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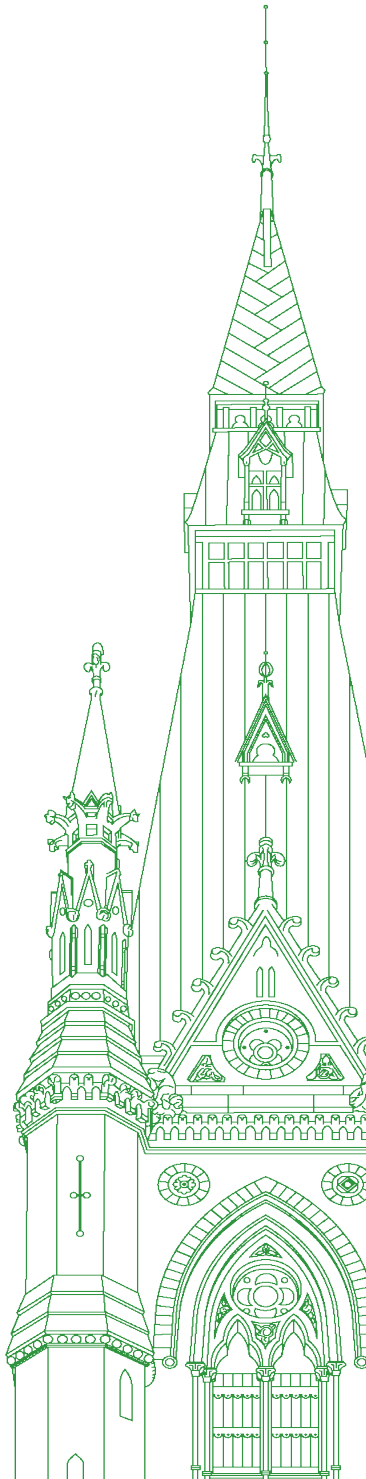
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Chair: John Brassard

Standing Committee on Access to Information, Privacy and Ethics

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● (1630)

[*English*]

The Chair (John Brassard (Barrie South—Innisfil, CPC)): I call the meeting to order.

Welcome to meeting number 57 of the House of Commons Standing Committee on Access to Information, Privacy and Ethics.

Pursuant to Standing Order 108(3)(h) and the motion adopted by the committee on Wednesday, December 10, 2025, almost a year ago, the committee is commencing its study today on the use of artificial intelligence in algorithmic pricing.

I would like to welcome our witnesses for the first hour.

From the Canadian Anti-Monopoly Project, we have Mr. Keldon Bester, who is the executive director. Welcome.

From the Canadian SHIELD Institute for public policy, we have Ms. Emily Osborne, policy research associate.

Mr. Bester, you have up to five minutes to address the committee. Go ahead.

Keldon Bester (Executive Director, Canadian Anti-Monopoly Project): Thank you, Chair and thank you to the members of the committee for inviting me to speak with you today.

My name is Keldon Bester, and I'm the executive director of the Canadian Anti-Monopoly Project. We're a think tank focused on building an economy where markets work for the people who depend on them. I commend the committee for undertaking this study, especially now.

Whatever name you use, algorithmic pricing, surveillance pricing or personalized pricing, the ability for a company to set a different price for each customer and a different wage for each worker is already here. Exactly when Canadians are subject to algorithmic pricing is often unclear, and that's part of the problem. As artificial intelligence capabilities make these pricing strategies cheaper and easier to apply, we should expect algorithmic pricing to become more widespread.

When algorithmic pricing does come to light, the results can often be quite shocking. Research out of the U.S. last year found that Instacart was charging some customers up to 23% more than other customers for the same goods in the same store purchased at the same time.

With results like these, it's no surprise that Canadians are deeply skeptical of algorithmic pricing. Surveys show that when Canadians learn companies can change prices based on demand, browsing behaviour, customer profiles or personal data, they react quite strongly in the negative direction. Over half of Canadians think it's unfair, and the same share believes the practice should be banned outright. Another 30% believe it should be allowed, but only if it's more strictly regulated. That's eight out of 10 Canadians who are eager for some sort of action on algorithmic pricing.

Over the course of this study, I think you're going to hear some arguments for why Canadians might be misguided and why there's nothing to worry about when it comes to algorithmic pricing. Companies are going to claim that they don't use algorithmic pricing and have no plans to do so, but a public commitment is not a contract, and as these tools get cheaper and easier to apply, more companies are going to be tempted to try them out.

Interim results from a study from the U.S. Federal Trade Commission found that companies offering algorithmic pricing solutions already had clients in a wide range of markets, including grocery stores, clothing stores, hardware stores and more. The Competition Bureau in Canada has found that at least 60 companies offer algorithmic pricing solutions to clients in this country.

Companies will also claim that these tools will only be used to offer customers, especially lower-income customers, lower prices. However, the end point of first-degree price discrimination, which is the economist's term for algorithmic pricing, is not to offer the lowest price. It is instead to charge each customer the most they are willing to pay, whatever their circumstance, and maximize the value captured by the company.

Finally, companies will claim that prohibitions on algorithmic pricing would stop them from offering familiar discounts like matinee pricing for theatre tickets or senior and student discounts. Here, the contrast between algorithmic pricing and other forms of discount pricing is important. Our concern is with the opaque customization of prices for individual consumers or groups of consumers based on personal data. Canada can learn from laws introduced elsewhere to stop practices that Canadians recoil from without risking the discounts they value.

Through this study, the committee can better understand the prevalence of algorithmic pricing in the Canadian economy and respond to Canadians' desire for action in their economic interest. In conducting this study, we suggest you consider three things. First, look beyond the use of artificial intelligence in algorithmic pricing and consider the practice itself, no matter the technology used to enable it. Also, include the setting of wages in your definition of algorithmic pricing, another way in which firms can extend control not just over consumers, but over workers as well. Finally, we encourage you to consider how updates to federal private sector privacy law can prevent the application of algorithmic pricing and the data collection that feeds the practice.

Canadians are right to distrust algorithmic pricing. It represents an erosion of the fair and open pricing on which competition is based. In studying the topic, the committee can play an important role in ensuring that when companies offer Canadians a price, they're always getting a fair deal.

Thank you for your time. I look forward to your questions.

● (1635)

The Chair: Thank you, Mr. Bester.

Ms. Osborne, I understand that this is your first time before a parliamentary committee. Welcome.

You have up to five minutes to address the committee. Go ahead, please.

Emily Osborne (Policy Research Associate, The Canadian Shield Institute for Public Policy): Thank you, Mr. Chair.

I am Emily Osborne, a policy researcher at The Canadian Shield Institute, where we have been studying algorithmic pricing for more than a year.

The adoption of AI and advanced algorithms has turned pricing into an exact science for firms, one by which consumers are constantly subject to pricing experiments they do not even realize they are participating in. Prices for everyday goods can fluctuate between different store locations, according to different weather conditions, or even between in-person and online shopping. Most concerningly, they can also fluctuate according to what a firm knows about you and what they infer you are willing to pay. We prefer to call this type of calibration surveillance pricing. No other term better captures the reality of what is happening.

This committee will hear from stakeholders who will insist that this does not occur, or that it is a form of low-stakes personalization that benefits consumers, but surveillance pricing does occur. Ultimately, it only benefits firms. The research and patents prove it, as do the software companies advertising pricing optimization as a service.

According to research by Dr. Lindsay Owens, who recently published a best-selling book on surveillance pricing, Walmart has patented technology that would allow it to scan what a consumer places in their shopping basket at a physical store in order to charge different consumers different prices for the same item. Walmart itself provides an example of how this could be applied. If a consumer puts a can of tinned tuna into their shopping basket, that information could then be used to alter the price of the mayonnaise a few aisles over. What is this if not surveillance? In fact, it is the perfect example of how the surveillance that we thought was once confined to the online world, where you can be followed across every move you make, is increasingly entering physical spaces.

The ability to price discriminate by firms is not new. What is new is the sheer amount of personal data that is now available for them to use to set prices, while advancements in AI and machine learning have supercharged their ability to analyze it at an unprecedented scale. In most cases, surveillance pricing is a black box for consumers. A consumer does not know when they are seeing a different price from others, or why. When prices are so volatile, the ability to comparison shop and budget becomes limited.

Manitoba has taken an important step in addressing surveillance pricing through Bill 49. For even longer, Quebec has had a provision on profiling in its privacy law that would ostensibly apply to the practice. It is encouraging to see movement on this at the federal level, but should it pass, the protections promised by Bill C-36 are unlikely to be in place before 2028. From what we have heard so far, we are concerned that enough exceptions and loopholes will be made to allow surveillance pricing to continue with simply a few more boxes for retailers to tick.

While the U.S. is ahead of us in regulating surveillance pricing, many of the bills that have passed or that have been proposed make broad exceptions for loyalty programs. This leaves the door open to massive amounts of surveillance. We must be sure not to follow this example.

Agentic commerce will add another layer of obscurity in pricing as shopping is increasingly outsourced to AI agents. We have already seen that Google's AI overview recommends products that have on average 22% higher prices than they do when using a regular search.

While we tend to focus on the use of algorithms for pricing consumer goods, we urge the committee to also consider the use of data and algorithms to set rental prices and wages. Otherwise, we risk leaving these equally exploitative practices out of our attempts to regulate. That is why we need to address surveillance pricing and all related practices at the root of the issue—namely, the invasive collection of personal information or of behavioural data to rig markets against us, with rental and labour markets included. Simply requiring firms to tell us in the fine print when they are engaging in these practices is not enough. We need to be saying point-blank that this is not an appropriate use of our information.

At the Canadian Shield Institute, we are fond of saying that governance is the foundation of digital sovereignty. If we are unwilling to simply accept data-driven business practices, such as algorithmic pricing, that have been pioneered by global technology giants, then we must be prepared to assert governance over how Canadians are experiencing the digital realm.

Thank you very much. I look forward to taking your questions.

The Chair: Thank you, Ms. Osborne.

Selfishly, in this study I'm hoping to find out why I was being asked to pay so much for Backstreet Boys tickets.

Voices: Oh, oh!

The Chair: Hopefully, one of you will have the answer to that.

We will start our questioning now.

I encourage you to put your earbuds in, because some of the questions will be coming in French. I will also ask you to wait until the interpretation is over before you provide your response. I will give you a bit more time in that circumstance.

We'll start our first six-minute round with Mr. Hardy.

[*Translation*]

Mr. Hardy, you have the floor.

Gabriel Hardy (Montmorency—Charlevoix, CPC): Thank you, Mr. Chair.

My thanks to the witnesses for joining us today. In this first round, I will be speaking French.

People are listening to us. We are talking about something new. We know how traditional marketing works. If I visit a website, buy something, and provide my email address, for example, I can expect to receive another email in a few weeks inviting me to buy something else. I may be told that, if I visit the site again, I may be given a coupon for a small discount. I feel that the public is used to that.

Is that algorithmic pricing, or is it how companies traditionally work to keep regular customers?

Does it meet the definition of algorithmic pricing?

● (1640)

The Chair: You have to put the question to a specific witness, because there are two of them.

Gabriel Hardy: Fair enough. The question is for Mr. Bester.

[*English*]

Keldon Bester: It's a good question.

There are a couple of key points there. One is the affirmative provision of your information. You said, “I'm providing my email; feel free to reach out to me.” Obviously, that's not quite the case, but the ability to provide a discount is not algorithmically priced on its own. The question is, what went into that offer you were sent? While you might have provided your email actively and in an affirmative manner, that firm could have purchased a wide variety of data about you and your customer profile. What takes that offer from just a regular discount to algorithmic pricing is what's going on behind it and what's driving that. A key issue is that it's opaque at the moment.

[*Translation*]

Gabriel Hardy: That is actually where I want you to go. I feel that there are things that the people listening to us find normal. They expect to receive an email after visiting a site, and things like that. However, I feel that the problem you mention is what people do not realize at the moment. They may give the information voluntarily, but companies are beginning to assemble that information, so the price of the same item may not be the same for everyone visiting the site. At that point, it becomes a problem.

Previously, the price of a product was fixed and, over time, it could be worth less because of its age. Also, customers who return frequently might get discounts, as an example. But you are basically telling me that the starting price is not fixed and that, if companies find out that I earn such-and-such a salary, or if I visit their site frequently, or if I visit the sites of companies that sell more expensive products, they may tell me that the same item is going to cost me 25% more than someone else visiting the same site at the same time just because they do not earn as much or they visit the sites of companies selling cheaper products.

Is that the situation?

[*English*]

Keldon Bester: Exactly. There are three key points there.

First of all, we're in an environment now where even if one firm isn't collecting information on you from A to B, they have access to a phenomenal amount of data that can basically infer your identity and many of your characteristics. The first one is that even if a small amount of data is collected on an A-to-B basis, we're swimming in an extremely detailed picture of what you look like to a business.

The second piece is the idea that you don't know what's being offered elsewhere. Increasingly, we're getting further away from an idea of understanding what a base price is, off of which we can say that this discount or this deal is good. We really don't know what offers are being made to other customers who have a different profile from us.

The core of that is the idea of what we are entitled to as a consumer. What do I need to know as a shopper versus what is being balanced against me? Increasingly, that tilts against the consumer.

[*Translation*]

Gabriel Hardy: I am trying to understand. Being online and providing information is one thing. But, if I go into a restaurant or a grocery store for something to eat, can I be profiled on the basis of my appearance or the car I have parked outside? Is that where we are headed? Will my steak cost me more than the next person is paying?

[*English*]

Keldon Bester: The key that you're hitting on there is that if we don't set guardrails, it will continue to expand and creep into areas that we are less and less comfortable with, until we find ourselves awash in this practice. Today, we say there are certain practices or areas that we think are okay—it's only creepy or it only makes me slightly uncomfortable—and other areas where Canadians' backs are clearly up.

An opportunity with this study, and for legislation in general, is to set down guardrails. It's to say that this is what we consider to be acceptable and this is where it's not acceptable. Allow companies to work around that, as opposed to what you're accurately describing, which is just a slow march of everything into wherever we allow it to occur.

● (1645)

[*Translation*]

Gabriel Hardy: Conventional wisdom is that competition makes prices go down. At the moment, everything is very expensive. We are hoping that prices go down and that there are no monopolies. However, with that kind of system, it would no longer work. A company could compete with another, even one next door, by specifically targeting each individual. People would not even be able to compare prices because those prices would depend on what they earn, what they look like, what kind of car they drive, and the sites they visit.

Clearly, Canadians and Quebeckers need to know what is coming. That's the point of this discussion, as I understand it.

The Chair: You just have ten seconds left.

[*English*]

If you can, provide a very quick answer to that.

I assume it's for Mr. Bester. Go ahead.

Keldon Bester: Fair and open pricing is key to competition. Monopolies exacerbate the problems we have with algorithmic pricing, certainly.

The Chair: Thank you, Mr. Hardy.

Members, I would just remind you to direct your question to the individual you'd like to respond.

Ms. Osborne, we'll get to you real soon; I promise.

Ms. Church, go ahead.

Leslie Church (Toronto—St. Paul's, Lib.): Thank you, Mr. Chair.

Mr. Bester and Ms. Osborne, thank you for being here today at our first meeting on a very important study that I think is very top of mind for most Canadians in terms of consumer habits today.

I think what the Canadian consumer is looking for is the ability to be in a market that is fair, a market that is competitive and ultimately a market that is affordable and respectful of the consumer.

This is for both of you. The concept of surveillance pricing is very new. I think it is opaque. It's a black box. You've both mentioned that. What are the digital touchpoints that companies are using today to gather data?

The Chair: We'll start with you, Ms. Osborne.

Emily Osborne: It can be any type of data. It can be data that they're collecting about you themselves—for example, your IP address, what type of device you're using, your postal code or any information that you've voluntarily handed over, willingly or not, while you've been shopping or transacting with a firm. They can also use data about your behaviour. How your mouse is moving on a web page might give them indications about how desperate you are or how frantically you're shopping.

Some research from the FTC, which Keldon mentioned in his remarks, suggests that they might even be able to purchase data from data brokers, which opens the door to a whole lot more sensitive data, including your financial data. The implications there are much more concerning.

Leslie Church: Mr. Bester, can you even explain for us what a data broker is? What is their role?

Keldon Bester: It's a good question. A data broker is a company whose business is the aggregation and repackaging of data about consumers, whether as individuals or segments, for the purpose of highly specific targeting of online advertising or, increasingly, as we're discussing today, the setting of prices.

The way I think about it—I'm taking someone else's turn, so I apologize—is that as we move through the world, as we use devices, online and even off-line, we leave exhaust in the form of data on location or, as Emily put it, on how frantically we're using a website. The role of a data broker is to aggregate that data and sell it into a marketing product, functionally.

Leslie Church: Just before this meeting, I took a look at my search profile and the different data points that are collected online. Most people would understand that some of these platforms or online companies have an idea of gender or age bracket. They now have a bracket for your household income. What I found surprising was the level of data points they amassed—the search history, the watch history, where I am when I use the Internet or access my phone in a kind of geotargeting function, payments info and wallets.

Are you saying that companies are using or have access to use this data now, through a data broker, to then create an identity for me in order to serve a price that's unique to me?

● (1650)

Keldon Bester: I think there could be a variety of pathways. It could be first party data collected by the platform. It could be purchased through a data broker or through a variety of other ways.

The core issue here is that over the past 20 years or so, we've created an environment where, to use whatever ocean metaphor I was using before, we are awash. We have a very detailed profile of ourselves available to companies. That on its own may be cause for concern, but we transcend into another area when we say that this will now become the foundation for pricing decisions that will affect our economic well-being. Whatever the path, first party or third party, these profiles are available. There are companies packaging them not just as data brokers but as those that offer algorithmic pricing solutions to turn them into pricing outcomes.

Leslie Church: Do you think we need to be distinguishing between something like surge pricing, which I think a lot of Canadians would be familiar with—in an Uber or buying an airline ticket—and a more predatory practice or surveillance pricing? Do you distinguish between those things?

Keldon Bester: Yes. I mean, it depends on your definition of surge pricing, but let's take the pure example of that, which is the idea that a price can fluctuate based on the supply and demand for a product. That can occur without personal information and the level of granularity we're discussing right now, but what is often mixed with that, which we have no idea of, is to say that demand and supply are a factor, but are they the only factors in that surge? I think increasingly the answer is no.

Leslie Church: Ms. Osborne, you mentioned Walmart and the existence of patents on this. Can you talk a bit more about that?

Emily Osborne: Yes. This is all based on research by Dr. Lindsay Owens, who published a really fantastic book on price gouging called *Gouged*. She has done really extensive research on Walmart's patents. They have some patents that can look at your vehicle and create a profile based on your vehicle. They have patents that claim to be able to predict a consumer's daily routine. They have all sorts of patents that have very concerning implications. Their having a patent doesn't necessarily mean that they are engaging in the practice, but it does raise alarm bells.

The Chair: Thank you.

Monsieur Thériault is next. Please make sure you have your earbuds in, and wait for the interpretation to be completed.

[*Translation*]

Mr. Thériault, the floor is yours for six minutes.

Luc Thériault (Montcalm, BQ): Thank you, Mr. Chair.

Welcome, Mr. Bester and Ms. Osborne.

I will turn to Mr. Bester first.

In a brief on algorithmic pricing that your organization presented to the Competition Bureau in 2025, you stated that, although algorithms are presented as a way to make markets more responsive, they can also coordinate prices, increase profits and limit genuine competition.

Can you be specific about that statement and provide some examples of the way in which this form of pricing can limit competition?

[*English*]

Keldon Bester: It's a good question, and it brings in a whole other dimension that I left out of my opening statement. It is the concept of algorithmic price-fixing, which is what we're concerned about when not just one company is engaging in algorithmic pricing, but multiple companies in the same market are, and are potentially even using the same software or system to conduct their pricing. The worry here is a very old worry that our competition law was designed to prevent, which is collusion in the market. The twist on it is that the collusion may actually be facilitated—even tacitly, without the knowledge of the companies—by software that is optimizing prices, because monopolies and cartels are good business, and it is entirely possible for prices to trend to an oligopoly outcome facilitated by algorithmic pricing.

There's one example that I'd be happy to send over. In Germany, they tested gas stations that were using the same algorithmic pricing software, and when there was a duopoly present, they found elevated prices that were not explained by any other demand or supply factors. That's a bit what we're worried about when we talk about algorithmic price-fixing, as opposed to just algorithmic pricing in general.

● (1655)

[*Translation*]

Luc Thériault: So we have to amend the Competition Act in order to combat algorithmic collusion. If so, which amendments would you propose?

[*English*]

Keldon Bester: This is actually an open question. We had two rounds of amendments in 2023 and 2024. It's possible that those amendments can speak to algorithmic price-fixing.

What we need is a good test case for the Competition Bureau or a private party to bring. The Competition Bureau was investigating a real estate rental-pricing company. The outcome of that investigation is that they said they were concerned with some of the conduct, but it was not widespread enough to have an effect on competition. What we're waiting for now is a good competition case to test whether our law is up to the task.

[*Translation*]

Luc Thériault: Thank you.

Ms. Osborne, your managing director has stated publicly that Bill C-36 does not prohibit surveillance pricing. Instead, it seems to strengthen the appropriate purpose criterion, allowing regulatory bodies to determine at which point the use of personal information in price setting becomes inappropriate.

Do you agree with that interpretation of Bill C-36?

[*English*]

Emily Osborne: I think, and we at Shield think, that Bill C-36 makes some important strides when it comes to privacy protection, but it contains no explicit reference to surveillance pricing and nothing that seems like it would clearly apply to the practice.

There's an enhanced test of appropriate purpose for the use of personal information. This includes criteria for whether an individual's loss of privacy is proportional to the benefits, which to us seems to hand firms a carve-out that they might be able to use to continue targeting consumers via subscription-based programs like loyalty programs. We have also heard that there will be further rules set up around the practice established by the digital safety commission.

We'll have to see when we see those.

[*Translation*]

Luc Thériault: Is there a need to add specific provisions on algorithmic pricing to the acts that protect private information, among others? If so, which ones?

[*English*]

Emily Osborne: Ultimately, we think the best way to address surveillance pricing is through privacy law. Whether that needs to be explicitly mentioned in privacy law or established by regulations around it is definitely an open question.

We think that going through the angle of appropriate purposes makes sense. We think there is definitely an opportunity to say that using personal information to set prices is not an appropriate use of our information.

[*Translation*]

Luc Thériault: Thank you.

The Chair: Thank you, Mr. Thériault.

I just want to let you know that that the Privacy Commissioner will come before us to testify on November 23. He is confirmed for that session.

[*English*]

That ends our first round. We're going to our second round.

Mr. Gunn, we're going to start with you for five minutes. Go ahead.

Aaron Gunn (North Island—Powell River, CPC): That's perfect. Thank you, Chair.

Mr. Bester, talking about price discrimination is bringing me back to my days in business school. Obviously, this is an old and well-known business or economic concept. From my understanding, it's a strategy to maximize earnings by charging different groups different prices based on their willingness to pay. I think you already mentioned seniors' discounts, which I remember being the most prominent one, or possibly the use of coupons. It's about charging significantly more for small changes in branding or marketing.

Do you view algorithmic pricing as separate from that? What is the issue for which you believe there is a problem that needs to be regulated, as opposed to just an extension of a practice that's been going on forever?

Keldon Bester: Thank you for the question. It's a good one. As we move from third-, second- and first-degree price discrimination, at what point do we have a policy issue as opposed to just a regular business practice?

The closer we get to true first-degree discrimination, we have to consider that there may be policy implications here, under the economic theory saying that the purpose of that is to transfer consumer surplus to the producer as efficiently as possible. We have a distributional issue. If you have an issue with that on its own, that can be a separate category. The layer that algorithmic pricing adds to it is opacity, the individual nature of it and the inability, as a result, to allow the market to function normally.

We have two issues here. The first is that we are moving closer and closer to first-degree price discrimination, which has a distributional consideration. We're also doing it in a way that continues to pull away agency from consumers and shift the balance towards the companies that they interact with.

● (1700)

Aaron Gunn: I'll throw this next one to you, Ms. Osborne.

Feel free to jump in afterwards, Mr. Bester.

Just so I have a clear understanding of this, when you're using the term surveillance pricing, is that a subset of algorithmic pricing? Is that the specific form of algorithmic pricing that you think needs to be regulated?

Emily Osborne: Exactly. I use that term to make a distinction from the dynamic prices that we already accept in certain industries, such as hotel prices or airfare. There is certainly a point at which that becomes surveillance pricing, like when firms are using personal information to set prices, but because these pricing strategies aren't transparent, it's often very difficult to draw the exact line.

Aaron Gunn: Mr. Bester, I don't know if you wanted to add to that. In addition to it, do you have a specific example of something that you'd want to be regulated so that it wouldn't happen here in Canada, or in a comparable country like the U.K. or the United States?

Keldon Bester: Again, it's three factors, whatever the title is: It's the opacity, it's the personal nature and it's the basis on individualized data. This is the problem we encounter and ask about: What does this mean for consumers? There are many examples that hit the tripwire. They go from something that we think may just be business as usual to an issue.

One thing I keep coming back to is the idea that on my block, we could be shopping from the same store or using the same channel for the same goods at the same time, and my neighbours and I could be getting a range of prices, none of us really the wiser. The idea is that often they will say this is a more targeted discount, but if the concept of the actual price of something—let's call it the normal sale price—gets further and further away from my understanding, how do I understand the quality of discount that I'm being offered? Everything basically boils down to a price just for me.

Aaron Gunn: I appreciate that.

Do you have any evidence that demonstrates that algorithmic pricing is being used to increase the price for Canadians or citizens in similar countries as opposed to just having more market-efficient pricing that's offering discounts and actually allowing people to purchase goods at price points they wouldn't have otherwise been offered?

Keldon Bester: I'd return to the example in my statement. The work of Consumer Reports and of Groundwork in the U.S. on Instacart is a clear example that this is not all trending in just the discount direction. I think a massive value of this study is to start pulling that information to the fore, because much of this is happening without our knowledge.

The Chair: Thank you, Mr. Gunn.

We have Ms. Tesser Derksen for five minutes, please.

Kristina Tesser Derksen (Milton East—Halton Hills South, Lib.): Thank you so much, Mr. Chair.

Thanks so much for appearing here today. It's very insightful and quite sobering.

As you were talking, I was thinking back to my childhood. You might remember that there was a lot of controversy about subliminal advertising. Do you guys remember hearing about that? I feel like I'm drawing some similarities between subliminal advertising and what we're talking about here today. They're rooted a lot in unfairness. The consumer doesn't have a way to defend themselves or make critical decisions, because they don't know what's being done basically behind the curtain.

Would that be a fair comment? Would you say there are some analogies to draw between subliminal advertising and surveillance pricing?

The Chair: Who is that directed to?

Kristina Tesser Derksen: Oh, I'm sorry, Mr. Chair.

We'll start with you, Ms. Osborne.

Emily Osborne: That's a great comparison, actually. It's all about how a firm is able to manipulate you and you don't even realize it's happening. Firms can also manipulate how search results are being presented to you. There are all these different ways that a firm can use your personal data to manipulate how you're seeing their offerings or their products.

● (1705)

Keldon Bester: The corollary I see there is the question of a lack of agency. A big problem I'd like to get across is the idea that if I, as a result of algorithmic pricing, have been sorted into a group, there's very often little I can do, or even be aware of what I might do, to change those circumstances. It's the idea that if I were in a different zip code, I would be priced differently. First of all, I wouldn't even know that. If I did know it, I really wouldn't be able to move to get a slightly lower price on a good or something like that.

With regard to subliminal advertising, who knows? I think it's this question of agency: Am I aware of it? Even if I am aware of it, can I do anything about it? I think that's one of the core issues on this topic.

Kristina Tesser Derksen: That's very interesting.

I have a question for you, Ms. Osborne. I'm going to pick up on what Mr. Gunn was talking about with the evidence piece. I think a lot of us have anecdotal evidence, like stories about trying to buy airline tickets or concert tickets or book a hotel. We'll be having a conversation with someone, and then when we open up our social media, we see that there's an advertisement for something along the lines of what we were discussing.

There's lots of anecdotal evidence, but as far as quantitative evidence goes here in Canada, how much do we actually have? How do we collect that data, and how do we use it to inform policy considerations?

Emily Osborne: Unfortunately, we don't really have a smoking gun for this practice like they do in the U.S. We do have a Competition Bureau discussion paper that found that 60 companies make algorithmic pricing tools available in Canada. That was from last year. Who knows how many it is now? We also recently found a blog post from Shopify that advertises the six best dynamic pricing software allowing retailers to maximize their profit margins. One of the tools is quite literally called Price2Spy.

We do have this evidence from looking at the providers of these tools. Unfortunately, it is really hard to measure what a firm is implementing in how they are pricing their products.

Kristina Tesser Derksen: Mr. Bester, do you want to comment on that?

Keldon Bester: This is a theme we come around to a lot, and we have over the past couple of years. It relates to competition law and particularly the ability of the bureau to conduct market studies. Whatever regulator this falls to, an important piece of that is the ability to compel information and actually open up the black box and see what firms are using to make these pricing decisions. This is because the work of individual reporters, non-profits and advocacy groups can all help, but there is no incentive—in fact, there's the opposite—for the firms to be transparent. I think that needs to come from legislation or regulation.

Kristina Tesser Derksen: Mr. Bester, I'll continue with you.

Our government has a new AI strategy, which you may have heard about, and it contains a commitment to addressing surveillance pricing through privacy reform. Tell me what you think about that commitment and what opportunities you see for how this could protect data with respect to pricing and pricing transparency.

The Chair: If you can, do it in 45 seconds or so.

Keldon Bester: I can.

Privacy at the federal level is, I think, the most direct path to addressing this. There are two things to think about. There's the idea of identifying data that we are uncomfortable with and that does not allow for pricing decisions and/or categories of products we feel are inappropriate.

At the federal level, privacy is the way to go.

The Chair: Thank you.

[*Translation*]

Mr. Thériault, you have two and a half minutes. Do you want a little more time?

Luc Thériault: Yes, it's actually quite a long question.

The Chair: I can give you more time, but let's start with your two and a half minutes.

Luc Thériault: Ms. Osborne, in your article entitled “Canada Has a Precedent to Regulate Surveillance Pricing”, you say that, following policy progress in the United States, Canada is beginning to engage in the broader policy conversation around data-driven pricing strategies that segment consumers based on increasingly sophisticated profiles. You go on to state that, despite a commitment in the federal artificial intelligence strategy to modernize privacy laws and to ensure that personal information is not used inappropriately, including for surveillance pricing, the recently tabled privacy bill, Bill C-36, does not specifically address the practice. You say that the bill provides more clarity on what may count as an inappropriate purpose and imposes stronger transparency requirements around automated decision-making, but it does not specify how these provisions apply to surveillance pricing.

Should Bill C-36 specify how the provisions I have just read apply to surveillance pricing?

● (1710)

[*English*]

Emily Osborne: That's a good question. As you mentioned, I talk in the article about how there's a strengthening of the appropriate purposes test in Bill C-36. There's also a provision on automated decision-making that would require organizations to provide information to you if your information has been used and that has had a legally significant effect on you.

There's a lot of vagueness in that definition, and that could very well be an opportunity for some clarification.

[*Translation*]

Luc Thériault: That is because it's currently very opaque. Lack of transparency is the problem. There is no transparency when people are doing it.

I can imagine that, when you belong to a loyalty program and provide a lot of information in the hope of receiving a lot of discounts, the information is being used. Artificial intelligence amplifies that use.

[*English*]

Emily Osborne: Exactly. We have a Canadian example with the Tim Hortons loyalty program. In 2022, there was a fairly famous story about how Tim Hortons was tracking the location data of users of its app, and it was paying particular attention to when they were visiting a competitor's location in order to tailor its advertising. Obviously, that's not surveillance pricing, but it points to that capability.

The Chair: Mr. Bester, did you have anything you wanted to add to the point that Mr. Thériault made?

Keldon Bester: There's this bigger question of loyalty programs. I'm thinking back to my experience in the banking industry, where the concept of loyalty can mean a stickier customer. We talk about loyalty discounts, but there can be a bit of a loyalty penalty, and I think that's worth considering.

[*Translation*]

Luc Thériault: Great. Thank you.

[*English*]

The Chair: We have Mr. Jivani for five minutes.

Go ahead, sir.

Jamil Jivani (Bowmanville—Oshawa North, CPC): Thank you, Mr. Chair.

Thank you for your presentations.

I want to ask you about digital pricing labels. They're something my constituents have raised with me when they go to retailers such as Loblaws, Walmart, Sobeys and Metro. I think a lot of these big corporations have started to use them. The assumption is that using digital pricing labels creates the possibility for some of the things you've raised, like prices being adjusted based on what people are buying in the store that day, or looking at the stock in a relative market and adjusting a price based on what's available to a consumer.

I'm wondering if you can share any concerns or observations about how digital pricing labels fit into this conversation.

Maybe we'll start with you, Ms. Osborne, and then go to you, Mr. Bester.

Emily Osborne: Electronic shelf labels, which you raised, are one of the key concerns when we talk about how surveillance pricing might spread to physical stores. We also have to be watching out for digital menu boards. We've seen lots of fast food drive-through restaurants implementing digital menu boards. They can change the prices there.

Basically, any time there's an increased amount of friction between a consumer and the price they see, that's an opportunity for firms to come in and manipulate the price.

Keldon Bester: It's a good question, and I think the key is to focus on—this goes back to my comment about artificial intelligence—the practice as opposed to, necessarily, the tools. I don't think there's anything particularly special about it taking more or less time to change the labels on grocery store shelves, but if we don't have confidence that we're being treated fairly on a pricing basis, then it suddenly enters this zone of worry and concern that we're being taken advantage of.

If you tackled algorithmic pricing and protected Canadians' interests, firms would be able to invest in things that make their businesses more efficient and take less time, and we wouldn't have to worry about being taken advantage of. It would benefit both sides of the transaction in that case.

Jamil Jivani: Let' say someone is concerned about the possibility of these pricing labels being used for an unfair practice. You were asked earlier about the government's AI strategy and the importance of addressing privacy concerns. What specifically would you want to see the government say they're going to do to say with confidence to Canadian consumers that this concern is being addressed? The more specific you can be, the better.

We'll start with you, Mr. Bester.

Keldon Bester: There are three big things.

The first is some clear direction on what kinds of data we do not accept to be involved in pricing decisions. We can run down the list. The California bill that was proposed a year or so ago had some great examples, such as biometric data and precise location data. We can run through those and have that conversation, which is a healthy one, to ask which of these we think are and are not appropriate to base pricing decisions around. I think the key is to create categories and say they are off limits.

The second is that another way to think about it would be categories of goods and services for which we feel like open and fair pricing is the way to go forward. In the case of groceries, we might say that all the neighbours on my block can get discounts, but we should know what is available. That's another place where you could think about it.

The third was referenced earlier. It's the concept of business exemption and proportionality. I think we need to take a really hard look at the system of exemptions we create that could allow this to occur, even with a strong stance at the front door.

● (1715)

Jamil Jivani: With the remainder of my time with you, I'd like to ask if you have any thoughts on how to make distinctions between.... A counter-argument that I've seen to concerns about this is that it is just how supply and demand works and it's normal for businesses to make decisions based on supply and demand.

How would you explain that your concerns are different from the innocuous sense that you might have to charge more if there's less of a certain good? This may be about something more consequential than that.

The Chair: Who's that directed to?

Jamil Jivani: That's for Ms. Osborne, to start.

Emily Osborne: When we talk about surveillance pricing, it's about way more than just supply and demand. It is not a firm that is charging you more because it has less of the item it's selling. It's trying to assess every single consumer's exact willingness to pay and charge them an amount. It does not have any relation to the supply or demand of a product. It's about the willingness to pay, and the goal is to completely erode any consumer surplus.

Jamil Jivani: Mr. Bester, do you want to add anything?

Keldon Bester: The way we think about it is the further we're moving away from market forces, the more we're moving toward personal data and what is actually required to do that kind of pricing.

On demand and supply, I'll give the ride-hailing example. A business can conduct that analysis and change their pricing accordingly with very little information about the customer. When we transcend things that materially affect the price to these personal factors and do it in an opaque fashion, that is when we have an issue.

The Chair: Thank you, Mr. Jivani.

Mr. Al Soud, you have five minutes. Go ahead, please.

Fares Al Soud (Mississauga Centre, Lib.): Thank you, Chair.

Thank you both for taking the time to be with us today. It's truly appreciated.

Mr. Bester and Ms. Osborne, I hope you'll indulge me. I would like to take a bit of a step back. I will ask you what is perhaps the simplest question so far. In a few words, could you each provide your best description of what algorithmic pricing is?

We'll start with you, Ms. Osborne.

Emily Osborne: Sure. It's basically any time an algorithm is being used to set prices based on any kind of data as an input. It doesn't have to be personal. It can be any kind of data. That's how I would define it.

Keldon Bester: We go at it in a bit of a different way. The algorithmic pricing we're concerned with is the opaque customization of prices to an individual or a group of individuals based on their personal data or data about that group. I think that definition gives you a lot to grab onto about what the real issues are and how we can separate it from other kinds of discounting that Canadians appreciate.

Fares Al Soud: Going back to something you've spoken to very briefly already, could you speak to the prevalence of algorithmic pricing? How often do we see it, and which industries might we see it in the most?

Once again, I'm starting with you, Ms. Osborne.

Emily Osborne: Again, we don't have great data in Canada. There are certain industries where we already accept some level of fluctuation in prices. Think of airfare, hotel prices or Uber, of course. We are concerned because, increasingly, we're seeing these pricing fluctuations creeping into other industries, and we're seeing patents that reveal that retailers have some really concerning capabilities. It's hard to say exactly how far it has spread beyond that.

Keldon Bester: The only thing I would add is that there are certain markets that are better set up for this practice to be applied with rudimentary technology. These are online marketplaces and mobile apps, which are places where your physical interaction is limited, and retail situations where you have repeat interactions and where loyalty programs are fairly common.

I echo the earlier point, but there are some areas where I think we should be looking first.

Fares Al Soud: It's interesting. I'll admit to walking into this topic with a degree of ignorance, but during my reading, the distinction between personalized pricing and dynamic pricing was particularly interesting.

Mr. Bester, could you give me a brief rundown of what that distinction actually means?

● (1720)

Keldon Bester: It's a great question, and I think it's a core one to drill into in this study.

There are situations where Canadians understand dynamic pricing and accept it. The categories where I think that's the clearest are those where there is transparency and a connection that can be drawn by any consumer as to why this is the case. Let's go back to the seniors' discount. I understand that I can't get a seniors' discount, but I understand the process to eventually be able to access it. As a result, I don't take issue with it.

We enter into personalized pricing when we layer in the very detailed picture of an individual and create a barrier between my understanding of my characteristics and how they feed into the price I'm being shown. This is in contrast to matinee pricing at a theatre—I know if I change my behaviour, I can access a different price—or seniors' discounts.

These examples are simple, but they're instructive to show us what the issue is, and we can transplant that into more complex situations.

Fares Al Soud: Would you agree that there are certain instances where the use of algorithmic pricing could in some way, shape or form make sense? It's about the way we're collecting data and then ultimately implementing it, and the degree of consent or acknowledgement the consumer has about the collection and use of that data.

Keldon Bester: There are a variety of issues we'll have to confront if that's going to be true. The first is the opacity, but transparency on its own is not enough.

I'll return to another question, which I thought was quite good, about agency. Can I understand what prices are available and, if possible, change my station to access them? The more the answer to that is no, the more we have to be clear about when that is and isn't appropriate.

Fares Al Soud: Ms. Osborne, we've heard Mr. Bester to some extent on this idea of certain pieces of personal data being off limits. Are there any for you that are particularly striking?

Emily Osborne: The types of data that firms are able to purchase through data brokers are especially concerning. When firms can access data about your finances, that is especially concerning.

By and large, most personal data should be off limits to set prices, even if it's just your postal code and they're charging people who are in a more affluent neighbourhood more because they live in that neighbourhood. I still think that is unfair.

Most categories of personal information should be off limits.

Fares Al Soud: Okay. Thank you.

The Chair: Thank you very much, Mr. Al Soud.

[*Translation*]

We have the time for two four-minute rounds.

Mr. Hardy, the floor is yours.

Gabriel Hardy: Thank you very much.

Ms. Osborne, one question has been running around in my head for a while.

The online market is evolving. We have seen companies set up specifically to offer those who use them the best prices. They do it by analyzing everything on the market. With their algorithms or whatever, they are able to find all the prices online and show the best prices at any given time.

Could the opposite be done as a way to protect consumers? When people pay, the price is tracked. Could companies be started that would check all the prices and tell people where to find the best price in town?

Could that help the market? Would the public see prices drop? Or are things so opaque that people will never know the best price that has been paid?

[*English*]

Emily Osborne: That's certainly an opportunity. We're seeing various AI agents promising that they might be able to help us comparison shop, but we also have to be careful because AI agents, as shown by the research referenced in my remarks, have been found to service products that have higher prices.

I think there's an opportunity for tools that help consumers comparison shop, but we still have to be careful.

Keldon Bester: In those situations, there's an optimistic case about.... Let's take agentic commerce, where I have an AI agent doing the work for me. The issue that we're always going to end up facing is that the balance of power—in this case, let's call it information—is almost always going to be stacked against the consumer. Major platforms in particular have a massive information advantage, and what we're seeing increasingly is that some of the largest platforms are simply shutting out those agents. That might be a separate issue. Those are two of the reasons I'm skeptical about that balancing power.

● (1725)

[*Translation*]

The Chair: You have two minutes left, Mr. Hardy.

Gabriel Hardy: Thank you.

Ms. Osborne, earlier, you said that it could also have an effect on salaries. I understand how that can happen. Companies could analyze the salaries of their customers and adjust their prices before they come through the door. But how can that new way of doing things affect companies when they are hiring? What effect will it have on the salaries they offer their employees?

[*English*]

Emily Osborne: This model has been pioneered by Uber and its drivers. It uses data and behavioural data about its drivers to target the wage that it offers them for a drive. Increasingly, we are seeing that model spreading. There's an example from the U.S. that suggests that certain on-demand nursing apps are using nurses' personal information, including their credit score, to offer them a lower wage if they seem like they need the work more because they have a low credit score and high credit card debt. We have some evidence that this could start spreading to—

[*Translation*]

Gabriel Hardy: I want things to be very clear. You are telling me that a company could analyze someone's circumstances and use the fact that they are desperate for work to offer them a less competitive salary.

[*English*]

Emily Osborne: Exactly. It's kind of the inverse of the formula for surveillance pricing. The point is to pay the worker the lowest possible wage. They're related in that way, and they're inverses of the same equation. It's always about calculating a desperation score and then using that to extract as much as possible from either a consumer or a worker.

The Chair: Thank you, Mr. Hardy.

Mr. Shahnawaz, you have four minutes. Go ahead, please.

Tanveer Shahnawaz (Beaches—East York, Lib.): Thank you, Mr. Chair.

Mr. Bester, in an earlier question, you alluded to California legislation with regard to the types of data we are going to be limited to, saying that's maybe more ideal. Could you dive into that a little deeper? Then maybe we can have both of you talk about other jurisdictions in general that we can look at.

Keldon Bester: The U.S., particularly at the state level, has quite a bit of activity. If you check today, you'll see that 17 states have either proposed or introduced some form of response to surveillance pricing. Three of these states that we and our colleagues in the States look towards are California, Colorado and Illinois.

None of these have been enacted. However, we have an opportunity to look at each of them and ask, in the Canadian context, what we can take away from them to create something that will—to return to my opening statement—go after the issues that Canadians have a very strong negative reaction to, while ensuring that businesses can continue to offer what customers actually value.

Emily Osborne: We've seen a range of bills passing or being proposed in U.S. states. They've all used different mechanisms. Some attempt to completely prohibit the practice, and others simply impose disclosure requirements on firms. If a retailer is setting a price using your personal information, they have to tell you in bold letters at the checkout that they've done so. We've also seen bills that target various sectors. There are bills that have passed specifically for rent-fixing in California, for example. We've seen bills that are specific to the grocery sector. There has been a huge range.

One thing we need to be careful about is that some of those bills have made quite broad exceptions for loyalty programs, as I mentioned. This gives firms a fairly easy way to continue using personal information to set prices, as long as they can do it within the compliance of a loyalty program.

Tanveer Shahnawaz: Looking beyond the U.S., I'm curious about whether you guys have any knowledge about other countries.

Keldon Bester: It's a good question, actually.

In our study, we haven't found many other international players engaged in this, but that may be the fault, on our part, of a limited scope. The states in the States are the most active and generative on this point right now.

Emily Osborne: The one example I know of is from the EU's consumer rights directive. They had a 2019 amendment that requires that consumers must be clearly informed when they are being subject to a decision made by an algorithm. That's the only example beyond the U.S. that I'm aware of.

● (1730)

Tanveer Shahnawaz: It seems like we are a much smaller market in terms of population as consumers. What would you say are the biggest concerns for Canadians from multinational corporations? There are states enacting certain legislation, but what should we be very concerned about that is particular to us in our Canadian ecosystem?

Emily Osborne: We have to be careful about letting global technology giants use our personal information against us beyond just algorithmic pricing. That's what I would say.

Keldon Bester: Briefly, I think there's a big question around feelings of control and feelings of agency. Anything that brings them back to Canadians so they feel like they know what's going on, know how their data is being used and know where a price came from would be very valuable, especially now.

The Chair: Thank you, Mr. Shahnawaz.

That concludes our first hour.

Mr. Bester and Ms. Osborne, I want to thank you for appearing before committee. I know the information—and I think members feel this way—was valuable in kicking off this study. Thank you so much for taking the time.

We are going to suspend for a couple of minutes while we switch over. We'll be back for our second hour.

● (1730)

_____(Pause)_____

● (1740)

The Chair: I want to welcome everyone back for our second hour.

We're having a bit of a technical difficulty with regard to one of our witnesses: Pascale Chapdelaine. We're trying to fix that. It's an issue with Zoom and the Internet connection.

We have Dr. Sylvain Charlebois here with us. He's the senior director at the Agri-Food Analytics Lab at Dalhousie University. With him is Dr. Stacey Taylor, who is an assistant professor at the University of Ottawa and research assistant at the Agri-Food Analytics Lab.

Mr. Charlebois, I know you have an opening statement of five minutes for the committee. Please go ahead.

Sylvain Charlebois (Senior Director, Agri-Food Analytics Lab, Dalhousie University, As an Individual): Thank you, Mr. Chair and members of the committee, for inviting us.

I'm Sylvain Charlebois, professor and senior director of the Agri-Food Analytics Lab at Dalhousie University. Joining me tonight is Dr. Stacey Taylor, assistant professor at the University of Ottawa and research associate at our lab.

Our recommendation is straightforward: Canadians should be able to buy food without having their personal information used to determine the highest price they might tolerate.

We must distinguish dynamic pricing from surveillance pricing. Reducing the price of food approaching its expiry date can lower costs and waste. Surveillance pricing uses information about shoppers, including their purchasing behaviour and inferred circumstances, to personalize prices or offers. Electronic shelf labels alone do not establish that surveillance pricing is occurring. The concern is what happens when a business can infer that a household has limited alternatives, faces financial pressure or needs a particular food for health reasons and uses that knowledge to worsen its offer.

Food is essential. Consumers can postpone many purchases; they cannot postpone eating. When prices and promotions become individually tailored and difficult to compare, consumers may lose bargaining power. Households with fewer shopping alternatives could be particularly exposed.

We should not claim that these practices are widespread in Canadian grocery retail without sufficient evidence. That uncertainty makes independent scrutiny necessary.

First, prohibit the use of personal information and inferred vulnerabilities to impose higher effective food prices. Include financial distress, health conditions, family circumstances and proxies for these characteristics. Consent buried in loyalty programs' terms should not make exploitive practices acceptable.

Second, guarantee a clearly displayed public price that shoppers can access without tracking or a loyalty account within the same store or online channel at the same time. Preserve transparency, rewards and voluntary discounts while preventing personalized surcharges from being concealed as selectively withheld savings.

Third, require meaningful transparency across the entire offer. Rules must cover coupons, delivery charges, mandatory fees and personalized product rankings. Consumers should know when profiling affects what they pay and see and have access to a shopping option without personalized profiling.

Fourth, require auditable records and regulatory access. Major retailers, delivery platforms and pricing vendors should retain records showing which data informed their systems and what offers resulted. Retailers must remain accountable when they outsource pricing. Enforcement should include corrective orders, meaningful penalties and a reimbursement of proven unlawful overcharges.

Fifth, launch a coordinated investigation by competition and privacy authorities, working with provincial counterparts. Examine loyalty data, third party data brokers and shared pricing vendors. Publish findings within 12 months, including evidence of consumer impacts and recommendations on any legislative gaps.

These measures should preserve inventory management, public promotions and markdowns that reduce food waste. Their purpose is to ensure that innovation improves efficiency while protecting consumers from exploitation.

Canadians should not have to surrender their privacy to afford groceries, at least not without consent. We urge the committee to establish clear protections, require evidence and make accountability enforceable.

Thank you. We welcome your questions.

● (1745)

The Chair: Thank you, Mr. Charlebois.

[*Translation*]

I understand that the technical difficulties are now behind us.

So we can now welcome Ms. Pascale Chapdelaine, associate professor and chair in law, intellectual property and the digital marketplace, faculty of law, University of Windsor. She joins us by video conference.

Ms. Chapdelaine, welcome to the committee.

[*English*]

You have up to five minutes to address us. Go ahead, please.

[*Translation*]

Pascale Chapdelaine (Associate Professor and Chair in Law, Intellectual Property, and the Digital Marketplace, Faculty of Law, University of Windsor, As an Individual): Thank you, Mr. Chair.

[*English*]

Thank you, members of the committee.

[*Translation*]

I will give my presentation mostly in English, but I will gladly answer all your questions in French or English.

[*English*]

Over the last eight years, I have researched and written extensively on the regulation of algorithmic personalized pricing, also known as surveillance pricing, from consumer protection, privacy, anti-discrimination and competition law perspectives. Given the mandate of this committee, I will focus my remarks on surveillance pricing from a personal data protection perspective. This is regulated, as you know, at the federal level under PIPEDA and falls under the scope of Bill C-36, the protecting privacy and consumer data act.

How our governments regulate surveillance pricing is a litmus test for the level of protection governments are willing to give consumers in the big data digital economy. It demonstrates foresight and is an assertion of digital sovereignty—a link that may not be obvious but is very real, given the number of consumer transactions handled through transnational platforms such as Amazon and Uber, which have strong market power to set rules on their own terms.

First, let's ask this question: On what basis is it ever legitimate for suppliers to use our personal information—including IP address, past purchases, speed of clicks, search history and inferred data such as income, health status, risk profile and so on, which are in some data profiling—to determine the price at which we should pay for goods or services?

Personal data protection has a special status in Canada. It has been recognized by our Supreme Court as a quasi-constitutional right. This is reinforced by Bill C-36, which refers to personal information protection as a “fundamental right”. In terms of the way personal data protection works, frameworks like PIPEDA or Bill C-36 rest on two pillars. The first is obtaining the consumer-citizen's valid consent. Second, the use of consumers' personal data should be done for a reasonable purpose.

In my view, it is impossible to obtain valid consent to collect personal information for the purpose of getting as close as possible to a consumer's maximum willingness to pay—the ultimate purpose of surveillance pricing. I say this for at least two reasons.

First, with surveillance pricing, consumers cannot assess whether sharing that personal information works to their advantage or detriment. This is unlike a situation where, for example, a consumer agrees that a supplier can collect their past purchase data for loyalty discounts, in which case the bargain—whereby a consumer trades information about past purchases in exchange for volume discounts—is fairly transparent to the consumer.

Second, suppliers have no interest in making a meaningful disclosure about surveillance pricing. Consumer surveys show a strong dislike of any form of surveillance pricing. Consumers generally view this practice as unjustified and unfair—rightly so, I think.

Third, surveillance pricing also fails the requirement of a legitimate reasonable purpose under PIPEDA and other similar frameworks. The main reason that firms use personal information is to set prices to maximize their profits by getting, as I said earlier, as close as possible to consumers' maximum willingness to pay. Viewing this as a legitimate reasonable purpose would render any personal data protection regime, such as PIPEDA, meaningless. Don't all firms want to maximize profits? A reasonable purpose requires something else: network safety concerns, consumer experience of the service, consumers receiving the good and sharing their address for this purpose, etc.

Viewed through a fundamental rights lens, valid consent and reasonable purpose need to ultimately work in the consumer-citizen's interest, with trade-offs they can reasonably understand regarding the use of their personal information. Setting bright line rules by banning certain uses of personal information for pricing, as is being done in some U.S. states—this was pointed out earlier—or by requiring explicit and extensive disclosure, as required in the European Union, is one significant way for our government to show consumers that they take the fair handling of personal data, as well as the inequality of bargaining power they face, seriously.

[*Translation*]

Thank you, Mr. Chair.

[*English*]

Thank you, committee members.

I welcome any questions you may have.

● (1750)

The Chair: Ms. Chapdelaine, we are still having a little technical difficulty. It could be your microphone. I'm hearing this from the interpreters. It has gotten a little better as you've spoken, but if it continues, we may have to suspend for a bit to fix the problem.

We are going to start with our first round of questioning. I'm going to Mr. Jivani for six minutes.

Go ahead, sir.

Jamil Jivani: Thank you, Mr. Chair.

Professor Charlebois, thank you for your five recommendations. They're very well thought out.

As you described three of the five, you mentioned loyalty programs numerous times. Can you elaborate on any concerns you have specific to loyalty programs or where they fit into the algorithmic pricing conversation?

Sylvain Charlebois: That's a good question.

Embedded in loyalty programs is a moral contract between consumers and grocers. They all have loyalty programs. The idea is to get personal information. Most Canadians don't know how much personal information they actually give out, but we give a lot of information about ourselves to all grocers, so they know us very well.

That's why they've been using loyalty programs way more. As you know, because of inflation, loyalty has been an issue. People are shopping around. They're investing even more in loyalty programs now to keep consumers coming back.

Jamil Jivani: Are there personal details being captured in these loyalty programs that could then be used to inform approaches to algorithmic pricing, where there is no information being shared with the consumer about how their personal information is being collected and potentially used?

Sylvain Charlebois: For example, people will go to the grocery store and buy certain items. Based on a list of items, it can actually be inferred what diet that person is on, what that person will be baking that evening or that weekend and if that person will be hosting people. It's implying that if that person is hosting a lot, the person will buy a lot of food, so they may want to populate their model to entice the person to buy more or less, depending. From a receipt, you can get a lot...in terms of building a digital profile about a customer. It's pretty scary, actually.

That's what's happening right now. That's the game that's going on right now. Keep in mind that the grocery business is a low-margin, high-volume business. They'll do anything to increase profits by a cent. That's one way to do it right now.

Jamil Jivani: I think most Canadians, hearing what you just said, would be concerned. I think most people would be alarmed by the idea that their information can be collected and used that way without consent.

Under current law in Canada, what can be done to increase transparency? If that is unsatisfactory, what new changes would be required to make this a more transparent process?

Sylvain Charlebois: That's a good question.

What was mentioned earlier during the first hour—and I would agree with the witness—was monitoring what data is being captured. That would be a good start: what is going to be used.

At the end of the day, I think a lot of Canadians would agree that loyalty programs are also there to benefit them. I believe that with AI, eventually consumers will be better tooled to become better shoppers. Their purchasing behaviour will be optimized by AI way more than it is now.

Right now, it's all about AI being used against Canadians. You have data centres. Grocers are not trusted at all, based on our data, and food inflation is amplifying the doubts and fears. All of that is happening at once while we're hearing about the surveillance pricing issue erupting. We have no evidence that it's happening right now in Canada, at least in physical stores, but as mentioned before by Ms. Osborne, we have little data about this issue, which is why we recommended doing further work in that area.

● (1755)

Jamil Jivani: You made a distinction between dynamic pricing and surveillance pricing in your presentation. My concern with things like dynamic pricing—and I think examples can be provided that are maybe less offensive—is that there are ways that dynamic pricing could also be seen as predatory, depending on the circumstances.

I think your recommendations touched on a few key ways to prevent that. You mentioned health, for example, and financial distress. Can you paint a picture of how to allow for things like dynamic pricing but safeguard the consumer from predatory behaviour?

Sylvain Charlebois: The fundamental principle of dynamic pricing is to optimize the exchange between supply and demand. If supply is up, you stimulate demand, and if supply is down, you increase prices, but it's not discriminatory and it's not personalized. Once you get personal and you focus on personal digital profiles, that's when, in my view, you get into tricky waters and you expose consumers to some risks.

Jamil Jivani: My last question is about enforcement.

If the laws were changed and it was easier to identify the problem, what options would the government have to enforce any of this and make sure that if a business wasn't following the rules, there would be a penalty for that?

Sylvain Charlebois: My natural go-to place would be the Competition Bureau. I'm not sure whether the grocery code of conduct that was created, which has been in force since January 1, could also play a role. Right now, it wouldn't be in scope, because the code of conduct doesn't look at prices; it only looks at conduct between players in the supply chain, so that would need to change.

The Chair: Thank you, Mr. Jivani.

Thank you, Mr. Charlebois.

Ms. Church, you have six minutes. Go ahead.

Leslie Church: Thank you, Mr. Chair.

Thank you, all three of you, for being here today.

Mr. Charlebois, I'm going to start with you. You mentioned a need to prohibit “inferred vulnerabilities”. Can you expand on what inferred vulnerabilities are?

Sylvain Charlebois: It's about knowing what the concerns could be, from a consumer perspective, regarding personal information. With surveillance pricing, we're approaching a dangerous area. When people go to the grocery store, they're already vulnerable. There are 30,000 SKUs in the grocery stores, and it's impossible to know the prices for all 30,000 products.

When you buy a car or when you buy insurance, the exchange is more linear. There's one price or a couple of prices, and that's it. For many people, when they go into a grocery store, it's overwhelming to capture all that data and ensure they're making the best decision possible. That creates a vulnerability.

Leslie Church: Ms. Chapdelaine, on a similar note, in your view, what type of data should be irrelevant or prohibited from pricing determinations?

Pascale Chapdelaine: When you look at personal information, it's very broadly defined in our laws as anything that connects a consumer to the information being collected on their behalf and can make them identifiable. When it comes to pricing, any data that is being used in ways in which the consumer cannot understand the effect of that use should be off limits. It's simple.

Take the loyalty program examples. I'm not saying they're perfect—far from it—and we should remember the basic principles of ensuring transparency and full disclosure about what is being disclosed. Let's say that the information being used is only related to past purchases in order to give discounts. It's clearly linked to the consumer, and I think in that case, the consumer could give their consent because they understand that the trade-off for sharing their personal information about past purchases is getting a benefit in return in the form of discounts.

Other than that, if it's about sizing up their maximum willingness to pay—and I've said this and written about this—personally I think it should be banned.

● (1800)

Leslie Church: Let me pick up on the idea of consent, because you raise a very good point by asking the question of what is valid consent. I think we've all been in a situation where we've been confronted with a very fine-print list of terms and conditions asking for consent, and if we don't offer that consent, we're denied access to a commonplace platform or service. In your mind, what would make for valid consent?

Pascale Chapdelaine: In the case of personalized pricing, I advocate for that, as I just indicated in my remarks. I don't think there can be meaningful consent for widespread personalized pricing that is not targeted to loyalty discounts, for example. However, I think for that reason, a ban on certain forms of surveillance pricing should be in place.

That being said, some jurisdictions are implementing a disclosure requirement. That's problematic, because as you pointed out yourself, consumers don't necessarily respond very well to disclosure. They don't necessarily understand.

There is one study I'm aware of, conducted in Ireland and Chile, I believe, under the auspices of the OECD, that had exactly that—a requirement of disclosure. They tested various forms of disclosure for using surveillance pricing, and consumers didn't really understand. Sometimes it creates a false.... If you introduce a disclosure requirement in, let's say, the law, people may assume that all suppliers are disclosing it and the ones that don't disclose it are not using personalized pricing.

It raises a couple of issues. The documentation and literature about lengthy consent forms not working in general are quite widespread, and I would say it is no different for surveillance pricing.

Leslie Church: Thank you for that. It speaks again to the need for regulatory intervention on the issue overall.

Mr. Charlebois, let me pick up on another point you raised and a question in my mind that you prompted around price comparison.

With regard to dynamic pricing, you mentioned electronic shelf labels as a technology that we know exists now and is in use. I worry that the ability to compare prices is also part of the purchasing power that consumers should have. In a situation where pricing can change at the speed of machine learning, there's almost a pressure on consumers that they had better lock in and purchase a product because the price is going to change on them, or it could change at any minute. Again, it's something that all of us have experience with.

Do you think there's any need to have some sort of guideline around a reasonable duration or time for price stability that a consumer could rely on?

The Chair: I'm going to need a quick response. You have half a minute.

Sylvain Charlebois: Essentially, I think surveillance pricing will mature over time and will empower consumers much more, creating some sort of inflation road map for consumers to know exactly what the best price is right now for cucumbers or tomatoes. We're at the beginning, and right now the power lies on the supply side for sure, but we expect a better balance down the road.

The Chair: Thank you.

[*Translation*]

It's Mr. Thériault's turn now.

[*English*]

If our witnesses require their earbuds, now would be the time to put them in. I would ask that you wait until the interpretation is over to respond.

[*Translation*]

Mr. Thériault, you have the floor for six minutes.

Luc Thériault: Welcome to the witnesses.

Mr. Charlebois, you published an article in which you state that artificial intelligence can make our food system more efficient, but also, if we are not careful, more expensive.

On the subject of surveillance pricing, you state that finding a different price for the same meal in two restaurants does not in itself prove that one or other of the restaurants is using artificial intelligence, or profiling its customers. But using browsing history, purchasing habits or making assumptions as to someone's salary in order to charge more for the food raises a concern of a completely different kind.

You then ask your readers to imagine two people buying the same basket of goods at the same time. One pays more because an algorithm thinks he or she can afford it or has less choice. You say that this is a concern in terms of food security and that Maryland already has legislation restricting surveillance pricing on food products. In your view, clear prohibitions should indeed be put in place.

Can you tell us more about the legislation in Maryland?

● (1805)

Sylvain Charlebois: Basically, Maryland has decided to ban the practice completely. It's the easiest thing to do. I don't know how they make sure that the rules are followed because we talk in terms of a network, which is quite complex. Canada has 25,000 different stores. So overseeing everyone can become somewhat of a daunting task.

Personally, I would not yet go so far as to ban the practice, as Ms. Chapdelaine proposes. But I am definitely concerned. I see the potential and I see grocers taking an interest. I give lectures to them and I hear them talking. The technology interests them a lot as a way to increase their company's profits. That is quite normal, but, at the end of the day, it can discriminate against people in terms of the affordability of food. That's why it's an important issue.

Luc Thériault: So basically, you are saying that artificial intelligence can bring about increased productivity and reduce waste, but that it would not necessarily mean lower prices because people are always looking for greater profits.

At this point in time, surveillance pricing is regulated inadequately, or not at all. There's agreement on that. It's a new phenomenon.

Which of the five measures that you propose do you see as the most important?

Sylvain Charlebois: The fifth one, in my opinion, because we have no real idea of what we are talking about. I don't think it exists in Canada yet. My colleague does not think so either. But we do not know. So it's going to be a really important issue to address.

I am working with people from Texas A&M University and Purdue University in the United States, where they have a better idea of the stage that artificial intelligence has reached. The latter has done really good work in the agrifood sector. Producers have been using it for a long time and it is also being used in processing. We know that we have a lack of productivity in Canada and artificial intelligence is a solution.

For consumers, there's more uncertainty. Currently, between distributors and consumers, there's a gap.

Luc Thériault: As Mrs. Church was saying just now, the consumer is currently under pressure and can easily be manipulated.

Sylvain Charlebois: Very easily. If you phone in three orders from your favourite restaurant chain in Ottawa this evening, you will see three different prices. That's geolocation. Artificial intelligence does it. A consumer can see the three prices and choose, but a grocery store has 30,000 products.

Luc Thériault: What do we have to do to put the fifth measure, the fifth proposal, into operation easily?

Sylvain Charlebois: I think it's important to talk about all this with the people from Innovation, Science and Economic Development Canada, the department responsible for the Competition Bureau. The Competition Bureau is currently doing a study on the whole sector. We were consulted in June or July. The bureau is interested in the entire sector, but I have not heard whether they are looking at surveillance pricing.

● (1810)

The Chair: Thank you, Mr. Thériault and Mr. Charlebois.

We now start the second round of questions.

Mr. Hardy, the floor is yours for five minutes.

Gabriel Hardy: Thank you, Mr. Chair.

My thanks to the witnesses for joining us today.

This topic is not only very interesting, it's also a priority. We all have to eat.

Mr. Charlebois, just now, you raised a point that I found really interesting.

Ms. Taylor, you can comment too.

This technology is able not only to change the prices at the grocery store according to a customer's identity and salary, it could even also analyze their diet. We know that some people have medical restrictions and have no choice in buying some foods. So they really could be adversely affected. They would be paying more because of their limitations.

So we are talking about something that could have significant impacts on families, who are already having a hard time making ends meet.

Can you comment on that, Mr. Charlebois?

Sylvain Charlebois: You are quite right. As an example, let's take a store located where a lot of people are gluten-intolerant. With the information the shopkeeper gathers, he could limit the number of gluten-free products in order to raise the unit price.

Gabriel Hardy: I am glad that you are talking about it.

At the moment, you are saying that it would be discretionary. You are talking about shopkeepers choosing to make their customers pay more. But earlier, we were hearing that artificial intelligence systems could also talk to each other, meaning that prices would rarely go down and would often go up. Usually, practices like that are illegal, but what do we do when artificial intelligence is behind it?

Could the owner of a major chain say that he has no idea of what is happening, that it is dynamic, that people are buying, that profits are increasing, and that he has nothing to do with it? If not, is the owner always going to be the last person setting the prices?

Sylvain Charlebois: At the moment, the power really is all on one side.

I will ask my colleague to comment because she has been working on the issue.

[*English*]

Stacey Taylor (Assistant Professor, University of Ottawa, and Research Assistant, Agri-Food Analytics Lab, Dalhousie University, As an Individual): Something we really need to remember is that it's not just about the data we have given over. It's also about the data that AI can get all on its own.

Ms. Osborne, in the earlier session, mentioned data brokers. It's amazing what AI can infer and put together very quickly to create a profile of you as an individual, and that is certainly going to have an effect when we are at the grocery store.

As much as we can potentially consent to giving over data, what about all of the other data that it can infer for us? We have zero control over that. Unfortunately, we have what I and other researchers have called the privacy paradox, in which we give over a lot of data without realizing it. We communicate and engage with people online, and that creates more data.

Madame Chapdelaine rightly said that we have the problem that some people don't understand what data they are giving and don't understand what the privacy aspects are. We also have a technological problem in that we have no way to engage online in a way that is going to protect our privacy without using these apps and these sites. That's problematic.

[*Translation*]

Gabriel Hardy: It is interesting that you mention that. Recently, we heard from the Information Commissioner who told us that she was quietly losing some of her powers. Basically, what we are being told is that access to information and the way in which our information is distributed is more important than ever and really should be our central concern, especially as parliamentarians.

Do you feel that we should look at how information travels and how it is used, especially when it is used against us? Should we focus on that rather than treating it lightly?

Sylvain Charlebois: You saw the cyber-attacks against supermarkets that happened in Europe this week. There were some in France two weeks ago; this week, we found out that a hundred or so supermarkets had been attacked. The temperature of the refrigeration systems was increased, leading to food being spoiled.

The whole sector is going to become more and more vulnerable in terms of cybersecurity. The people responsible for these cyber-attacks certainly want to obtain consumer information. So the vulnerability is two-sided, one side being the consumers themselves and the other side being the whole sector, which may or may not handle the vulnerability well.

● (1815)

The Chair: Thank you, Mr. Hardy and Mr. Charlebois.

[*English*]

Ms. Chagger, you're up next. You have five minutes. Go ahead.

Hon. Bardish Chagger (Waterloo, Lib.): Thank you, Chair.

Thank you for the conversation and discussion today. It's interesting, because this is quite the opportunity. It seems like as a country, we're perhaps not where we need to be, but AI is here, and it's going to be here for a while.

I will ask you a question, Ms. Taylor. Knowing that you've done research in the AI space, and having heard some of the comments that you made about how AI can create a profile on an individual and so forth, how can we test the accuracy of that? There is guessing happening. Do we know the accuracy of the AI when it's creating a profile?

Stacey Taylor: We can determine how accurate it is, because we can use what we call ground truth data to test against it. I could say, for example, if it was going to be done on me, that these are my shopping habits, this is what I like, this is my diet and this is how much I'm willing to pay for products X, Y and Z. We can then compare that with what the AI has predicted and determine how close that predictive accuracy is.

Hon. Bardish Chagger: That's happening right now, and you have the data to see how accurate it is.

Stacey Taylor: I don't have data on individuals, but I can guarantee you that companies already have that information and are able to run those scenarios to determine how accurate it is.

Hon. Bardish Chagger: Could AI expertise be used to explore how pricing algorithms could be audited? Are there ways of using it to help us figure out these issues?

Stacey Taylor: I think we could do that. The problem is going to be accessing the data, because no company is going to willingly give over their data and say, “Hey, here you go. Please audit me to make sure that I'm not doing anything I shouldn't,” because it's proprietary data to them.

I'm sure that Madame Chapdelaine would be much better placed to speak about the legalities of this. However, from a consumer point of view, I would love for them to give over the information they have on me so I could see where it is and how accurate it is, but no company is going to willingly give that up.

Hon. Bardish Chagger: I'll be a bit more optimistic, because I think we are all trying to figure out a trend, and at some point we're going to have to.

Thank you for that.

Dr. Chapdelaine, I'll turn to you. As has been suggested, I recognize that you're a leading Canadian scholar on personalized pricing. Today is our first day of this study. I'm learning about algorithmic pricing, dynamic pricing, personalized pricing, surge pricing and surveillance pricing. Can you give me your definition of algorithmic pricing?

Pascale Chapdelaine: Certainly.

Some of the expressions you used are synonyms. It made my head spin when I heard your list.

Algorithmic personalized pricing is the collection of data that can be connected to an individual to gauge their maximum willingness to pay. Ultimately, that's the goal. It's a dream for suppliers to be able to get that.

I'm happy to speak about contrasting that with dynamic pricing. It's been discussed already. Dynamic pricing is about supply and demand—the price goes up and down depending on supply and demand. The theory would be that there's no use of personal information. However, the line is very blurry between what is dynamic pricing and what is personalized pricing. With dynamic pricing, there are already some limits in law. For example, if you create price gouging, as you do with dynamic pricing, that would be prohibited under most consumer protection laws as we speak today. There are already some limits in the law that are applicable.

I'm happy to answer any other questions you may have about the distinctions between all those definitions.

● (1820)

Hon. Bardish Chagger: Which would you say are the synonyms of the ones that I listed off, or which ones am I missing?

Pascale Chapdelaine: Surveillance pricing would be a synonym of algorithmic personalized pricing. It depends. If you look at the laws in the U.S., some of which have been enacted and some of which are pending right now, they define surveillance pricing or algorithmic personalized pricing in similar ways.

Then there is surge pricing, which is when prices go up because of the elements of demand. As I said, in that case, if it leads to price gouging, that would be regulated and prohibited.

The Vice-Chair (Kristina Tesser Derksen): Thank you, Professor.

That's it for your time.

Hon. Bardish Chagger: Seriously?

The Vice-Chair (Kristina Tesser Derksen): It went quickly.

Hon. Bardish Chagger: The chair always gives me more time, Madam Vice-Chair.

Voices: Oh, oh!

The Vice-Chair (Kristina Tesser Derksen): I'm sorry. I'm a different chair.

[*Translation*]

Mr. Thériault, the floor is yours for two and a half minutes.

Luc Thériault: Ms. Chapdelaine, algorithmic pricing is at the intersection of several fields of law, including competition, consumer protection and privacy protection. Some provinces have begun to circumscribe it, like Manitoba with Bill 49. Ontario even has a government bill that states that it is an unfair practice to use personalized algorithmic pricing to justify a price change for a specific consumer.

How can we limit algorithmic pricing federally without creating conflicting legislation?

Pascale Chapdelaine: Thank you for the question.

Actually, all those legislative frameworks are complementary. In competition law, as an example, the issue is considered in macroeconomic terms, which is absolutely fundamental. The Competition Bureau has also addressed the matter of personalized pricing. Consultations were held last year; I took part in them.

Sometimes, a small transaction here or there does not cause a lot of harm; consumers aren't likely to complain each time. But we really have to consider the effect on the market. When a company has a dominant position on the market, that dominant position can result in abuse. The ultimate goal is to eat away at what consumers have left. In periods of high inflation, when everyone is having trouble finding enough money to buy things, it's a big concern. At that point, the problem lies with the competition.

In terms of commercial law, contract law and consumer protection, yes, it is a step in the right direction—as Manitoba has done, as you mentioned—to establish the presumption that personalized algorithmic pricing is an unfair practice. Looking at the issue from different perspectives makes it complementary.

In my view, the key is everything that is happening in the area of protecting personal information. I feel that the committee's goal is to focus on that. That is where work has to be done and clarifications are needed. I fully agree that more in-depth studies have to be conducted into the information that is being collected.

The current commissioner has the powers and, if Bill C-36 is passed, the commission that will be created will have greater investigative authority. There was a question about that earlier. In New York State, the attorney general has recourse to injunctive power when it is realized that such a practice is occurring. Fines can be levied.

So I feel that there is more than one solution, that this issue has to be tackled from different angles and that various orders of government have to work on it.

Luc Thériault: Thank you.

The Vice-Chair (Kristina Tesser Derksen): Thank you very much.

[*English*]

Next we have Mr. Gunn for five minutes.

Aaron Gunn: Thank you, Chair.

Ms. Chapdelaine, I just want to pick up on a point that, unless I missed it, I'd like you to expand on more.

You mentioned that there are existing laws in this country against price gouging, which could be the natural extension of really extreme forms of surveillance pricing, perhaps. Can you detail those laws and what might be needed to expand them to protect consumers?

● (1825)

Pascale Chapdelaine: Yes. Price gouging would be covered under consumer protection laws. There is a prohibition against price gouging in Ontario, for example. There is a similar prohibition in abuse clauses in Quebec in the Civil Code. I suspect there are some similar clauses across common-law jurisdictions.

It's different from personalized pricing. I think it touches upon dynamic pricing and what can lead to that. There are some examples where Uber has been accused of price gouging in cases of a public transit strike, very severe weather conditions and so forth. This is one area that could be tackled through these provisions.

Aaron Gunn: I'll continue with you for one second before turning to Mr. Charlebois.

One thing we chatted about with the last panel was, from my perspective, that this is almost the convergence of new technology with pre-existing business practices regarding price discrimination for companies trying to maximize their earnings or profits by identifying different price points for different individuals based on their willingness to pay.

Given that that's a long-standing business practice, however you want to think of it, whether it's for seniors' discounts or charging more money closer to a flight based on travellers' willingness to pay more, is it simply a matter of transparency and privacy that's the issue here? As long as people know what they're getting themselves into, is everything aside from that just par for the course?

The Vice-Chair (Kristina Tesser Derksen): Was that directed to Professor Charlebois or Professor Chapdelaine?

Aaron Gunn: It's for Professor Chapdelaine first, and then maybe we'll go over to Mr. Charlebois.

Pascale Chapdelaine: I'm so sorry. Can I ask you to briefly summarize your question?

Aaron Gunn: Yes. In the last panel, we were talking about how in many ways this is just the convergence of new technology on top of existing price discrimination practices that have been happening in business for forever, essentially, with companies trying to charge different price points to different individuals based on their willingness to pay.

My question was, is the key point of the regulation, in your view, simply to unmask this for transparency so that consumers know what they're getting themselves into, or do you think this is entirely different from what was going on before?

Pascale Chapdelaine: Charging different prices to different people is not illegal per se, but what we've added to this equation in recent years is the massive collection of personal data that didn't exist before in a bricks and mortar world.

One thing we didn't mention in much detail, maybe, is that anti-discrimination laws exist that apply to the private sector. All the codes of human rights are also a way...and this is clear. On that front, if in your pricing you end up doing it in a way that violates human rights codes, everyone agrees this is a problem, even without changing the law. In fact, I believe the Ontario Human Rights Commission issued a statement on that this week, pertaining particularly to surveillance pricing.

I think it's amplified. As I said in my remarks, personal data protection is seen as a fundamental right. It's something that really has weight in our legal system. It's not any other type of law. Over time, with the Supreme Court decisions and now with the way Bill C-36 is headed, we are reinforcing that principle, just as in the case of the European Union, where it has long been recognized as a stronger form of right than other rights.

Aaron Gunn: Do I have time for another question?

The Vice-Chair (Kristina Tesser Derksen): You have 30 seconds.

Aaron Gunn: Mr. Charlebois, very quickly, you've been a big proponent, obviously, of fighting back inflation at the grocery store and fighting for better costs for consumers. Do you think the emergence of new technology and AI presents opportunities for consumers?

I think of when I'm shopping. For example, when choosing credit cards, you can type your budget or what you're spending into Claude or another AI system, and it will shoot back at you what the optimal credit card is for you to use. Also, you can check Amazon pricing history to see how the prices of goods have changed over the last six months and find out if you're getting ripped off or not.

Are there opportunities there as well?

● (1830)

Sylvain Charlebois: I would say yes, absolutely. I'm thinking of good prices, of course. I'm also thinking about food safety and recalls. We often see Canadians die, unfortunately, because they didn't get the proper information on a food recall. By having access to information, you can operationalize a recall much more quickly.

There are benefits with AI, as far as I'm concerned, but when we look at forecasting and at the potential of surveillance pricing in particular, will consumers save money over time with surveillance pricing? It is possible, but given the governance of the industry right now, it's highly unlikely.

The Vice-Chair (Kristina Tesser Derksen): Thanks very much.

We'll go to Mr. Al Soud for five minutes, please.

Fares Al Soud: Thank you, Madam Chair.

Thank you to all of you for taking the time to be with us today. It is truly appreciated.

Professor Chapdelaine, earlier, my colleague Ms. Church asked a question on consent. Under PIPEDA, consent is considered valid only where “it is reasonable to expect that an individual” understands “the nature, purpose and consequences” of how their personal information will be collected and used. At the same time, we know that most Canadians are not spending their evenings reading lengthy privacy policies and terms of service before purchasing a product or using a service.

My question is this: If a consumer clicks “I agree” without any real understanding that their personal information may be used to influence the prices they're offered, should that be considered meaningful consent?

Pascale Chapdelaine: I would say most likely no, because unless you are versed in retail pricing—and I've studied that at length—it's quite complicated. The way the law works is that it's not only consent. Let's say you click “I agree”. It still has to be for a reasonable purpose.

In some cases, it might be for a reasonable purpose, and it is very clear that the purpose is “we collect your past purchases”, as I said in the previous example, “in order to give you discounts”, and it's very transparent on how many discounts. I'm not saying it is or that all loyalty discount programs are, but let's say it is. That could be a reasonable purpose, but if the main purpose is only to maximize a company's profits, I don't think that would fly under personal data protection law, because if we start seeing this as a reasonable purpose, it just flies in the face of what personal data protection is about.

All companies want to make a profit. That's a given.

Fares Al Soud: Thank you for that.

Dr. Charlebois, on that same topic, you noted earlier that most consumers don't know how much information they give out. Is there anything you'd like to add to this?

Sylvain Charlebois: Basically, we all shop every single day. The grocery store is a lab for grocers. Everything is designed to capture any data possible from consumers. We don't really realize it, but I understand the business very well. The information they have about us.... We look at a label for two seconds and then move over and buy another product. That's data for them. It's just incredible. It's quasi-scary, really.

Food distribution is a cent-and-dime game. It's a very tough business, so they'll do anything possible to increase profits.

My question has always been the same about gouging. I've heard the word “gouging” quite a bit tonight. I often ask my students how to define greed in the food business. Nobody has ever done that. Is it 2%? Is it 5%? We've heard many parties say that we should limit profits. Well, limit them based on what and in what capacity? I think this is an opportunity for this committee to look into this matter. How much is too much?

Fares Al Soud: Dr. Taylor, earlier you noted that you may wish to see what information they have on you but that you doubt they'll be giving that up anytime soon. I think that's a reality and challenge for many Canadians.

Under Bill C-36, you'd be able to ask a company in writing for the personal information it holds about you, and then it would generally have about 30 days to provide that information, explain how it was used and disclosed, and identify who received it. I'd love your thoughts on this.

● (1835)

Stacey Taylor: It would certainly give me some comfort to know exactly how much data I'm giving out without even realizing it, because it goes much further than just.... We've talked a lot about loyalty programs. It goes much further than that.

Also, a number of studies have shown that once a consumer really understands what data is being captured about them and how companies are using it, they change their shopping habits. To me, that says people are looking for a lot of privacy. They don't realize how much it's affecting how they buy things—what they buy and at what price they buy. Really, it's an influencing mechanism.

Fares Al Soud: Thank you, Madam Chair.

The Vice-Chair (Kristina Tesser Derksen): Thank you.

I am going to leave it to members. We could do another short round. Maybe we'll shorten it up a bit to four minutes each, if that's okay.

I have Mr. Hardy for four minutes and then Mr. Shahnawaz for four minutes.

[*Translation*]

Gabriel Hardy: Thank you very much.

Mr. Charlebois, two questions still occur to me. Maslow's Pyramid is very well-known. The foundational needs that allow a human being to develop safely on Earth are food and shelter. That's generally agreed to be the basic level. For some families at the moment, an average of 50% to 80% of their income goes to those two needs.

But we are now looking at a new factor: algorithmic changes and everything. Should we not put that on hold with regard to the basic needs like food and shelter? Then we can see what is going to happen in the rest of the market. Should we enact legislation to stop it in cases where basic needs are affected, like eating and having a roof over one's head, in order to give us time to evaluate how other kinds of purchases, such as for leisure, are affected?

Sylvain Charlebois: I want to be clear about your question. Are you talking about surveillance pricing?

Gabriel Hardy: Yes, I am. We have been talking about surveillance pricing for some time. We seem to be saying that it will make prices go up and that basically consumers are not going to pay less. At the moment, families are having a hard time making ends meet, yet, as I understand it, we are talking about technology that will make prices go up. Should we not put some parts of it on hold?

Earlier, you said that you were perhaps not ready to go so far as to recommend legislation to put a stop to the practice. But when it comes to food and shelter, could we not make it illegal, say for two years, so that we have time to see how things go and how companies use it? Would that not give the public some breathing room?

Sylvain Charlebois: That is a good question.

I have seen how the grocery code of conduct has evolved. I encouraged Parliament to establish that code for ten years and now it exists. But at the time, the grocers wanted absolutely nothing to do with a code, whether voluntary or compulsory. With time, with inflation, with the situation and everything, the grocers were eventually forced to adopt it because of the specific political context. Parliament, through the Standing Committee on Agriculture and Agri-food, forced the grocers' hand. They had to accept a code of conduct. It's voluntary at the moment. Over time, discipline was established, though they wanted none of it.

I sincerely believe that, without legislation on surveillance pricing, a clear message can be sent to the industry for the benefit of Canadians that the behaviour is unacceptable. That would probably be enough for now, because lawmakers such as yourselves can now be seen to be taking an interest in the problem ahead of time.

Gabriel Hardy: Thank you.

My last question goes to Ms. Chapdelaine.

In your research, you raise questions of valid consent and of reasonable purposes as companies use our data in personalizing prices. In simple terms, what does the law already prohibit?

Then, what direction should we take so that we can make sure that consumers are fully aware of the way in which their data are being used, either for or against them?

We agree that, when the data are used against them, they do not like it. When they are used for them, they are happy. But they at least have to be aware.

Pascale Chapdelaine: That is a good question. Actually, my argument is that it contravenes the law in that case because valid consent cannot be obtained. The purposes for which the information may be used would not be legitimate under the law. It is a nebulous area, but that is the argument I am making.

So, for progress to be made along those lines, I would really like to see the Privacy Commissioner, or his successor, actually, use Bill C-36 to focus on that and establish very clear benchmarks. There would have to be a study and then an explanation of what is allowed and what is not. It's been done very well in the past. That would be a step in the right direction, in my opinion.

Of course, some thought will need to be given to the powers that the new commission would take on if Bill C-36 comes into effect. The powers of investigation are all helpful too. It would be a matter of looking at what is happening and intervening when necessary. The commission would have many more powers than the current commissioner. I feel that that is a positive path towards protecting consumers and the public.

● (1840)

Kristina Tesser Derksen (Vice-Chair): Thank you, madam.

[*English*]

Finally, we'll go to Mr. Shahnawaz. I believe you're going to be splitting your time with me.

Tanveer Shahnawaz: Thank you.

My question is for Dr. Taylor.

You co-authored the "Canadian Food Sentiment Index", and you released some interesting reports, including some on the perception Canadians have about inflation. I'm wondering if you can speak to any intersection this has to this study and the conversations we've been having when it comes to perceptions of algorithmic pricing, as well as our ideas on inflation.

Stacey Taylor: We see that Canadians are very worried that prices are going to continue to go up and that inflation is going to go up. We see that grocers are not trusted at all. When you layer on top of that the idea of algorithmic pricing or surveillance pricing and the confusion of what the difference is between surveillance and dynamic pricing, I think it just compounds the problem and makes it much scarier for Canadians.

They're already looking at the fact that they're having affordability problems with food, shelter, transportation and all of the things we need to function in life. They can't afford them, and this is just compounding that.

Tanveer Shahnawaz: Thank you.

The Vice-Chair (Kristina Tesser Derksen): I have one quick question. I think I'll direct it to you, Professor Taylor. It's about the role of social media in all of this.

When I open up platforms like Facebook and Instagram, I'm bombarded with retail advertising. How does this dovetail with the problem of surveillance pricing?

Stacey Taylor: Every time we click on something, it's going to notice. When that happens, we tend to get more of the same type of thing to see if we are going to engage with it, and it's adding to the whole profile. Did I engage with that particular ad, that particular reel or whatever it is? Then they start to make predictions about what else I could be interested in. We all think our phones are listening to us anyway, so this is just adding to it.

The Vice-Chair (Kristina Tesser Derksen): They definitely got my number. Thank you so much.

Thank you so much to our witnesses. It was a very enlightening meeting.

I'm going to adjourn shortly. I just want to remind everyone that on November 23, we have the Privacy Commissioner attending.

Thank you so much, everybody, and thanks for your patience as we wrap up.

We are adjourned.

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