



## Decision on Intervener Participation in Stage 2 Hearings (Democracy Watch)

### Introduction

1. Democracy Watch (“**DW**”) has Intervener standing during the factual phase of the Inquiry as well as standing in the policy phase. It seeks an order granting it two additional participatory rights during the Stage 2 factual hearings: the right to cross-examine the witnesses who testify; and the right to access, in the same way as Parties, documents in the Party database.
2. In this decision, I explain why I have decided to dismiss the application.

### Background

3. In my *Decision on Standing*, I discussed the requirements for applicants to gain standing before the Inquiry.<sup>1</sup> One of the central criteria to obtain standing, as required by my Terms of Reference, was that an applicant have a “substantial and direct interest” in the subject matter of the Inquiry. I noted that this was a demanding criterion, and that a mere concern, however pronounced, was not sufficient if that concern did not stem from the consequences that the Commission’s findings or recommendations could have on an applicant’s interests.<sup>2</sup> Moreover, I noted that having some relevant expertise was not in and of itself sufficient to justify a grant of standing.<sup>3</sup>

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<sup>1</sup> [Decision on Standing](#), 4 December 2023, edited December 18, 2023.

<sup>2</sup> *Ibid*, para. 12.

<sup>3</sup> *Ibid*, para. 14.



4. I also noted that a “substantial and direct interest” was not an all or nothing concept, and that there are degrees of interest that individuals and groups may have in the subject matter of an inquiry.<sup>4</sup>

5. As a result of this consideration, as well as the requirements for participants to be in a position to make “necessary” contributions and to have “appropriate” participation, I decided to grant two distinct forms of standing during the factual phase of the Inquiry. For those who had the most direct interest in the subject matter of the Inquiry, I granted Party standing. This standing carried with it the broadest participatory rights, including advanced access to a database of documents and the right to cross-examine witnesses.

6. Generally speaking, those participants who were granted Party standing had some form of personal or reputational interest in the outcome of the Commission’s work, or had a formal, official role in countering foreign interference or in the federal electoral process. These participants had the most at stake with respect to the findings that I may make or might be called upon to implement potential recommendations that would emerge from my work.<sup>5</sup>

7. On the other hand, I granted Intervener standing to participants who, while having some particular interest in the subject matter of the Commission, did not have as direct an interest as those that I identified as Parties. This included those whose interest

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<sup>4</sup> *Ibid.*, para. 13.

<sup>5</sup> *Ibid.*, para. 22.



was defined by a general interest in the issues of foreign interference or the integrity of the electoral process and democratic institutions.<sup>6</sup>

8. I noted, however, that in exceptional circumstances, it may be appropriate for an Intervener to exercise greater rights with respect to a particular issue or phase of the proceedings.<sup>7</sup>

9. Prior to the start of the Stage 1 factual hearings in March 2024, I concluded that four Interveners ought to be granted enhanced participatory rights: The Conservative Party of Canada, the New Democratic Party, the Bloc Québécois, and Erin O'Toole. I therefore granted these four Interveners, for the duration of the Stage 1 factual hearings, the right to cross-examine the witnesses who testified and the right to access, in the same way as Parties, documents in the Party database.<sup>8</sup>

10. This decision was based on my own assessment of the strength of the interest of the four Interveners in the specific subject matter of the Stage 1 factual hearings. The focus of the Stage 1 hearings was on the 43<sup>rd</sup> and 44<sup>th</sup> General Elections. Each of the four interveners played a direct role in the events that were under examination as they were all direct contestants in those elections. Further, Mr. O'Toole and representatives of the Conservative and New Democratic Parties were called as witnesses to testify about their specific involvement in those elections. Additional evidence was heard about an alleged disinformation campaign targeting Mr. O'Toole and the Conservative Party, as well as concerns raised by them and conveyed to the Government of Canada.

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<sup>6</sup> *Ibid.*, para. 24.

<sup>7</sup> *Ibid.*, para. 28.

<sup>8</sup> [Decision on Intervener Participation in Stage 1 Hearings](#), 15 March 2024.



11. Due to the direct connection between the focus of the Stage 1 factual hearings and the role the four Interveners played in those events, I benefited from their exercising additional participatory rights and as such I decided to grant them these same additional rights for the duration of Stage 2 factual hearings.<sup>9</sup>

## The Application

12. In the case of DW, I granted them Intervener standing. I concluded that DW had a long-standing interest in the integrity of the democratic process. I took specific note that DW may be well positioned to provide the Commission with submissions on matters within its mandate, and to help bridge the gap between fact-finding and policy making.

13. However, I did not view DW as being uniquely positioned to assist the Commission by calling witnesses or conducting cross-examinations. Rather, I found that its necessary contributions would rest in making submissions on what the Commission ought to make of the evidence before it, and how to apply that evidence to potential recommendations.<sup>10</sup>

14. DW seeks enhanced participatory rights during the Stage 2 factual hearings that mirror the enhanced rights that the Conservative Party, New Democratic Party, Bloc Québécois, and Erin O'Toole received during the Stage 1 factual hearings.

15. The Stage 2 factual hearings will focus on Clause (a)(i)(C) of my Terms of Reference, which direct me to:

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<sup>9</sup> *Decision on Intervener Participation in Stage 2 Hearings (Political Parties and Erin O'Toole)*, September 6, 2024.

<sup>10</sup> [Decision on Standing](#), 4 December 2023, para. 139.



(C) examine and assess the capacity of relevant federal departments, agencies, institutional structures and governance processes to permit the Government of Canada to detect, deter and counter any form of foreign interference directly or indirectly targeting Canada's democratic processes, notably in relation to

- (I) the creation, sharing, assessment and distribution of intelligence and the formulation of advice to senior decision-makers, including elected officials,
- (II) the supports and protections in place for members of a diaspora who may be especially vulnerable and may be the first victims of foreign interference in Canada's democratic processes, and
- (III) the mechanisms that were in place to protect the integrity of the 43rd and 44th general elections from foreign interference as compared to those in place in previous recent federal elections that the Commissioner determines to be relevant

16. Referring to previous notices to the public issued by the Commission, DW states that, through its grant of full standing during the Policy Phase, it expected to have full participation rights for matters falling under clause (a)(i)(C) of the Terms of Reference. Now that it understands that there are distinct factual and policy phases taking place during the Commission's fall hearings, it brought this application to obtain enhanced standing during the Stage 2 factual phase.

17. DW submits that it has as much of a substantial and direct interest in the Stage 2 factual phase as any of the diaspora groups that have been granted standing as a Party. It states that it has a particularly strong interest in the topics and issues to be addressed during Stage 2. It points to its long-standing interest in the integrity of the democratic process and its non-partisan position. It also refers to its closing



submissions made following the Stage 1 factual hearings, which it says addresses several matters that are central to the Stage 2 factual hearings, such as the capacity of the Government of Canada to detect, defer and counter foreign interference.

18. DW also points to an earlier letter it sent to the Commission in March 2024, setting out ten “key witnesses” and approximately 140 factual questions that it submitted should be asked in relation to gaps in the Government’s ability to respond to foreign interference. It submits that these comprehensive questions, which are linked to the extensive research conducted by DW’s co-founder as part of his Ph.D dissertation, demonstrate DW’s direct interest in the Stage 2 hearings, as well as its unique ability to make necessary and appropriate contributions through cross-examination of witnesses.

19. Finally, DW refers to my *Decision on Intervener Participation in Stage 1 Hearings*. It submits that the same reasons that justified enhanced participatory rights for the three political parties and Mr. O’Toole during the Stage 1 factual hearings justify enhanced participatory rights for DW during the Stage 2 factual hearings.

## Analysis

20. As I indicated at the outset of this decision, I would dismiss DW’s application.

21. I accept DW’s submission that it has a substantial and direct interest in the subject matter of the Stage 2 factual hearings. Clearly questions about Canada’s ability to maintain the integrity of our electoral processes and democratic institutions are of central concern to an organization such as DW.



22. It is because of this interest that DW was granted standing in the first place.

However, in order to assess its request for enhanced participatory rights, I must consider the strength of this interest, as well as the other criteria that I discussed in my *Decision on Standing*.

23. In my view, DW does not have the type of substantial and direct interest that would justify giving it participatory rights that mirror those of Parties, such as access to the Party database and cross-examination rights.

24. In this respect, I note that there is no suggestion that DW was involved in the factual events that I will be examining during the Stage 2 factual hearings. This distinguishes DW from the majority of parties, who do have such a factual involvement.

25. This also distinguishes DW from the four Interveners who were granted enhanced participatory rights. Those Interveners – three political parties and a party leader during the 44<sup>th</sup> General Election – were active contestants in the electoral events being examined by the Commission during Stage 1 factual hearings. They did not merely have an interest in the 43<sup>rd</sup> and 44<sup>th</sup> General Elections, they were also directly involved in the specific events that were under examination by the Commission. The same cannot be said for DW.

26. I also do not agree that DW's position is analogous to the various diaspora groups that have been granted party status.



27. From the earliest days of my work, it was apparent that foreign interference likely had a unique impact on diaspora communities in Canada. The findings that I have made in my *Initial Report* have confirmed this.<sup>11</sup> Put simply, while foreign interference into electoral processes and democratic institutions impacts all Canadians, it does not impact us all equally. Members of diaspora communities who suffer unique harms from foreign interference have a substantial and direct interest in the subject matter of this Inquiry that is distinct from the interest of other members of the Canadian polity.

28. The interest of diaspora communities is arguably even stronger during the Commission's Stage 2 factual hearings. The Commission's terms of reference specifically instruct the Commission to examine the supports and protections in place for members of a diaspora who may be especially vulnerable and may be the first victims of foreign interference in Canada's democratic processes.<sup>12</sup> It seems self-evident to me that members of these communities have a substantial and direct interest in the supports and protections that are (or are not) in place to protect them.

29. Granting Party standing to a number of diaspora organizations reflected a pragmatic approach to my work. As I noted in my *Decision on Standing*, there is no single diaspora community experience. At the same time, proportionality and expeditiousness required me to place some limits on participatory rights.<sup>13</sup> As a result, I dismissed standing applications brought by a number of individuals, and instead granted Party standing to a number of groups or coalitions of groups that, collectively,

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<sup>11</sup> Foreign Interference Commission, [Initial Report](#), 3 May 2024, at pp. 147-148.

<sup>12</sup> Terms of reference, Clause (a)(i)(C)(II).

<sup>13</sup> *Decision on Standing*, *supra*, paras. 162-163.





represent a broad range of diaspora communities in Canada. By permitting them to fully participate in work of the Inquiry, my hope was that they could in some sense speak on behalf of the many thousands of diaspora community members who have had their lives impacted by foreign interference.

30. DW is in a rather different position than these groups. As an organization that is devoted to the integrity of Canada's democratic processes, government accountability, democratic reform and citizen participation in public affairs,<sup>14</sup> it represents the interests of Canadians generally. To the extent that it seeks to speak on behalf of a community, it is the totality of the Canadian public, which collectively has an interest in democracy and good government.

31. The issue with this is that representing the public interest is the responsibility of Commission counsel. Advancing the generalized interests that DW represents is already central to the function of Commission counsel. In this respect, permitting DW to also cross-examine witnesses does not represent a necessary contribution. This conclusion accords with the findings that I made respecting DW's interest in my original *Decision on Standing*.<sup>15</sup>

32. DW's application emphasizes not only its interest, but also its expertise. It submits that more active participation in the Stage 2 hearings is both necessary and appropriate because it has particular expertise in the topics to be addressed.

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<sup>14</sup> *Ibid.*, para. 137.

<sup>15</sup> *Ibid.*, para. 139.



33. I do not dispute that DW has such an expertise. However, as I stated in my *Decision on Standing*, the fact that an individual or group has particular expertise in the matters within the Commission's mandate does not itself justify a grant of standing.<sup>16</sup> Even accepting that DW does possess a measure of expertise in the topics that will be the focus of the Stage 2 factual hearings, I am not satisfied that their participation would be necessary since I am satisfied that Commission counsel are fully able to adduce the evidence that I will need in order to discharge my mandate.

34. In this respect, I take note of DW's March 2024 letter to the Commission, setting out some 140 questions it states it would ask of various witnesses. DW relies on this letter to demonstrate how it would make a necessary and appropriate contribution through enhanced participatory rights. I note that the questions it has set out mostly address questions of law, such as the rules that exist under a number of federal statutes. To the extent that these questions are of importance to the Stage 2 factual hearings, Commission counsel are well equipped to ask them.

35. In this respect, I agree with the approach taken by Commissioner O'Connor in the *Arar Commission* in granting participatory rights to Interveners. In concluding that it was not necessary to grant Interveners the right to cross-examine witnesses, he relied on the fact that Commission counsel would be fully able to canvass the types of issues that the Interveners had an interest in, and that Interveners could suggest lines of inquiry to Commission counsel. In his view, permitting additional counsel the right to

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<sup>16</sup> *Ibid.*, para. 108.



examine witnesses would not advance the public interest in having an expeditious proceeding.<sup>17</sup>

36. In reaching this conclusion Commissioner O'Connor stated that he did "not intend in any way to criticize the organizations to which [he granted] intervener standing."<sup>18</sup> Nor do I. I believe that DW continues to have a very important role to play in the work of the Commission and I expect that it will continue to collaborate with Commission's counsel as it did during Stage 1. However, I do not believe that it has a sufficiently substantial and direct interest to justify enhanced participatory rights, nor do I believe that permitting it to cross-examine witnesses would constitute a necessary or appropriate contribution.

37. Access to the Party database is also unwarranted. Access to that database is only necessary to the extent that a participant can cross-examine witnesses.

## Conclusion

38. The application is dismissed.

*Signed*

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Commissioner Marie-Josée Hogue

September 6, 2024

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<sup>17</sup> Commissioner Dennis O'Connor, [Ruling on Standing and Funding](#), 4 May 2004 (Arar Commission) at 9-10.

<sup>18</sup> *Ibid.*, p. 10.