



DECISION ON APPLICATION TO RESTRICT CERTAIN CROSS-EXAMINATIONS (HUMAN RIGHTS COALITION)

1. The Human Rights Coalition (“the Coalition”) has applied to the Commission for permission to redact the names of any individuals belonging to the Uyghur, Hong Kong, and Falun Gong communities on all documents submitted to the Commission. The Coalition also asks that Michael Chan, Han Dong, and Yuen Pau Woo, who have been granted Party standing,¹ not be permitted to cross examine witnesses from these same communities since, the Coalition claims, they are suspected of collaborating with or supporting China.

2. The Coalition states that its application is based on Rules 62 to 66 and 82 to 85 of the *Rules of Practice and Procedure*, published December 12, 2023.² The application is supported by two sworn statements in which it is argued that it would be dangerous for Messrs. Chan, Dong, and Woo to cross-examine witnesses from these communities, as this would allow them to obtain information that they could then pass on to the Chinese government, should the allegations of their collaboration with China be founded. The two affiants produce documents (appended) which they say show, inter alia, the alleged persecution of these groups by the Chinese Government.

¹ Commissioner Marie-Josée Hogue, [Decision on Standing](#), December 4, 2023, revised December 18, 2023 (Public Inquiry Into Foreign Interference in Federal Electoral Processes and Democratic Institutions).

² Public Inquiry Into Foreign Interference in Federal Electoral Processes and Democratic Institutions, [Rules of Practice and Procedure](#), Rules 62 – 66 and 82 – 85.

Agreed-to Redactions

3. Since the filing of this application, Commission counsel have met with counsel for the Coalition and, as permitted by Rules 23 and 26 of the *Rules of Practice and Procedure*, they have agreed on the information that may be redacted in the documents the Coalition shall produce. The application has thus become moot in this regard, and only the issue of the right to cross-examination remains.

Cross-Examination

4. I believe that the Coalition's application, in its current form, must be dismissed, but reiterate that there are various means of ensuring the safety of those who wish to contribute to the Commission's work but who fear for their safety or that of their loved ones.

5. I note at the outset that the Coalition's application presumes that members of Uyghur, Hong Kong, and Falun Gong communities will testify at the public hearings, without identifying them. In fact, the Coalition's application is *generic* in that it asks the Commission to order that Messrs. Chan, Dong,³ and Woo⁴ not be permitted to exercise their right to cross-examine any witness from one of these communities, regardless of the evidence given.

³ As Messrs. Chan and Dong are being represented by counsel, it is their counsel who would conduct any cross-examinations.

⁴ As Mr. Woo has been granted Intervener status only, neither he nor his counsel has the right to cross-examine witnesses (unless I authorize it on specific matters).

6. While I appreciate the importance of providing a safe space for those who wish to provide information to the Commission, I cannot revoke in advance the right of certain Parties (or their counsel) to cross-examine witnesses who may give evidence in the Commission's public hearings. Here is why.

7. The Commission, which began its work a few months ago, held its first round of public hearings from January 29 to February 2, 2024. These preliminary hearings were intended to assist the Commission and the public in understanding both the risks that may arise from the disclosure of classified information and the practices that can be adopted to allow for the disclosure of as much information as possible within the applicable legal and national security constraints.

8. Hearings on substantive issues, including whether China, Russia, or other actors interfered, or attempted to interfere, in the 2019 and 2021 federal elections and, if so, whether this had an impact on their integrity, should take place in the following weeks and months. Evidence to enable the Commission to understand what happened will be presented at these hearings, some of which will be held in public, while others will very likely be held in camera.

9. Only at the end of these hearings, after hearing the evidence, will I come to findings of fact.

10. Participants to whom I have granted Party standing may, to the extent of their recognized interest and unless I decide otherwise, attend witness testimonies and cross-examine those who will testify at the public hearings in order to test their evidence. This is an important right in a system based on the rule of law and that serves to ensure the fairness of the Commission's process.

11. I therefore cannot deprive these Parties of that right on the basis of allegations of these Parties' collaboration with a foreign state and before even having heard the evidence.

12. It is true that, under certain circumstances, cross-examination may be limited to certain subjects or even put to an end if the cross-examination is deemed abusive. That being said, I believe that such limitations on the right to cross-examination should only be made once the witness's direct examination has been completed, and not preemptively before the testimony even begins, as the Coalition requests here.

13. However, given that some persons may have a legitimate fear of retribution or reprisal if they testify openly, the Commission's Rules provide that, under certain circumstances, evidence may be presented through special measures.

14. These measures are set out in Rules 82 to 85 of the Commission's *Rules of Practice and Procedure*.⁵ They range from the simple redaction of personal information to in camera or *ex parte* testimony—that is, without the public or Participants present—to anonymization and publication bans. These measures are designed to protect both the witness's identity and the content of their evidence, while respecting the rights of Participants to the extent possible.

15. Such measures can be ordered if I am satisfied that they are appropriate, meaning, if it is shown that the underlying concern is reasonable, without needing to

⁵ Public Inquiry Into Foreign Interference in Federal Electoral Processes and Democratic Institutions, [Rules of Practice and Procedure](#), Rules 82 – 85.

prove that there is a real and imminent risk that the witness or their relatives will be the victims of retribution or reprisal.

16. Anyone who requests that any special measures apply to their testimony will know my decision before they testify and, therefore, do not run the risk of being taken by surprise once their testimony is completed.

17. In short, I am convinced that the measures provided for in Rules 82 to 85⁶ are sufficient to protect those who cooperate with the Commission, while respecting the rights of Participants and third parties as much as possible. A witness from one of the communities named by the Coalition, like any other witness, may, in due course and should they so desire, ask me to order that some of these measures be put in place. I will then consider the request and determine the terms and conditions applicable to the testimony to be given.

18. Given the nature of the Coalition's application and the decision I have made, I did not find it useful or appropriate to provide their application to the other Participants or invite their submissions.

19. The Coalition has stated that its application is based on Rules 82 to 85, which suggests that the Coalition wanted this application to be kept confidential. However, its existence having been made public by one of its members, I am of the view that the

⁶ Public Inquiry Into Foreign Interference in Federal Electoral Processes and Democratic Institutions, [Rules of Practice and Procedure](#), Rules 62 – 66 and 82 – 85.

Commission cannot keep this request confidential.⁷ The caselaw has clearly established that information voluntarily disclosed to the public can no longer be protected.⁸

20. While it is no longer possible to keep the application, and therefore this decision, confidential, it remains appropriate not to disclose any personal information contained therein, including the identity of the affiants, as no personal information appears to have been communicated to the press and to the public.

Conclusion

21. I therefore dismiss the Coalition's application for an order that Michael Chan, Han Dong, and Yuen Pau Woo not be permitted to cross-examine witnesses from the Uyghur, Hong Kong, and Falun Gong communities during the Commission's public hearings, but Coalition members who may be called to testify retain their rights to request that special measures be put in place to protect them and their loved ones.

Signed

Commissioner Marie-Josée Hogue

February 12, 2024

⁷ Benson, Stuart. "Human Rights Coalition threatens withdrawal from foreign interference inquiry over rejected bid to limit standing for trio of politicians", hilltimes.com, January 17, 2024, <https://www.hilltimes.com/story/2024/01/17/human-rights-coalition-threatens-withdrawal-from-foreign-interference-inquiry-over-rejected-bid-to-limit-standing-for-trio-of-politicians/408129/>. Accessed January 17, 2024.

⁸ *Glegg v. Smith & Nephew Inc.*, [2005 SCC 31](#), paras. 18 - 19; *Biomérieux Inc. v. GeneOhm Sciences Canada Inc.*, [2007 QCCA 77](#).