



## Third Decision on Funding

### Introduction

1. On February 1, 2024 the Commission received an application for a recommendation for funding by the Churchill Society for the Advancement of Parliamentary Democracy (“Churchill Society”).
2. In this decision, I explain why I have decided to recommend to the Clerk of the Privy Council that the Churchill Society receive funding for its participation in the Inquiry.

### Background

3. The Churchill Society is an organization with Intervener standing during the factual phase of the Inquiry and standing in the policy phase of the Inquiry. It applied for standing on November 21, 2023, and was granted standing on December 4 when I issued my *Decision on Standing*.
4. In its original application, the Churchill Society did not seek funding. It also did not list a legal representative.
5. In its application, the Churchill Society explained how it wished to participate in the work of the Commission. During the factual phase, it indicated that it wished to address the orchestrated use of misinformation and disinformation by state actors. It indicated that it would do so by providing briefs drawn from its own members’ peer-reviewed published works, which would be adapted to the mandate of the Inquiry. During the policy phase, the Churchill Society submitted that it would continue to focus

on misinformation and disinformation, providing comments on the federal government's ability to effectively counter such activities via existing government regimes.

6. After obtaining standing, the Commission was contacted by legal counsel who indicated that she had been retained by the Churchill Society.

7. On January 4, 2024, counsel for the Churchill Society emailed Commission counsel inquiring whether it could still seek a funding recommendation from the Commissioner. Commission counsel responded later that day indicating that the deadline for applying had passed, but that the Commissioner had discretion to consider late-filed applications pursuant to Rule 9 of the *Rules of Standing and Funding*. Commission Counsel told the Churchill Society to file a formal application if it wished to seek a funding recommendation.

8. It was only on February 1, 2024, that the Churchill Society submitted an application for a funding recommendation, in which it made submissions on whether I should exercise my discretion to consider the application, and submissions on the merits.

9. On the issue of delay, the Churchill Society submitted that it had not appreciated the extent of the legal assistance it would need in order to participate meaningfully in the Commission's work.

10. On the merits, the Churchill society submitted that it is a non-partisan charitable organization with limited resources. It stated that it does not have the financial resources available to cover legal expenses. The Churchill Society further submitted

that given the nature of the inquiry and the scope of standing granted to it, it would not be reasonable to require it to rely on pro-bono legal representation.

## Decision

11. With some hesitation, I have decided to recommend funding to the Churchill Society.

## Extension of Time

12. I would exercise my discretion under Rule 9 of the *Rules of Standing and Funding* to consider the Churchill Society's application.

13. The delay by the Churchill Society in bringing this application is concerning. Participants were required to seek a funding recommendation at the same time that it sought standing. With very few exceptions, Participants did so. In this case, the delay in bringing this application was significant. I am particularly troubled by the fact that, even when told by Commission counsel on January 4, 2024 to bring a formal application, the Churchill Society waited almost an entire month before doing so.

14. The Churchill Society's explanation for the delay is also not entirely satisfactory.

15. However, I note that the Commission only began to hold public hearings in late January, and so it may not have been fully apparent to participants how much work participation would entail until counsel began preparing for those hearings in early 2024.

16. The main reason why I have exercised my discretion to consider this application on its merits is that, while significantly delayed, the Churchill Society's application has been filed early enough that I can consider it prior to the Commission's anticipated March hearings without incurring any prejudice. In the absence of clear neglect or of

bad faith by a participant, I believe that I should generally exercise my discretion in a manner that allows for applications to be considered on their merits if doing so does not cause prejudice to the Commission, the participants or the public.

17. However, I emphasize that I did not arrive at this conclusion easily, and that Participants should not assume that further extensions will be granted.

#### Recommendation for Funding

18. I accept the Churchill Society's claim that it lacks the resources to retain and pay counsel to participate in the Inquiry, and that it is not reasonable to expect counsel to represent it on a fully pro-bono basis.

19. However, this does not end the analysis. I also need to consider the type of participation that the Churchill Society will have in the Inquiry. The delay in bringing this application is also a relevant consideration in considering this funding request.

20. Until it filed its application, the Churchill Society never suggested that it required legal assistance to participate in the manner it outlined in its application for standing and it is not obvious to me that legal assistance is necessary to present briefs based on its own members' peer-reviewed publications. Though legal representation could facilitate the presentation of this evidence, the standard for a funding recommendation under my Terms of Reference is stricter. The test is whether I believe a participant would not otherwise be able to participate in the Inquiry.<sup>1</sup>

21. In practice, however, the Churchill Society's participation is not strictly limited to what was set out in its application for standing. For example, it participated, through

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<sup>1</sup> [Order in Council P.C. 2023-0882](#), cl. (a)(ii)(D).

counsel, during the Commission's National Security Confidentiality hearings in January and February 2024. It has made written submissions in response to directions that I have given. Going forward, I would expect that it would engage in other activities that would also require legal representation.

22. However, I also take into account the fact that much of what I anticipate the Churchill Society to do – as set out in their application for standing – would require only limited involvement of counsel. This does not disqualify them from a funding recommendation, but it is a factor that I consider when deciding how much funding I should recommend.

23. Similarly, given the delay in bringing its funding application, I do not believe that I should recommend funding for work that was done before the Churchill Society made its funding request.

24. I therefore conclude that the Churchill Society should receive a funding recommendation from me. However, the amount that I have decided to recommend takes into account the considerations that I have outlined above. In the result, the Churchill Society's funding recommendation will be less than what it requested.

*Signed*

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Commissioner Marie-Josée Hogue

February 28, 2024