

SUBMISSION TO THE PUBLIC INQUIRY INTO FOREIGN INTERFERENCE IN FEDERAL ELECTORAL PROCESSES AND DEMOCRATIC INSTITUTIONS ON BEHALF OF THE HONOURABLE ERIN O'TOOLE, PC, CD

Introduction

Canadian democracy is a work in progress. All the various actors within the Canadian electoral ecosystem—from individual voters to executive branch agencies, from political party volunteers to the Prime Minister—have a responsibility to build, maintain, and protect Canadian democracy. This responsibility applies not only during election periods but also possesses an ongoing, perpetual nature.

During this phase of the Inquiry the Commission is directed to:

(A) examine and assess interference by China, Russia and other foreign states or non-state actors, including any potential impacts, in order to confirm the integrity of, and any impacts on, the 43rd and 44th general elections at the national and electoral district levels,

(B) in relation to the issues set out in clause (A), examine and assess the flow of information to senior decision-makers, including elected officials, and between the Security and Intelligence Threats to Elections Task Force and the Critical Election Incident Public Protocol panel during the election periods that led up to the 43rd and 44th general elections, and in the weeks following those periods, and actions taken in response,

Mr. O'Toole submits there is unambiguous evidence before the Commission that:

1. China, and to a lesser degree, Russia, India, and Pakistan interfered in both the 43rd and 44th General Elections.
2. Foreign interference, particularly by Chinese actors, suppressed or affected voter choice during both general elections and in at least one nomination race.
3. In both elections the degree of interference during the election period did not meet the Panel of Five's "very high" threshold for a public announcement on foreign interference during an election.
4. During each election, the relevant agencies did a poor job of passing on information to participants in the election: individual voters, political parties and staffers, and individual candidates.
5. There were severe problems with the flow of information and analysis regarding foreign interference within the government. Governmental decision-makers did not receive information

on foreign interference with the 43rd and 44th General Elections in a coordinated or coherent manner.

This submission will expand upon each of these five points.

1. Foreign Interference during the 43rd and 44th General Elections

Although foreign interference has long posed a threat to Canadian democracy, the scale and sophistication of foreign interference have increased in recent years. The People's Republic of China (the 'PRC') poses a particular threat to Canadian democracy. The PRC has adopted a "sophisticated, pervasive and persistent strategy"¹ and:

has repeatedly demonstrated over the span of several decades that it is extremely willing to engage in clandestine, deceptive and threatening interference activities in Canada whenever necessary.²

The Commission has also heard evidence of foreign interference³ activities by Russia,⁴ India⁵ and Pakistan.⁶ These efforts do not appear to have been as extensive as efforts by China, but they are nonetheless significant.

Mr. O'Toole does not contest the ultimate results of the 43rd and 44th General Elections and did not publicly raise concerns about foreign interference while he was Leader of the Opposition. Mr. O'Toole has carefully tried to raise the issue of foreign interference to ensure it is addressed without eroding public trust in our elections.

¹ CAN005811 at 1.

² *Ibid* at 9.

³ For a definition of "foreign interference," see the definition of the SITE Task Force: CAN002359, at 3. The Task Force defined foreign interference as "activity conducted or supported by a foreign state/actor that is detrimental to Canadian national interests and is clandestine, deceptive or involves a threat to a person."

⁴ See CAN.SUM.000006 at 2: "The Russian Federation continues to pose an FI threat to Canada, although it is likely not currently a significant foreign interference".

⁵ See CAN.SUM.000012 at 2: The Government of India's foreign interference "activities during the 44th General Election in Canada in 2021 (GE44) were centred on a small number of electoral districts".

⁶ See CAN.SUM.000008 at 2: The Government of Pakistan was "a limited [foreign interference] actor during the 43rd and 44th General Elections".

The evidence of the CEO is clear that he had no concerns about the integrity of either election⁷, however, it is vital to underscore the narrowness of his mandate. His evidence was that the *Elections Act* articulates a strict legal mandate and different governmental bodies have different roles to play in ensuring a free and fair election.⁸ He further noted that he has concerns about foreign interference that are presently not addressed by the *Elections Act* and that he has recommended amendments to the *Act* in order to address some of these concerns.⁹ In other words, the mere legal validity of the 43rd and 44th general elections is not synonymous with the absence of foreign interference.

Given the evidence and testimony before the Commission, there can no longer be any doubt that foreign interference occurred during both the 43rd and 44th general elections. Both Panels of 5 agree that foreign interference occurred. The National Security and Intelligence Advisors agreed that foreign interference occurred. The Prime Minister during his evidence also agreed that foreign interference occurred.¹⁰ There is a lengthy set of reports before the Commission outlining foreign interference. To list a few:

- CAN003787 - Intelligence Assessment Secretariat - China's Foreign Interference Activities
 Summary of redacted section
 During the 2019 federal election, a group of PRC-linked individuals worked in loose coordination with one another to covertly advance PRC interests through democratic institutions which included 11 political candidates and 13 political staff members who were either implicated or impacted by this group of PRC linked individuals. Some of these individuals appeared willing to cooperate in FI related activity while others appeared to be unaware of potential FI related activity due to its clandestine nature.¹¹
- CAN002359 - SITE TF - Threats to the Canadian Federal Election - December 17, 2021

⁷ Public Inquiry Into Foreign Interference in Federal Electoral Processes and Democratic Institutions, Transcript Volume 7, at 84-85.

⁸ *Ibid* at 21-22.

⁹ See Office of the Chief Electoral Officer of Canada, *Meeting New Challenges Recommendations from the Chief Electoral Officer of Canada following the 43rd and 44th General Elections* (Gatineau: Elections Canada, 7 June 2022).

¹⁰ Public Inquiry Into Foreign Interference in Federal Electoral Processes and Democratic Institutions, Transcript Volume 14, at 181.

¹¹ CAN003787 at 4.

The People's Republic of China (PRC) sought to clandestinely and deceptively influence Canada's 2021 federal election.¹²

....

In addition to covert FI, certain entities also engaged in 'open' influence activities [REDACTED] the CCP openly issued stark warnings via a propaganda media mechanism to Canadians during Election 2021. These warnings primarily sought to highlight negative consequences if Canadians voted for the CPC.¹³

- CAN004495 - Briefing to the Prime Minister's Office on Foreign Interference Threats to Canada's Democratic Institutions - February 21, 2023. This note appears to have been prepared in response to media stories on this matter. The presence of redactions suggests that the omitted material was not a recitation of media stories, which would not need to be redacted, but rather a recitation of the contents of various CSIS reports.

Reporting suggests that on at least one occasion the PRC [REDACTED] transferred approximately \$250,000 [REDACTED] *to the staff member of a 2019 Federal election candidate, and then to an Ontario MPP.*¹⁴

....

We also observed online and media activities aimed at discouraging Canadians, particularly of Chinese heritage, from supporting the Conservative party leader, Erin O'Toole, and particularly Steveston Richmond East candidate Kenny Chiu.

[REDACTED] the timing of these efforts to align with Conservative polling improvements; the similarities in language with articles published by PRC state media; and the partnership between these Canada based outlets and PRC entities; **all suggest that these efforts were orchestrated or directed by the PRC.**¹⁵

¹² CAN002359 at 3.

¹³ *Ibid* at 5. This activity might well be a violation of the *Elections Act* prohibition on organizations using resources to promote partisan positions during an election. However, as Mr. Yves Côté (OCCE) noted during his evidence, such a violation would be difficult to prosecute.

¹⁴ CAN004495 at pg. 2. Italicized comments summarize a redacted portion of the document.

¹⁵ CAN004495 at pg. 3. Bolding included in the original.

These are just a few of the many examples of interference by China in the 43rd and 44th General Elections. These examples form part of a long term approach that is "...sophisticated, pervasive and persistent..."¹⁶ and that has taken "place over a period of several years."¹⁷ In addition to this pattern of conduct by China there is evidence before the Commission of opportunistic interference by Russia,¹⁸ India¹⁹ and Pakistan.²⁰

2. How Foreign Interference Affects the Canadian Electoral Ecosystem

The ministerial witnesses (including the Prime Minister) emphasised the fact that the Panel of 5 decided not to make an announcement under the Critical Election Incident Public Protocol. Phase II of the Commission's operations will focus, at least in part, on the suitability of the Critical Election Incident Public Protocol. The major point regarding the Protocol to highlight for the purposes of the Commission's Phase I mandate is that the decision by the Panel of 5 not to make an announcement during either the 43rd or 44th general elections does not equate to the absence of foreign interference during those elections.

Elections have two purposes:

1. Citizens elect individual Members of Parliament, leading eventually to the formation of a government.
2. Elections are a vehicle for dialogue between electors and candidates in which the party that successfully forms a government acquires a mandate to pursue certain policies.

Elections do not start the day the writ is dropped. Rather, elections start with the announcement of the first nomination race to select party candidates. It has been said that Canada is in a permanent election campaign²¹ and this is one of the reasons that the *Elections Act* has been amended to extend regulatory authority over the pre-election period.

¹⁶ CAN005811 at pg. 1.

¹⁷ *Ibid* at pg. 4.

¹⁸ CAN.SUM.000006 at 2.

¹⁹ CAN.SUM.000012 at 2.

²⁰ CAN.SUM.000008 at 2.

²¹ Marland, Alex et al (eds), Permanent Campaigning in Canada, (UBC Press, 2017).

One critical issue is that existing executive branch counter foreign interference mechanisms do not apply effectively in the pre-election period.

Executive branch bodies do not have a sufficiently wide mandate to counter foreign interference efforts that affect nomination races. Despite Minister Karina Gould's assertion that nomination races come within the remit of Election Canada and the RCMP²², there is in practice little regulation of nomination races. The Chief Electoral Officer ("CEO") testified that Elections Canada is confined to administering financial rules around party political candidate nomination contests after those contests have occurred; Elections Canada does not have real authority to intervene while those contests are occurring.²³ Mr. Jaskaran Sandhu, who participated in the Panel of Diaspora Communities, told the Commission that "...foreign interference really happens at a much more successful and consistent manner in nominations in leadership races." [sic]²⁴

Like Elections Canada, the RCMP has limited ability to prevent foreign interference from affecting a nomination race. The RCMP can only investigate criminal acts and there is little it can do with respect to a foreign state interfering in a nomination race. Further, in practice Elections Canada or RCMP only act after a nomination race has concluded; both organisations take months to conduct investigations into allegations.

The irregularities surrounding the Liberal Party of Canada's Don Valley North nomination race are a perfect example of the lack of oversight around nomination races more broadly. During his testimony on April 2, MP Han Dong testified that he only realised on April 1, 2024 that Chinese international students who attended New Oriental International College ('NOIC') had arrived by bus at the 2019 Don Valley North nomination meeting.²⁵ Dong could not verify who had paid for the bus²⁶ but CSIS noted that the situation was "...consistent with our current understanding of PRC foreign interference in the Greater

²² WIT0000062, at para 11.

²³ Public Inquiry Into Foreign Interference in Federal Electoral Processes and Democratic Institutions, Transcript Volume 7, at 69-70.

²⁴ Public Inquiry Into Foreign Interference in Federal Electoral Processes and Democratic Institutions, Transcript Volume 6, at 146. See entire discussion of nomination and leadership interference from pg. 146 line 14 to pg. 148 line 20.

²⁵ Public Inquiry Into Foreign Interference in Federal Electoral Processes and Democratic Institutions, Transcript Volume 8, at 111-2.

²⁶ *Ibid.*

Toronto Area.”²⁷ Political parties and party volunteers simply do not have the time, training or incentive to shield party processes from foreign interference. And, as previously established, Elections Canada and the RCMP also have limited oversight over nomination races.

The Don Valley North nomination race example is in some ways misleading, because the Liberal Party had more tools available to it than other parties would in a similar situation. Compared to the other political parties, the Liberal Party was best placed to protect its own nomination races from foreign interference, given that it was in government. The Liberal Party’s security-cleared representatives received a briefing on September 28, 2019, concerning “potential irregularities” in the Don Valley North nomination race.²⁸ They passed this information on to Mr. Jeremy Broadhurst, the Liberal National Campaign Director. Mr. Broadhurst already possessed a Top-Secret clearance and contacted “senior public servants” in the Privy Council Office for additional context.²⁹ Mr. Broadhurst then informed the Prime Minister of the irregularities with the nomination race—likely on September 29, 2019.³⁰ The Prime Minister allowed Mr. Dong’s nomination to stand because he was not satisfied the irregularities met the “very high threshold for overturning the result of a democratic event.”³¹

If these events had occurred in any party other than the governing party, the SITE representatives would have been confined to informing the Campaign Director and leader of that party that there were irregularities. The SITE representatives would be unable to provide more details and the party officials would not have been able to simply walk over to the Privy Council Office and obtain additional information.

In responding to foreign interference efforts that target a nomination race or event during the electoral period, executive branch security agencies cannot rely entirely on political party volunteers. Over-reliance upon political party volunteers to respond to foreign interference can jeopardise ongoing operations of a security agency. For a political volunteer to respond to foreign interference, that person must have access to sufficient information. Yet once an agency has shared classified information with an

²⁷ CAN004728.

²⁸ Public Inquiry Into Foreign Interference in Federal Electoral Processes and Democratic Institutions, Transcript Volume 13, at 117-8.

²⁹ *Ibid* at 118.

³⁰ *Ibid* at 178.

³¹ Public Inquiry Into Foreign Interference in Federal Electoral Processes and Democratic Institutions, Transcript Volume 14, at 214.

individual, it is difficult to control the spread of that information. As an example, the media has reported that a Liberal Party member informed Mr. Dong that CSIS was surveilling him.³² The sharing of intelligence with political party volunteers, who are not trained or sensitised in the same way as intelligence agents, could lead to grave national security consequences.

A second critical issue is that executive branch agencies, while more equipped to deal with foreign interference efforts that occur during the election period, remain handicapped with respect to general elections. The threshold for governmental action remains too high and is unrealistic, given the impossibility of cleanly attributing foreign interference activities to a single actor.

MP Jenny Kwan and Mr. Kenny Chiu both testified to being deplatformed by community organisations because of the views they expressed in relation to China. They testified to not being invited to events and to no longer being interviewed by community media publications. They attributed this to instruction from proxy agents of the PRC.³³ The government did not act upon these allegations.

In a similar vein, Mr O'Toole testified that the Conservative Party of Canada observed a persistent campaign of mis- and dis-information on WeChat and other platforms. This is consistent with the information provided by the SITE TF. During the 2021 campaign the SITE TF did "...not have clear evidence that this online activity was a PRC directed FI campaign.." but reported clear indicators of coordination.³⁴ It also noted that the Chinese Communist Party "openly issued stark warnings via a propaganda media mechanism to Canadians during Election 2021."³⁵ By February of 2023 CSIS analysis was that these efforts were orchestrated or directed by the PRC.³⁶

³² ['Liberal Party member warned MP Dong of CSIS surveillance, national security source says' Globe and Mail](#), April 10, 2024 (accessed April 12, 2024).

³³ WIT0000036 Evidence of Mr. Basler at pg. 7

Mr. Basler explained that in 2019, candidates the PRC disliked received little to no coverage in Chinese-language news media and would not be invited to Chinese-Canadian community events. The PRC's strategy was to make these candidates unappealing by rendering them unknown, while heavily promoting the PRC's favoured candidates. By 2021, the PRC's strategy had evolved from passive shunning to active reputational attacks. For example, as in the case of Kenny Chiu, candidates that were not favoured by the PRC were labelled as racist or anti-Chinese.

³⁴ CAN002359 dated December 17, 2021.

³⁵ *Ibid*, at pg. 5.

³⁶ CAN004495

We also observed online and media activities aimed at discouraging Canadians, particularly of Chinese heritage, from supporting the Conservative party leader, Erin O'Toole, and particularly Steveston Richmond East candidate Kenny Chiu.

The Conservative Party reported these actions to oversight authorities, but the government did not react appropriately. The Conservative Party of Canada provided its analysis of significant discrepancies, based upon predictive modelling, to the SITE TF and to David Johnston, the Independent Special Rapporteur.³⁷ The SITE TF response was that it:

...cannot decisively conclude that the PRC sought to clandestinely and deceptively influence outcomes in all of the 13 ridings identified by the CPC.³⁸

And,

CSIS cannot assess the impact of any potential or actual interference attempts, but has reported them to relevant authorities.³⁹

The Prime Minister and Mr. Broadhurst testified they did not think that foreign interference was the cause of the alleged seat losses. They attributed the poor performance of the CPC and Mr. Chiu in these seats to Conservative rhetoric on Sino-Canadian relations and gun policy. Of course, their assessments are opinions rather than facts. This conflict of opinion between Mr. O'Toole and the Liberal Party illustrates the perils of requiring a finding that foreign interference has definitively occurred before the government takes action in an election.⁴⁰ Governments cannot only respond to foreign interference after a definitive finding that foreign interference has occurred; given the difficulties of attribution, such a bar is unrealistic.

Various officials have testified during the inquiry that it is almost impossible to determine whether foreign interference affected the final outcome in any one riding.⁴¹ Even if officials cannot conclude that

[REDACTED] the timing of these efforts to align with Conservative polling improvements; the similarities in language with articles published by PRC state media; and the partnership between these Canada based outlet and PRC entities; **all suggest that these efforts were orchestrated or directed by the PRC.**

The Director of CSIS testified this did not represent a change in view from the conclusions of the SITE TF. However, he also agreed that the words in this analysis were selected with intention. To the extent they are different from the SITE TF assessment it is submitted they should be taken to reflect the CSIS view of these matters as of February 2023.

³⁷ Public Inquiry Into Foreign Interference in Federal Electoral Processes and Democratic Institutions, Transcript Volume 9, at 13-14.

³⁸ CAN014862 at pg. 2.

³⁹ *Ibid*, at pg. 3.

⁴⁰ See the discussion immediately below regarding the threshold.

⁴¹ *Ibid*.

results in individual ridings would have been different, it is still completely possible and, given the evidence, probable, that foreign interference negatively impacted voters in multiple ridings. As Mr. O'Toole testified when asked about the seats targeted by the PRC foreign interference campaign:

...for people in those seats, if they were undergoing intimidation or suppression measures, their democratic rights were being trampled on by foreign actors.⁴²

One of the difficulties with assessing the extent of foreign interference and misinformation is that Canada does not have a relationship with, or an understanding of, foreign social media platforms. As noted by Ms. Dobner of the SITE TF:

As I mentioned earlier, we didn't have a relationship with Tencent, and that would require a relationship with Tencent and information provided by Tencent. The Chinese social media platforms for us are -- it's fair to call them a black box; we just don't have the same understanding of them as we do of some of the big American social media platforms.⁴³

Minister Gould testified that Canada did not enter relationships with Tencent or ByteDance (owner of TikTok) because they do not have offices in Canada. This lack of understanding of these platforms and the traffic on them created a significant vulnerability to interference and distribution of misinformation.

Foreign interference damages our democracy by limiting discourse and removing voices from the democratic dialogue. It affects individual voters, most often members of diaspora communities, through acts of suppression or intimidation.⁴⁴ Democratic freedom is often the very reason diaspora community members came to Canada. If a Canadian chose not to vote, was discouraged from voting, or voted in a particular manner because of foreign-organized compulsion, intimidation, or deceit, then foreign interference affected the integrity of the election. The freedom of every voter matters.

⁴² Public Inquiry Into Foreign Interference in Federal Electoral Processes and Democratic Institutions, Transcript Volume 9, at 16-17.

⁴³ Public Inquiry Into Foreign Interference in Federal Electoral Processes and Democratic Institutions, Transcript Volume 11 at 214.

⁴⁴ Morris Rosenberg, *Report on the Assessment of the 2021 Critical Election Incident Public Protocol* (Ottawa: Privy Council Office, 2023), at 12.

3. The Panel of Five's Threshold for Responding to Foreign Interference in the 43rd and 44th General Elections

It has been repeatedly said that a Panel of non-partisan, independent, public servants determined the 43rd and 44th elections were free and fair. It is true the Panel of 5 in each election was composed of non-partisan, independent, public servants. However, it would be inaccurate to say that the Panel affirmatively determined that both elections were free and fair. Instead, the Panels applied the appropriate Cabinet directive and determined that no events had occurred that would justify a public announcement regarding foreign interference. The CEO underscored this distinction during his evidence when he referred to his recommendations for amendments to the *Elections Act*.⁴⁵

The Commission has heard evidence about the conditions under which the Panel of Five would make a public announcement. When Minister Gould was asked about the development of the Cabinet directive, she testified she was seeking to avoid the Obama dilemma:

President Obama became aware of intelligence that Russia was interfering in the 2016 presidential election but felt unable to publicly intervene because doing so would itself be viewed as a partisan actor interfering in the electoral process.⁴⁶

She testified that as a result the government created a protocol that allows for an independent panel to inform the public when Canada's ability to have a free and fair election is threatened.

Both Panels gave evidence that they considered the three factors listed at Section 6.0 of the directive and determined that no event met the threshold for public notification. Those factors are: (1) the degree to which the incident(s) undermine(s) Canadians' ability to have a free and fair election; (2) the potential of the incident(s) to undermine the credibility of the election; and (3) the degree of confidence officials have in the intelligence or information.⁴⁷ Both Panels also rejected the notion they were looking at the threshold with respect to the whole general election. Ms. Drouin, a member of both Panels,

⁴⁵ See Public Inquiry Into Foreign Interference in Federal Electoral Processes and Democratic Institutions, Transcript Volume 7, at 21-22.

⁴⁶ WIT0000062 at para 4.

⁴⁷ COM0000195 Morris Rosenberg, *Report on the Assessment of the 2021 Critical Election Incident Public Protocol* (Ottawa: Privy Council Office, 2023), at 32.

testified that it would have been possible that a riding-level event could have met the threshold, but the Panel did not observe such an event.⁴⁸

Evidence from members of each Panel of 5 was consistent that the threshold for an announcement was either high or very high.⁴⁹ Mr. Daigle from the 2021 Panel of 5 testified, the panel needed:

....some reliable information that we could test to know that there's actually something nefarious going on here and we have to correct the record, that we have some information as panel members that the public doesn't have that would help them ensure that they have a free and fair election...a mere possibility of a proxy acting isn't enough.⁵⁰

The first issue with the Cabinet Directive is that the high threshold will fail to cover most, if not all, instances of foreign interference. This very high or high threshold was combined with a requirement for consensus decision-making, which required that all five Panel members had to conclude the threshold had been met before the Panel could act. Rather than solving the Obama dilemma the Cabinet Directive on Critical Election Incident Public Protocol has institutionalised it. By requiring certainty or a high degree of confidence that a nefarious event has occurred, the Directive makes it highly unlikely that the Panel of Five will ever act in an election.

In addition to the threshold issue the Directive has two further problems:

It will only be initiated to respond to incidents that occur during the caretaker period, and that do not fall within Elections Canada's areas of responsibility (i.e., with regard to the administration of the election, as identified in the *Canada Elections Act*). Incidents that occur outside of the caretaker period will be addressed through regular Government of Canada operations.

First, the Panel of 5 cannot consider incidents that occurred prior to the election period, even if those incidents have influenced the election itself. Additionally, it cannot consider an incident that would fall within Elections Canada's responsibility. This second limitation results in divided responsibilities rather than unity of action.

⁴⁸ Public Inquiry Into Foreign Interference in Federal Electoral Processes and Democratic Institutions, Transcript Volume 12, at 28.

⁴⁹ Public Inquiry Into Foreign Interference in Federal Electoral Processes and Democratic Institutions, Transcript Volume 12, at 23-24. See also ministerial statement of January 30 referred to in the Judd Report (COM0000122) at pg. 12.

⁵⁰ Public Inquiry Into Foreign Interference in Federal Electoral Processes and Democratic Institutions, Transcript Volume 12, at 99-100.

The problems associated with the Panel's limited timeframe of operations has already attracted criticism. Mr. Judd commented on the Panel's timeframe of operations in his review of the Panel's efficacy during the 2019 election. In recommending the Panel have a standing existence he wrote:

One possible revision to the existing Protocol could be considered: changing the operational time frame for the Panel to include both the writ and pre-writ periods. The rationale for this is two-fold:

The principal reason is that it is unlikely that any potential foreign interference would be confined to the writ period alone. A recent case in point is the cyber attacks on the Australian parliament and three of the largest political parties. Those were carried out before the 2019 election campaign began.⁵¹

This point is cited not necessarily for the solution it poses but to support the argument that confining the assessment of an incident to the five-week election period makes it less likely the Panel of Five would find that the appropriate threshold has been met.

The inability to consider incidents within the jurisdiction of Elections Canada prevents the Panel from looking at issues of illegal contributions by foreign actors. Contributions plainly fall within the authority of Elections Canada but are dealt with as individual offences. Elections Canada receives a report of an illegal contribution, refers the matter to the Commissioner of Elections, an investigation is commenced and, if merited, charges are laid. However, this happens months and sometimes years after the event rather than in real time. This, in fact, was the path followed in the Don Valley North investigation.

The issue of an alternate protocol is a matter for Phase 2 of this inquiry. However, it is submitted that the Panels of 5 functioned as directed under the Protocol. They were told to consider incidents based upon a 'very high' threshold to act and as a result did not act. Their decision not to make a public announcement does not equate to an absence of foreign interference in the 43rd and 44th general elections. As Ms. Drouin testified during her evidence, foreign interference did occur, but the Protocol's threshold was not met.⁵²

⁵¹ COM0000122 at pg. 22.

⁵² TRN0000012 at pg. 155.

4. Information flow to participants in the election

Ensuring an effective information flow to actors outside of the government is a necessary element of deterring and responding to foreign interference. This tactic is now a common tool for law enforcement in criminal matters and security agencies in counterterrorism. By warning people of specific occurrences, it allows them to take preventive steps. It also engages the public in the process and turns members of the public into sources of information.⁵³

Mr. Rosenberg highlighted the importance of pre-election communication to the public and political parties in his report on the Panel of 5's performance during the 2021 election:

False information about parties, candidates, or leaders can be spread well in advance of the campaign. Cyber attacks on political parties can occur before the election is called. Covert attempts by foreign actors to secure the nomination of candidates who might be favourable to foreign interests would occur in the months leading up to an election.

The government's integrated plan described above is not clear on how pre-election attempts at interference will be addressed. It would be helpful if the government's plan and public communication expressly acknowledged the problem of interference activity before the election is called. It should also provide some detail on how this is intended to be addressed, beyond simply saying that it will be handled through normal ministerial channels.⁵⁴

The executive branch did not communicate fully or openly with the variety of groups whose participation is critical for an election. First, the executive branch did not transparently communicate with political parties. The Commission has heard evidence from political parties that foreign interference was low on their radar and that SITE only provided general warnings to them regarding foreign interference. The general warnings did not appropriately convey the seriousness of the threat.

- Azam Ishmael of the Liberal Party of Canada said the briefings were interesting but characterized the recommendations or the lack thereof as 'disappointing.'⁵⁵
- Walied Soliman of the Conservative Party of Canada told the Commission the information provided was 'not actionable.'⁵⁶

⁵³ Most airports have 'See Something, Say Something' signs that direct reporting of suspicious activity.

⁵⁴ COM0000195 at pg. 24

⁵⁵ TRN0000008 at pg. 17, line 7-15.

⁵⁶ *Ibid.* at pg. 29.

- Anne McGrath of the New Democratic Party agreed the information was not actionable and testified that she never “had the tools to actually identify if and when it [foreign interference] was happening.”⁵⁷

The generality of the information provided by the SITE TF prevented political parties from being effective partners in detecting and responding to foreign interference. Each of the political parties told the Commission they had volunteers in each riding who were conditioned to report activities that appeared to violate the *Elections Act*. However, SITE TF did not provide the parties with precise indicia that the parties could in turn pass onto volunteers on the ground; consequently, volunteers did not have the level of training they would have required to identify and counter foreign interference.⁵⁸ This was a lost opportunity to leverage the political party infrastructure to detect foreign interference.

Second, the executive branch did not pass on relevant information to the political parties about specified individuals who might pose a foreign interference threat. Political party volunteers could have easily acted upon a warning that a specific person might pose a foreign interference threat. Without a foreign agents’ registry or law that bans individuals from acting as foreign agents, the RCMP does not have the authority to confront proxy agents. One of the most common threat reduction measures is simply to advise the actor that agencies are watching. However, this requires legal justification that presently does not exist in Canada.

Third, the executive branch did not warn individuals whom the government suspected were targets of foreign interference during the election period. This prevented targeted individuals from acting proactively or gathering information that would have been of further use to the authorities. It was only after the 2021 election that CSIS gave defensive briefings to MPs Kwan and Chong and Mr. O’Toole.

By the time that Mr. O’Toole was briefed in May 2023, fifteen months had passed since he had been leader of the CPC. He was advised that so long as he spoke out on issues that were of interest to the PRC, he would be a potential target of Chinese foreign interference. By sensitising him to the risks and

⁵⁷ *Ibid.* at pg. 30.

⁵⁸ *Ibid.* at pp 57 - 61.

probability of foreign interference, CSIS hoped to improve his ability to protect himself and provide him with a channel through which to report any such activities.⁵⁹

It is reasonable to conclude that the concerns that CSIS raised to Mr O'Toole in May of 2023 traced back to his time as leader of the Conservative Party of Canada and the 2021 election. This was the first time that authorities provided confirmation of his suspicions from that time. As he testified before the Commission, his view was that CSIS should have delivered this briefing when the relevant concerns first emerged.⁶⁰

The choice not to provide information to political parties and individual political actors caused them not to be alert to foreign interference activities. As a result, none of the political parties or targeted individuals took significant precautionary measures and, as importantly, none looked closely for signs of foreign interference that they could pass on to the authorities.

Finally, the executive branch failed to communicate transparently with diaspora communities. The failure to alert these communities to foreign interference and to provide them with culturally and linguistically appropriate reporting channels limited the authorities' ability to respond effectively to foreign interference and prevented smooth collaboration between the diaspora communities and the government.

5. Information flow within the government

The SITE Task Force was an effective forum for the integration of information regarding foreign interference from various sources within government but below the ministerial level. SITE passed on this information to the Panel of 5, which in turn had access to a comprehensive understanding of events in assessing whether to make a public announcement. Although SITE seems to have succeeded in collecting and synthesising relevant intelligence, there remain broader issues related to information sharing among different components of the executive branch.

⁵⁹ CAN.DOC000022.

⁶⁰ TRN0000009 at pg. 6.

One key problem is that the various executive branch organisations that contribute to counter foreign-interference efforts have narrow and specific mandates. The government has not created an integrated mechanism or body that examines foreign interference efforts—regardless of whether that interference occurs during an election—and forces the various responsible agencies to cooperate in a seamless way. The existing bodies in place, such as the SITE TF, do not have a wide enough mandate or the appropriate decision-making authority. The challenge of inter-agency cooperation and siloing is illustrated by the Office of the Commissioner of Canada Elections (OCCE). The OCCE is an office with a relatively small staff and budget (approximately \$6.6 million, though the OCCE has the ability to draw from the consolidated revenue fund).⁶¹ When a matter is referred to the OCCE its primary focus is compliance with the *Elections Act*.⁶² The OCCE does not consider the availability of charges under other statutes, such as the *Security of Information Act* or the *Criminal Code*. There are no public reports of the OCCE seeking an injunction under s. 516 of the *Elections Act* to prevent conduct which might violate the *Act*. It is critical that the Government of Canada take a whole-of-government approach to acts of foreign interference; governmental agencies must cooperate and determine the best response in terms of mitigation, punishment, deterrence, and prevention, regardless of when the alleged act of foreign interference occurs.

Second, information did not flow smoothly to the appropriate government ministers. It is apparent from the evidence that agencies did not present information to ministers on a timely basis, that ministerial decision-makers and their staff received very general analysis with respect to foreign interference, and that the agencies provided little to no specific guidance on how to react to foreign interference.

The most egregious example concerns the briefing of the Minister of Public Safety regarding specific incidents of foreign interference. The documents provided to the Participants reveal only general level briefings to the Minister of Public Safety or his staff. In addition, it would appear that the agencies briefed the Prime Minister's Office on specific incidents without briefing the Minister of Public Safety on those same incidents.

This failure to brief the Minister of Public Safety is problematic for two reasons:

⁶¹ Public Inquiry Into Foreign Interference in Federal Electoral Processes and Democratic Institutions, Transcript Volume 7 at 144-5.

⁶² *Ibid*, at 201.

1. The Minister of Public Safety is the minister responsible for CSIS.
2. The Minister of Public Safety is ultimately responsible with respect to the employment of Threat Reduction Measures by CSIS.⁶³ Pursuant to the Ministerial Directive on Accountability CSIS must advise the Minister whenever it is engaged in high risk or novel activities.⁶⁴

The breakdown in the information flow to the relevant minister is serious. The ineffective flow of information prevents the Minister from abiding by the principles of ministerial responsibility and thus imperils Canadian democracy. CSIS should have briefed the Minister of Public Safety on all serious incidents of foreign interference; the decision to brief the Prime Minister's Office on incidents and not to provide those same briefings to the Public Safety Minister prevented effective and immediate action by the appropriate authority. This breakdown in information flow may explain the lack of follow up to the allegations of foreign interference in the Don Valley North nomination race⁶⁵ and with respect to Ms. Kwan, Mr. Chiu, and Mr. O'Toole. This breakdown in information flow may also explain the significant delay that occurred before CSIS was able to provide defensive briefings to individuals who were targets of Chinese foreign interference.

Third and most troubling, there was an absence of smooth information flow to the Prime Minister and his staff. The Prime Minister and his staff indicated that they did not receive specific assessments by CSIS Director David Vigneault with respect to Chinese foreign interference. Mr. Vigneault submitted that he did not specifically repeat messages about the particular threats that China posed in terms of foreign interference because he regularly communicated these assessments. Repetition was unnecessary, given the well-understood context. Indeed, the documents before the Commission are full of general statements regarding the threat of foreign interference. Yet the Prime Minister and his staff testified they were unaware of such assessments.⁶⁶

⁶³ *Canadian Security Intelligence Service Act*, R.S.C. 1985, c-23 as amended July 13, 2019, at s. 21.2.

⁶⁴ [Ministerial Directive to the Canadian Security and Intelligence Service: Accountability](#) dated September 10, 2019, accessed April 13, 2024.

⁶⁵ It was never satisfactorily explained why there was no follow-up with respect to reports of foreign interference in Don Valley North after the 2019 election.

⁶⁶ Public Inquiry Into Foreign Interference in Federal Electoral Processes and Democratic Institutions, Transcript Volume 13 at 141.

It is submitted that Mr. Vigneault's evidence should be preferred. We do not know what Mr. Vigneault said privately to the Prime Minister and his staff, but his public comments on this subject are consistent with his testimony. Mr. Vigneault warned about Chinese foreign interference at meetings of the Five Eyes heads in May and October of 2023, in his evidence before Parliament⁶⁷, and in public remarks on the Public Safety website. Even if Mr. Vigneault had not conveyed these assessments verbally to the Prime Minister, it is difficult to accept that the Prime Minister and his staff would have been aware of a message that was consistently and publicly articulated.

But the Prime Minister's failure to take onboard this information signifies a deeper problem. The evidence was that the Prime Minister prefers to take material verbally and that is the way to get information to him.⁶⁸ Yet certain information ought to be conveyed in written form. The written form provides a permanent record, allows for repeated and grounded reflection on the information conveyed, and allows for the provision of larger volumes of information. Ultimately, the provision of written information better ensures the accountability of the Prime Minister, due to the consequent presence of a paper trail. The fact that CSIS tended not to provide information on foreign interference in writing to the Prime Minister is indicative of a systemic failure.

Conclusion

There is a compelling case that China, and to a lesser extent other foreign states, engaged in sophisticated, persistent, and pervasive interference in the 43rd and 44th General Elections. Foreign interference efforts suppressed voter choice. Foreign interference efforts led to the deplatforming of candidates, limits upon community discourse, and a wave of mis- and dis-information on electoral issues. Foreign interference efforts undermined the integrity of the electoral process even though it did not change the ultimate election outcome.

The evidence highlights critical flaws in the government's approach to foreign interference including a lack of understanding of foreign based social media platforms. The executive branch has failed to adopt a streamlined, whole-of-government approach to the threat of foreign interference. The various tools

⁶⁷ Standing Committee on Science and Research, No. 66 dated November 22, 2023.

⁶⁸ Public Inquiry Into Foreign Interference in Federal Electoral Processes and Democratic Institutions, Transcript Volume 14 at 190.

that the government has implemented remain overly narrow in scope. The confinement of the Critical Election Incident Public Protocol to the writ period, for example, prevents a coherent and proactive response to foreign interference. Critical issues with the flow of information to individual Canadians, Cabinet Ministers, and the Prime Minister himself contributed to the success of foreign interference efforts.

Protecting Canadian democracy must mean more than ensuring the legal validity of an election. The Canadian government needs a calibrated, proportionate response to foreign interference that protects the integrity of every vote. Until all Canadians can vote freely without fear of intimidation or malign misinformation from foreign actors the government will not have succeeded in its task of ensuring the health of Canadian democracy.