



## Decision on Application Under Rules 82 and 83

### Introduction

1. Commission counsel have applied for an order pursuant to Rule 83 of the *Rules of Practice and Procedure* with respect to two potential witnesses, whom I will refer to as Person B and Person C.<sup>1</sup>

2. In this decision, I explain why I grant the relief sought and permit Commission counsel to adduce the evidence of Person B and Person C by way of affidavits that will not be disclosed to the Participants or the public. However, publicly disclosable summaries of these affidavits will be released to the Participants and the Public in due course. I also explain why I order that certain documents that would disclose identifying information about Person B and Person C be sealed.

### Background

3. During its investigation, the Commission learned that Person B and Person C may provide relevant information to the Commission. Commission counsel interviewed Person B and Person C separately in 2024.

4. Person B provided Commission Counsel with insight into how the People's Republic of China ("PRC") co-opts and leverages some Chinese Canadian community

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<sup>1</sup> I have adopted these labels to avoid any confusion with the individual – known as Person A – who was the subject of my [Decision on Anonymous Participation in a Consultation Panel](#) (October 4, 2024). Persons A, B and C are different individuals.



associations and politicians of Chinese origin. The information provided by Person B was often first-hand, and other times based on second-hand information.

5. Person B expressed fear to the Commission that they would suffer serious repercussions if their identity was revealed. This fear is based, in part, on the fact that the PRC and its United Front Work Department (“UFWD”) has infiltrated some Chinese Canadian community associations. Person B explained that if it was discovered that they were the source of this information, they would expect to suffer various negative consequences. This included the loss of their employment, being excluded from their community, and retribution by the PRC.

6. Person B provided additional information to the Commission related to the basis for their fears described above.

7. Person C also provided first-hand information about foreign interference activities by the PRC.

8. Person C expressed fear of serious repercussions if their identity was revealed. These repercussions include threats to their physical safety, intimidation and harassment by PRC officials or sympathetic community members in Canada, and the potential loss of their employment.

9. Following their interviews, Commission counsel formed the view that Person B and Person C had relevant evidence to provide to the Commission. Commission counsel also concluded, based on the information provided by Person B and Person C, as well as other information respecting the activities of the PRC, that the fears expressed by Person B and Person C were credible.



10. In order to facilitate this application for protective measures, Commission counsel consulted with Person B and Person C, and brought this application on their behalf.

11. Commission counsel seek an order that I permit them to adduce the evidence of Person B and Person C in the form of affidavits. These would be filed without being disclosed to the Participants or the public. Commission counsel propose, however, to prepare publicly disclosable summaries of these affidavits, which would be released to the participants and to the public.

12. Commission counsel also seek ancillary relief to ensure that the information provided by Person B and Person C is protected from subsequent disclosure. They request sealing orders over the affidavits that they would file from Person B and Person C, as well as over this Application, which discloses identifying information about Person B and Person C.

## Decision

13. I grant the Application.

## Procedural Issues

14. Rule 82 provides that:

A witness or potential witness may apply in confidence to the Commissioner for a direction that some or all the witness's evidence be received other than in a manner fully accessible to the Participants and the public.

15. In this case, the application has been brought by Commission counsel, and not Person B or Person C.



16. In my view, this approach is appropriate, and furthers the guiding principles of the Commission set out in Rule 11.

17. This application engages significant issues pursuant to both the Commission's *Rules of Practice and Procedure* as well as the constitutionally grounded open court principle. It raises issues that would be difficult for a lay individual to address without assistance of counsel well versed in the law applicable to public inquiries.

18. While the *Rules* are drafted in a way that suggests that potential witnesses should themselves apply for protective measures, I do not believe that there is anything inappropriate in the Commission itself bringing such an application when warranted, particularly when doing so would assist me in fairly adjudicating the application. I have concluded that this is such a situation.

19. As I have previously noted, there is nothing objectionable in Commission counsel playing a role in witnesses seeking protective measures in appropriate circumstances, and there is precedent for them doing so.<sup>2</sup>

20. Moreover, the Commission has taken measures to ensure that this Application would be considered fairly on its merits. The Commission counsel who has assisted me in the consideration of the Application and the preparation of this decision has had no involvement whatsoever in the interview of Person B or Person C. Similarly, the Commission counsel who interviewed Person B and Person C have had no involvement in my deliberations over the application or in this decision.

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<sup>2</sup> *Decision on Anonymous Participation*, *supra* at para. 10.



21. In considering this application, I have given no weight to the fact that it has been brought by Commission counsel. I have considered it on the same basis as if it had been brought by Person B or Person C directly.

#### Substantive Issues

22. Rules 82 and 83 govern protective measures for witnesses or potential witnesses. I have already cited Rule 82 above. Rule 83 provides for a non-exhaustive list of protective measures that I may grant if I am “satisfied that exceptional measures are appropriate”. Rule 83(g) contemplates that I may:

[...] make directions to receive the evidence of a witness in the absence of the public and any or all Participants, including the Government, and to disclose only so much of the evidence of or pertaining to the witness as (I) determine to be appropriate.

23. The *Rules of Practice and Procedure* were adopted by the Commission following consultation with the Participants. The *Rules* do not grant me powers that I would not otherwise have pursuant to the *Inquiries Act*, other applicable statutes, or at common law. While Rules 82-83 provide Participants and the Public with fair notice of how I will exercise my powers, the source of my authority to grant the relief requested is my inherent authority to control my own process.

24. I interpret the reference to “exceptional measures” under the *Rules* as being equivalent to the requirements to satisfy me pursuant to the open court principle that a measure limiting the openness of the Commission’s proceedings is necessary and proportionate under the *Dagenais/Sherman Estate* framework. I had addressed this



framework already in a series of decisions,<sup>3</sup> and so will not repeat it here. It is enough to note that limitations on the open court principle ought to be exceptional.

25. That said, I find that a serious risk to an important public interest exists in this case. As I noted in my *Decision on Anonymous Participation in a Consultation Panel*, there is “an important public interest in commissions of inquiry having access to relevant information and perspectives”.<sup>4</sup> Here, I am satisfied by the information contained in the Application that the fears expressed by Person B and Person C are not only credible, but also compelling. In light of other information that the Commission has received about the tactics of the PRC, including transnational repression, I am satisfied that the concerns expressed by Person B and Person C are reasonable.

26. I am also satisfied that, without measures to protect the identities of Person B and Person C, the Commission would not have access to the information that they would provide. The information in question is of a character that makes it highly relevant to the Commission’s work.

27. I am also satisfied that the measures proposed by Commission counsel are necessary in the sense that lesser measures could not adequately prevent the risk identified above.

28. I have considered potential alternatives to accepting the evidence of Person B and Person C by way of non-public affidavit. In particular, I have considered whether a

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<sup>3</sup> *Decision on Anonymous Participation*, *supra*, paras. 19-41; Foreign Interference Commission, [Decision on an Application to Disclose Standing Applications](#) (February 8, 2024), paras. 9-14; Foreign Interference Commission, [Decision on Application to Strike Comments from the Record](#) (October 29, 2024), paras. 30-41.

<sup>4</sup> *Decision on Anonymous Participation*, *supra*, para. 29.



combination of measures could be used to permit Person B and Person C to testify *viva voce* while protecting their identities from the public and perhaps the participants. This would be a lesser measure as members of the public could still observe their testimony, even if their identities were obscured.

29. Ultimately, I have concluded that this would not be possible. The information that Person B and Person C have is primarily first-hand. Any public disclosure of this evidence would give rise to a very significant risk – if not inevitability – that the actual identity of Person B or Person C would become known to others who were involved in the events in question. This would include individuals who may be acting at the behest of the PRC. Put simply, given the nature of Person B and Person C's evidence, any public testimony from either of these witnesses would inevitably reveal their identities to an informed observer.

30. In my view, the only possible way for the Commission to obtain relevant evidence from Person B and Person C is to effectively model the approach taken to the *in camera* evidence provided by Government of Canada officials. Indeed, this is the approach that I described in my *Initial Report* that I might take if faced with an application for protective measures by individuals expressing fear for their safety:

To maximize transparency, I will approach testimony received *in camera* due to safety concerns similarly to how I deal with *in camera* hearings requested by the Attorney General of Canada. First, the Commission prepares a summary of the testimony. Before making it public, the Commission makes



sure with the witness that nothing contained in it would put them, or anyone close to them, at risk.<sup>5</sup>

31. For reasons of expeditiousness, rather than hold an *in camera* hearing, the Commission would adduce the evidence of Person B and Person C by affidavit. This is specifically contemplated by Rule 47. The Commission will still produce public summary disclosing as much of their evidence as possible.

32. In terms of Commission counsel's request for a sealing order, I agree that such a measure is also necessary.

33. Pursuant to Clause (a)(iii)(I), at the Conclusion of the Commission's mandate, it is required to "file the records of the Public Inquiry with the Clerk of the Privy Council as soon as feasible after the conclusion of the Public Inquiry for transmittal to Library and Archives Canada." In order to ensure that identifying information is not subsequently made available to the public, a sealing order is necessary, since the materials in question – the affidavits as well as the underlying Application by Commission counsel – would disclose the identities of Person B and Person C.

34. However, a permanent sealing order is not necessary to prevent harm to an important public interest. Rather, a time-limited measure that would protect Person B and Person C, as well as any family members that they may have, is appropriate. However, after careful consideration, I have concluded that a lengthy duration is necessary. A 99-year sealing order would still allow access to the underlying material

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<sup>5</sup> Public Inquiry into Foreign Interference in Federal Electoral Processes and Democratic Institutions, [Initial Report](#) (Ottawa: His Majesty the King in Right of Canada, 2024), p. 79.





eventually for historical purposes, once the real risk to an important public interest will have lapsed. While this does significantly limit access to a very small piece of the Commission's record, it is mitigated by the publicly disclosable summaries that will be produced and released.

35. Finally, I consider these measures to be proportionate. They adhere to the approach taken with classified information placed before me, whereby as much information as possible is produced to the participants and the public in the form of summaries of information. This approach reflects the realities of transnational repression and the real risks faced by individuals providing sensitive information about state actors such as the PRC; the Commission's compelling need to access information of the type described in this decision; and the public interest in transparency and openness.

## Conclusion

36. I make the following orders:

- a. The evidence of Person B and Person C may be filed with the Commission by way of affidavit, which shall not be disclosed to the participants or the public, but may be considered by the Commission;
- b. The Commission shall prepare public summaries of these affidavits, which shall be produced to the participants and the public; and



- c. The unredacted version of the instant application, as well as the affidavits and any accompanying exhibits of Person B and Person C shall be subject to a sealing order lasting 99 years from the date of this Decision.

*Signed*

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Commissioner Marie-Josée Hogue

November 13, 2024