



Preparatory Document
on the Policy Aspect
of the Public Inquiry into Foreign Interference

Prepared by: Research Council

Contents

- 1 Introductory remarks 3
 - 1.1 Context and Objectives of the Preparatory Document 3
 - 1.2 The Challenge of the Policy Phase 4
 - 1.3 Your Contribution to the Preparatory Work 5
 - 1.4 How and when to send us your comments 5
- 2 Hypotheses, themes and questions for comments and suggestions..... 6
 - 2.1 Democracies in Theory and Practice. 6
 - 2.2 Foreign Intervention & Diplomatic Practice 7
 - 2.3 Electoral Integrity: Nomination Contests and Leadership Contests..... 9
 - 2.4 Electoral Integrity: Political Financing..... 11
 - 2.5 Disinformation, Digital Space and Democratic Processes 12
 - 2.6 Canada’s National Security Apparatus..... 15
 - 2.7 Whole-of-Society Approach, Public Engagement and Civic Education 16
 - 2.8 Canada’s “Plan to Protect Democracy” 17
 - 2.9 Enforcing, Deterring and Prosecuting Foreign Interference Activities 19

1 Introductory remarks

1.1 Context and Objectives of the Preparatory Document

- [1] The mandate of the Public Inquiry into Foreign Interference in Federal Electoral Processes and Democratic Institutions (the Commission) has two aspects: a factual aspect and a policy aspect. Under the policy aspect, Commissioner Marie-Josée Hogue is tasked with recommending any appropriate means for better protecting federal democratic processes from foreign interference.
- [2] Part of the work on the factual aspect was addressed in the hearings held earlier this year, and in the initial report tabled on May 3. This fall, another set of hearings will enable the Commission to complete the factual component of its work. This will be followed by a series of consultations to address policy issues. As such, at this point the Commission has not reached any conclusion on any aspect of its work and has not yet identified the mechanisms that may need to be strengthened or put in place.
- [3] The short timeline for the Commission's work means that it must prepare for the policy consultations before the factual hearings are completed. This preparatory document has been drafted by the Commission's Research Council and is aimed at helping the Commission finalize the organization of the policy aspect of its work. Nothing in this preparatory document should be construed or interpreted as the Commission having come to any conclusion regarding any aspect of its work.

1.2 The Challenge of the Policy Phase

- [4] In principle, the Commission would wait for the factual hearings to be completed before turning its attention to the policy aspect of its work. Indeed, to identify measures likely to strengthen protection against foreign interference, it is first necessary to understand what needs strengthening. This involves considering the evidence heard and assessed by the Commissioner.
- [5] However, as mentioned above, the Commissioner is working to very tight deadlines to produce her final report. She has therefore asked the Research Council to carry out preparatory work. In response, the Research Council produced this document. In it, you will find hypotheses, themes and questions identified by the Council as potentially relevant to the policy aspect of the Commission's work.

Please note! This document is intended as a basis for discussion only. It should not be seen as anticipating future conclusions, nor as reflecting the position of the Commissioner or the Research Council. In producing this document, the Council drew on the Commission's initial report, various reports tabled in Canada on the issue of foreign interference, and the experiences of other states that have faced issues similar to those the Commission is charged with examining. The factual hearings may lead to the conclusion, for instance, that some hypotheses are incorrect, that some themes are of less significance than others, and that some experiences of other states are not relevant to Canadian reality. The factual hearings may of course also raise issues or questions not mentioned below.

1.3 Your Contribution to the Preparatory Work

[6] Given your expertise in relevant areas, the Commission invites your comments and suggestions on the following aspects:

1. On the proposed topics:

a. Do you find the hypotheses, themes and questions set out in this preparatory document relevant and useful?

b. Would it be desirable to add any themes or questions to this list?

2. As for the processes proposed to address these topics:

The Commission plans to hold thematic roundtables, bringing together academics and experts with relevant experience.

a. Do you consider the themes set out in the document to be relevant and useful for a roundtable program?

b. Given the different themes that could be selected, do you have suggestions regarding whom the Commission should invite to participate in the roundtables?

3. Any other comments or suggestions that you feel would maximize the benefits and outcomes of the policy aspect of the Commission's process.

1.4 How and when to send us your comments

[7] Comments should be sent by e-mail to the Research Council member who contacted you, **by September 11th, 2024.**

2 Hypotheses, themes and questions for comments and suggestions

2.1 Democracies in Theory and Practice.

- [8] For elections to serve their intended purpose, it is critical that eligible participants – and only eligible participants – choose a representative through a process which is free, fair, and informed.
- [9] It is partly because foreign interference can impact the freedom, fairness, and information environment of elections that it is a cause for concern. Foreign interference is difficult to address in part because some mechanisms a state could use to prevent or limit its impact could themselves negatively impact democracy. For example, efforts to limit disinformation that might poison the information environment may risk limiting access to diverse perspectives that enrich that environment.
- [10] The purpose of this roundtable is to identify and consider approaches to managing tensions in democratic values, such as between freedom and safety in the information environment, or over- and under-inclusion regarding who is eligible to participate in democratic processes.
- [11] Questions might include:
1. In maintaining the conditions necessary for a healthy democracy, which democratic values may conflict?

2. Among Canada's democratic practices are certain models for balancing conflicting values, such as the "Oakes test".¹ What other models and practices do we have, and which might be suitable for addressing value conflicts in situations of foreign interference?
3. What salient institutional or cultural practices does Canada maintain between elections to ensure that, when an election is called, eligible voters have the best prospect to make a free and informed choice? Which useful practices does Canada lack which we could cultivate?
4. How effectively do current electoral laws provide oversight and redress for potentially concerning foreign interference? How could current electoral law be improved in this regard?
5. In Canada, are there models of effective prevention, oversight and redress concerning foreign interference from other, non-election oriented areas of government that could be usefully considered in the elections context?
6. Are there models of effective prevention, oversight and redress from other jurisdictions that might usefully be considered in Canada?

2.2 Foreign Intervention & Diplomatic Practice

[12] In her Initial Report, Commissioner Hogue mentions common concerns about distinguishing foreign influence, understood as legitimate or acceptable behavior, from foreign interference, understood as problematic. Influence may 'become' interference, the

¹ Hogue, The Honorable Marie-Josée. May 3, 2024. "Public Inquiry into Foreign Interference in Federal Electoral Processes and Democratic Institutions: Initial Report," pp. 20ff and 85-86.

report notes, when it is “clandestine, deceptive, or personally threatening.” Yet, the report also notes that this distinction can be difficult to make. Indeed, many reports and observers have described a substantial ‘grey zone’ of ambiguous behaviors that look questionable to some, while striking others as ‘business as usual’.

[13] This ambiguity may create at least three potential difficulties. First, ambiguity may make it harder to confidently identify inappropriate political behavior, while also potentially chilling legitimate political or diplomatic efforts. Second, disagreements between governmental bodies around what counts as concerning or illegal behavior may hamper a government’s ability to take appropriate action in a timely manner. And third, ambiguity may contribute to public confusion, which may in turn make it less likely that citizens will recognize foreign interventions of potential concern.

[14] A common proposal is to formulate a definition of foreign interference that eliminates ambiguity. Yet, any such definition would have to manage genuine, not just semantic ambiguities: for example, could any definition capture the contextual complexities of diplomacy? If it turns out definitions cannot be made specific enough to be workable while remaining abstract enough to capture real ambiguities, are there other ways to guide citizens and officials?

[15] Additional questions include:

1. Are there foreign activities that are legal but nonetheless illegitimate? Can you think of borderline cases that could illustrate such cases?
2. Moving away, for the sake of the discussion, from a focus on definitions and legal constraints, what other means are available to guide evaluation of foreign actions

and responses? For example, might a statement of principles and values that goes beyond a definition assist?

- Alternatively, what about a guided decision document (such as a decision matrix), with questions to aid reasoning and deliberation?
3. What other tools beyond the law could be employed, and what other non-legal responses might be appropriate to address foreign intervention?
 4. Article 41 of the Vienna Convention forbids interference in internal affairs and guides appropriate mechanisms for diplomatic activity.² Why do some states fail to comply with this Article, and might anything effectively address these failures?
 5. What levels or types of interactions between politicians and diplomats or foreign representatives in Canada are in compliance with the Vienna Convention? How can Parliamentarians and their staff be educated on where to draw the line?

2.3 Electoral Integrity: Nomination Contests and Leadership Contests

[16] Nomination contests are one process by which political parties may choose the candidates who will represent them in each riding in a general election. These processes can be thought of as the first step in an election. Each political party has its own rules to govern nominations processes and these rules are enforceable by the party rather than by Elections Canada; they are not enshrined in law. Elections Canada's role in

² Vienna Convention: "41(1)...it is the duty of all persons enjoying [diplomatic] privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State. (2) All official business with the receiving State entrusted to the mission by the sending State shall be conducted with or through the Ministry of Foreign Affairs of the receiving State or such other ministry as may be agreed."

nominations processes is to monitor the flow of money to nomination contestants through contributions, which are regulated by the Elections Act.

[17] In her interim report, Commissioner Marie-Josée Hogue writes that “nomination contests can be gateways for foreign states who wish to interfere in our democratic process.”³

Nomination contests may be vulnerable to foreign interference for various reasons. Potential factors might include rules around membership and voting, voting procedures, proof of citizenship and residency requirements, or consistency of rule enforcement.

[18] Leadership contests may face the same vulnerabilities for similar (or perhaps different) reasons.

[19] Given what appear to be vulnerabilities of nomination and leadership contests to foreign interference, what can be done to fortify these processes, and perhaps other political party processes, against foreign interference?

[20] Questions might include:

1. What rules for nomination processes in the various political parties may make them vulnerable to foreign interference?
2. How might rules around nomination and leadership contests be reformed to make them less vulnerable to foreign interference?
3. What are the advantages and disadvantages of regulating/imposing rules on political party processes?

³ Hogue, The Honourable Marie-Josée. May 3, 2024. “Public inquiry Into Foreign Interference in Federal Electoral Processes and Democratic Institutions: Initial Report,” p. 23.

4. Who ought to be allowed to vote in nomination contests and leadership races?
5. What type of rules should be set by political parties and what type of rules should be legislated (if any)? Who should be responsible for supervising and enforcing them?
6. What other vulnerabilities may exist in political party processes, and how might these be addressed?

2.4 Electoral Integrity: Political Financing

[21] The Canada Elections Act places limits on the size of annual contributions to political parties, candidates, leadership and nomination contestants, and riding associations. Further, there are limits on the amounts that political actors, including third parties, can spend before and during election campaigns. Third parties – people and organizations or groups that seek to participate in and influence the election debate but do not seek election themselves – are required by law to keep separate bank accounts for their election expenses so that election expenses and contributions can be more easily tracked and scrutinized. Political actors must submit reports to Elections Canada outlining their expenditures as well as the donations received. These rules, including the specific limits on contributions and spending, are all enshrined in law and enforceable by Commissioner of Canada Elections.

[22] Political finance rules have evolved considerably over the years with the goal of increasing transparency and fairness in electoral competition. Only Canadian citizens and permanent residents are permitted to donate to political campaigns; contributions from corporations, trade unions, organizations, and foreign entities are prohibited by law.

Financial contributions have been recognized as an important form of political expression in public debate and in jurisprudence on the regulation of third parties.⁴

[23] The limits on financial contributions seek to ensure a level playing field between contestants so that competing political messages can be heard without having some campaigns effectively drowned out by others that have more financial support.

[24] Though the law prohibits donations from foreign entities, it may prove difficult to “follow the money” with precision.

[25] Questions related to the implications and effectiveness of the political finance regime, and its capacity to protect against foreign interference, include:

1. Are existing rules and authorities adequate in ensuring transparency in political financing? Are there barriers to effectively identifying political donors?
2. Are there additional measures that would enhance the ability of the political finance regime to detect and counter foreign interference?
3. Who should be allowed to make contributions to political actors and who should not? Should the rules be the same for all types of contributions?

2.5 Disinformation, Digital Space and Democratic Processes

[26] Disinformation and misinformation refer to verifiably false claims, in the latter case shared without intent to deceive, and in the former, with intent to deceive and mislead. A third category, malinformation, refers to information that stems from the truth but is exaggerated or used out of context in order to mislead and cause potential harm. The

⁴ [*Harper v. Canada \(Attorney General\)*, \[2004\] 1 SCR 827.](#)

acronym MDM in this document is used to capture misinformation, disinformation and malinformation.

[27] Regardless of intent, MDM is potentially harmful in many ways, including in reducing trust in institutions and the media, breaking down social cohesion and undermining the integrity of democratic processes. For this reason, some states may leverage MDM for the purpose of foreign interference.

[28] MDM is not a new phenomenon: states disseminated lies and propaganda long before the rise of social media. However, social media platforms and the digital ecosystem in general have considerably increased the spread and impact of MDM. This explains why MDM, on the one hand, and social media, on the other, are often discussed and addressed simultaneously. More recently, advances in generative AI tools have added another layer to the discussion.

[29] Finding appropriate ways to respond to foreign-based MDM in the current digital landscape raises significant challenges, which democratic states around the world are facing. One such challenge is to ensure that the means and tools that we develop to detect and counter MDM do not violate the very principles and values that we are trying to preserve. Among these are freedom of expression, access to reliable information and the protection of privacy. Another challenge is to design protection and prevention mechanisms that are flexible enough to keep pace with accelerating technological change. Fundamental to all these challenges is the need for clarity around the substantive nature of the threat that MDM represents, and the extent to which it affects democratic processes and institutions.

[30] This reality raises many questions, including:

1. What approach should Canada take in confronting the challenge posed by MDM to our democratic institutions: targeting the substance of the information, those who produce it, the mechanisms by which it is disseminated?
2. In the context of foreign interference, identifying the source of MDM for the purpose of attribution is often difficult. Are there appropriate and effective means to do so? What should be the threshold for attribution of MDM to a foreign actor?
3. Should the government publicly identify and attribute MDM to foreign actors and, if so, when and how?
4. What tools currently exist to counter MDM? Are these tools effective? Are they likely to be effective in the case of AI-generated information, such as deepfakes?
5. What should be the responsibility of social media platforms in dealing with MDM in democratic processes? Is self-regulation of these platforms compatible with democratic principles?
6. Research has shown that different diaspora communities are unevenly affected by MDM spread by social media and messaging applications. What strategies could respond effectively to the diversity of audiences likely to be affected by MDM?
7. Should there be a distinct strategy to detect, deter and counter offline MDM?

2.6 Canada's National Security Apparatus

[31] The Commission is mandated to examine and assess the capacity of the federal government, including its intelligence agencies, to detect, deter, and counter foreign interference in Canada's democratic processes.

[32] The Commissioner's Initial Report noted difficulties in identifying, confirming, and attributing foreign interference – especially online activities- and the process of making intelligence-informed decisions in response to that threat. The Report also discussed the challenge of effective communication of foreign interference intelligence and information to stakeholders, the public, and to those likely most vulnerable to foreign interference.

[33] This aspect of the Commission's mandate may raise several questions, including:

1. Do Canada's intelligence agencies have the legal authorities, technical capabilities and resources necessary to detect, collect and analyze information regarding foreign interference, especially in the online environment? Do they have the authorities and tools they need to effectively counter foreign interference? What more can be done to improve Canada's capacity to detect and counter the threat?
2. What measures can be taken to make the relationship between Canada's intelligence agencies and government decision makers more effective and efficient?
3. What measures can be taken to improve the communication of intelligence and the understanding of the implications of foreign interference threats with external stakeholders such as political parties and candidates? Can amendments to section 19 of the Canadian Security Intelligence Service Act in Bill C-70 be expected to

improve information sharing? What will they address and what will they not address?

4. How should the tension between providing information specific enough to be meaningful and protecting the operational and security imperatives that require limits on information-sharing best be resolved?
5. What is the current public perception of Canada's national security agencies? Does this perception differ between different Canadian communities? If a lack of public trust exists, either generally or within certain communities, how has this affected the agencies' capacity to deter, detect and counter foreign interference? What measures should be taken to rebuild that trust?
6. Should Canada's national security agencies better communicate with the public about the threat of foreign interference and how to protect themselves against it and, if so, how?

2.7 Whole-of-Society Approach, Public Engagement and Civic Education

[34] It has frequently been said that combatting foreign interference requires a “whole-of-government” approach, meaning that all components of the state, including all departments and agencies, must be engaged in the overall strategy to guard against foreign interference and carry responsibility for seeing it through.

[35] It is also frequently suggested that, while the state is an essential player in protecting against foreign interference, the success of any strategy in this area ultimately requires and depends on the participation and commitment of individuals and institutions directly or indirectly affected by such interference, i.e., a “whole-of-society” approach. Areas that

are frequently mentioned in this respect include: (1) raising public awareness of the importance and fragility of democratic processes, and of the dangers that foreign interference poses to these processes; (2) educating the public regarding foreign interference tactics and protective measures that may be taken, and (3) ensuring media and digital literacy.

1. Do you agree with these initiatives? How can Canada do this better to effectively combat foreign interference?
2. How can Canada build civic awareness about the danger of foreign interference without contributing to the loss of confidence in our democratic institutions?
3. How can citizens practice civic self-defense both during and between elections?
4. What other civic organizations or non-state-based institutions, may have a role to play in a whole-of-society approach? How can they best coordinate?
5. How might education regarding media and digital literacy be improved? How might the federal and provincial governments cooperate to achieve this?
6. What approaches are other countries using to achieve these goals? Do international examples exist that could serve as useful models?

2.8 Canada's "Plan to Protect Democracy"

[36] The Critical Election Incident Public Protocol (CEIPP) and the Security and Intelligence Threats to Elections (SITE) Task Force are two elements of the government response to foreign interference. These bodies are part of a strategy called Canada's Plan to Protect Democracy (the "Plan") developed in 2019.

[37] When developing the Plan and the Protocol, the Government made the threshold for a decision by the Panel of Five to notify the public about a foreign interference threat high. It was explained that this threshold is high in part because of the potential consequences of notification: the concern that has been expressed is that announcing a threat to free and fair elections may damage trust in our electoral process, or itself affect the election outcome. This can inadvertently further an interfering state's goal to sow discord, and discredit or harm democracy.

[38] Notably, the threat of foreign interference facing Canada has evolved since the implementation of the Plan raising the following questions:

1. Is the CEIPP, as originally envisioned and previously implemented, the optimal process for deciding when, why, how and by who information about foreign interference in democratic processes should be shared with the public during an election?
2. If not, what ought that process, or those processes to entail? Issues may include:
 - a. Is the current composition of the "Panel of Five" appropriate?
 - b. Is the threshold for making a public announcement sufficiently clear?
 - c. Is the threshold for making a public announcement too high? Too low?
 - d. Should the "Panel of Five" or another body be empowered to make public announcements or take other public action for "below threshold" events?
 - e. How should this process work in the context of by-elections, when the "caretaker convention" does not apply?

3. What process or processes should exist outside the writ period to monitor and report on foreign interference threats to democratic institutions?

2.9 Enforcing, Deterring and Prosecuting Foreign Interference Activities

[39] Several aspects of foreign interference can make investigating and prosecuting its perpetrators challenging. While there are laws that criminalize some types of foreign interference there are relatively few foreign interference prosecutions. The Commission heard evidence during its Stage 1 hearings in the spring about some of the actors responsible for investigating and prosecuting offences linked to foreign interference, and some of the challenges that they face. This evidence suggests that there are important questions to ask about whether Canadian laws, procedures, and enforcement agencies are designed and resourced to effectively investigate, deter and prosecute foreign interference activities.

[40] Questions that could be considered within this theme include:

1. Is the criminal law an appropriate way of responding to foreign interference? Are there reasons why other approaches could be preferable?
2. Do Canada's laws prohibit the right things? Are there gaps in our legislation? Should the definition of existing offences be revised to better account for the reality of foreign interference or to enhance the prospect of successful prosecutions? How has this changed since the passage of Bill C-70?
3. Does law enforcement have the right powers to enforce the laws that exist? Can those powers be exercised in a way that makes them of practical value in foreign interference investigations?

4. There are multiple agencies that may play a role in detecting and investigating foreign interference. This includes traditional law enforcement like the RCMP or local police of jurisdiction; intelligence agencies like CSIS or the CSE; and specialized entities like the Commissioner of Canada elections. Is the current distribution of responsibility and authority between these bodies conducive to effective investigation of foreign interference? Are there aspects of their relationships that create challenges for prosecutions and, if so, could they be reformed?
5. Prosecuting foreign interference crimes in a courtroom presents its own challenges, including – but not limited to – the “intelligence to evidence” problem. Are there ways that criminal procedures could be reformed to make foreign interference prosecutions more viable?
6. How does the Canadian Charter of Rights and Freedoms come into play in foreign interference prosecutions? Would reforms to our foreign interference laws be consistent with Charter rights and values?
7. Do the mechanisms contained in Bill C-70, such as a transparency registry and mechanisms to use sensitive information in administrative proceedings, provide a useful alternative to the criminal law?