



Decision on Application to Revisit Commission's Initial Report, Conduct Certain Investigative Steps and to Hold Certain Public Hearings

1. On July 16, 2024, the Russian Canadian Democratic Alliance (“RCDA”) filed an application with the Commission seeking orders that the Commission do the following:
 - a. Seek out and collect evidence from relevant organizations and witnesses knowledgeable about Russian interference in the 2019 and 2021 general elections, including Yonder employees, the Atlantic Council and social media companies.
 - b. Convene public hearings focused exclusively on Russian interference, featuring testimony from the aforementioned organizations, government officials, and representatives from the Rapid Response Mechanism (“RRM”) Canada; and
 - c. Revisit key findings in the Initial Report concerning Russian interference during the 2019 and 2021 general elections, notably by expressly addressing the evidence introduced during the Stage 1 hearings, and by expressly addressing the RCDA's final submissions of the Stage 1 hearings.¹
2. In this decision, I explain why I have decided to dismiss the application.

Background

3. The RCDA has standing as a Party during the factual phase of the Inquiry. As a Party, the RCDA has been consulted by Commission counsel about matters pertaining to its mandate. For example, all Parties, including the RCDA, were asked for their views

¹ RCDA Application, dated July 16, 2024, para. 1.



on witnesses that the Commission could interview during the course of its investigation, as well as topics and questions to address with government witnesses during *in camera* hearings.

4. At the conclusion of the Commission's Stage 1 factual hearings, in accordance with the Commission's *Rules of Practice and Procedure*, the RCDA filed a 20-page set of written closing submissions.² In those submissions, the RCDA identified what it submitted was evidence of Russian foreign interference in the 2019 and 2021 General Elections, and made submissions that the government of Canada misapprehended the threat Russia posed and failed to communicate or investigate key information about Russian activities.

5. On May 3, 2024, I released my *Initial Report*³ in which I reached a preliminary conclusion that, while Russia has significant capabilities and seeks to undermine public confidence in political systems and democratic processes in the West, it was not a significant foreign interference actor in relation to the last two Canadian federal elections.⁴ As with my other findings in the *Initial Report*, this conclusion was only

² [Written Submissions of the Russian Canadian Democratic Alliance with respect to Stage 1 Hearings](#), April 15, 2024.

³ Public Inquiry in Federal Electoral Processes and Democratic Institutions, [Initial Report](#), May 3, 2024 ["*Initial Report*"].

⁴ *Initial Report*, p. 138.



preliminary. It may be revised based on further evidence obtained by the Commission during its Stage 2 factual proceedings.⁵

6. On July 26, 2024, the RCDA filed an application with the Commission asking me to “revisit” my findings respecting Russian interference in the 2019 and 2021 federal elections. It also applied to have the Commission conduct specific investigative work on Russian interference in the 2019 and 2021 General Elections, including by interviewing particular individuals, and to convene public hearings focused “exclusively” on Russian interference.

7. Given the unusual nature of the relief that the RCDA was requesting, Commission counsel had a series of communications with counsel for the RCDA. These communications focused on the Commission’s role and processes.

8. Ultimately, the RCDA confirmed that it wished for its Application to be adjudicated.

9. Pursuant to Rule 63 of the Commission’s *Rules of Practice and Procedure*, the Commission delivered the RCDA’s application to all Parties and invited their written submissions by August 22, 2024. Submissions were only provided by the Government of Canada and the Ukrainian Canadian Congress.

10. I also directed Commission counsel to request that the RCDA provide a detailed list of citations to the evidence that it indicated was not properly investigated and considered by the Commission and that supported its position that my preliminary

⁵ *Initial Report*, p. 150.



findings respecting Russian foreign interference in the 2019 and 2021 General Elections should be revisited. The RCDA responded to this request on September 2, 2024, in an email that contained a combination of references to the evidence and arguments.

Submissions Received

The RCDA

11. A significant portion of the RCDA's application is devoted to setting out the procedural history to its application, as well as expressing its concerns about the quality and thoroughness of the Commission's work.

12. It submits that the Commission appears to have uncritically accepted the Government's conclusions respecting Russian interference in the 2019 and 2021 General Elections. It states that it is "perplexing" that the Commission could accept those conclusions in light of what it says is contradictory or "strongly attenuating" evidence from witnesses.

13. The RCDA also criticizes the Commission for failing to address more directly its Stage 1 written submissions in the *Initial Report*.

14. It further submits that the Commission has failed to properly consider various *Charter* values in issuing the *Initial Report*. It submits that the Commission's failure to address the submissions it made in the *Initial Report* constitutes a failure to consider or proportionately weigh freedom of expression, the right to vote, or equality rights.



15. The RCDA also made a legal argument, based on administrative law principles,⁶ that the reasons given by the Commission for not expressly addressing the RCDA's written submissions in the *Initial Report* are unreasonable. It submits that the relief that it is requesting falls squarely within my Terms of Reference; that notwithstanding the time and resource constraints imposed on the Commission it "could have pursued the evidence presented by the RCDA or expressly addressed its submissions"; and that the issues to be considered during Stage 2 are different from those in Stage 1 and so are unlikely to result in any reconsideration of the preliminary conclusions regarding Russian interference in the 2019 and 2021 General Elections.

The Government of Canada

16. The Government of Canada took no position on the specific relief sought by the RCDA.

17. In its submissions, the Government of Canada emphasized the independent role of the Commission, noting that no participant (including the Government) has control over the Commission's direction or process.

18. It also noted that it has made best efforts to provide the Commission with all information in its possession relevant to my Terms of Reference, including with respect to Russia.

⁶ Specifically citing [Canada \(Minister of Citizenship and Immigration\) v. Vavilov](#), [2019] 4 SCR 653.



19. Finally, it disagreed with the way that the RCDA has characterized the evidence before the Commission and maintained that in some cases the RCDA has even mischaracterized the evidence.

The Ukrainian Canadian Congress

20. The Ukrainian Canadian Congress (“UCC”) supported the RCDA’s application. It noted its concern that Russia received significantly less attention during the Stage 1 hearings than other countries, notwithstanding the fact that it is expressly mentioned in my Terms of Reference. It also expressed its concern that my preliminary conclusions respecting Russia’s involvement in Canadian federal elections does not accurately reflect the true state of affairs.

21. It further noted the strong interest of the Ukrainian Canadian diaspora in having the Commission fully explore any allegations of Russian foreign interference in Canada.

Analysis

22. As mentioned above, I would dismiss the RCDA’s application.

23. The RCDA’s application asks that I direct myself and my staff to conduct particular investigative steps and to hold particular hearings. It also seeks to have me revisit findings in an initial report that are, on their very own terms, preliminary in nature. None of these requests are appropriate.

Request for Specific Investigative Steps

24. There is nothing wrong with the RCDA expressing its view that the Commission should undertake particular investigative steps. Indeed, the Commission benefits from



the suggestions of Participants, as they may have important information or connections to relevant witnesses.

25. To the extent that this is all that the RCDA is seeking to do in this application – *suggest* that the Commission investigate certain matters – there was never any need to bring an application. The Commission actively solicited this very advice from the RCDA, along with all other Parties, and the RCDA provided it.

26. In bringing an application, it appears to me that the RCDA is asserting that it has a right to compel the Commission to conduct the investigation that it has suggested and that it considers appropriate. This view is both misguided and dangerous.

27. A Commission of Inquiry is intended, by its very nature, to be independent. The importance of independence is most often understood in relation to government since Commissions of Inquiry often investigate matters that involve government actors or respond to controversies involving the government. Commissions exist in part to avoid the many problems that may exist when governments investigate themselves.

28. That said, I do not think that the importance of Commission independence is limited to government. Rather, Commissions of Inquiry seek to gain and maintain public confidence through their independence from any external influence. It is the Commission's terms of reference and the public interest that must guide its actions.

29. This is not to say that the specific suggestions made by the RCDA was contrary to the public interest. Indeed, the Commission has already reached out to several of the individuals and entities identified by the RCDA. Some agreed to be interviewed and



provide the Commission with evidence while others indicated they had no relevant information to provide. Some did not respond.

30. The point is that, as a general matter, Participants have no legal right to dictate how a Commission's investigation should proceed. They can *suggest* or *ask* – even forcefully – but they cannot *require*, by application or otherwise.

31. I leave open the possibility that, in an appropriate case, considerations of procedural fairness and natural justice could give rise to some type of obligation on a Commission of Inquiry to engage in a particular investigative step. However, this issue has not been addressed in any of the submissions before me, and so I do not make any finding on it. I simply observe that in my view no such right arises in this case.

32. I reiterate the fact that this application was essentially unnecessary. The RCDA has repeatedly made its position clear to Commission counsel. The Commission has considered those suggestions, along with all other suggestions provided by the other Parties, and the information available to it. The Commission has made its decisions about how to conduct its investigation based on the information available to it, its available resources, and the public interest.

33. The Commission has not followed up on every investigative lead suggested by the RCDA. Nor has it accepted and applied every suggestion proposed by any one Party. It has, however, followed up on some number of the suggestions from Parties, including some of the RCDA's suggestions. In some cases, the Commission's efforts have been successful. In other cases, they have not.

34. The RCDA cannot obtain more than this through an application.



Request to Hold Particular Hearings

35. For essentially the same reasons, this aspect of the RCDA's application is also misguided.

36. The Commission structures its public hearings based on a range of factors, including its Terms of Reference, the evidence available to it, the availability of witnesses, the time available for hearings, and considerations of proportionality and expeditiousness.

37. As part of this process, the Commission solicits and receives the perspectives of Participants about the topics, issues and witnesses that they believe should be called during public hearings.

38. The perspectives of Participants are valuable. However, it is the Commission that has all of the relevant information, and the broader duty to serve the public interest. Consequently, it is the Commission that is required to make decisions about what evidence will be called during public hearings.

39. The Commission has taken note of the RCDA's views on what the public hearings should include. It has also taken note of the wide range of other perspectives expressed by other Participants. The public hearings will be scheduled based on all relevant considerations that apply. It will not be dictated by any one Party.

Request to Revisit *Initial Report's* Findings

40. The RCDA's request for the Commission to revisit findings that are preliminary and already open to reconsideration is also misguided.



41. The RCDA knows very well that all of my findings respecting Russian foreign interference could change based on the information that I will have when I draft my final report. This fact is clearly expressed by the *Initial Report* itself. Ultimately, I may or may not revisit those findings. It is premature to reach any conclusion at this stage. On this basis alone, I would dismiss the RCDA's application to revisit my findings.

42. On a close reading of the RCDA's application, it appears that their position is in fact twofold: First, the Commission ought to have reached different findings based solely on the record that existed at the time; and second, that it was unreasonable for the Commission not to have discussed the RCDA's written submissions more explicitly in the *Initial Report*.

43. The fact that the RCDA wished that I would have arrived at different conclusions based on the evidence before me is not a basis upon which to seek reconsideration of my report. I note in that respect that the RCDA does not demonstrate that I have committed a palpable and overriding error in my assessment of the evidence.

44. It is also important for both the RCDA and the public to recall that the findings in my *Initial Report* are based on all of the evidence that was before me in relation to the 2019 and 2021 General Elections. This includes a substantial body of highly classified evidence that the public cannot have access to, and extensive *in camera* testimony. Much of the RCDA's criticism fails to recognize this fact.

45. I recognize that this places the RCDA, and the wider public, in a difficult position. They cannot assess my conclusions by reference to anything other than the public record and cannot be faulted for doing that. However, this does not change the reality



that my findings are informed by information that the RCDA and the public do not have access to. It is my duty to assess the evidence before me, and in doing so I came to the conclusions that I have reached in the *Initial Report*. The RCDA may disagree, but it cannot impose its views or force the Commission to share them.

46. Furthermore, I am of the opinion that the RCDA's application does not accurately portray the evidence before me.

47. In several instances, the RCDA points to small excerpts of the evidence, while failing to account for the evidence as a whole. However, it is the totality of the evidence before me, and not any one piece, that must be considered. The evidence as a whole led me to arrive at my conclusions.

48. Similarly, the RCDA occasionally relies on isolated comments from some witness testimony, while not giving due attention to the totality of their evidence. In doing so, the RCDA's submissions paint an inaccurate picture of the evidence some witnesses provided.

49. The RCDA's complaint that I ought to have dealt with their written submissions more explicitly in my *Initial Report* assumes a process that is similar to adversarial litigation, in which an adjudicator is required to explain to a litigant why their position was or was not accepted.

50. A Commission of inquiry is different. It is an inquisitorial process. Participants are not litigants who seek to prevail over their opponent, but rather partners in the Commission's work. Their submissions may assist a Commissioner greatly, but they are not like written arguments in a court case. A Commissioner's report is not a judgment



and is not meant to be a review of arguments or positions expressed or adopted by participants.

51. A Party has a right to expect a Commissioner to consider, in good faith, their submissions. They do not have a right to expect that a Commissioner's report will refer to those submissions with any particular degree of detail or explicitness.

52. In the case of the RCDA's written submissions, I simply did not find them to be convincing. It was not necessary for me to set out explicitly why that was the case. That is not the purpose of a Commissioner's report. Rather, I focused on the issues identified in my Terms of Reference, and provided my conclusions as clearly, directly, and succinctly as I could.

Conclusion

53. The Application is dismissed.

Signed

Commissioner Marie-Josée Hogue

September 18, 2024