



## Decision on Intervener Participation in Stage 1 Hearings

### Introduction

1. In my *Decision on Standing*, I established two forms of standing during the factual phase of the Inquiry: Party standing, and Intervener standing. Because of their more substantial and direct interest in the subject matter of the Inquiry, I granted Parties more extensive participatory rights than Interveners.
2. However, I also anticipated that, as the Commission's investigation progressed, the apparent interests of Participants could evolve, and that "it might be appropriate for an Intervener to exercise greater rights with respect to a particular issue or phase of the proceedings." As a result, I wrote that "I always retain the right to modify the scope of the participation rights I have granted".<sup>1</sup>
3. In this decision, I explain why I have decided to exercise this discretion and extend additional participatory rights to four Participants with Intervener standing:
  - a. The Conservative Party of Canada;
  - b. Canada's New Democratic Party;
  - c. The Bloc Québécois; and
  - d. Erin O'Toole.

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<sup>1</sup> *Decision on Standing*, December 4, 2023, at paras. 28-29.

## Forms of Standing before the Commission

4. My terms of reference provide that I may:

grant any person who, in [my] assessment, would provide appropriate and necessary contributions to, and has a substantial and direct interest in, the subject matter of the Public Inquiry, an opportunity for appropriate participation in the public portions of the Public Inquiry.<sup>2</sup>

5. In my *Decision on Standing*, I explained that I did not view the concept of a “substantial and direct interest” as being an all or nothing concept. Rather, I expressed my view that “[t]here are degrees of interest that individuals or groups may have in the subject matter of an inquiry.”<sup>3</sup> I also explained that the use of the term “appropriate contributions” envisioned a range of potential forms of contributions that a Participant might make.<sup>4</sup> I considered that these two facts were linked: what might constitute an appropriate form of participation for a given Participant would likely vary depending on the strength of their interest in the subject matter of the Inquiry.

6. As a result, I decided to permit two distinct forms of participation in the factual phase of the Inquiry: Party standing, and Intervener standing.<sup>5</sup> In short, those Participants who I concluded had the most direct interest in the subject matter of the Inquiry were made Parties, and were granted the broadest set of participatory rights, such as the right to cross-examine witnesses. Other participants, who had a more general interest, were made Interveners.

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<sup>2</sup> Order in Council PC 2023-0882, cl. (a)(ii)(C).

<sup>3</sup> *Decision on Standing*, December 4, 2023, para. 13.

<sup>4</sup> *Decision on Standing*, December 4, 2023, paras. 16-18.

<sup>5</sup> *Decision on Standing*, December 4, 2023, paras. 21-25.

7. Interveners were given several important rights, including the right to be informed of all public hearings, the right to attend them as Participants, the right to have access to exhibits entered into evidence and the right to make submissions, orally or in writing, as I would direct from time to time.

8. Crucially, Interveners also facilitate the work of the Commission by providing documents and evidence to the Commission, and by proposing witnesses or suggesting potential topics on which to examine witnesses.

9. Throughout my *Decision on Standing*, I emphasized my decision was not set in stone. Rather, I indicated that I could modify grants of standing based on a range of factors, including new evidence obtained by the Commission during the course of its investigation.<sup>6</sup> I also contemplated scenarios in which it would be appropriate for Interveners to exercise greater rights with respect to a particular issue or phase of the inquiry due to a particularly strong interest in a given topic or issue.<sup>7</sup>

### Decision to Grant Additional Rights to Certain Interveners

10. Over the last several months, the Commission has conducted an extensive investigation into the matters set out in Clauses (a)(i)(A) and (B) of my terms of reference, namely:

(A) examine and assess interference by China, Russia and other foreign states or non-state actors, including any potential impacts, in order to confirm the integrity of, and any impacts on, the 43rd and 44th general elections at the national and electoral district levels,

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<sup>6</sup> For example, see *Decision on Standing*, December 4, 2023, para. 159.

<sup>7</sup> *Decision on Standing*, December 4, 2023, para. 28.

(B) in relation to the issues set out in clause (A), examine and assess the flow of information to senior decision-makers, including elected officials, and between the Security and Intelligence Threats to Elections Task Force and the Critical Election Incident Public Protocol panel during the election periods that led up to the 43rd and 44th general elections, and in the weeks following those periods, and actions taken in response

11. As a result of the Commission's investigation to date, I have concluded that it would be appropriate to permit the four Interveners listed at the outset of this decision to exercise two additional procedural rights.

12. First, I would grant them the right to cross-examine the witnesses who testify during the Stage 1 hearings (March 27 – April 10).

13. Second, for the duration of the Stage 1 hearings, I would grant them access, in the same way as Parties, to documents in the Parties database. This will permit them to access documents identified by the Commission as potentially relevant to its mandate prior to their being made exhibits during the public hearings. This access will permit them to prepare examinations and enter documents into evidence. For the sake of clarity, I emphasize that no Party or Intervenor will have access to:

- a. Information provided to the Commission on a confidential basis; or
- b. Classified documents or information, either before or during the hearings.

14. The Commission has no authority to disclose classified information to Participants.

15. Further, as with all participants, the Interveners are bound by the confidentiality undertakings they have entered into pursuant to the Commission's *Rules of Practice and Procedure*.

## Procedure

16. The decision to grant the four named Interveners additional procedural rights was based on my own assessment of the strength of their interest in the subject matter of Stage 1 of the factual phase of the Inquiry. This was not done in response to an application or request from one of the Interveners.

17. Because I did not think it would be appropriate to grant the Interveners additional rights against their wishes, I decided to notify them of my intention to issue this decision and determine whether they in fact wished to have these additional rights.

18. To that end, on March 11, 2024, Commission Counsel wrote to each of the four Interveners indicating that I had formed the view that they should have the two additional rights described above for the duration of the Stage 1 hearings. The Commission requested that the Interveners indicate, by no later than March 15, 2024, whether or not they wished to have these additional rights. Commission Counsel's letter indicated that, if no response was received, I would assume that they did wish to have these rights.

19. All four Interveners have expressed their desire to have these rights, either in a communication to the Commission or in public statements to the media.

## Conclusion

20. I therefore grant the Conservative Party of Canada, the New Democratic Party of Canada, the Bloc Québécois, and Erin O'Toole the following additional rights during the Stage 1 hearings (March 27 – April 10, 2024):

- a. The right to cross-examine the witnesses who testify; and

- b. The right to access, in the same way as Parties, documents in the Parties database.

*Signed*

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Commissioner Marie-Josée Hogue

March 15, 2024