



Public Inquiry Into Foreign Interference in Federal Electoral Processes and Democratic Institutions

NOTICE TO INTERESTED PARTIES AND THE PUBLIC CONCERNING THE PUBLIC INQUIRY ON FOREIGN INTERFERENCE

Setting the scene

The evidence that foreign states have been interfering in our electoral processes and our democratic institutions has been a matter of increasing concern in recent years, and this has generated much public discussion and commentary. However, the concern appears to have become more acute in 2022, when some media outlets focused their attention on evidence of foreign interference and the sufficiency of the Government of Canada's response to it in the context of the 43rd (2019) and 44th (2021) federal elections.

These articles gave rise to numerous questions from politicians, the media and members of civil society alike.

It was against this backdrop that on March 21, 2023, the Government of Canada appointed the Right Honourable David Johnston as Independent Special Rapporteur on Foreign Interference and asked him to determine whether foreign governments had attempted to influence election results, either by interfering with voters or with candidates. He was also asked to review the federal government's information and actions about the threat of foreign interference to Canadian electoral processes. The Special Rapporteur was also tasked with determining whether additional, more transparent, processes to inquire into the matter would be advisable.

The Special Rapporteur tabled a first public report, together with a confidential appendix, on May 23, 2023. In essence, he concluded that foreign governments attempted to influence election candidates and Canadian voters, but that the integrity of the outcome of the last two elections was not affected by these attempts. He also found that there is no evidence to suggest that the Prime Minister, any minister or their respective offices knowingly or negligently failed to act on any information they may have received.

The Special Rapporteur recommended that a further public process, though not a Public Inquiry, be undertaken to address issues of foreign interference. He tabled his confidential final report in June 2023.

However, questions about the nature of this interference, its frequency and scale, the means used, and its possible consequences continued to exist.

Accordingly, on September 10, 2023, the Government of Canada adopted Order in Council P.C. 2023-882 and officially established the Public Inquiry into Foreign Interference in Federal Electoral Processes and Democratic Institutions ("the Commission" or "the Inquiry").

All officially recognized political parties have publicly expressed their agreement with the choice of Commissioner and the Terms of Reference that set out her mandate. They have also expressed their intention to collaborate with the Commission to help shed light on the issue of foreign interference and its fundamental implications for Canadian democracy.

The Inquiry Commission

A commission of inquiry is an inquisitorial process aimed at objectively seeking out the truth. It is tasked with making factual findings and then making recommendations for improvement.

Justice Marie-Josée Hogue, appointed Commissioner under Part 1 of the *Inquiries Act*, took office on September 18, 2023. Since then, the Commission has been setting up: hiring counsel, staff, and advisors, obtaining the necessary equipment; organizing its offices, and developing its infrastructure. Given the challenging logistics and requirements for handling the classified information to which the Commission will be privy, the set-up process is complex and ongoing.

The Commission has also been planning its work.

As stipulated in the Terms of Reference, the Commission will carry out its work in two phases.

In phase 1, it will look at whether China, Russia and other foreign actors engaged in foreign interference relating to the 43rd (2019) and 44th (2021) elections, and, if so, any impact such interference may have had on the integrity of those elections. It will also consider how information regarding foreign interference was circulated and actioned (paragraphs (a)(i)(A) and (B) of the Terms of Reference).

In phase 2, the Commission will examine the capacity of the various actors and components of the state to detect, prevent and counter foreign interference (paragraph (a)(i)(D) of the Terms of Reference).

Each of these phases will give rise to a report in which the Commission will set out its factual findings. The second report will also contain the Commission's recommendations.

The Public Hearings

The Commission intends to conduct its work in such a way as to maximize the public disclosure of the information it will obtain, while ensuring compliance with applicable laws and not endangering national security. This may be a difficult balance to strike, but the Commission intends to do its utmost to achieve it, as it considers both these objectives to be paramount. The Commission is committed to accomplishing its mandate with independence, impartiality, fairness, thoroughness, expedition, proportionality, and transparency.

The Commission will hold public hearings at least on two occasions: in the winter of 2024, and (provisionally) in the fall of the same year. These hearings will likely take place in Ottawa. The Commission anticipates that various parties will participate in these hearings, which it expects will involve both fact witnesses and experts.

The Commission also considers the information and observations of the public to be an important element of this Public Inquiry, and will establish a mechanism by which that input can be provided and considered by the Commission.

As set out in the Terms of Reference, the Commission's first public hearings will consider the impact of the fact that much of the information it will examine in the course of its work is classified and may not be publicly disclosable. The Commission will attempt to identify ways of making as much of this information as possible available to the public.

The Commission's Deadlines

The timeframe for the Commission's work is very short. The Terms of Reference stipulate that the initial report pertaining to Phase 1 must be submitted no later than February 29, 2024. The Commission's final report, containing all conclusions and recommendations, must be submitted no later than December 31, 2024. The two reports must be tabled in both official languages.

The Commission's mandate, described below, is vast, and the timeframe it has been given to accomplish its work is short. Nevertheless, the Commission intends to do its utmost to meet its deadlines. Achieving this goal will require cooperation, goodwill, diligence, and flexibility on the part of all involved. And of course, the Commission's ability to meet its deadlines will depend on receiving prompt production of relevant documents and information from all sources, including but not limited to government sources.

The Commission's Mandate

The Commission's mandate includes both an investigative and a public policy aspect.

The investigative aspect

Essentially, and subject to the exact terms found in the Order in Council, the Commission's investigative mandate can be summarized as:

- (i) to examine any interference by China, Russia and other foreign actors relating to the 43rd (2019) and 44th (2021) general elections, and to assess any repercussions such interference may have had on the integrity of these elections, both nationally and at the constituency level;
- (ii) to examine, where appropriate, how information about such interference was circulated between the Security and Intelligence Threats to Elections Task Force and the Critical Election Incident Public Protocol panel, and how it was communicated to senior decision-makers and interested parties, including elected officials;

- (iii) to assess the measures taken by government authorities after information was obtained.

The Commission will also have to examine the extent to which the governance processes in place within federal departments, agencies and various institutional structures enable the federal government to detect, prevent and counter foreign interference aimed directly or indirectly at the country's democratic processes.

The public policy aspect

The Commission's public policy mandate is to identify and recommend appropriate ways of strengthening the protection of federal democratic processes against foreign interference. The Commission will seek the input of recognized experts in relevant fields to assist in this aspect of its mandate. Subject to its obligation and commitment not to endanger national security, the knowledge gained from these experts will also be made public in a format that will allow the public to access it.

The Commission's Procedure

As mentioned above, the timetable set out in Order in Council 2023-882 will require the Commission and all interested parties to work expeditiously and cooperatively with one another. The Commission intends to set tight but fair deadlines, and to require all participants to meet them. The Commissioner is confident that everyone involved will work assiduously and cooperate in good faith.

To accomplish its work in the allotted time, the Commission will need to adopt rules of procedure and evidence that are simple and malleable and implement means of tendering evidence and receiving public input that are creative, efficient, reliable and fair. These rules will be drawn up with a view to maximizing public transparency insofar as possible. The rules will be published on the Commission's website in due course.

The public hearings, which should be held in late January and September 2024, will likewise aim to be efficient, thorough, transparent and fair.

The process for recognition of standing to participate in the Commission's work

As is customary with commissions of inquiry, those interested in taking an active part in the Commission's work must apply for what is commonly known as *standing*.

Standing is not automatically granted when an application is made. Certain conditions must be met for standing to be granted, such as demonstrating a direct and substantial interest in the subject matter of the inquiry or unique and experience or expertise that will assist the Commission in its work beyond what would be available by calling witnesses. Parties with a common interest should consider grouping together to submit a single application for standing, keeping in mind that doing so may increase the likelihood that standing will be granted.

Individuals and groups applying for standing may also, if necessary, apply for funding to enable them to participate in the Commission's work. As with standing, funding applications are not automatically granted, and certain criteria apply. The Commissioner's power in this respect is only one of recommendation; it is up to the Clerk of the Privy Council, who is free to accept or reject the Commissioner's recommendation, to decide whether to grant such funding.

The rules that govern the Commission's process for standing and funding are being published today. Interested persons or groups should review these and prepare the information and documents likely to be useful in demonstrating their direct and substantial interest in the subject matter of the inquiry.

The timeline for the application and granting of standing process is as follows:

November 10, 2023: Publication of rules governing applications for standing and for funding;

November 22, 2023: Deadline for applications for standing and related funding;

November 29, 2023: Hearing, if necessary, of applications for standing and funding (virtual);

December 4, 2023: Release of Commission decisions on applications for standing and funding.

Persons and groups granted standing will be required to file their documents soon after standing is granted, in accordance with the rules of practice to be adopted by the Commission. Parties will have an opportunity to comment on them.

Timeline for Phase 1 of the Commission's work

The Commission intends to let the public and the interested parties know as soon as possible when each of the key stages of its work will be completed. As such, it plans to establish a provisional timetable for the inquiry and hearings once the participants have been identified and the deadlines by which they will be able to submit all required documents and information are known.

For the time being, and assuming the timely cooperation of all involved, the Commission plans to hold its first public hearings at the end of January 2024, with the following tentative timetable:

November-December 2023: Standing process (see detailed timetable above);

November 24, 2023: Publication of the Commission's draft rules of procedure and practice;

December 4, 2023: Release of the Commissioner's decision on standing;

December 7, 2023: Deadline for participants with standing to comment on the Commission's draft rules of procedure and practice;

December 12, 2023: Publication of the Commission's rules of procedure and practice;

December 16, 2023: Deadline for documentary production from all participants relating to Phase 1 of the Commission's work;

End of January 2024: Phase 1 of public hearings;

February 29, 2024: Submission of the Commission's preliminary report.

The Commission is committed to holding a public process before the release of its first report. However, as can be seen from this schedule, the February 29, 2024, deadline means that the timeline for Phase 1 of the Commission's work is very compressed. Parties intending to seek standing should therefore immediately begin gathering and preparing all documents and information relevant to Phase 1 of the Commission's mandate, as they will be expected to produce these very shortly after the Commissioner's decision on standing is issued.

The Commission looks forward to working with all interested parties, participants and the public in order to accomplish its ambitious and important mandate, in the service of Canadian democracy.

The Commission intends to report on the progress of its work by publishing regular public notices on its website and invites anyone interested in its work to consult it regularly.