



## Decision on Funding

1. Twelve Participants in the Inquiry have made requests for funding: Michael Chan, Erin O'Toole, the Centre for Free Expression, Democracy Watch, the Iranian Justice Collective, Justice for All Canada, the “Human Rights Coalition”, the Russian Canadian Democratic Alliance, the “Chinese Canadian Concern Group”, Michael Chong and the Ukrainian Canadian Congress. The Pillar Society previously sought funding but has withdrawn their application.
2. In this decision, I explain why I have decided to make certain funding recommendations to the Clerk of the Privy Council.

### General Principles

3. Before explaining my recommendations for each Participant, I will discuss the general principles that have guided my decision-making.
4. As my Terms of Reference make clear, I am not authorized to grant funding to any Participant. The power to grant funding rests exclusively with the Clerk of the Privy Council. My role is limited to making recommendations to the Clerk, which he may or may not accept.
5. Clause (a)(ii)(D) of my Terms of Reference impose two limits on my discretion to make recommendations. I am only empowered to recommend funding if, in my view, the person requesting funding “would not... otherwise be able to participate in the Public Inquiry”. Further, I can only make recommendations that are “in accordance with

approved guidelines respecting remuneration and expenses and the assessment of accounts”.

6. The “approved guidelines” in my Terms of Reference refer to the *Terms and Conditions of the Contribution Program for Commissions of Inquiry* (the “Contribution Program”). The Contribution Program sets out both broad principles as well as detailed rules that govern funding in federal commissions of inquiry.

7. The general purpose of the Contribution Program is to ensure that Participants who do not have sufficient financial resources receive necessary funding to access legal counsel and are able to participate appropriately in the work of the Commission. The purpose of the Contribution Program is not, however, to indemnify the Participants for all costs incurred.

8. Funding is therefore limited to certain categories of legal expenses. The Contribution Program does not authorize funding for things other than legal expenses, such as conducting non-legal research, or travel expenses for Participants themselves. Further, the Contribution Program is not intended to cover the full costs of legal representation. Participants may be expected to spend their own resources, fundraise, or retain counsel willing to work at reduced rates.

9. Although I must make recommendations that comply with the requirements of the Contribution Program, I do retain the authority to determine how many hours of legal work I recommend for funding. In exercising this discretion, I have considered the importance of Participants being able to participate appropriately in the work of the Commission, the participatory rights I have granted to each of them, and my responsibility to be prudent in recommending the expenditure of public funds.

## Funding Recommendations

10. Considering the general principles I have set out above, and the information provided to me by the Participants, I have made the following recommendations to the Clerk of the Privy Council.

### Michael Chan

11. I have granted Mr. Chan standing as a Party during the factual phase of the Inquiry.

12. Mr. Chan indicated in his application that he could participate on the limited issues on which he sought standing without funding, but submitted that it would be appropriate to provide funding to persons who have been individually impacted.

13. My Terms of Reference only permit me to make a recommendation for funding if I conclude that the Participant “would not... otherwise be able to participate in the Public Inquiry”. Mr. Chan has explicitly stated that this condition does not apply to him. As such, I am not authorized to make a recommendation of funding for Mr. Chan.

### Erin O’Toole

14. I have granted Mr. O’Toole Intervener standing in the factual phase of the Inquiry and Standing in the policy phase of the Inquiry.

15. Mr. O’Toole emphasizes in his application the importance of legal representation to protect his interests. He points to the fact that he no longer enjoys Parliamentary Privilege, and that, as a continuing target of foreign interference, he requires legal representation throughout his participation in the Inquiry.

16. Although I would have benefitted from further submissions from Mr. O’Toole on his financial circumstances, I accept that he requires legal assistance throughout the entire duration of the Inquiry. I also take note that most Canadians, even those who are former Parliamentarians, would not be able to afford legal counsel to represent them throughout a proceeding as long and complex as this Inquiry.

17. I therefore recommend to the Clerk of the Privy Council that funding be provided to Mr. O’Toole.

#### [The Centre for Free Expression](#)

18. I have granted the Centre for Free Expression (“CFE”) Party standing in the portion of the factual inquiry set out in clause (a)(i)(D) of my Terms of Reference.

19. The CFE provided extensive information, including affidavit evidence, about its financial condition, including sources of funding and its reliance on *pro bono* counsel to participate in legal proceedings. This detailed information assisted me in assessing its application.

20. I accept the CFE’s submission that it does not have the resources to retain legal counsel to participate in the Inquiry and that it requires legal representation to appropriately participate in the Clause (a)(i)(D) hearings. I also accept its submission that, given the nature of the Inquiry, it cannot be expected to rely on *pro bono* legal representation. Although I have only granted the CFE standing in a limited portion of the Inquiry, I do not believe that this should disentitle it from a funding recommendation. It does, however, impact the amount of funding that I recommend.

21. I therefore recommend to the Clerk of the Privy Council that funding be provided to the CFE.

#### Democracy Watch

22. I have granted Democracy Watch Intervener standing in the factual phase of the Inquiry and standing in the policy phase of the Inquiry.

23. Democracy Watch provided detailed financial information to the Commission, including copies of banking documents and information about existing or anticipated financial obligations. This detailed information assisted me in assessing its application.

24. I accept Democracy Watch's submission that it cannot afford to retain counsel to participate in the Inquiry, and that it requires legal representation to appropriately do so.

25. I therefore recommend to the Clerk of the Privy Council that funding be provided to Democracy Watch.

#### The Iranian Justice Collective

26. I have granted the Iranian Justice Collective ("IJC") standing in the policy phase of the Inquiry.

27. The IJC indicates in its application that it operates solely based on volunteer participation and receives no external funding. As such, it does not have the resources to retain counsel to participate in the Inquiry.

28. The IJC subsequently clarified with the Commission that it intended to participate through its own representative, rather than by retaining outside counsel. While its internal representative is a lawyer, the IJC indicated that its representative would be acting in their capacity as a member of the IJC, and not as retained legal counsel.

29. I accept that the IJC does not have the financial resources to retain counsel to represent it. However, the IJC is not seeking funding for this purpose. Rather, it has sought funding to cover costs that fall outside of the scope of the Contribution Program. As a result, I do not have the authority to make a recommendation for funding for the IJC.

#### Justice for All Canada

30. I have granted Justice for All Canada (“JFAC”) standing in the policy phase of the Inquiry.

31. JFAC submits that it is a non-profit advocacy organization that relies on donations from the public to fund its work. It indicates that a recommendation of funding would greatly assist JFAC’s ability to participate in the Inquiry while managing its ongoing advocacy work.

32. JFAC subsequently clarified with the Commission that it intended to participate in the policy phase through its own representative, rather than by retaining outside counsel.

33. While I accept that an organization such as JFAC might not be able to afford legal representation for a Commission of Inquiry, it is not seeking funding for this purpose. Rather, its sole request for funding is meant to cover expenses that fall outside the scope of the Contribution Program. As a result, I do not have the authority to make a recommendation for funding for JFAC. I also note that JFAC submitted that funding would assist it in participating in the Inquiry. It did not provide me with a basis to conclude that it would not be able to participate without a grant of funding.

## The “Human Rights Coalition”

34. I granted a coalition of diaspora groups, collectively referred to as the “Human Rights Coalition” Party standing in the factual phase of the Inquiry and standing in the policy phase of the Inquiry.

35. The Human Rights Coalition provided extensive financial information about its coordinating member, the Human Rights Action Group. It also provided supporting documentation, including banking records, as well as a proposed budget. I note that the budget that it proposed was modest, though it did include some expenses that fall outside of the scope of the Contribution Program. This detailed information assisted me in assessing its application.

36. The Human Rights Coalition submits that, while it could engage in a limited form of participation without funding, it could not fully participate without it. It notes that, as a relatively new organization, it has only been able to engage in limited fundraising to date, and most of those funds have already been spent.

37. I accept that the Human Rights Coalition would not be able to participate appropriately without funding. While I accept that some form of participation could be possible without funding, it could not provide the type of necessary contribution that I envisioned in my *Decision on Standing* when I granted it full party standing in the factual phase of the Inquiry and standing in the policy phase of the Inquiry. As a coalition who will represent the perspectives of a wide range of distinct diaspora communities, there may be an increased need for legal work to effectively coordinate its participation in the proceedings.

38. I therefore recommend to the Clerk of the Privy Council that funding be provided to the Human Rights Coalition.

#### [The Russian Canadian Democratic Alliance](#)

39. I have granted the Russian Canadian Democratic Alliance (“RCDA”) Party standing in the factual phase of the Inquiry and standing in the policy phase of the Inquiry.

40. The RCDA submits that all its activities are self-funded and that all money it raises through donations are reinvested back into its existing projects. It indicates that it has negligible capital and resources to invest into participation in the Inquiry.

41. In supplementary submissions sent to the Commission, the RCDA indicated that, without funding, it would not be able to participate at all in the Inquiry. It also made submissions on the inadequacy of the maximum hourly rates for counsel which it understood applied and requested that I recommend compensation at a higher rate.

42. I accept that the RCDA does not have the means to retain external counsel and that, without funding, it could not appropriately participate in the Inquiry.

43. With respect to the hourly rates for counsel, the RCDA has operated on a misunderstanding about my authority to recommend rates of compensation. Their confusion is understandable as the rules related to the Contribution Program are not well known. Some clarification is therefore in order.



44. The federal Department of Justice maintains a tariff for outside legal counsel, which provides for maximum compensation based on year of call.<sup>1</sup> Under these guidelines, the Government retains a discretion to depart from the tariff in appropriate circumstances.

45. The Contribution Program contains its own rules related to compensation. It includes an identical tariff but does not provide for discretion to provide compensation above the tariff rates. While I have discretion to recommend compensation at rates *below* those set out in the tariff, I do not have the authority to make recommendations for compensation *above* them.

46. I am therefore not able to accept the RCDA's request for compensation above the tariff rates contained in the Contribution Program.

47. I nonetheless recommend to the Clerk of the Privy Council that funding be provided to the RCDA.

#### [The Chinese Canadian Concern Group](#)

48. I granted the Chinese Canadian Concern Group on the Chinese Communist Party's Human Rights Violations ("Concern Group") Intervener standing in the factual phase of the Inquiry and standing in the policy phase of the Inquiry.

49. The Concern Group explains in its application that it has limited ability to engage in fundraising. Due to concerns about infiltration by individuals associated with the Government of the People's Republic of China, it takes particular precautions in admitting members and does not engage in large scale fundraising efforts. It indicates

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<sup>1</sup> Justice Canada, [Agent Affairs Program](#).

that many of its members are from low-income communities, and therefore cannot afford to fund legal representation.

50. I accept that the Concern Group is not able to fund external counsel and requires funding to appropriately participate in the Inquiry. Without taking a position on whether or not it is in fact at risk of infiltration by foreign actors, I do accept that it has an honest concern about this and that such concern constitutes a reasonable explanation for not attempting to generate additional funds for the purpose of participating in this Inquiry.

51. I therefore recommend to the Clerk of the Privy Council that funding be provided to the Concern Group.

[Michael Chong](#)

52. I have granted Mr. Chong Party standing in the factual phase of the Inquiry and standing in the policy phase of the Inquiry.

53. Mr. Chong's request for funding was filed after the deadline for applications had passed. For the reasons I outline in my *Second Decision on Standing*, I exercise my discretion under Rule 9 of the *Rules of Standing and Funding* to consider his request on its merits.

54. Mr. Chong submits that, given the nature of his interest in the Inquiry, he requires legal representation in order to participate appropriately. He makes reference to the legal fees policies made by the Board of Internal Economy of the House of Commons, and indicates that participating in the Inquiry would not qualify for reimbursement.

55. I would recommend that Mr. Chong receive funding for substantially the same reasons as Mr. O'Toole. While I would have benefitted from more detailed information

about Mr. Chong's individual financial circumstances, I am satisfied that he requires funding in order to appropriately participate in the work of the Inquiry. This is particularly true given his role as a full Party.

56. I therefore recommend to the Clerk of the Privy Council that funding be provided to Mr. Chong.

#### The Ukrainian Canadian Congress

57. I have granted the Ukrainian Canadian Congress ("UCC") standing as a Party in the factual phase of the Inquiry and standing in the policy phase of the Inquiry.

58. The UCC did not initially seek funding in its request for standing. After being granted standing, it retained counsel and filed a supplementary request for funding. It explains that it was not sure whether it would be granted standing and, if so, the scope of its participatory rights, and decided to wait until it had a decision before seeking funding.

59. The UCC ought to have applied for funding at the time of its initial request for standing. The Commission's rules were clear in this respect and did not contemplate the type of two-stage approach taken by the UCC.

60. That said, its delay in seeking funding was minimal and could be explained by the fact that it had not yet retained counsel at the time it sought standing. Further, I do not see any specific prejudice suffered by the Commission or the Participants by considering this late request. I therefore exercise my discretion under Rule 9 to consider this request on its merits.

61. The UCC submits that it is a not-for-profit organization with a small paid staff. It states that the nature of the work required to participate in the Inquiry goes beyond its in-house capacity, and requires retaining experienced external counsel. It indicates that it cannot afford to pay external counsel. In support of this submission, it provided the Commission with recent financial statements for the organization, which assisted me in assessing its application.

62. I accept that the UCC is not able to fund external counsel and requires funding to appropriately participate in the Inquiry. I therefore recommend to the Clerk of the Privy Council that funding be provided to the UCC.

## Conclusion

63. Participants will be contacted directly by the Commission with respect to the Clerk's decisions on funding. For those granted funding, Commission Counsel will also provide further information about administrative requirements.

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Commissioner Marie-Josée Hogue

January 5, 2024