



April 15, 2024

VIA EMAIL: aid@pifi-epie.gc.ca

**Public Inquiry into Foreign Interference in
Federal Electoral Processes and Democratic Institutions**

Dear Madam Commissioner Hogue

RE: Closing Submissions of Democracy Watch (Stage 1 Hearings)

We are counsel for Democracy Watch. Thank you for the opportunity to provide closing submissions in respect of the Stage 1 hearings.

The parties and intervenors have had the opportunity to read and to hear a significant amount of pertinent information with respect to foreign interference in the past two federal elections. Democracy Watch commends the extraordinary efforts that Commission counsel, Commission staff, and you, Madam Commissioner, have put into this inquiry so far regarding this very serious issue.

Based on the evidence presented during the Stage 1 hearings, as well as the facts established during the National Security Confidentiality (“NSC”) hearings, Democracy Watch respectfully submits that it is important to address and include the following matters in the Commission’s interim report.

1. The Government of Canada has not produced certain unredacted documents

On February 8, 2024, Democracy Watch filed written submissions¹ following the conclusion of the NSC hearings, in which Democracy Watch asked that the Commission request and obtain the following documents and information from the Privy Council Office (the “PCO”):

- i. Unredacted versions of documents provided by the Government of Canada (the “Government”) to the Commission that have been redacted on the basis of Cabinet confidence;
- ii. An explanation, in writing, as to why the decision was made to maintain Cabinet confidence over these documents and not provide them in unredacted form to the Commission—especially given that the Commissioner and Commission counsel have been afforded the highest levels of security clearance, and that highly sensitive materials from the Canadian Security Intelligence Service (“CSIS”) and other national security materials were provided in unredacted form to the Commission;
- iii. An explanation, in writing, as to why the decision was made to maintain Cabinet confidence over these documents and not provide them in unredacted form to the Special Rapporteur.

¹ [Democracy Watch.pdf \(foreigninterferencecommission.ca\)](#)

Democracy Watch also requested that the Commission make public the PCO's written explanations.

The fact that the PCO has submitted redacted versions of these documents to the Commission was confirmed by the Commission during the NSC hearings. Democracy Watch has raised this issue multiple times since filing its submissions in respect of the NSC hearings, but no response has yet been received. Accordingly, Democracy Watch is highlighting these issues again at this time, as we believe it is crucial that the Commission obtain and review the unredacted Cabinet documents and the PCO's written explanations.

The fact that the Government has not disclosed—and, apparently, is refusing to disclose—all relevant documents in unredacted form to the Commission must be noted in the interim report.

Without full access to the unredacted versions of these Government documents, it is impossible for the Commission to fulfill its mandate. This information is essential to determining exactly what information was provided to our government institutions (and particularly the federal Cabinet and government officials, up to and including the Prime Minister) about foreign interference activities from 2015 onward, when the information was received, who received it, to whom it was distributed, and what actions and steps those government officials and institutions took after receiving this information.

2. The activities of third parties during federal nomination contests and party leadership contests are not regulated

The activities of third parties (individuals and interest groups) in nomination contests are not regulated in any way by the *Canada Elections Act* (the “*Act*”). This was confirmed by the testimony of the Chief Electoral Officer (“CEO”) of Elections Canada and that of the current and former Commissioners of Canada Elections (“CCE”). The testimony of the CEO and of the current and former CCEs, as well as the testimony of Conservative MP Michael Chong, also confirmed that the activities of such third parties in party leadership contests are not regulated by the *Act*.

A third-party individual or interest group can spend an unlimited amount of money—including money provided by a foreign government, foreign business, or other entity—on activities that support a candidate in a nomination contest and/or leadership contest. This can be done completely in secret and without registering or disclosing any of the activities, the amount spent, or the source of the money.

The CEO, Elections Canada, and the CCE do not monitor these activities, nor do they have any regulatory power concerning the activities of third parties during nomination and/or leadership contests; they also have no jurisdiction to investigate complaints about third-party activities during nomination and/or leadership contests.

In fact, there is no government regulatory body with this jurisdiction.

As a result, it is impossible to determine the actual level of foreign interference by foreign-sponsored third parties during nomination contests and/or leadership contests associated with the 2019 and 2021 federal elections. It is also impossible to determine the level of foreign interference in nomination and/or leadership contests held since the 2021 election.

3. Voting in nomination contests and leadership contests is not regulated, meaning underage foreign nationals can vote in these contests

Per point #2 above, it was confirmed that the voting processes in nomination and leadership contests are not regulated in any way by the *Act*. As a result, foreign nationals (even those under 18 years of age) are allowed to vote in these contests.

4. Most false claims, misinformation, and disinformation are not regulated

The testimony of the CEO and the current and former CCEs further confirmed that only some false claims, misinformation, and disinformation concerning candidates and party leaders—and by candidates and party leaders—during election campaign periods are prohibited under the *Act*.

On March 23, 2024, Democracy Watch made a submission² to the Commission concerning this matter, and Democracy Watch proposed potential witnesses and questions in this respect. We particularly note the proposed questions at subsection 5(iv) of that submission, the answers to which are both “yes”:

iv. Rules and enforcement for misinformation and disinformation

a) Is it true that the [Act] only prohibits false statements about some aspects of a federal political party leader, party official or election candidate? (NOTE: [Click here](#) to see summary of how limited the provision in the [Act], and how it allows most false claims, and [click here](#) to see details).

b) Is it true that the [Act], because of an incorrect interpretation by the CCE in a [March 2018 decision](#), only prohibits a false claim by a politician that fraudulently misleads voters (when, in fact, unlike in B.C.’s election law, fraud is not required to be proven under the provision in the [Act])?

There is no Canadian federal law (other than the common law of defamation) that proscribes false claims, misinformation, and/or disinformation about or by party leaders, MPs and Senators, their staff and appointees, nomination contestants, or party leadership contestants where those false claims, misinformation, and/or disinformation are stated or published outside of the election campaign period.

The same is true of false claims, misinformation, and/or disinformation about those individuals’ decisions or actions; about the actions or decisions of government officials and institutions; and about laws, regulations, and public policies in general.

² [Suggested Witnesses, and Key Questions for these Witnesses, for the Public Inquiry into Foreign Interference in Federal Electoral Processes and Democratic Institutions.](#)

5. Foreign interference watchdogs are chosen by and serve at the Cabinet’s pleasure

The following people—all of whom play key roles in monitoring, overseeing, and preventing foreign interference—are chosen by and serve at the pleasure of the ruling party Cabinet, and so can be removed from their position at any time for any reason:

- i. All members of the Critical Election Incident Protocol Panel;
- ii. Clerk of the PCO;
- iii. RCMP Commissioner and Deputy Commissioner, and the Commanding Officer of each Division of the RCMP;
- iv. Director of CSIS;
- v. Chief of the Communications Security Establishment (“CSE”);
- vi. President and Executive Vice-President of the Canada Border Services Agency; and
- vii. Director of the Financial Transactions and Reports Analysis Centre of Canada.

That these are all at-pleasure appointees was confirmed by the testimony of the heads of various federal foreign interference watchdog institutions, and by the statutes that establish the heads and members of each watchdog institution.³

Democracy Watch’s respectful submission is that this taints the enforcement system with at least the appearance of partisan political influence, which impermissibly undermines public confidence in the impartiality and effectiveness of the system.

6. CSIS has warned Cabinet for years about foreign interference and legislative gaps

David Vigneault, who has been the director of CSIS since June 2017, testified that for years he has briefed the federal Cabinet, individual Cabinet ministers, and officials in the PCO and the Prime Minister’s Office (“PMO”) on the following matters:

- i. That foreign interference is a serious threat to Canadian security, sovereignty, democratic institutions, political processes, fundamental rights and freedoms under the *Charter*, and our interests and values;
- ii. That there are few legal or political consequences for foreign interference, and so engaging in political and electoral interference in Canada is a low-risk and high-reward activity for foreign governments, entities, and individuals;

³ See also: [Suggested Witnesses, and Key Questions for these Witnesses, for the Public Inquiry into Foreign Interference in Federal Electoral Processes and Democratic Institutions.](#)

- iii. Stopping foreign interference will require a shift in the government’s perspective and a willingness to take decisive action, not only by establishing a foreign agents registry but also by adopting a “wider toolkit” of changes and a “true whole-of-government approach”, including imposing “consequences on perpetrators” of foreign interference; and
- iv. Canada is behind the other member nations of the Five Eyes intelligence alliance in terms of making these changes and strengthening enforcement and penalties.

It is notable that Mr. Vigneault was assistant secretary to the Cabinet, Security and Intelligence, Privy Council Office from 2013–17. Regrettably, it was not established during the Stage 1 hearings when Mr. Vigneault told the Cabinet, PCO, and PMO each of the four items listed above.

Democracy Watch respectfully submits that the Commission should request that Mr. Vigneault provide the dates that he told the Cabinet, PCO, and PMO each of the four above-noted items. This is crucial information that should be included in the interim report, given that the report will address key questions of who knew what, when they knew it, and what they did with the information.

7. Democracy Watch’s proposed witnesses and questions

In the interest of assisting the Commission with focusing on its non-partisan aim of reporting on past foreign interference and recommending changes to prevent future interference, Democracy Watch has submitted a list of 10 key witnesses and ~140 key questions to ask those witnesses.⁴

Democracy Watch respectfully submits that asking these questions of these witnesses will reveal the significant gaps in key federal legislation concerning elections, ethics, lobbying, border security, and money laundering. These legislative gaps make secret, unethical, and undemocratic interference by foreign governments (as well as by groups and individuals sponsored by foreign governments and other foreign entities) both legal and easy to do without consequences—or without even being caught in the first place.

While some of these gaps have been highlighted in the Stage 1 hearings, Democracy Watch sincerely hopes that the next round of fact-finding hearings and the Stage 2 policy hearings will bring a fastidious and rigorous non-partisan focus to detailing and developing recommendations for changes to close these legislative gaps and strengthen enforcement.

8. Concluding remarks

Significant materials have been produced to the Commission, notwithstanding what we reasonably believe to be refusals by the Prime Minister and Cabinet to waive Cabinet privilege/confidence over important documents. We believe these refusals are untenable and unjustifiable, given that the Commission and Commission counsel have the highest security clearance, such that even CSIS and the CSE have provided highly sensitive documents in unredacted form.

⁴ [Suggested Witnesses, and Key Questions for these Witnesses, for the Public Inquiry into Foreign Interference in Federal Electoral Processes and Democratic Institutions.](#)

In short, if the Commission and its counsel can see highly classified national security documents, they ought to be able to see Cabinet documents as well.

The Commission's hearings thus far have made it apparent that it will be very difficult to determine the extent of foreign interference in our elections and democratic institutions under the current system—which is a broken system.

In the midst of the Commission diligently conducting this difficult but important work, we saw the Prime Minister (in response to Erin O'Toole's testimony) make a public statement essentially discounting foreign interference and saying that the integrity of the past two federal elections was intact. This came across to Democracy Watch as nothing but a partisan jab leading into the election.

Discounting foreign interference in this way strikes us as especially jarring, when juxtaposed with the fact that the Commission and its counsel are working tirelessly to uncover and report upon the extent of foreign interference.

This is not just a criticism of the Prime Minister or a political party. Partisan attacks are, regrettably, all too common across the political spectrum. For instance, we saw news articles in which pundits sought to discredit the Commission's process as a partisan endeavour before it even began. Yet throughout the NSC and the Stage 1 hearings, we have seen firsthand how the Commission and its counsel are carrying out their important work in a neutral, motivated, professional manner.

Foreign interference in our elections is something that strikes at the very heart of our democracy. There can be no question at this point that such interference is a very real threat that will only increase as technology continues to advance. Democracy Watch expects—and, we believe, Canadians expect—that partisan posturing and point-scoring would give way to the primacy of protecting our democratic institutions.

Democracy Watch respectfully urges this Commission to consider whether the lamentable state of political discourse has impaired and continues to impair our ability to combat foreign interference.

Democracy Watch also respectfully urges this Commission to consider whether any actors have used the threat of foreign interference for political gain. Fear is a powerful motivator, and the threat of foreign interference can often be more insidious than certain aspects of actual foreign interference.

Put another way, there is no question that we need to safeguard our democracy from foreign interference, but it bears considering whether and to what extent the divisive partisan landscape we find ourselves operating within is conducive to foreign interference thriving—to the detriment of Canadians of every political persuasion.

Democracy Watch looks forward to the recommendations of the Commission as it moves forward with this very important work.

Thank you, Madam Commissioner.



Sincerely,
ROSS & MCBRIDE LLP
Per:

A handwritten signature in black ink, appearing to read "Nick Papageorge".

Nick Papageorge
NPP

A handwritten signature in black ink, appearing to read "Wade R. Poziomka".

Wade R. Poziomka
WRP