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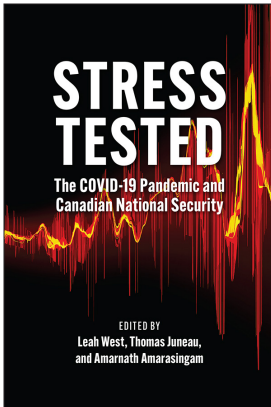
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STRESS TESTED: THE COVID-19 PANDEMIC AND CANADIAN NATIONAL SECURITY

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Enforcing Canadian Security Laws through Criminal Prosecutions during a Pandemic: Lessons from Canada's COVID-19 Experience

Michael Nesbitt and Tara Hansen

Introduction

Emergencies of all kinds, pandemics being no exception, produce a host of acute challenges while simultaneously revealing and exacerbating latent systemic vulnerabilities. This chapter considers Canada's experience during the COVID-19 pandemic, focusing on illuminating those most pressing challenges and vulnerabilities associated with enforcing security threats through the criminal law.

Specifically, the chapter identifies three systemic challenges in criminal law exposed by the COVID-19 pandemic. First, Canada's criminal justice system as a whole was stress tested by the COVID-19 emergency, including through increases in certain types of criminal behaviour such as cyber scams and frauds, as well as the introduction of novel public health regulations. Investigators and prosecutors were confronted with both a broader array of enforcement obligations and an increase in distinct types of criminality. This combination created new and unforeseen challenges and increased the need for different types of professional expertise in the field. Second, Canada saw an increase in ideologically motivated extremism, particularly on the far right, and conspiracy-driven threats like QAnon (see Argentino and Amarasingam, this volume). This trend

directly implicates Canada's national security apparatus, including its enforcement wings such as the Royal Canadian Mounted Police (RCMP), local and provincial police, and prosecution services. Third, this shift in criminality and extremism was layered on top of a criminal justice and national security apparatus, showing signs of being stretched to its limits. Already antiquated in terms of their use of modern technology, Canadian courts and the criminal justice system found their capacity limited during the pandemic, forcing them to make swift judgments and resort to untested technology on the fly. In the end, police and prosecutors had to make hasty decisions based on emerging and sometimes shifting information about what crimes to prioritize for prosecution, whether prosecutions could meaningfully deter public health violations, and whether extremist threats were national security threats.

The result is an uncomfortable one: an already overtaxed system must respond to *increased* security threats while operating with a *reduced* capacity to manage and prosecute such serious threats. What steps Canada takes now to modernize its system, from the process of prioritizing enforcement matters in a planned and deliberate manner to the use of technology to assist justice system participants, will go a long way in determining the system's capacity to keep a handle on democratic and extremist threats, future emergency or not.

Problem 1: The COVID-19 Pandemic Seems to Have Resulted in a Shifting Criminal Offence Landscape

Criminality and criminal-justice-associated tasks stretched resources for government departments during the COVID-19 pandemic, including that of the Canadian Security Intelligence Service (CSIS) (Bell 2020; Davey, Hart, and Guerin 2020), local police (Statistics Canada 2021), the RCMP (Roberts 2020), and prosecutors. More broadly, new health and safety restrictions under provincial authorities and federal legislation like the *Quarantine Act* required the use of additional police, prosecution, and court resources that were already heavily taxed before the pandemic (Statistics Canada 2021; Johnson 2019). Offences such as online fraud (Deveau 2020), economic crime (McGee 2020), and cyber-related crime (Canadian Centre for Cyber Security 2020), saw a significant increase

in Canada (West 2020). However, Canada also saw a decrease in certain types of opportunistic crimes such as breaking and entering, robbery, and impaired driving; the most likely explanation for this decrease being that the implementation of social restrictions diminished the opportunities to commit such crimes (Statistics Canada 2021).

Rather than saying opportunistic crimes *decreased* overall, it appears more accurate to say that the types of opportunistic crimes *shifted* due to the social limitations in place due to the pandemic (Watkins 2020; Bowman and Gallupe 2020). As cities shut down, the trend moved away from traditional opportunistic crimes (such as petty subway thefts or home robberies) toward more complex scams and cybercrimes (as people spent more time working and living online) (*Canadian Security* 2020; Almazora 2021). This trend may also indicate a shift in the type of offender, from those with break-and-enter or pickpocketing skills, for example, to those with a more sophisticated technical capacity needed to engage in cyber frauds.

As Canada sees shifts in the types of opportunistic crimes and offenders, the skills needed to investigate and prosecute—and the placement of resources into the correct law enforcement teams (e.g., cyber teams versus street drug teams)—will also necessarily shift. In particular, fraud, cyber attacks, and other forms of technology-driven crimes require different knowledge and skills such as financial and technical literacy, not just to commit but also to investigate and prosecute. Given that such complex crimes are by their nature already relatively more difficult and resource-intensive to investigate and prosecute (Russel 2019), an increase in offences without a corresponding growth in state expertise and resources escalates a pre-existing systemic burden (Canadian Centre for Cyber Security 2020). Government officials would do well to monitor these trends and avenues so as to align human resourcing, hiring priorities, and skill development with the demands of prosecutions in a post-COVID-19 world.

We also see here the need to *deliberately* form policies around how to prioritize which criminal files will proceed to trial, including how and on what basis. For example, does one prioritize the prosecution of low-level *Quarantine Act* and drug offences to demonstrate statistical results (more prosecutions, better success rate), or fewer low-level frauds and extremism cases with more serious outcomes for individual victims? Prosecutors

answered this question during the pandemic under the fog of an emergency, with little time for deliberation. Although this may have been necessary at the time, it is not an ideal situation and is one that Canada can and should plan to rectify going forward. The pandemic served to exacerbate an already-occurring shift to technological and financial crimes; it has also provided the opportunity to re-evaluate current prosecution priorities—and surely offered some lessons on how to do so.

Problem 2: The Pandemic Coincided with, and Almost Certainly Increased, Various Forms of Extremist Activity

Layered atop the shifting criminality and enforcement landscape was a corollary increase in extremist activity, including criminal behaviour that implicates the national security community. The COVID-19 pandemic resulted in lost jobs (Statistics Canada 2021), restricted freedoms, and a decreased sense of autonomy for many individuals and businesses (Press 2020). These outcomes, coupled with foundational shifts in political and social climates, created ideal social conditions for right-wing (and other) extremist groups to gather support and further their strategic goals (Haig 2021).

Increasingly strict government regulation of day-to-day activities, together with restrictions on movement, trade, and supply chains, likely made it more difficult for extremist groups to meet or plan in person (Bell 2020). As a result, they refocused their efforts on online platforms (see Babb and Wilner, this volume). Similar to the increase in cybercrime, this extremist move online is neither unexpected nor new. Online platforms have been rife with extremist activities for decades (Conway 2006; Amarasingam 2015), but this shift to an online presence appears to have been sped up by the pandemic and its social and political fallout (*Al Jazeera* 2020; Bell 2020; Davey, Hart, and Guerin 2020). All currently available evidence suggests that an increase in far-right activity is occurring parallel to the pandemic. Seemingly, extremist groups (or at least certain groups) are taking advantage of uncertain times to try and spread their ideology (Argentino 2020). In sum, as the shift to a virtual way of living continues and more people find themselves online more often, extremist groups have also happened into a situation where society writ large may be

more cognitively receptive to their messages. Such groups are, as a result, capitalizing on the pandemic to spread their strategic goals (Bellemare 2020; UNSC CTED 2020; Amarasingam and Argentino 2020).

However, it would seem that attempts to prosecute these extremist and far-right groups have proven difficult (Quan 2020). For example, as of the time of writing, there have been only two far-right terrorism charges in Canada; the first following the murder of a woman in a Day Spa in Toronto by a youth allegedly motivated by the Incel movement, and the second following a vehicle attack in London, Ontario that killed four members of a Muslim family (Nesbitt 2021).

From the perspective of criminal justice, at least two things are necessary to build law enforcement capacity to tackle this extremism, including its online and social media variants. First, a deliberate plan for prioritizing criminal investigations and prosecutions, particularly how to balance public health or other emergency-specific actions with extremism and other serious crime. Second, a re-evaluation of Canada's criminal anti-terrorism framework, with a specific need to consider the definition of terrorist activity.

A strategic plan is needed for how public health violations and low-level criminality by extremist actors—particularly those whose actions overlap with the ideologies associated with the emergency at hand (such as the organizers of anti-mask rallies)—should be investigated and prosecuted. As the state cannot prosecute everyone who commits any crime, it must look at how and when it can meet the criminal law goal of deterrence associated with those most harmful to society and identify which crimes fall into this category.

For example, one might advocate for prosecuting all protesters violating criminal laws or public health orders. However, this strategy would likely draw unnecessary attention to relatively small protests or groups and amplify their messages. Moreover, police have learned over the years—particularly after the G20 Summit in Toronto—that tactics to enforce laws and make mass arrests, including so-called kettling, can backfire. Such efforts to prevent or prosecute a few isolated, relatively minor infractions can result in widespread violence or property damage (Maguire 2016; Perkel 2017). Finally, tackling public health violators has reverberating effects; if law enforcement diverts significant resources to enforcing such

measures, it becomes harder to counter complex cybercrime and the most dangerous, deliberate extremism or terrorism.

Thus, deliberate choices must be made, starting with politicians who allocate resources down to agency leaders who help set the agenda for deploying those resources. This exercise should not take place under the cloud of an emergency. Rather, Canada must take advantage of the lessons learned during the pandemic to better plan its enforcement going forward, both in terms of broader social and criminal trends (see problem 1, above) and with a view to providing an institutional bulwark against a repeat of these systemic deficiencies should another emergency arise. A review of government priorities and resources with the goal of internal reflection and improvement, coupled with a sustained effort to prioritize how and when police make arrests and where prosecutors expend resources, would thus be well-advised post-pandemic.

To be clear, deliberate prioritization of resources is not *only* about procedurally identifying trends in criminal behaviour and risks to society and its institutions; it is also about identifying which resources should be reallocated. The idea of “doing more with less”—too often the solution in large organizations and government bureaucracies—is not the solution here, or is at least far from the only solution. A significant source of re-allocation could come from moving a portion of Canada’s investigative and prosecutorial resources away from so-called administrative offences (e.g., bail violations) (Wade and Zhang 2013; Department of Justice 2017; Beattie, Solecki, and Morton-Bourgon 2013) and low-level drug activity. The Public Prosecution Service of Canada (PPSC) announced it was taking such steps during the COVID-19 pandemic (Tunney 2020).

Administrative offences alone consume a massive amount of court resources. A 2013 study found that these types of cases made up 25 per cent of those tried in criminal court in Canada, costing taxpayers an estimated \$807 million per year (Wade and Zhang 2013). These resources could instead go to prosecuting crimes that have a systemic impact, such as cyber scams that prey on vulnerable Canadians and extremist or foreign-influenced activities that seek to subvert not just the economy but public health, trust in institutions, and indeed the rule of law and public safety. *An Act to Amend the Criminal Code and Controlled Drugs and Substances Act*, introduced in the previous Parliament, offered an excellent example

of a step in the right direction. By removing mandatory minimums (particularly for some drug crimes), promoting earlier trial resolutions, and broadening the opportunity for conditional sentences, the Act, if reintroduced, could create procedural efficiencies, cost savings, and more targeted interventions—a winning trifecta by any measure (Bill C-22 2021).

Diverting law enforcement away from mental health checkups is another source of potential resource reallocation. There is already a good deal of evidence to suggest that police are not well-suited for this role (Canadian Mental Health Association 2016). Law enforcement agencies could instead direct these resources toward white-collar crimes, organized crime, and confronting extremist groups, all of which have a significant public safety impact during emergency and non-emergency times.

Similarly, tackling systemic racism is both a moral and security imperative, as has been laid (more) bare during the pandemic. Building trust and understanding across all communities makes law enforcement co-operation and assistance more robust while simultaneously decreasing the social discord we have seen during the pandemic. Put another way, there is a need for high-level thinking, deliberate prioritizing, and *strategic budgeting* to provide a bulwark against the overstretch of Canadian enforcement institutions in the years to come. For this to work, the long-recognized, low-hanging fruit should, at minimum, be addressed in short order.

Going forward, we have also identified a second, very different need: a re-evaluation (perhaps better said, a twenty-year review) of Canada's legal framework and priorities vis-à-vis terrorism. In particular, the lack of terrorism prosecutions targeting far-right groups, coupled with widespread social unrest over unfair and/or disproportionate targeting of specific communities, has made plain a long-standing and uncomfortable dichotomy in the application of Canada's terrorism laws (Nesbitt 2021, 2019). On the one hand, Canada would seem to need to “extend” its criminal application of terrorism laws to ensure that it can and does capture the relevant actions of far-right groups or new and emerging terrorist threats (Nesbitt 2021). On the other hand, the scope of Canada's terrorism regime is already under fire for targeting almost exclusively Islamist-inspired extremism, while the Black Lives Matter movement and Indigenous protests have shone a light on so many of the dangers associated with the over-policing

of specific communities. This reality has served to reinforce the need for highly circumscribed terrorism offences that are not too easily extended to new political and social groups and ideologies. This dichotomy is not unbridgeable, but it does create a genuine conundrum: How does Canada coherently define terrorist activity such that it can “expand” in a timely fashion to apply to new and emerging threats regardless of group affiliation, ideological, political, or religious motivation, and simultaneously remain properly circumscribed such that terrorism offences do not become all-encompassing political crimes attached to groups in the political or institutional disfavour of the day?

To thread this fine needle, it is beyond time to review the past twenty years of terrorism prosecutions in Canada. One clear place to start is with the definition of terrorist activity, and particularly “ideology,” in the *Criminal Code* (*Criminal Code*, s. 83.01(b)(i)(B)). While Canada does not define “terrorism” in the *Criminal Code*, it does define “terrorist activity,” which includes the nebulous requirement surrounding the need for a person or group to act with a “political” or “ideological” or “religious” motive. However, Parliament failed to define the terms “political” and “ideological” during the debates leading to the passing of Canada’s terrorism offences in 2001. Not surprisingly, then, no further definition was given to the terms upon their enactment in the *Criminal Code*. Moreover, prosecutors have yet to argue for a coherent definition of either term at trial or offer policy explanations for how these terms will be treated, for example, in the PPSC Deskbook (2020). Finally, although proving political, religious, or ideological motivation is an element of various terrorism offences that must be proven in court, courts themselves have yet to define the terms in any judgment. Unfortunately, the definitions offered outside the legal system also look to be of little assistance. There appear to be as many different definitions of ideology as there are those trying to define it.

When Ministers of Justice then offer confusing and arguably incorrect public explanations about the scope of Canada’s terrorism regime, and particularly which ideologies do or do not “count” (Mehler Paperny 2015¹), this point of confusion becomes stark. When does a new ideology—for example QAnon—become an ideology such that if the other elements of terrorist activity definition are met, terrorism charges can be laid? Without a clear definition of what constitutes an ideology, or policy guidelines

around how police and prosecutors will determine what ideologies and political groups might, in theory, commit terrorist activity, it seems inevitable that as new groups continue to arise, Canadian law enforcement will be slow to react to the (possible) terrorism threat. This hesitation may partially explain the first element of the dichotomy discussed above. In other words, it might explain why, despite years of far-right threats and numerous opportunities to do so, there are no known terrorism peace bonds or criminal terrorism convictions against far-right adherents, while examples of equivalent measures against Islamist extremism abound.

However, we should not extend this line of reasoning too far, as the inverse concern (the other side of the above dichotomy) is also well placed. Namely, if the definition of ideology—and thus the plausible application of terrorism offences—is too broad, it could easily capture new ideologies, groups, or movements that should not, in a democratic country, amount to terrorism. For example, should a protester associated with Black Lives Matter who commits a serious violent offence with the intent to coerce the government to recognize the movement (these being the other elements necessary to prove terrorist activity) bring the whole protest group into the headlights of Canada’s criminal terrorism regime? There is no *legal* assurance that protest groups do not become terrorist entities the moment one person, being part of that political movement, goes criminally (and violently) rogue.

In terms of re-evaluating and defining the role of ideology in law or policy, we should start by asking what exactly the “ideological” motive requirement adds to the definition of terrorist activity that the requirement for a political or religious motive does not capture? The Crown has to prove three things to prove terrorist activity: (1) the political, religious, or ideological motive behind the crime (the “motive clause”); (2) that the offence was committed “in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security ... or compelling a government or a domestic or an international organization to do or to refrain from doing any act” (the “purpose clause”); and (3) that the plan or action cause death or serious bodily violence, endanger life or cause a serious risk to health and safety, cause substantial property damage, etc. (the “consequence clause”) (*Criminal Code*, s. 83.01(b)(i)(B); Nesbitt and Hagg 2019, 608–13). So, the question posed herein is: When

is a motive “ideological” but not “political” or “religious”? It is tough to conceive of a limited definition of ideology that would not already neatly fall into the political or the religious. At the same time, applying a broad conception of ideology that is neither political nor religious (a personal idea or goal driving a crime, for example) almost certainly takes terrorism into the territory of the mundane or the everyday. Put another way, if the act of serious violence is neither politically nor religiously motivated, it is hard to imagine why it should constitute terrorism and thus why the reference to ideology is needed at all.

The above question is not merely theoretical or posed to suggest a harmless redundancy between ideology and political/religious motivations; for, as noted above, at the investigative stage the ideological requirement is arguably causing confusion (including for ministers of justice) when new extremist groups arise and the state must come to terms with their ideologies (see the confusion around the decisions not to charge Minassian, Bourque, Bissonnette, Baine, Souvannarath, as but some examples) (Nesbitt 2021). If this analysis is correct, then the term “ideology” results in delays in moving quickly against new and dangerous extremist movements while offering little to limit the scope of terrorism or help explain to the Canadian public why some acts count as terrorism and others do not. If this is true, it is time for a high-level legislative and policy review of this proposition.

A further, perhaps more fundamental question flows from the above analysis: If one proves an intent to intimidate the public or compel a government to take action (the purpose clause), as well as the consequence clause, then what role is played by the motive clause at all, whether it be ideological, political, or religious?

The reality is that Canada is twenty years into its experience with its criminal terrorism regime, and some cracks are showing. Canada has been (arguably) too slow to respond to emerging extremist threats, too muddled in its public explanations of what is and is not terrorism in Canada, and has done too little to assuage concerns from minority groups that they will not be disproportionately targeted. A re-evaluation of Canada’s criminal terrorism regime should be done deliberately and in the abstract rather than through reactionary incrementalism. Given the increase in various forms of extremism that coincided with the pandemic, Canada needs to

engage in this discussion urgently before the next emergency brings with it a new extremist threat.

Problem 3: Increased and New Forms of Criminality (Problem 1) and Extremism (Problem 2) Layered Over an Already Overstretched Criminal Justice System

The closing of courts due to the COVID-19 pandemic placed a significant burden on an already strained system. Canadian courts have yet to transition to a fully virtual method of record-keeping, complicating the sudden shift to virtual trials (Puddister and Small 2020). There are concerns that this closure will impact the justice system for years to come, even doubling the amount of time taken to process an accused (Graveland 2020). Currently, the nationwide number of backlogged cases created by the pandemic can only be estimated; however, at the time of writing, provinces such as Ontario are believed to have about thirty thousand delayed cases (Stefanovich 2020).

One of the main questions that has yet to be answered is whether the Supreme Court of Canada's landmark 2016 decision in *R v Jordan*, which sets time limits on bringing a case to trial, will continue to apply to cases delayed during this or a subsequent emergency (*R v Jordan* 2016; Brady, Rosenberg, and Courtis 2016). Justice Minister David Lametti expressed complete confidence in the system's ability to deal with these cases. The *Jordan* principle already provides for "exceptional circumstances," which allow courts (and the state) to extend the so-called *Jordan* timelines beyond the eighteen months allowed for provincial court trials and thirty months to finish in superior court (Connolly 2020). Nevertheless, Minister Lametti proposed the introduction of new legislation to provide a guideline for what constitutes "exceptional circumstances." There is, however, concern that a legislative interpretation may capture cases down the road never intended to be encompassed by this legislation (Stefanovich 2020). Without further guidance on how exactly the pandemic will be interpreted as an exceptional circumstance—or better yet, how we should view exceptional circumstances at all—the courts could begin to throw out hundreds of cases for violating the *Jordan* principle (Azpiri and Daya 2020).

More broadly, any emergency—the COVID-19 pandemic included—brings with it a risk of perpetuating the cycle of backlogged cases (Statistics Canada 2021b) in the Canadian court system (Senate Committee on Legal and Constitutional Affairs 2016). There were already eighteen judicial vacancies across Ontario courts at the beginning of the pandemic (Smith 2020). Similar shortages exist across the nation. Coupled with the economic blow from the pandemic, the courts are not equipped to deal with the influx of cases expected once the dust of COVID-19 settles.

Engaging with *Jordan* timelines and system delays only in response to the pandemic emergency is like bailing water out of a canoe when one has the tools to plug the leak. *Jordan* itself was a judicial response to an overstretched criminal justice system (*R v Jordan* 2016, para 3) that saw trials being delayed by years due to lack of resources, including the timely appointment of judges, physical court resources (buildings, etc.), staff, the availability of both federal and provincial prosecutors, and other factors (Smith 2020). In *Jordan*, the court sought to address the overall complacency that had developed in the criminal justice system, including “unnecessary procedures and adjournments, inefficient practices, and inadequate institutional resources [that] are accepted as the norm and give rise to ever-increasing delay” (*R v Jordan* 2016, para 40). The case dates from 2016, but there have been few meaningful legislative responses in the years since. The idea driving the *Jordan* decision was always to force Parliament to do its job and take a broad look at the funding, workings, and efficacy of the criminal justice system and to make the necessary changes. Instead, the courts have been further strained post-*Jordan*. Not only are we witnessing system and trial delays (Azpiri and Daya 2020), but some courts in Canada still cannot even access the tools necessary to hold remote court appearances to perform basic functions. As the pandemic exacerbates these systemic problems, it is a reminder that politicians need to act now and not count on the Supreme Court to “legislate” by judgment when Parliament fails to take action (*R v Jordan* 2016).

Parliamentary and bureaucratic responses should not, however, be viewed simply as system upgrades. Creating efficiencies now will provide a *marge de manoeuvre* within the system to allow the criminal justice system to better counter extremism in the future. Additionally, parliamentary responses could create or reinforce innovations necessary to make all

prosecutions more efficient and effective, terrorism cases perhaps most of all. A commendable example of this is Bill C-23, which seeks to formally implement many of the technological and efficiency upgrades introduced in criminal law practice during the pandemic (Bill C-23 2020).

Still, the government response must be careful to consider the criminal justice system as a whole rather than merely treat the courts as surrogates for the entire system—and thus the sole object of reforms. For example, during the pandemic, prosecutors accessed files from home that required security that remote-access systems through government and courts do not necessarily allow. In this way, federal prosecutors are similarly placed and require the same technological support as many other government employees who handle sensitive information. Simply put, upgrades should be prioritized not as a matter of preference or convenience but of security.

Finally, prosecutors must also contend with external systems that feed into the justice system. Such feeder systems come from institutions on both the top and bottom of the prosecution sandwich, including provincial courts and associated individuals on the top half and investigative agencies like the RCMP and provincial and local police forces on the bottom half. Some prosecution offices and evidentiary disclosure processes have not moved to an electronic filing system, slowing the process down before files ever get to court.

It is beyond time for the above systems and procedures to move from antiquated to innovative. The ultimate success of Canada's criminal justice response to extremism depends on such innovation, and the federal government is best placed to recognize the needs of federal prosecutors and the system as a whole. Adopting more innovative and secure technology will have up-front costs but will reap downstream savings. It will also significantly improve access to justice for the very public this system is meant to serve.

Conclusions

We now have preliminary evidence that intuitively aligns with what one might assume will happen during a global pandemic: new threat vectors emerge while old ones morph in scope, capacity, and application; new criminal actors take advantage of the situation while other forms of

(largely opportunistic) crime fade; and an already strained system will be stress tested under the weight of new and shifting demands and priorities coupled with greater economic constraints. Though the result of the story told in this chapter is not surprising, it is stark. There is every reason to imagine that government agencies must prepare themselves for a repeat performance during the next emergency, perhaps with an even more strained economy. As a result, the time to act is now.

Of course, the question is how should we prepare? The problems seem insurmountable, ever-shifting, and resource-based at a time when resources are already stretched to sustain the economy and people's livelihoods. Although the specifics will have to be negotiated in the years to come, we offer three recommendations.

First, a deliberate strategy must be in place to prioritize criminal investigations and prosecutions. Such a strategy will allow decisions to be made in a clear-headed, prospective fashion, and not under the fog of an emergency. Deliberate prioritization should include critical thinking about emerging threats and training for the investigation and prosecution thereof, which is sure to focus on online criminality, financial crimes, fraud, and the likely spread of mis- and disinformation. Crime itself tends to be opportunistic (Clark 1995; Wilcox and Cullen 2018), and as we move increasingly online, an increase in such crimes is inevitable (Statistics Canada 2019).

Second, Canada needs to think deeply about extremism and terrorism in terms of scope, application, and deterrence, particularly during a pandemic or subsequent emergency. This includes identifying law enforcement priorities and budgeting accordingly. Prosecutorial prioritization is also needed that deliberately considers when public health violations are enforced compared with other criminal laws, and how extremist fallout is best prioritized and targeted during both emergency and non-emergency times. Similarly, it is time to revisit the *Criminal Code's* terrorism regime, particularly the definition of terrorist activity. After twenty years of largely successful prosecutions, a look back at what has gone well and what has caused problems is in order. In this regard, a close look at the role of the motive requirement of "terrorist activity" is necessary.

Third and finally, during the pandemic, the effects of a lack of physical, technological, and monetary investment in the justice system became

more pronounced. Such systemic challenges must be viewed, in part, through the lens of security. If prosecutors do not have safe and accessible methods to access and share files from home, if courts are not prepared for the electronic future (or present), and if system constraints go unaddressed, then surges in the system during times of emergency may lead to blackouts. It is time for Parliament to take steps now to address *Jordan* delays and innovate and upgrade the system from investigations to prosecutions to courts. The pandemic has shown that repairing the series of small cracks recognized half a decade ago in *Jordan* must be treated as an integral aspect of maintaining Canada's security edifice.

NOTE

- 1 Mehler Paperny describes a 2015 announcement by then Justice Minister Peter MacKay that a bomb plot of a mall in Halifax was not terrorism because it lacked "cultural motivation," which is not a requirement of any terrorism offence in Canada.

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