



## 3<sup>rd</sup> NOTICE TO THE PUBLIC

1. The Foreign Interference Commission held an initial series of public hearings from January 29 to February 2, 2024,<sup>1</sup> to “identify the challenges, limitations and potential adverse impacts associated with the disclosure of classified national security information and intelligence to the public.” The purpose of these preliminary hearings was, firstly, to enhance public awareness and understanding of these issues and, secondly, to support the Commission in identifying ways to maximize the transparency of its work, while respecting what will herein be referred to as “confidentiality requirements”: that is, the Commission’s obligation to “prevent the disclosure of information whose disclosure could be injurious to the critical interests of Canada or its allies, national defence, or national security.”

2. The evidence, as well as the panelists’ presentations and ensuing discussions provided useful insights into the nature and extent of the confidentiality requirements that apply to the Commission. The presentations and discussions also showed that it is possible to respect these requirements while remaining true to the public nature of a commission of inquiry and its hallmark principle of transparency.

3. Following the hearings, the Commission invited Participants to make written submissions and to suggest ways of maximizing the transparency of its work, while respecting the confidentiality requirements of the Terms of Reference and the law. The

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<sup>1</sup> The hearings can be viewed on the Commission’s website under the [“Public Hearings” tab](#), and documents filed at the hearings under the [“Documents” tab](#).

Commission is delighted that many responded to this invitation, as these submissions enabled it to better understand the expectations of both Participants and the public.<sup>2</sup>

4. The Commission has considered all the information provided during the preliminary hearings and has carefully read the submissions made by Participants. In what follows, the Commission provides some background information, before outlining the process it intends to follow to maximize the transparency of its work while respecting confidentiality requirements.

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## BACKGROUND INFORMATION

5. The Commission began its inquiry process several months ago. It submitted production requests to the Government, which resulted in the Government producing thousands of documents and a substantial amount of information.

6. The vast majority of the documents and information the Commission received from the Government are classified, indicating that the Government believes they should be kept confidential on the grounds that they contain information whose disclosure could be injurious to Canada's national interests.

7. During the hearings, it was established that a document is typically classified by the Government if it contains any information the disclosure of which could be harmful. This means classified documents may contain both potentially injurious information and information whose disclosure would pose no risk.

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<sup>2</sup> The Participants' submissions are available on the Commission's website under the ["Documents" tab](#).

8. In accordance with paragraph (ii)(B) of its Terms of Reference, the documents received and analyzed by the Commission are not in any way redacted for national security confidentiality. However, the fact that the Commission has access to unredacted documents does not mean that it can grant other people access to them, even if the people in question have all the required security clearances. The applicable legislative provisions stipulate that the right to access classified documents does not include the right to disclose them to others. The Commission is therefore not authorized to grant Parties or their counsel access to classified documents.

9. It should be emphasized that not all documents and information made available to the Commission by the Government are relevant or useful to the public's understanding of what transpired in terms of foreign interference. As a result, the Commission will focus its efforts on obtaining public disclosure of the documents and information it deems most relevant and useful, thereby ensuring that it makes good use of the time available to fulfill its mandate.

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10. The Commission notes from the submissions made by Participants that they would like, inter alia, the Commission to:

- a. Help maintain public confidence in Canada's democratic institutions and electoral processes and build public resilience to foreign interference;
- b. Respect the open court principle wherever possible and not hesitate to challenge the Government's position when it argues that information cannot be disclosed for national security reasons (some Participants find arguments

related to the “mosaic effect,” artificial intelligence, and open sources unconvincing);

- c. Recognize that, in some circumstances, the public interest in the right of citizens to be informed may outweigh the protection of national security, as information helps build resilience, which in turn strengthens national security;
- d. Publicly communicate its efforts to convince the Government to disclose information that the Government deems should be protected, and inform the public of any disagreements that arise (this, however, can only be done in accordance with the provisions of the *Canada Evidence Act*, “the Act”);
- e. Consider retaining the services of independent counsel expressly to promote transparency or, failing that, expressly entrust this task to a member of the Commission counsel team;
- f. Allow counsel for the Parties to attend hearings held *in camera* because they deal with classified documents or information (as opposed to hearings held *in camera* to protect the safety and security of the witness giving evidence), if they are unable to attend due to the nature of the evidence being tendered, inform them of the topics of discussion and invite them to submit questions for witnesses;
- g. Regularly inform the public of these *in camera* hearings and release a summary of the evidence presented; and,
- h. Reach out to the diasporas to enable them to fully participate in the Commission’s work.

## HOW THE COMMISSION INTENDS TO PROCEED

11. In order to maximize the transparency of its work while respecting confidentiality requirements, the Commission has established how it intends to proceed in the following three cases:

- a. When the Commission wishes to disclose documents received from the Government, but the Government deems that these documents should be redacted;
- b. When the Government requests that testimony be given in camera because the evidence deals with classified information (i.e., in the absence of the public and Participants, other than the Attorney General of Canada); and,
- c. When persons who fear for their safety but who would like to contribute to the Commission's work request to testify and to produce documents in camera (i.e., in the absence of the public and Participants, other than the Attorney General of Canada).

### Document Redaction

12. The Commission's *Rules of Practice and Procedure*, adopted after consultation with the Parties, take into account that the Commission will receive unredacted documents from the Government containing information whose disclosure could be injurious to national defence, national security, or international relations. The *Rules of Practice and Procedure* further stipulate that the Commission shall identify the documents and information it wishes to introduce into evidence or disclose to the Parties, and then work with the Government to agree on the necessary redactions or, as

the case may be, to agree on an acceptable way to summarize the redacted information. Such summaries may be used to extract, from a classified document, relevant and useful information that can be disclosed without risk of causing harm, or to summarize relevant and useful information from several documents in a way that does not risk causing harm.

13. The Commission will require the Government to justify any redactions when the Commission deems that the documents and information the Government wishes to protect would be relevant and useful to enable Participants to participate fully in the Commission's work or for the public to understand what transpired. If the Commission deems that the information is relevant and useful and that redaction is not justified, Commission counsel<sup>3</sup> will challenge the redaction or, if they deem it more appropriate, will seek to agree on summaries using the procedure set forth in the *Rules of Practice and Procedure*.

14. In all cases, the burden will be on the Government to convince the Commission that disclosure of the information it wishes to redact could be, in the words of clause (iii)(C)(II) of the Commission's Terms of Reference, injurious to the critical interests of Canada or its allies, national defence, or national security.

#### [Requests from the Attorney General to Hold \*In Camera\* Hearings](#)

15. The *Rules of Practice and Procedure* provide that when the Government asserts that information or evidence to be presented must be kept confidential for reasons of

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<sup>3</sup> At present, the Commission believes that its team of experienced counsel will be able to carry out this task without the need to retain independent counsel.

national security or public interest and the Commission is of the same opinion, the Commission must receive it *in camera*, but, where possible, release a summary of the matters considered at these hearings.<sup>4</sup>

16. The Attorney General of Canada has already advised the Commission that it will be necessary to receive certain evidence *in camera*, for reasons of national security or other public interest.

17. In keeping with the requirements of the Terms of Reference and the *Rules of Practice and Procedure*, and taking into account the submissions of Participants, the Commission will apply the following procedure to requests from the Attorney General to hold *in camera* hearings:

- a. From the outset of the hearing or, as the case may be, throughout its course, the Government will have the burden of convincing the Commissioner, through evidence and argument, that disclosure of the evidence to the Parties or the public could be injurious to the critical interests of Canada or its allies, national defence, or national security. This evidence and these arguments will then be tested by the Commission's experienced counsel, to whom the Commissioner has expressly entrusted this task;
- b. If the Commissioner is not convinced by the evidence and/or the arguments presented by the Government, she will require that the evidence be presented in public hearings; and,

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<sup>4</sup> *Rules of Practice and Procedure* 79 and 80.

- c. If, on the other hand, the Commission believes that the Government has shown that hearing this information publicly could be injurious to the critical interests of Canada or its allies, national defence, or national security, the Commission will accept that the evidence be heard *in camera*. However, at the conclusion of an *in camera* hearing, the Commission and the Government will undertake a process to prepare a summary or summaries of the evidence presented that will allow for the disclosure of as much evidence as possible without prejudicing these interests.

18. If, during any of these procedures, the Government and the Commission disagree on the need to keep certain documents or information confidential, i.e., if the Government insists on keeping them confidential while the Commissioner deems this unjustified, the Commissioner, if she wants to make these documents or information public, will notify the Government of her intention to disclose them. This will allow the Government to initiate the procedure provided for in the *Canada Evidence Act* and to bring the dispute before the Federal Court. In accordance with the *Act*, the Commission may not disclose the information and documents in question until the Court has rendered its decision and until that decision is final.

#### [Application for an \*In Camera\* Hearing from a Person Fearing for their Safety](#)

19. If a person who fears for their safety or that of those close to them files an application to testify *in camera*, the Commissioner will promptly make a determination on their application so that the person knows the decision well before their anticipated testimony. Where applicable, the Commissioner will determine the arrangements and protections that will apply to such testimony.



20. The Commission will prepare a summary of this testimony and, before making it public, will ascertain from the witness that nothing contained therein will put the witness or those close to them at risk.

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21. Since transparency cannot be demanded at the cost of compromising national security, the Commissioner will examine any arguments put forward by the Government in support of the confidentiality of documents or information with all due seriousness. That said, to fulfill her obligations under the Terms of Reference to maximize the transparency of her work, she will not hesitate to utilize the processes provided for to obtain the disclosure of documents or information when she deems it appropriate.