

**Public Inquiry into Foreign Interference in
Federal Electoral Processes and Democratic Institutions
Written Closing Submissions of MP Jenny Kwan for Phase I**

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A. Introduction and Summary

In Phase I, the Commission must address the following two items in the *Terms of Reference* (emphasis added):

(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 decisionmakers, 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, ...*

MP Jenny Kwan makes two submissions.

First, the Phase I report should address the mishandling of Ms. Kwan’s complaint regarding potential foreign interference (“**FI**”) in Vancouver East in the 44th General Election (“**44GE**”). She brought her complaint *four* times to *three* different federal institutions between 2021 and 2023 – the Office of the Commissioner of Canada Elections (“**OCCE**”), the Canadian Security Intelligence Services (“**CSIS**”) and the Royal Canadian Mounted Police (“**RCMP**”). The uncontradicted evidence before the Commission is that *not one* of these agencies, whose mandates include detecting, deterring and countering FI, properly exercised existing

investigatory or enforcement tools. Moreover, there was a lack of information flow between intelligence and enforcement agencies. This episode is important not only in its own right, but as an illustration of deeper *systemic institutional failures* that hamper Canada’s ability to address FI.

Second, the Phase I report should offer *interim recommendations* pursuant to the Commission’s mandate under clause (E) to “recommend any means for better protecting federal democratic processes from foreign interference that the Commissioner may consider appropriate”, to be implemented *before* September 2024. This because it is possible that the 45th General Election (“**45GE**”) could be called before the Commissioner delivers her Phase II report on December 31, 2024. The Commissioner must advise the federal government of measures that can be taken *now* to protect the 45GE from FI.

B. Potential FI in Vancouver East: A Narrative of Institutional Failure

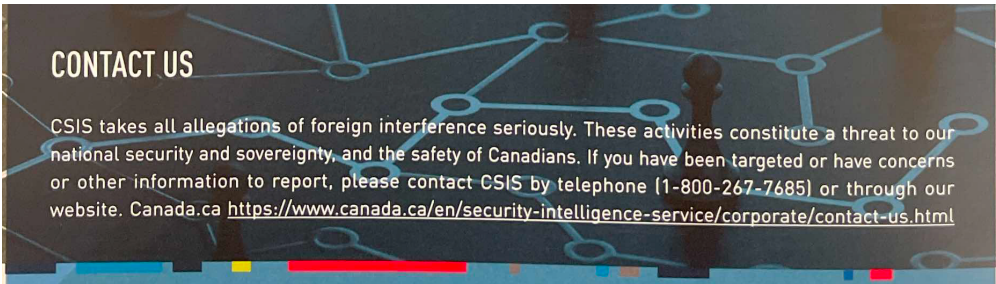
1. August 6, 2021: Briefing on FI before 44GE

On August 6, 2021, approximately a week prior to the issuance of the writ for the 44GE, CSIS met with Ms. Kwan and her staff to bring potential FI issues to their attention.¹ CSIS did not inform Ms. Kwan *why* she was receiving this briefing at the time. This briefing was what CSIS has termed a “defensive briefing”. CSIS prioritized defensive briefings for MPs who were vulnerable to FI.² The Commission should draw the inference that that CSIS briefed Ms. Kwan in August 2021 because CSIS had concluded by that time that she was already a target of FI.

CSIS provided Ms. Kwan and her staff with high level information about the nature of FI,

¹ WIT0000012.EN, para. 26.
² WIT00041, p. 12.

including the aim of FI, perpetrators and targets of FI, and common techniques of FI employed. None of the information was classified. Ms. Kwan came away from the CSIS briefing with a heightened awareness of FI, and the understanding that if she had any information about actual or potential FI, she should report it to CSIS. In fact, Ms. Kwan and her staff were left with a public-facing brochure that summarized the contents of the briefing and expressly advised her to contact CSIS with any FI concerns:³



2. August 28, 2021: Vancouver East Campaign Event for Liberal Candidate

During the 44GE, Ms. Kwan and her team became aware of a campaign event hosted for the Liberal candidate for Vancouver East on August 28, 2021.⁴ The event was hosted by Fred Kwok, a prominent member of the Chinese Canadian community, and at the time, the President of the Chinese Benevolent Association (“CBA”). Mr. Kwok issued an invitation to the event on WeChat in Chinese, which reads (translated; emphasis added):⁵

Just over two weeks left in the federal election. Throughout these years, the Chinese community and the *Chinese people* have long been neglected. The *Chinese people* must show their voting power in this election. Now that this Liberal candidate is running for the first time in Van East. We the *Chinese people* must show the voting power to politicians. The Indian (South Asian) people already have a huge influence. The *Chinese*

³ JKW0000069, p 8.
⁴ WIT0000012.EN, paras 38 to 41.
⁵ JKW0000076, p 2.

nationals should also show solidarity. Tomorrow morning at 11:30 a.m., lunch at Floata Restaurant. No matter how many, no need to pay. You all may bring some friends to show that you care. When the future victory comes, at least there will be a few more MPs who care about issues of the *Chinese nationals*.

As Ms. Kwan explained in her testimony, the terms “Chinese nationals” and “Chinese people,” are distinct in Chinese. The former refers to a person whose main political concern or allegiance is China, whereas the latter refers to people of Chinese ethnicity.⁶ Ms. Kwan was concerned about Mr. Kwok’s deliberate use of the term “Chinese nationals” in the WeChat post, because “they’re talking about wanting to elect someone who will prioritize the issues that are of concern to Chinese nationals, to the Chinese government or to China...”⁷

The deliberate use of the term “Chinese nationals” in the WeChat post, along with additional information that Ms. Kwan would later receive, reasonably led her to develop concerns that this campaign event may have been an instance of FI by China, and to bring those concerns to the OCCE, CSIS and RCMP.

3. September 7 and 15, 2021: OCCE Complaint and SITE Task Force Reports

On September 7, 2021, through the New Democratic Party’s (“**NDP**”) legal counsel, Ms. Kwan made a formal complaint to the OCCE regarding potential violations of the *Canada Elections Act* (“**CEA**”) arising from the campaign event.⁸ The complaint provided the OCCE with the information Ms. Kwan and her campaign team had to date, including the WeChat post with a translation, possible *Elections Act* offences that may have taken place. The complaint requested

⁶ TRN0000009, p 196, lines 14 to 21.

⁷ TRN0000009, p 177, lines 20 to 24.

⁸ JKW0000076.

that the OCCE assign an investigator immediately and ensured that the NDP would fully cooperate and provide any additional information it received.

Also on September 7, 2021, and unknown to Ms. Kwan, the Security and Intelligence Threats to Elections Task Force (“SITE”), comprised of CSIS, the Communications Security Establishment (“CSE”), the RCMP, and Global Affairs Canada (“GAC”), produced a situation report (“SITREP”), which flagged the Vancouver East campaign event as raising potential concerns regarding FI. The SITREP noted that the WeChat Post had been distributed by the CBA, which it flagged as being linked to the United Front Work Department of the CCP:⁹

- (U//OUO) The Facebook page for the Vancouver Hong Kong Forum Society (VHKFS) published screengrabs from a WeChat group with what they claim are members of the Chinese Benevolent Association (CBA) of Vancouver, a group that many open source reports claim are linked to China's United Front Work Department. The chat that shows what is purported to be an offer of a free lunch to support the LPC Vancouver East candidate as someone who “cares about the issues of the Chinese people”. VHKFS further claims that the message encourages solidarity among Chinese voters in a manner similar to South Asian voter solidarity.

The SITREP was a weekly report meant to collect any FI intelligence (among other forms of interference) from all SITE members, and share it within SITE and the Panel of 5.

The SITREP for September 16, 2021 also flagged this event as raising potential FI concerns, since it described Mr. Kwok as “a pro-Beijing individual with connections to China”:

⁹ CAN000175, p 1.

- (U//OUO) A *Postmedia* editorial as well as MacDonald-Laurier Institute's DisinfoWatch commented on what they characterized as examples of Chinese foreign interference during GE44, including: a campaign event for the LPC Vancouver-East candidate that promised a free lunch hosted by a pro-Beijing individual with connections to China; a perceived campaign on WeChat accusing Conservative MP Kenny Chiu of seeking to "supress the Chinese community" through his private members bill to create a foreign agents registry; recent Chinese Communist Party media outlet Global Times (GT) articles claiming the Conservative Party caters to Canada's "toxic anti-China atmosphere" and a perceived warning of "counterstrikes" should the Conservative Party win. No reaction yet from Chinese media and government officials.

Ms. Kwan testified that SITE did not inform her that they had flagged the campaign event; indeed, she was unaware that SITE even existed until the Commission.¹⁰ Ms. Kwan only became aware of these SITREPs when they were disclosed to the Commission.

The former Commissioner of Canada Elections, Yves Côté, and Mylène Gigou, OCCE's Senior Director of Enforcement, also testified that the OCCE had never received the September 7, 2021 SITREP or the information it contained until it was presented to them in preparation for their testimony.¹¹ This is unsurprising. There was no formal relationship between OCCE and SITE during the 44GE, and OCCE's evidence is that it "did not receive any actionable intelligence related to foreign interference from SITE".¹² The OCCE was not on the regular distribution list for SITREP; while there were meetings between SITE members and the OCCE, these were only to discuss their respective mandates and collaboration.¹³

It also bears noting that Anne McGrath, then Executive Director of the NDP – which had lodged the complaint on behalf of Ms. Kwan – met with SITE three times during 44GE, but was never alerted to the risk of FI regarding the campaign event.¹⁴ When she later became aware of

¹⁰ TRN000009, p 172, line 10 to p 172, line 26.

¹¹ TRN0000007.EN, p 189, lines 21 to 23 and p 190, lines 23 to 24; also see WIT0000025.EN, para. 73.

¹² WIT0000025.EN, paras. 72 and 74.

¹³ TRN0000009, pp 132 to 133, lines 25 to 4.

¹⁴ WIT0000023.EN, para. 16.

the complaint to OCCE, she reasonably concluded that the campaign event was not a high priority for SITE.¹⁵

4. September 13, 2021: Media Coverage Raises Additional FI Concerns regarding Vancouver East Campaign event

Ms. Kwan testified regarding an article published on September 13, 2021 in the *Vancouver Sun* by Daphne Bramham, “Is China interfering in the Canadian election?”¹⁶ The article stated that if the Liberal candidate for Vancouver East defeated Ms. Kwan, “it may be due to geopolitics and, some suggest, thanks to the help of people and organizations tied to the Chinese Communist Party”. The article specifically referred to the fact that Mr. Kwok alleged that he paid \$1500 to the Floata Restaurant for the campaign event. Ms. Kwan’s campaign manager, Gabriel Yiu, confirmed that approximately 10 to 12 tables were used for the event.¹⁷ This translated into a cost of between \$125 and \$150 per table.

Soon after the 44GE, Mr. Yiu contacted the same restaurant to ask for pricing for a potential event for Ms. Kwan, and received an estimate of approximately \$250 per table. At this rate, the total price for the campaign event should have been between \$2500 and \$3000.¹⁸ The reported price of the campaign event, \$1500, only accounted for between one-half and two-thirds of the market price. At this point, Ms. Kwan began to wonder whether a foreign actor – such as the CCP – had covered the difference between the reported and likely cost of the event.

¹⁵ TRN000008, p 70, lines 8 to 27.

¹⁶ JKW0000072.

¹⁷ WIT000008, para. 5.

¹⁸ JKW0000085.

If a foreign actor had done so, it would have violated several provisions of the *Canada Elections Act* (“**CEA**”): the prohibitions on undue influence by foreigners under section 282.4, on the use of foreign funds by third parties under section 349.02, and spending by foreign third parties under section 349.4.

5. October 7, 2021: Additional Information sent to OCCE

On October 7, 2021, Mr. Yiu emailed a detailed explanation of the difference between the reported and likely cost of the campaign event to the OCCE investigator who had been assigned to investigate the complaint.¹⁹ The OCCE investigator confirmed receipt on October 12, 2021. When Mr. Yiu offered to send audio recordings that captured discussions on pricing with the venue, the investigator responded that he did not need them, but suggested that Mr. Yiu retain them and stated he would ask for them at a later date if he needed them. The OCCE investigator never contacted Mr. Yiu or Ms. Kwan again.

6. October 8, 2021: Complaint to CSIS

On October 8, 2021, in light of the information Ms. Kwan and her staff had received about the campaign event (including the *Vancouver Sun*’s reporting), she decided to contact CSIS.²⁰ She provided CSIS with information about the campaign event, Mr. Kwok, and the questions raised by the discrepancy between the reported and likely cost of the event. She hoped CSIS would investigate whether the event was indeed FI. CSIS never followed up with her, to inform her if they had investigated potential FI, and if so, the results of any investigation.

¹⁹ WIT000008, para. 8; JKW0000078.

²⁰ WIT0000012.EN, para. 27.

Either when CSIS became aware of the potential FI in relation to the campaign event through the September 7 and 16, 2021 SITREPs, or when Ms. Kwan made her complaint to CSIS on October 8, 2021, CSIS could have taken steps to inform her or the NDP under its threat reduction measure powers. However, as then Minister of Public Safety, Bill Blair, testified, he had oversight over all CSIS threat reduction measures and he had no consultations with CSIS about any specific threat reduction measures related to FI suggested by CSIS or him during his tenure.²¹

7. June 14, 2022: OCCE Investigation Completed

According to evidence tendered by the OCCE, it investigated the complaint until June 14, 2022 – a fact which Ms. Kwan only became aware of when the OCCE disclosed this information to the Commission.²² The OCCE also disclosed that it had imposed an Administrative Monetary Penalty on the Liberal candidate for Vancouver East in the 44GE. The OCCE ruled out the possibility of FI, because “the event was held at the request of the [Liberal] candidate” and “there were no indications of a direct contribution of foreign funds”, the campaign event therefore “did not appear to have been a proactive effort by China”.²³

The evidence of Mr. Côté, Caroline Simard (Commissioner of Canada Elections since June 2022), and Ms. Gigou shows how the OCCE’s investigation was manifestly inadequate. The OCCE provided no evidence that it investigated the possibility of FI arising from the discrepancy between the reported and likely cost of the campaign event, based on the information provided by Mr. Yiu. Moreover, while the OCCE investigators communicated with counsel for Mr. Kwok,

²¹ TRN0000014, p. 93 lines 1 to 28, p 94 lines 1 to 13.

²² CEF0000156.

²³ WIT0000026.EN, paras. 51 and 53; also see WIT0000025.EN, para. 96.

they did not interview Mr. Kwok himself. The Floata Restaurant refused to provide the receipt for the campaign event to the OCCE to substantiate the reported price of \$1500. The OCCE did not interview any restaurant employees. The OCCE does not appear to have examined the WeChat post, or the background of Mr. Kwok, which both support the concern there may have been FI at play.

In short, the OCCE completed its investigation without interviewing key witnesses and reviewing any documentary evidence, and apparently without considering the only hard evidence, which had been provided by Ms. Kwan’s team, the political messaging for the event, or the background of the organizer. This hardly counts as an investigation at all. To make matters worse, the OCCE had the power to obtain the information it lacked. Under section 501.01(1) of the *CEA*, the OCCE may obtain a court order requiring testimony by a person who “has or is likely to have information that will provide evidence” of a contravention of the Act – such as Mr. Kwok or the restaurant staff. Section 501.02(1) provides that person may be compelled to provide evidence – such as the receipt for the campaign event.

When asked to explain why the OCCE had not exercised these legal powers to fully investigate the complaint, Commissioner Simard responded that the OCCE did not have the authority to compel the venue to provide the requested information because it decided to treat the complaint as an administrative matter, as opposed to a quasi-criminal one.²⁴ She did not explain why the OCCE had not compelled Mr. Kwok to testify. Moreover, her answer is question-begging, because it fails to address why the OCCE did not treat this complaint as a quasi-criminal

²⁴ TRN0000007.EN, p. 188, lines 1 to 11.

matter from the outset. If the OCCE's answer is that it lacked reasonable grounds to obtain a court order, that is simply untrue. Mr. Yiu's evidence on its own, or corroborated by the OCCE, would have met this legal standard.

Moreover, had the OCCE been aware that SITE had twice flagged the event as raising FI concerns, it could have included this information in its request for a court order; the information was provided by GAC based on open source intelligence, and hence would not compromise CSIS sources or methods. Indeed, Mr. Côté finally conceded that had OCCE received the SITREP:²⁵

our investigators would have taken into account and considered the contents, with the information and allegations in this paragraph, and would have been part of the analysis of the file they would have done and it might have brought them in the same direction or a different direction

Two other pieces of intelligence put into evidence support the conclusion that the campaign event was potentially an instance of FI. CSIS Director David Vigneault confirmed that Chinese authorities had provided funds for the 43GE to support "threat actors" including proxies who "worked ... to covertly advance PRC interests through democratic institutions", and in particular, transferred \$250,000 to these threat actors.²⁶ CSE Deputy Director Alia Tayyeb provided evidence that there had been a "distribution of funds" as part of FI activities in relation to *both* the 43 GE *and* the 44GE.²⁷ It is therefore highly plausible that China could have engaged in FI in relation to the campaign event by financially supporting it.

The OCCE's conclusion that the campaign event did not raise plausible concerns of

²⁵ TRN0000007.EN, pp 190 to 191, lines 23 and 28.

²⁶ CAN.SUM.000010, p 2; TRN000010, p 201, line 12 to p 204, line 21.

²⁷ WIT000033, para. 16.

Chinese FI because it had been requested by the Liberal candidate is simply illogical. The OCCE does not appear to have considered the possibility that China acted opportunistically, without the knowledge of the Liberal candidate, to covertly fund the campaign event. This would be consistent with CSIS intelligence on how the PRC acted during the 43GE, where the PRC worked through proxies to support candidates, some of whom “appeared to be *unaware* of potential FI-related activity due to its clandestine nature”.²⁸

Finally, and most disturbingly, when the OCCE panel was repeatedly asked various versions of the following elementary question, it refused to answer:²⁹

If the Chinese Consulate in Vancouver contributed funds to a lunch hosted for a candidate in the 2021 federal election, would that not amount to undue influence by foreigners, in contravention of the *Canada Elections Act*?

OCCE’s failure to answer this simple question suggests it simply would not recognize FI if it was right in front of it.

8. September 30, 2022

On September 20, 2022, Mr. Yiu spoke to RCMP officers Integrated National Security Enforcement Team, and provided the same information regarding the discrepancy between the reported and actual price of the campaign event.³⁰ The RCMP officers did not seem interested in the issue.

²⁸ CAN.SUM.000010, p 2 (emphasis added).

²⁹ TRN0000007.EN, p 184, line 6 to p 185, line 2.

³⁰ WIT0000012.EN, para. 45; WIT000008, para. 11; JKW0000078; JKW0000079.

9. May 26, 2023: CSIS Briefing for Ms. Kwan

On May 26, 2023, CSIS officials meet with Ms. Kwan to inform her that she was a target of FI by the CCP and their proxies, and that these activities were a threat to the security of Canada.³¹ CSIS informed Ms. Kwan that she was an “evergreen target” for the CCP and would be so for the rest of her life, even after she retires from politics.³²

CSIS informed Ms. Kwan they were providing the briefing pursuant to its threat reduction mandate. The goal of the briefing was to equip Ms. Kwan “with a better understanding of PRC foreign interference methodology and tradecraft”, so that she “would be better able to reduce the effectiveness of such threats in the future, enabling her to respond and resist foreign interference efforts by reporting them to CSIS and other authorities, or by taking other protective measures.” Ms. Kwan testified she reasonably concluded that she had been advised to report potential foreign interference and CSIS and other federal authorities, such as the OCCE and RCMP.³³

CSIS informed Ms. Kwan that FI activities are often pursued by the CCP through the United Front Work Department, which engages in FI through means that are “clandestine or coercive in nature and are conducted by foreign diplomats, intelligence officers, state proxies and co-optees including key members of diaspora communities.” She was also informed that the goal of FI was “to coopt, reorient, or silence non-party elites ... both within and outside of China”.

Since the *Vancouver Sun* article published in September 2021, Ms. Kwan had been

³¹ CAN.DOC.000023.

³² WIT0000012.EN, para. 28.

³³ TRN000009, p 197, line 24 to p 199, line 26.

concerned that the campaign event might have been subject to FI. The May 2023 CSIS briefing deepened her concerns regarding potential FI in relation to the campaign event.³⁴

She also began to view other events also connected to Mr. Kwok through the lens of FI. In January 2023, she was prevented from holding an annual meet and greet on Lunar New Year with senior citizens in a housing project operated by the Chinese Freemasons.³⁵ Mr. Kwok is an honorary national leader of the Chinese Freemasons.³⁶ She also not invited to the annual Lunar Near celebration organized by the CBA in January 2022.³⁷ CSIS provided evidence to the Commission that China had “coordinated the exclusion of particular political candidates, perceived as ‘anti-China’, from attending local community events”, which “was accomplished via PRC proxy agents, hiding the direct involvement of these PRC officials”.³⁸ The Commission should infer that this is precisely what occurred – and that Mr. Kwok’s connection to both events raised potential FI concerns regarding the campaign event.

10. July 17, 2023 to September 1, 2023: Re-engagement with the OCCE

On July 17, 2023, an OCCE investigator reached out to Ms. Kwan’s office to discuss a different FI issue.³⁹ During a call with the investigator, and afterwards in a lengthy email dated August 23, 2023, Ms. Kwan raised her complaint regarding the campaign event again, this time in light of the CSIS briefing she had received in May 2023.⁴⁰ As she explained to investigator:

³⁴ TRN000009, p 174, lines 3 to 25.

³⁵ WIT0000012.EN, para. 31.

³⁶ WIT0000012.EN, para. 39; TRN000009, p 177, lines 3 to 8.

³⁷ WIT0000012.EN, para. 32.

³⁸ CAN.SUM.00000, p. 2; TRN0000010, p 206, line 27 to p 208, line 5.

³⁹ JKW0000082.

⁴⁰ JKW0000083.

When I brought the Fred Kwok matter up on the telephone call with you recently, your response was that you are less interested in this issue with your visit to the Lower Mainland. I would like to point out that following this complaint and in light of the revelation from CSIS [in May 2023] that I am a target for foreign interference, it would be important to ensure that there be a thorough investigation on this matter to ensure that no foreign interference or violation of the Election Act has taken place.

She again provided the information from Mr. Yiu regarding the discrepancy between the reported and likely price of the campaign event – which had been previously provided to the OCCE and CSIS in 2021, and the RCMP in 2022. She then drew a link between the campaign event and the possibility that the Chinese Consulate Vancouver had used a slush fund, just as the Chinese Consulate in Toronto had done:

Recent news coverage of CSIS leaks has brought to our attention alleged involvement and interference by the Vancouver Chinese Consul General in the 2021 federal election. The media has also reported on a scheme conducted by the Toronto Chinese Consulate, which funnelled funds through Chinese community figureheads into election campaigns. These reports have reminded us of the Fred Kwok incident, and brings to the forefront the lingering questions we have regarding the luncheon he hosted for the Liberal candidate during the 2011 election.

She concluded by expressly calling on the OCCE to investigate if FI had occurred in relation to the campaign event, and reminded the investigator that:

Foreign interference could come in a number of different forms, via social media platforms like Wechat or the involvement of volunteers or through organized events. By nature, foreign interference is clandestine activities, as such, any such activity would be hidden. No matter how the potential foreign interference is exerted, each approach is equally serious and worthy of the truth.

On September 1, 2023, Ms. Kwan received a generic response from the investigator. Notably, the investigator stated that the OCCE’s investigation into the campaign event was an “ongoing matter” – which contradicts the OCCE’s evidence that the investigation had been completed on

June 14, 2022, over a year earlier.⁴¹

The OCCE failed to reopen the investigation in light of this additional information or to use the powers available to it under its Memorandum of Understanding with CSIS (“**OCCE-CSIS MOU**”) to obtain the relevant information to conclude whether re-opening the investigation would be appropriate. The *OCCE-CSIS MOU* clearly states that both organizations, “share a goal of preventing covert, clandestine or criminal activities interfering with or influencing electoral processes in Canada” and part 4 of the *OCCE-CSIS MOU* enables two-way information sharing between the organizations.⁴²

11. March 6, 2024: Imposition of Administrative Monetary Penalty

Although the OCCE purportedly concluded its investigation in June 2022, according to the OCCE’s website, it appears that the AMP was not imposed until March 6, 2024 – a regulatory decision of which the Commission can take notice.⁴³ Coincidentally, March 6, 2024 was also the date on which Commission counsel first interviewed Commissioner Simard.⁴⁴

12. Conclusion: Systemic Institutional Failures

As CSIS had advised her to do, in 2021 and again in 2023, Ms. Kwan repeatedly raised credible concerns regarding potential FI she may have faced during the 44GE from China, which may have funded a campaign event for the Liberal candidate in her riding without his knowledge. She raised her concerns *four* times with *three* different federal agencies from 2021 to 2023: the

⁴¹ JKW0000084

⁴² CEF0000044, pp 2, 5.

⁴³ <https://cef-cce.ca/content.asp?section=amp&dir=pub&document=mar0524-cr&lang=e>.

⁴⁴ WIT0000026.

OCCE, the RCMP and CSIS. All of these agencies have mandates which include detecting, deterring and countering FI. Not one properly investigated the campaign event to ascertain if FI had in fact occurred – failing to interview key witnesses, demand key documents, and considering the evidence that was before them.

These agencies failed to exercise their existing powers to investigate and counter potential FI in Vancouver East, notwithstanding that: (a) Ms. Kwan has long been a target of FI by the CCP – in all likelihood, *before* the 44GE; (b) *during* the 44GE, SITE flagged this event *twice* as potentially raising concerns of FI by China, including on the *same day* as the complaint to OCCE; (c) China had used a slush fund to channel monies to Canadian proxies during the 44GE, as Ms. Kwan fears may possibly have happened in Vancouver East; and (d) Mr. Kwok, working through the CBA and the Chinese Freemasons, may have engaged in other FI activities against Ms. Kwan, through methods CSIS identified as reflecting FI by China.

In addition, there was a total failure of information flow in investigating the complaint. Federal agencies did not “connect the dots”, on multiple occasions, between facts that were known to the security and intelligence (“**S&I**”) services and the complaint itself. Crucially, SITE flagged the same event as on the same day as the complaint, in September 2021, but did not share this intelligence with Ms. Kwan or the OCCE during the 44GE. Nor was this intelligence subsequently shared with Ms. Kwan or the OCCE in May 2023 after CSIS informed Ms. Kwan that she was a target of FI.

Indeed, the OCCE admitted under cross-examination that it would have investigated the complaint differently had the SITREPs on the campaign event been shared with it. Moreover, the

OCCE's counsel's surprising question to Ms. Kwan during cross-examination, asking her if *she* had evidence of a Chinese slush fund, betrays OCCE's ignorance of CSIS intelligence regarding the existence of use of a slush fund by the CCP in Canada.⁴⁵ And most disturbingly of all, when OCCE was repeatedly asked whether payments by a foreign government to host a campaign event for a political candidate during a general election would violate the *CEA*, it did not provide an answer to this simple question.

The Commission should not treat the inadequacies of the investigation of the complaint as a single event in isolation or fail to view it in light of the FI faced by other candidates in GE 44, including Kenny Chiu and Erin O'Toole. As Ms. Kwan testified, her experience illustrates deep *systemic institutional failures* in Canada's existing framework for combatting FI.⁴⁶

You have multiple government agencies who have a bit of the ingredients, let's put an analogy that I can understand, of baking a cake. Everybody has a little bit of the ingredients here and there and multiple agencies, the RCMP, CSIS, OCCE, this Taskforce, for example. And they all have it. And then when you want to bake the cake, you want to make sure all the ingredients are mixed well together in the order in which it should be to produce the product.

Well that didn't happen here. Instead, what happened is that you have a half-baked product, because everybody owned their own ingredients and filled it in whenever they felt like it. And that doesn't make any sense at all. And so that's a failure of the system. And then when you have all the tools to follow to try and get the ingredients, or sorry, to get the product, you think that you'd used all the tools, but it seemed to me that OCCE did not use all the tools, because they did not compel the restaurant to produce the receipt and to follow the cost to verify the amount of that free lunch event.

So it's a failure of a system to me, and I'm deeply disappointed about it.

Ms. Kwan also explained that the failure to investigate her complaint damages the public's

⁴⁵ TRN000009, p 188, lines 8 to 25.

⁴⁶ TRN000009, p 205, lines 8 to 28.

confidence in Canada's ability to investigate FI:⁴⁷

The worst thing for me about all of this is, aside from my complaint itself, set that aside for a minute, is what message is being sent to public? We look at government agencies and they are supposed to instil confidence, and trust, and faith in the hearts and minds of the public. We rely on them to do the very work to investigate and to verify, and to ensure the law is being followed. But I think that in this instance, the investigation failed in that.

Finally, the failure to investigate FI means that foreign actors are not deterred from continuing to engage in it:⁴⁸

And in relation to foreign interference, the message here is that for the -- if in fact there was foreign interference that took place in this free lunch event, the message sent to them is, "You can get away with it." That is the message, and that is not helpful.

C. Interim Recommendations

Clause (G) of the *Terms of Reference* provides that the Commissioner's report on clause (E) must be publicly released on later than December 31, 2024. This deadline does not preclude the Commissioner from delivering *interim* recommendations before that date – for example, as part of her Phase I report, which must be publicly released by May 3, 2024.

The reason to make interim recommendations is that it is possible the 45GE will occur before the Commissioner delivers her Phase II report. Based on the evidence that has been placed before the Commission, it is clear that Canada's existing institutions and procedures to combat FI are inadequate. They would be unable to address FI during the 45GE.

Ms. Kwan's particular concern is the lack of *information flow* regarding FI. She therefore

⁴⁷ TRN000009, p 206, lines 1 to 9.

⁴⁸ TRN000009, p 206, lines 10 to 14

proposes the following interim recommendations to enhance information flow:

1. SITE should integrate its intelligence gathering and analysis in real-time with complaints to the OCCE, RCMP and/or CSIS, so that it “connects the dots” between intelligence, on the one hand, and investigation and enforcement, on the other.
2. SITE should immediately share SITREPs with all relevant enforcement arms of the government, including OCCE.
3. Political party representatives on SITE should receive Top Secret security clearances, to enable them to receive any relevant classified intelligence regarding FI.
4. SITE must share relevant information with political party representatives with the requisite security clearances, so that political parties are aware of potential FI and can act within the scope of their legal authority to address it.
5. SITE members, on their own authority or together with other appropriate government agencies, must share relevant information with candidates, with classified information removed, so that they are aware of potential FI, and can act within the scope of their legal authority to address it.
6. SITE, including its members, the Panel of 5, and certain senior government officials, agencies, and ministries, should have an aggregated analysis of the impact of all potential FI activity for any given period during the election so that any decisions about what action, if any, adequately addresses the threat. In the case of 44GE, this aggregate view should have considered the impact of all FI activities against Kenny Chiu, Erin O’Toole and Jenny Kwan (amongst any others). Each case of FI activity against each target may not seem significant, but taken together the impact may be meaningful enough to warrant action by SITE, its members, or the Panel of 5.

These recommendations can be implemented within existing institutions and legal authorities.

The Commissioner should recommend they be implemented no later than September 1, 2024 or the 45 GE, whichever comes earlier.