthier attitude in a democracy is for governments to accept such criticisms as opportunities for building greater understanding between security agencies and civil society groups. If governments make efforts to provide more information about both security threats and responses, there may be less of an adversarial approach between civil society and governments on at least some security issues. This could also counter some of the dangers of partisanship, polarization and misunderstandings on security issues.

The Need for Meaningful Transparency and Accountability for Governmental and Corporate National Security Actions

In a democracy, it is important that national security activities be as transparent as possible and that national security actors are made to account for abuse of power, violation of rights and security failures. The federal government’s 2017 transparency commitment and follow-up report is a step toward increased transparency,⁴ but more work remains to be done.

Accountability is not limited to sanctions. It includes publicity and reputational harms, which are consistent with acknowledgement of a wide range of governing instruments and may be especially important to the private sector. National security institutions themselves have a role to play. Professionals respond more to rewards and denials of promotion than to the threat of sanctions.

There is a case for some redundancy in review and oversight, with courts, supervisory bodies, the prime minister’s national security and intelligence advisor and the committee of deputy ministers with national security responsibilities all having roles to play. Multiple voices and perspectives are healthy in a democracy. National security efforts need to be reviewed both with respect to their propriety and proportionality, but also with respect to their

⁴ See www.canada.ca/en/services/defence/nationalsecurity/national-security-transparency-commitment.html.

efficacy, and this often requires multiple review bodies. At the same time, review and oversight should not be unnecessarily duplicative or inhibit the ability of security institutions to take necessary and proportionate steps to protect national security.

Whole-of-government approaches to national security should be matched by whole-of-government accountability. There is reason to be optimistic about the creation of two new whole-of-government review institutions: the NSIRA and the NSICOP. That said, some national security functions performed by the Canada Border Services Agency (CBSA) are not subject to its own complaints mechanism despite the significant powers that it exercises. Simply adding the CBSA to the mandate of the under-resourced Royal Canadian Mounted Police complaints and review body will not be sufficient. As a frontline agency, the CBSA has the potential to view some migrants to Canada as suspect. This can have implications for both Canada's asylum obligations and longer-term patterns of security enforcement. The Taxpayers' Ombudsperson is now responding to concerns raised by academics and civil society groups about discriminatory enforcement of tax laws against Muslim charities. A full investigation, however, may require expertise in both intelligence and anti-discrimination and access to classified information. The vital task of ensuring whole-of-government approaches to security with whole-of-government review and oversight is unfortunately not yet complete. It also needs to be nourished by adequate resources, a non-partisan approach and inspired leadership.

Ministerial accountability is difficult to maintain at the best of times. It is especially challenged by whole-of-government approaches to national security. Within the federal government, the prime minister should ultimately be accountable for national security abuses or failures. This also justifies the key role played by the prime minister's national security and intelligence advisor and the whole-of-government committee of deputy ministers that the advisor chairs. The Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 stressed the key role that the prime minister should play in national security and underlined the importance of accountability for security failures.

One role of the prime minister is to ensure consistency within the federal government about national security approaches on matters

such as countering violent extremism or not condoning torture by other countries. Whole-of-government approaches to both national security and accountability are sound, but require greater transparency and consistency across the federal government. Ministerial directives should be used, coordinated and readily available to the public.

More attention needs to be devoted to the role of provincial, local and Indigenous governments with respect to national security. There are concerns about the transparency and accountability of Integrated National Security Enforcement Teams, which have members from various federal agencies and provincial, regional and municipal police services. Recent changes in policing stress the utility of multidisciplinary tables that include educational, health and correctional officials and community groups as well as the police. At the same time, however, such services must be delivered in a non-discriminatory and accountable manner and in a way that targets violent extremism and not simply political or social opinions that are seen by the majority as extreme.

Whole-of-government approaches to national security are warranted but still present problems of transparency and accountability gaps, especially when the role of different levels of governments and corporations are considered.

Conclusion

Canada will confront growing security threats in the next decades. These include direct threats to democracy, disinformation threats and threats presented by foreign conflicts on Canada's diverse population, which depends on growing levels of migration from other countries for its economic health.

In order to counter these threats to both security and democracy, there should be increased investment in educating Canadians about security threats and institutions. This will involve schools, post-secondary institutions, the media, civil society and governments.

There is a need to engage both governments and corporations because they both can violate rights that are essential to democracy. There is also a

need for both governments and corporations to respect all rights, including equality and Indigenous rights that are too often ignored in traditional debates that pit security against privacy, liberty and due process. National security efforts should not threaten the security of the most vulnerable, including Muslims and Indigenous peoples whose rights can be threatened either through profiling or underprotection.

Attention should be paid to a broader range of governing and policy instruments with due recognition of the limits of law. Governments should avoid securitizing all elements of social, political or economic life or taking crudely partisan, “wedge” or solely symbolic approaches to security. In light of proliferating security threats, it may be a challenge to avoid increased politicization of national security issues in the future. Nevertheless, the dangers of misinformation and polarization should be avoided. Finally, whole-of-government responses to security, including those by different levels of government, should be matched by appropriate review and accountability measures that resist overbroad claims of secrecy.

Author’s Note

The author thanks all those who participated in the three workshops that led to a draft of this report and those who commented on an initial draft that led to significant changes. The author is responsible for all errors, omissions and opinions.

Works Cited

- Dworkin, Ronald. 2002. “The Threat to Patriotism.” *The New York Review*, February 28. www.nybooks.com/articles/2002/02/28/the-threat-to-patriotism/.
- Fadden, Richard B. 2009. “Remarks by Richard B. Fadden, Director, Canadian Security Intelligence Service, to the Canadian Association for Security and Intelligence Studies (CASIS) Annual International Conference.” October 29. <https://casis-acers.ca/wp-content/uploads/2014/06/Dick-Fadden-CSIS-Speech-To-CASIS-OCT-091.pdf>.
- Government of Canada. 2020. *Report on the Assessment of the Critical Election Incident Public Protocol*. May. www.canada.ca/content/dam/di-id/documents/ceipp-eng.pdf.
- Loewenstein, Karl. 1937. “Militant Democracy and Fundamental Rights.” *The American Political Science Review* 31 (3): 417–32. https://warwick.ac.uk/fac/arts/history/students/modules/hi290/seminars/revolution/loewenstein_militant_democracy_i.pdf.

Acknowledgements

The Reimagining a Canadian National Security Strategy project wishes to acknowledge the valuable engagement we have enjoyed with senior officials during working group discussions and the drafting of the report. The senior government liaisons who took part in discussions about the Ensuring Democracy theme and who consent to be acknowledged are:

- Elisabeth Eid, Assistant Deputy Minister, Justice Canada
- Artur M. Wilczynski, Assistant Deputy Minister, Senior Advisor for People, Equity, Diversity and Inclusion, Communications Security Establishment

Their involvement with the project does not in any way indicate their agreement in whole or in part with the theme report and their participation does not reflect any official Government of Canada policy or position.

The project wishes to acknowledge the valuable contributions made by working group members during discussions and the drafting of the report. The working group members who took part in discussions about the Ensuring Democracy theme and who consent to be acknowledged are:

- Chantal Bernier, Counsel, Dentons
- Nathalie Des Rosiers, Principal of Massey College, University of Toronto
- Robert Fay, Managing Director of Digital Economy, CIGI
- Mary Francoli, Associate Professor of Communication and Media Studies and Associate Dean and Director, Arthur Kroeger College of Public Affairs, Carleton University
- Patti Tamara Lenard, Associate Professor, Public and International Affairs, Faculty of Social Sciences, University of Ottawa
- Stephen McCammon, Legal Counsel, Office of the Ontario Information and Privacy Commissioner
- Sean McGillis, Executive Director, Resource Management and Strategic Direction, Federal Policing, Royal Canadian Mounted Police

- Tim McSorley, National Coordinator, International Civil Liberties Monitoring Group
- Justin Mohammed, Human Rights Law and Policy Campaigner, Amnesty International
- Marie-Christine Monchalain, Manager, Privacy Audit and Review, Office of the Privacy Commissioner of Canada
- Hon. Richard G. Mosley, Judge, Federal Court of Canada
- Kerry Ellen O'Neill, Contract Instructor, Department of Philosophy, Carleton University
- Heidi Tworek, CIGI Senior Fellow and Associate Professor, jointly appointed at the School of Public Policy and Global Affairs and History, University of British Columbia
- Wendy Wagner, Partner, Gowling WLG
- Leah West, Associate Director, MA Admissions and Recruitment, and Assistant Professor of International Affairs, Norman Paterson School of International Affairs, Carleton University
- Cara Zwibel, Director, Fundamental Freedoms Program, Canadian Civil Liberties Association

Their involvement with the project does not in any way indicate their agreement in whole or in part with the theme report.

**Centre for International
Governance Innovation**

67 Erb Street West
Waterloo, ON, Canada N2L 6C2
www.cigionline.org