



THIRD DECISION ON STANDING

Introduction

1. On December 12, 2023, the Commission received two applications for reconsideration of my Decision on Standing, dated 4 December 2023: one from the Conservative Party of Canada (“CPC”) and one from the Human Rights Coalition.¹
2. Since interveners can only bring applications with leave, I have reviewed the applications and concluded that leave should be granted but that both applications must be dismissed. Here are the reasons.

Background

3. These reasons should be read along with my Decision on Standing of December 4, 2023, which sets out the factors and criteria I have considered to grant standing. In that decision, I provided for different degrees of standing – “Party” and “Intervener” – based on the applicants’ type of direct and substantial interest in the subject matter of the Inquiry and the nature of their necessary contribution to the Inquiry. In the Public Inquiry into the Safety and

¹ It appears that only five of the eight groups forming the Coalition filed the application for reconsideration but for convenience I will refer to the “Coalition”.

Security of Residents in the Long-Term Care Homes System, Commissioner Gillese explained that “the power to put limits and conditions on participants and different classes of participants enables the Inquiry to discharge its obligation (...) to conduct its work in accordance with the principle of proportionality.”² I endorse her words.

4. Rule 18 of the Commission’s revised Rules of Standing and Funding, dated November 16, 2023, grants me the discretion to “modify, rescind or grant standing.” This discretion should be exercised carefully, while considering the arguments advanced for reconsideration, the nature and significance of the applicant’s interest and the mandate and objectives of the Commission.

Conservative Party of Canada

5. In my December 4, 2023, Decision on Standing, I granted the CPC standing as an Intervener in the factual phase of the Inquiry and standing in the policy phase of the Inquiry. The CPC had originally sought Party standing for the factual phase. I concluded that the CPC has a direct and substantial interest in the work of the Commission, but that this interest is of a general nature only. As an Intervener, the CPC will have the right to be informed of all public hearings of the Commission, to attend them, to have access to exhibits introduced into evidence, and to make submissions. However, I was of the view that the CPC will not need

² Commissioner Eileen Gillese, “Participation (Standing) Hearings Opening Remarks”, December 12, 2017 (Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System) reproduced as Appendix N to [Volume 4 of the Inquiry’s Final Report](#), at 70.

to cross-examine witnesses or access documents that are not made exhibits to make its “necessary contribution” to the Inquiry’s work.

6. The CPC applies for reconsideration of my decision to award it Intervener standing in the factual phase of the Inquiry. It once again seeks Party standing for this phase. In support of its application for reconsideration, the CPC argues that:
 - a. Its full participation is necessary to enable the Commission to bring a final resolution to the questions surrounding foreign interference in Canadian elections;
 - b. Fairness dictates that it be granted standing;
 - c. Decisions to deny standing to political parties in other commissions do not support the decision to exclude it from Party standing;
 - d. It is not interested in using the Inquiry for partisanship.

7. While I appreciate the CPC’s genuine interest in the Commission’s work and the helpful submissions made in support of its request, the CPC has not presented any new facts or developments warranting a reconsideration of its current standing at this juncture. Rule 18 is not intended as an appeal mechanism to challenge a prior decision. Should new facts or developments come to light over the course of the Commission’s investigation that would support the CPC’s claim to Party standing, or if it becomes clear that the CPC’s participation as a Party becomes particularly important to understand a particular set of events, I will

entertain – or indeed if appropriate I could invite – a Rule 18 application to modify the CPC’s standing.

8. While, for the foregoing reasons, I do not consider it appropriate to reconsider the standing granted to the CPC in the Decision on Standing, the following observations should assist the CPC in understanding the role it can play with the standing it has been granted, and the different role that I see the CPC playing in the political venues examining the foreign interference issue.
9. Although the CPC argues that it requires Party standing to make a meaningful contribution to the Commission’s work, this view does not take account of the various ways in which the CPC can contribute to the Commission’s work. As an Intervener, the CPC may work with Commission counsel by providing documents and information, proposing witnesses to be interviewed and/or called to give evidence, and suggesting potential areas of examination of the witnesses that are to be called by the Commission. As I stated at paragraph 28 of my December 4, 2023, Decision on Standing, there may also be circumstances in which it is appropriate for an Intervener such as the CPC to exercise greater rights with respect to a particular issue or aspect of the proceedings, but that will have to be decided if/when such circumstances arise. The CPC also has full standing for the policy phase of the Inquiry, where it can share its insights to enable the Commission to fulfill its mandate.
10. While the CPC argues it is unfair to deny it Party status while granting Party status to the Government of Canada, currently headed by the leader of the Liberal Party of Canada, there is a distinction between the government of the day

and the political party that controls the House of Commons.³ My Terms of Reference concern the conduct of the Government of Canada rather than that of the Liberal Party.

11. Ultimately, it is important that a Commission of Inquiry remain an independent forum, distinct from the political process. This is particularly apposite where parallel political mechanisms exist to review and address matters that are also the subject of the Inquiry.⁴ In this case, there are already a number of political mechanisms for the review and assessment of foreign interference in Canadian elections and democratic institutions, and it is and has been open to CPC to be fully involved in those political mechanisms. First, the House of Commons Procedure and House Affairs Committee (PROC) has held hearings and will report on foreign election interference in Canada. Second, the House of Commons Access to Information, Privacy and Ethics Committee (ETHI) has studied and reported on foreign interference and threats to the integrity of democratic institutions, intellectual property, and the Canadian state. Third, the National Security and Intelligence Committee of Parliamentarians (NSICOP) is completing a review to assess the state of foreign interference in federal electoral processes, pursuant to [s. 8\(1\)\(a\)](#) of the *National Security and Intelligence Committee of Parliamentarians Act*, [SC 2017, c 15](#). I note that NSICOP has access to classified information. Conservative MPs sit on all three of these

³ Gomery Commission, [Supplementary Ruling on Standing](#) (September 13, 2004).

⁴ See Commissioner Paul S. Rouleau, [Decision on Standing](#), July 27, 2022 (Public Order Emergency Commission) at paras. 38-39.

committees, and in this way contribute to the study and resolution of issues relating to foreign interference in Canada. In my view, absent a particular interest or specific circumstances indicating that Party standing before the Commission is required, these political mechanisms should be the primary vehicle for all political parties to address issues relating to foreign interference. It is worth noting that of the five political parties represented in the House of Commons, only two (the CPC and the NDP) applied for standing before the Commission. I granted Intervener standing to both.

Human Rights Coalition

12. The Human Rights Coalition applies for reconsideration of my December 4, 2023, Decision on Standing, not in relation to its own standing as a Party but rather in relation to my decisions to grant Party standing to Mr. Michael Chan and MP Han Dong and Intervener standing to Senator Yuen Pau Woo.
13. In its application, the Human Rights Coalition claims that Mr. Chan, Mr. Dong, and Senator Woo have possible links to and support for the Chinese Communist Party (CCP). They argue that the participation of these three individuals in hearings and their access to sensitive information shared by witnesses or victims will deter witnesses from speaking freely about their firsthand experience and information regarding foreign interference and transnational repression by the CCP.

14. The Human Rights Coalition requests that the standing of Mr. Chan and Mr. Dong in the factual phase of the Inquiry be restricted to the issue of their alleged participation in Chinese interference in the 43rd and 44th general elections and that they not be able to access other witnesses' testimony or documents of other parties, examine or cross-examine witnesses, or be present in hearings that deal with issues beyond those that address the allegations against them. The Human Rights Coalition does not specifically explain what recourse it seeks with respect to the standing of Senator Woo, though it seems to imply that his Intervener standing should be revoked.
15. The Human Rights Coalition also requests a 12-day extension for documentary production for Phase 1, to begin after I have ruled on this application for reconsideration of the standing of Senator Woo, Mr. Chan and Mr. Dong.
16. The Human Rights Coalition has claimed that, since my December 4, 2023, Decision on Standing, some individuals have stated they have concerns about being questioned by Mr. Dong and Mr. Chan. These concerns are important, but they are addressed through procedures set out in the Commission's Rules of Procedure and do not warrant reconsideration of the Decision on Standing.
17. The Commission should not restrict the standing of Mr. Chan, Mr. Dong, or Senator Woo on the basis of allegations of possible links to or support for China or the CCP. The Commission is an independent and impartial body, and the Commissioner is charged with making findings of fact based on the evidence adduced in the Commission's proceedings. The Commissioner cannot make findings of fact or jump to conclusions before hearing the evidence. This fact-

finding function is central to the Commission's mandate and will lead to the recommendations it will ultimately make.

18. Furthermore, it is precisely because there are allegations made against Mr. Chan and Mr. Dong that it is paramount that they be afforded the full range of participatory rights and protections, including the ability to cross-examine other witnesses when affected by their evidence. Procedural fairness is essential where the findings of a Commission of Inquiry can damage the reputation of a witness.⁵
19. Having said this, the right of cross-examination granted to the parties is not absolute and will be supervised by myself throughout the process.
20. Finally, to the extent that potential witnesses may have concerns about retribution or reprisal, I note that Rules 82-85 of the Commission's *Rules of Practice and Procedure* provide a mechanism for witnesses to apply to have their evidence received other than in a manner fully accessible to the Participants and the public. These Rules were put in place specifically to ensure that where legitimate security concerns exist, evidence may be heard while protecting the identity of those providing it.
21. As mentioned above, the Human Rights Coalition also requests a 12-day extension of the first deadline imposed for documentary production for Stage 1,

⁵ *Canada (Attorney General) v Canada (Commission of Inquiry on the Blood System)*, [1997] 3 SCR 440, at para. 55; John Sopinka, "The Role of the Commission Counsel" (1990) 12:3 Dal LJ 75, pp. 81-82.

to begin after I have ruled on this application for reconsideration of the standing of Senator Woo, Mr. Chan and Mr. Dong.

22. Although I believe its present application for reconsideration did not prevent the Coalition from beginning to collect and organize the relevant documents, I accept that some people may have waited to know my decision before delivering documents to the Commission.
23. In these circumstances, I consider it appropriate to grant the Coalition a 7-day extension of the deadline to submit a list of the documents it intends to produce, which means by December 29, 2023.
24. I, therefore, dismiss both applications for reconsideration of standing while I grant partially the Coalition's request for an extension and extend its deadline to submit the list of the documents it intends to produce for Stage 1 to December 29, 2023.

Signed

Commissioner Marie-Josée Hogue

December 22, 2023