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

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TABLE OF CONTENTS

I. OVERVIEW

1. The Public Inquiry into Foreign Interference in Federal Electoral Processes and Democratic Institutions ("the Commission") held its Factual Phase Stage 2 hearings between September 16 and October 16, 2024. The Stage 2 hearings focused on the capacity of federal departments, agencies, institutional structures, and governance processes to permit the Government of Canada to detect, deter and counter foreign interference in Canadian democratic institutions. The Commission held its Policy Phase hearings between October 21 and October 24, 2024. These hearings included a series of round-table discussions with experts, including academics, to assist the Commissioner with the development of recommendations related to all aspects of the Commission's mandate. As part of the hearings, the Commission examined the disproportionate impact of foreign interference on members of diaspora communities including Uyghurs, Falun Gong practitioners, Hongkongers, Tibetans, Tigrayans, Eritreans, Cubans, and Tamils.

2. The Human Rights Coalition ("HRC") – comprised of Human Rights Action Group, Falun Gong Human Rights Group, Canada-Hong Kong Link, Uyghur Rights Advocacy Project, Democratic Spaces, Hidmonna-Eritrean Canadian Human Rights Group of Manitoba, Security and Justice for Tigrayans Canada, the Alliance of Genocide Victim Communities, and Tamil Rights Group – participated as a party in both Factual and Policy phases of the Commission's work to represent these communities' perspectives. Participants were invited to provide closing submissions in writing following the conclusion of the hearings to the Commission by November 4, 2024.

3. In these closing submissions, HRC highlights the disproportionate impact of foreign interference on Uyghur, Falun Gong, Hongkonger, Tibetan, Tigrayan, Eritrean, Cuban, and Tamil Canadians. HRC submits that the Commissioner's final report should contain a series of recommendations attuned to this reality. The series of recommendations proposed by HRC in these submissions span three categories: (A) recommendations that existing laws and policies be utilized in a systematic and

consistent manner, with a view to protecting those most impacted by foreign interference; (B) recommendations that counterproductive or harmful laws should be repealed or terminated, as the case may be; and (C) recommendations for additional laws and policies to be passed to address outstanding gaps, particularly in the protection and support of Uyghurs, Falun Gong practitioners, Hongkongers, Tibetans, Tigrayans, Eritreans, Cubans, and Tamils. This should be done with an eye to the definition of foreign interference, which properly captures the existence of a foreign interference ecosystem in which members of diaspora communities face implicit threats and disenfranchisement from Canada's democratic processes and institutions.

II. THE IMPACT OF FOREIGN INTERFERENCE ON DIASPORA COMMUNITIES

4. The impact of foreign interference on Uyghur, Falun Gong, Hongkonger, Tibetan, Tigrayan, Eritrean, Cuban, and Tamil Canadians is significant. That these community members often bear the brunt of foreign interference is a reality of which numerous government actors are aware. In the Factual Phase Stage 1 hearings, Janice Charette stated that "some of the most difficult and injurious impacts of foreign interference are on these diaspora communities".[1] David Vigneault identified diaspora communities as "one of the most significant target[s] of foreign interference."[2] Minister Dominic LeBlanc explained in his Factual Phase Stage 1 testimony that the Public Safety department was "always struck that diaspora communities are, in many cases, the targets and the victims of these foreign interference attempts."[3]

5. Similar concerns were raised by witnesses in the Stage 2 hearings. For instance, in their discussion of the APT31 cyber-attack on members of the Interparliamentary Alliance on China ("IPAC"), MPs Garnett Genuis and John McKay both expressed concerns that members of diaspora communities with whom they were in contact might have been inadvertently exposed and impacted by the cyber-attacks.[4] Both agreed, in response to questions posed in cross-examination, that the impacts of such exposure

[1] Transcript: Volume 12, TRN0000012 at 190.
[2] Transcript: Volume 10, TRN0000010 at 164.
[3] Transcript: Volume 14, TRN0000014 at 154.
[4] Transcript: Volume 17, TRN0000017 at 61-62.

would be significant, and that their safety and wellbeing might be threatened in Canada in a way that parliamentarians' safety and wellbeing may not be.[5] As MP Genuis stated:

> "… the greatest threat here is to the freedom of people in diaspora communities. They are vulnerable to all kinds of different threats and I think it's important, as much as possible, to put the spotlight on them, as well as on their courage and heroism in persisting in human rights advocacy in spite of these counter-pressures."[6]

6. The disproportionate impact faced by diaspora communities is further evidenced by several of the exhibits introduced in the hearings. For example, the 2024 Report of the Special Rapporteur on the situation of human rights in Eritrea, Mohamed Abdelsalam Babiker, noted that:

> "The use of digital technologies, including social media, to target and harass human rights defenders, activists and journalists in the diaspora has reached alarming levels. The Special Rapporteur is particularly concerned about online threats and attacks against women human rights defenders, which often feature gendered and sexualized abuse."[7]

7. Babiker also noted the involvement of Eritrean embassies and consulates, finding that "[i]n order to access consular services, Eritrean embassies and consulates require the payment of the diaspora tax, which amounts to 2 per cent of the income earned abroad …, the signature of a 'regret' or 'repentance' form and the completion of an interview at the Eritrean embassy".[8] He further noted that "Eritrean embassies and consular representations, as well as individuals linked to those diplomatic outposts, actively encourage support for the Government of Eritrea, such as through purported community organizations and cultural activities … and through providing support to structures of the People's Front for Democracy and Justice [PFDJ] in the diaspora".[9] These findings mirror the concerns raised

[5] Ibid at 62.
[6] Ibid.
[7] HRC0000121 at 13.
[8] Ibid.
[9] Ibid.

by Eritrean-Canadians, including concerning the continued collection of the so-called "diaspora tax", despite Canada banning this process in 2013.[10] As shared by Mr. Ghezae Hagos Berhe, co-founder of Hidmonna – Eritrean Canadian Human Rights Group of Manitoba:

> "Eritreans are some of the largest refugee communities coming to Canada… but the question remains are we giving them the protection, healing, and safety? The answer is unfortunately an emphatic no because there is a systematic and widespread control of the Eritrean Canadian diaspora by the Eritrean government …
>
> Proxy organisations in all major cities claiming to be non-political and neutral, but in reality have close affiliation with the Eritrean Consulate, operate as the political arms of the regime. In short, as a victim aptly told the media, or lamented rather, 'It's like you run away from the regime, you thank God, yet the regime is right here in Canada'."[11]

8. Tigrayan Canadians have likewise been impacted by the long arm of the Eritrean regime, as well as by that of Abiy Ahmed's Ethiopia. The war in Tigray "has killed thousands of people, forced as many as two million people to flee their homes and destroyed much of the region's health care system and other basic services".[12] The severity of the crisis has "often been obscured by a fog of falsehoods and duelling propaganda claims", as "[d]isinformation has been a key element of the [Ethiopian] government's communication strategy".[13] As noted by Professor Aengus Bridgman, this "highlights many of the dangers … of social media-based propaganda … It sheds a very clear light on some of the harms and some of the tools that people can use, including governments against their own people, to manipulate public opinion … it's tragic".[14]

9. These concerns were shared by Mr. Sieru Kebede, vice-president of Tigray Community Toronto and

[10] HRC0000064 at 21.
[11] Transcript: Volume 26, TRN0000026 at 108-109.
[12] HRC0000039 at 2.
[13] Ibid.
[14] Transcript: Volume 22, TRN0000022 at 244.

volunteer with the Alliance of Genocide Victim Communities, Security and Justice for Tigrayans Canada, and Ethiopian Canadians for Peace. As he noted:

> "The Ethiopian and Eritrean Governments launched extensive propaganda campaigns, making it difficult for people to grasp the true extent of the crisis… The Tigray war has resulted in over a million civilian deaths, primarily due to the brutal siege and targeted massacres. The Ethiopian government led the conflict, supported by Eritrean soldiers and Amhara paramilitary groups, with an estimated million combatants involved. The war has led to the sexual assault of over 200,000 women and girls, often tortured in gruesome ways by gangs. It had also led to the destruction of more than 90 percent of schools, hospitals, as well as factories, water supplies, civic buildings with essential public records. Currently over 40 percent of Tigray remains under occupation by the same forces responsible for these atrocities, hindering justice and the return of displaced persons."[15]

10. Mr. Kebede shared his impression that the mis- and dis-information perpetuated by Ethiopian and Eritrean officials contributed to the lack of media coverage of the conflict which in turn hindered the Tigrayan Canadian community's ability to obtain support. As he put it:

> "Compared to conflicts in Ukraine or Israel, the Tigray war has resulted in far more casualties and urgent needs. Yet it has received minimum media coverage. This lack of awareness significantly hinders our ability to raise funds for recovery efforts and support refugees in both – in Tigray and within Canada."[16]

11. Mr. Kebede further shared his impressions of the inadequacy of Canada's support, noting that only a "small number [of Tigrayan refugees] have arrived in Canada, particularly in Toronto, but they lack adequate support to address the mental trauma and resettle effectively".[17]

[15] Transcript: Volume 26, TRN0000026 at 75-76.
[16] Ibid at 76.
[17] Ibid.

12. Many of these same themes pertain to the Chinese regime's long arm in Canada, and its disproportionate impact on Uyghur, Hongkonger, Falun Gong, and Tibetan Canadians.

13. As noted in the February 2022 Uyghur Rights Advocacy Project ("URAP") report, "'Intended and Unending': A Report on China's Transnational Harassment and Intimidation Campaign Against Uyghur-Canadians", URAP discovered "that not a single [Uyghur interviewee] has escaped the long arm of the Chinese state's campaign of transnational repression, intimidation, harassment and even direct threats".[18] The report concluded that Uyghurs in Canada suffer "in a state of psychological torment, left to worry day after day about missing relatives who have been sent to the Chinese state's sprawling system of concentration camps, where since 2017 over one million Uyghurs have been, or still remain imprisoned".[19] The URAP report found that the repression committed against Uyghur Canadians takes on a multitude of forms, including, but not limited to, intimidation, surveillance, threats, cyber-attacks, and denial of consular services.[20]

14. These findings were reiterated by Uyghur-Canadian Mr. Kayum Masimov, who shared that "the Uyghur community, like many diaspora communities in Canada, … have faced significant and ongoing threats due to foreign interference…".[21] Mr. Masimov shared that such "activities often manifest in covert surveillance, intimidation, and harassment, all aimed at silencing [Uyghur] voices and curbing [Uyghur] advocacy for human rights".[22]

15. One emblematic case of foreign interference targeting Uyghur Canadians was discussed in one of the Canadian Security Intelligence Service ("CSIS") intelligence assessments introduced as an exhibit over the course of the Commission's hearings. This 2022 CSIS assessment describes an incident wherein People's Republic of China ("PRC") based hackers targeted activists, journalists, and dissidents,

[18] HRC0000089 at 4.
[19] Ibid.
[20] Ibid at 5.
[21] Transcript: Volume 26, TRN0000026 at 135.
[22] Ibid.

predominantly Uyghurs, based outside of the PRC including in Canada.[23] The assessment states that "[a]ccording to Facebook, this group used various cyberespionage tactics to identify targets and infect their devices with malware to enable surveillance".[24] CSIS noted that although the operations were not specifically attributed to a Chinese state actor, the "sophistication, pervasiveness and persistence" of the operation "highly suggest the implication of PRC state actors".[25]

16. In response to questions in cross-examination about this above incident, Mr. David Vigneault stated that CSIS has "protocols to act very quickly" when the agency has "any information that speaks to someone who might be under threat".[26] Mr. Vigneault further stated that CSIS has "engaged with those communities".[27] However, based on the remarks provided during the Stage 2 hearings by Mr. Masimov, as well as the remarks provided during the Stage 1 hearings by Mr. Mehmet Tohti, it is evident that at least from the Uyghur Canadian community's perspective, they are not adequately protected or supported in the face of such instances of foreign interference. Mr. Tohti explained during the Stage 1 hearings that many Uyghur Canadians do not even bother to try to report cases of foreign interference anymore. He shared that trying to report cases "is a waste of time", and that he has "gone numerous times about [foreign interference cases] and we don't get any result".[28]

17. Ms. Gloria Fung, the co-convener of the Canadian Coalition for a Foreign Influence Transparency Registry and the immediate past president of Canada-Hong Kong Link, also shared the view that "[d]iaspora communities are direct victims of foreign interference and transnational repression" and that the interference that has been uncovered so far "only represents the tip of the iceberg".[29]

18. According to a report published by Alliance Canada Hong Kong in May 2021, "In Plain Sight: Beijing's

[23] CAN029962_0001 at 4.
[24] Ibid.
[25] Ibid.
[26] Transcript: Volume 24, TRN0000024 at 201.
[27] Ibid.
[28] Transcript: Volume 6, TRN0000006 at 112.
[29] Transcript: Volume 26, TRN0000026 at 126-128.

unrestricted network of foreign influence in Canada", there is intersection and overlap between digital and non-digital methods of foreign interference and transnational repression. Person-to-person direct pressure, threats to relatives, and other such tactics can be leveraged to facilitate the spread of mis- and dis-information. As the report noted:

> "The [Chinese Communist Party ("CCP")] exerts its influence in Canadian media in the form of censorship, propaganda, and control over content-delivery systems including control over media outlets, the entertainment industry, and the frequent use of social media campaigns. Simple, overt methods have included sponsored posts or advertorial inserts written by Chinese party-state media. Other direct methods include running digital or print advertisements parroting party rhetoric purchased by groups closely tied to the Chinese authorities….
>
> There have been incidents with Chinese Consul Generals in Canada applying direct pressure to outlets to remove quotes critical of the CCP, or preventing publications of certain ads from Falun Gong.
>
> Chinese-Canadian journalists face job losses, death threats, online threats, and threats to relatives in China for unfavourable coverage of Beijing."[30]

19. Mr. Sherap Therchin, Executive Director of the Canada Tibet Committee, discussed the prevalence of mis- and dis-information impacting Tibetan Canadians. He noted that "as China has ramped up its claims and preparation to identify and appoint the next Dalai Lama … we believe there is going to be a massive influence campaign internationally over the next few years".[31] Mr. Therchin stated that "we cannot let Canadian soil be misued and Canadian democracy be taken for granted in assisting People's Republic of China in imposing state interferences in the religious freedom of the Tibetan people".[32]

[30] HRC0000008 at 15-16.
[31] Transcript: Volume 26, TRN0000026 at 105.
[32] Ibid.

20. Mr. Therchin described a particular incident where a Chinese proxy organization shared a document that contained the forged signature of a Canadian official, clearly designed to mislead Canadians about the human rights situation in Tibet.[33] According to Mr. Therchin, this organization "claimed that Tibet now enjoys freedom of religion, economic development, ecological and environmental preservation, and improvement of Tibetans' livelihood".[34] Mr. Therchin noted that this "whitewashes the actual situations in Tibet".[35]

21. Falun Gong practitioners described a spectrum of foreign interference with grave impacts on community members. Mr. Pixing Zhang, who has been advocating on behalf of Falun Gong practitioners' human rights for the last 20 years, and who was awarded the Queen Elizabeth II's Diamond Jubilee Medal for his work, shared that from 1999 onwards, "the CCP has conducted a large-scale propaganda and a disinformation campaign to portray Falun Gong as a dangerous and political, justifying its persecution and misleading the public, including in Canada".[36] Mirroring what Mr. Kebede described, Mr. Zhang noted that as a result, "representation or report of Falun Gong usually falls off of the horizon".[37] Mr. Zhang noted that although "there is [little] hostility toward the Falun Gong among average [Chinese] mainlanders … fear of the CCP's ruthless tactics leave the most to remain silent on the persecution of Falun Gong".[38] Mr. Zhang's comments on mainland Chinese communities are significant in this regard, as he emphasizes that although some "act as agents for the CCP due to greed or fear, the silent majority are not CCP followers … [they] just … cannot openly express opposition about CCP".[39]

22. Foreign interference and transnational repression targeting Falun Gong practitioners takes on many forms. Much of this is detailed in the recent report published by the Falun Dafa Association of Canada,

[33] Ibid at 105-106.
[34] Ibid at 105.
[35] Ibid at 106.
[36] Ibid at 111.
[37] Ibid.
[38] Ibid at 112.
[39] Ibid at 114.

"Foreign Interference & Repression of Falun Gong in Canada: Key Development & Case Studies 1999-2024".[40] This 130-plus-page report was originally published in October 2023, and then updated in July 2024.[41] It discusses at length instances of persistent political infiltration/manipulation, intimidation, hate incitement, harassment, surveillance, mis- and dis-information, cyber-attacks, and physical and verbal assaults. In one instance, an elderly Falun Gong practitioner was choked at Nathan Phillips Square.[42] In another, a Falun Gong practitioner was threatened at gunpoint while he was meditating outside of the Chinese consulate in Vancouver.[43] These are only a couple of examples of many, pointing to systematic abuse. The report also covers the tactics used by the CCP to influence Canadian elected officials and different sectors of society to marginalize or suppress public support for Falun Gong, as well as CCP interference toward Canadian communities, businesses, festivals and other art and culture events to exclude the Falun Gong community from participation. During the Stage 1 hearings, Ms. Grace Wollensak provided examples of CCP interference targeting Canadian elected officials. She cited instances where individuals impersonated Falun Gong practitioners to send insulting and threatening messages to politicians, intended to make the PRC's disinformation about Falun Gong appear credible.

23. Earlier this year, a bomb threat targeted Shen Yun Performing Arts, which is known to portray the PRC's persecution of Falun Gong.[44] Shen Yun is New York-based but tours globally. Its 2024 Canadian tour was March 20 to April 24, 2024.[45] On March 24, 2024, an email was sent to the Vancouver theatre set to host performances "threatening to detonate bombs … if Shen Yun was allowed to perform".[46] This threat mirrored others sent to Shen Yun's training centre in New York, and to theatres in Taiwan and the United States.[47] This may represent an escalation in foreign interference and transnational repression tactics and may not bode well for the other communities similarly targeted by the CCP,

[40] HRC0000123.
[41] Ibid.
[42] Ibid at 75.
[43] Ibid at 78.
[44] HRC0000113.
[45] Ibid.
[46] Ibid.
[47] Ibid.

including Uyghurs, Tibetans, and Hongkongers.

24. Ms. Katpana Nagendra, a Tamil Canadian human rights activist serving as the general secretary and official spokesperson for Tamil Rights Group, noted that the "Sri Lankan Government's interference in the lives of Tamil Canadians has significant implications".[48] Ms. Nagendra shared that tactics include "surveillance, threats, harassment, [and] disinformation campaigns aimed at discrediting Tamil activists", which "not only targets Tamil Canadians, but also seeks to manipulate international perceptions and hinder the global response to the human rights violations committed during the genocidal war against Tamils in Sri Lanka".[49]

25. Ms. Nagendra, a survivor of the 1983 anti-Tamil pogroms in Colombo, experienced Sri Lankan government intimidation tactics first-hand, including in Canada. She shared that she and other activists "face ongoing harassment" and that speaking out against the atrocities or demanding accountability "are met with defamation, threats, and malice falsehoods".[50] Ms. Nagendra described it as "essential" for the Canadian government to engage in "transparent communication and engagement with affected communities".[51] Ms. Nagendra also described how imperative it is that "Canada takes decisive actions to hold the Sri Lankan government accountable so that Tamil Canadians can live and advocate without fear of reprisal".[52] She said that "[t]he fact that they believe they are getting away with their [atrocity] crimes emboldens them to target those who oppose their actions and advocate for justice".[53]

26. This is where broader accountability efforts are important, as there are links between repression in Canada and repression abroad, and between repression and impunity. This applies to all targeted communities, and it compounds the importance and the enormity of combatting foreign interference

[48] Transcript: Volume 26, TRN0000026 at 70.
[49] Ibid.
[50] Ibid at 71.
[51] Ibid at 73.
[52] Ibid at 84.
[53] Ibid.

and transnational repression.

27. MP Michael Chong made a similar point in response to questions in cross-examination. He noted that "upholding that rules-based order … is incredibly important, because it faces a determined threat from authoritarian states to deconstruct it and replace it with [one] that is based on brute force".[54] MP Chong described efforts to uphold the rules-based international order as "incredibly important" to support and protect members of diaspora communities in Canada.[55]

28. Further compounding the complexity is the need to address collaborations and cooperation between authoritarian regimes. This is particularly important, as "[c]ollaboration between autocrats makes them stronger, and more effective at surveilling, isolating, and persecuting human rights defenders".[56] The Cuban dictatorship is an important example of this, given its alliances with both China and Russia.[57] Failure to adequately respond to Cuba's authoritarianism risks undermining Canada's efforts to combat foreign interference by other, bigger regimes. For instance, the Canadian Radio-television and Telecommunications Commission ("CRTC") decided to remove RT, previously known as Russia Today, and RT France from the list of non-Canadian programming services and stations authorized for distribution in Canada.[58] However, Cubavision Internacional continues to be authorized for broadcast in Canada,[59] and as the Commission saw, this station replays RT content,[60] leaving a critical gap and rendering the removal of RT and RT France rather meaningless.

29. Of course, besides the Cuban regime's links to other authoritarian regimes that engage in foreign interference, it is important to note that the Cuban regime itself has a disastrous record on human rights issues. In response to questions posed in cross-examination of Mr. David Morrison, he mentioned "the

[54] Transcript: Volume 18, TRN0000018 at 85.
[55] Ibid.
[56] HRC0000126 at 1.
[57] Ibid at 2.
[58] Transcript: Volume 25, TRN0000025 at 179-182.
[59] HRC0000125.
[60] HRC0000129.

detention of protesters that took place in the summer of 2021".[61] The Cuban regime is one of the world's oldest dictatorships, and in the aftermath of the July 2021 pro-democracy protests, the Cuban regime detained "so many political prisoners that it [had] more arbitrarily detained than Venezuela and Nicaragua combined".[62] This reinforces the importance of addressing the role played by the Cuban regime in foreign interference and repression both at home and abroad.

30. Having established that numerous authoritarian regimes engage in foreign interference and transnational repression, including but not limited to, China, Eritrea, Ethiopia, Cuba, and Sri Lanka – and that diaspora community members are disproportionately impacted – the question becomes, what should be done to protect and support victims?

31. Foreign interference and transnational repression pose serious threats to democracy and the rule of law, in Canada and across the globe. According to CSIS, foreign interference "activities pose strategic, long-term threats to Canada's interests, jeopardize our future prosperity, and have a corrosive effect on our democratic processes and institutions".[63] Authoritarian regimes will continue to exploit and aggressively engage in foreign interference and transnational repression so long as the benefits of engaging in such acts outweigh the costs. While the amendments contained in Bill C-70 and the enactment of the Foreign Influence Transparency and Accountability Act (FITAA) are welcome, there is more work to be done.

32. HRC's recommendations span three categories: (A) recommendations that existing laws and policies be utilized in a systematic and consistent manner; (B) recommendations that counterproductive or harmful laws should be repealed or terminated, as the case may be; and (C) recommendations for additional laws and policies to be passed to address outstanding gaps, particularly in the protection and support of Uyghurs, Falun Gong practitioners, Hongkongers, Tibetans, Tigrayans, Eritreans, Cubans,

[61] Transcript: Volume 28, TRN0000028 at 171.
[62] HRC0000126 at 9.
[63] COM0000061 at 3.

and Tamils.

III. THE IMPORTANCE OF LEVERAGING EXISTING LAWS AND POLICIES

33. While there remain gaps in the legislative and policy framework dealing with foreign interference, which are discussed below, the Commission should not overlook the numerous existing tools that are currently available to combat foreign interference and transnational repression. Many of the existing tools remain underutilized or utilized in inconsistent or incoherent ways. As part of the Commission's series of recommendations, the Commissioner can and should recommend that existing immigration and sanctions laws be leveraged to support and protect victims. Further, the Commissioner can and should recommend that reporting mechanisms be made accessible to diaspora communities.

A. Use Existing Immigration Laws to Remove Perpetrators and Resettle Victims

34. Generally, foreign interference can be effected by four different sets of actors – foreigners abroad, Canadian citizens, members of diplomatic and consular missions in Canada, and/or persons in Canada who are not Canadian citizens. Persons in Canada who are not Canadian citizens can be removed from Canada if they fail to meet any of the requirements of the Immigration and Refugee Protection Act ("IRPA"). Foreign interference is not, in itself, a ground of inadmissibility under IRPA. Amendments to IRPA to create a specific ground of inadmissibility for foreign interference may be advisable. However, in practice any such amendment would take time to pass and enter into force. At least in the meantime, the Commission should recommend that the existing, various provisions that may apply to remove from Canada those individuals engaged in acts of foreign interference should be leveraged.

35. One prohibition, the violation of which can be a form of foreign interference, is being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in:

    (a) an act of espionage that is against Canada or that is contrary to Canada's interests;

    (b) instigating the subversion by force of any government;

(b.1) an act of subversion against a democratic government, institution or process as they are understood in Canada;

(c) terrorism.[64]

36. Membership in such an organization is not limited to those who have membership cards. Legally, membership is not a defined term. It is determined on a case-by-case basis, based on the facts of the case. Criteria considered are the degree of involvement in the organization, the length of time of involvement, and the intentions, purpose, and commitment to the organization and its objectives.[65]

37. The Canadian Legal Information Institute ("CanLII") has a website posting Canadian jurisprudence. A search for the relevant statutory section "34(1)(f)" lists 368 federal cases. There are, accordingly, many cases where a finding of inadmissibility is sought for a non-citizen on the basis of membership in a terrorist or other organization where the activities of the non-citizen whose inadmissibility is sought are not, aside from membership, a basis for a finding of inadmissibility.

38. Despite the clear prohibitions and the low threshold of proof, at least compared to criminal law proceedings, there is a record of this remedy having been invoked to address foreign interference by foreign actors in Canada in only one case. Add, for the search, the phrase "foreign interference" and the search turns up only the case of Jing Zhang.[66] Ms. Zhang was ordered deported for membership in an espionage organization, the Overseas Chinese Affairs Office ("OCAO"). The Minister provided evidence to the Immigration Division of the Immigration and Refugee Board that the OCAO is "an organization that engaged in acts of espionage against Canada, and against Canada's interests, by infiltrating and gathering information on overseas Chinese communities in Canada and other countries, targeting Chinese dissidents such as Falun Gong practitioners and other minorities including Uyghur

[64] Immigration and Refugee Protection Act (S.C. 2001, c. 27) at s 34.
[65] Nassereddine v Canada (Citizenship and Immigration), 2014 FC 85, [2015] 2 FCR 63, paragraph 24; Kanapathy v Canada (Public Safety and Emergency Preparedness), 2012 FC 459 paragraph 33.
[66] Zhang v Canada (Public Safety and Emergency Preparedness), 2023 CanLII 123767

and Taiwanese populations, as well as Chinese Canadian citizens".

39. The Minister did not claim that Ms. Zhang was herself involved in espionage. Ms. Zhang claimed that she was not a member of OCAO. The Immigration Division nonetheless found that she was:

> "[84] ... even though Ms. Zhang submits that she did not have a connection to any central information of the OCAO, her length and type of employment in the OCAO constitutes substantive participation with institutional links to its policies and practices. ... Based on her lengthy employment with the OCAO and considering the basic knowledge that she did have regarding the gathering of information on and by overseas Chinese, there are reasonable grounds to believe that she knew or ought to have known of the surveillance and information gathering tactics and other methods being used by the OCAO.
>
> [85] If I am wrong and Ms. Zhang was not aware of the OCAO's espionage related tactics, because she had a direct role for over a decade in coordinating, supporting, and achieving the OCAO's *qiaowu*, I find that she made a sustained and voluntary contribution as an employee of the OCAO to inculcate overseas Chinese into the OCAO objectives through her united front work. …
>
> [87] Accordingly, I find that Ms. Zhang is a member of the OCAO for the purpose of inadmissibility. Therefore she is inadmissible to Canada under paragraphs 34(1)(f)(a) of the IRPA for having been a member of an organization that engaged in acts of espionage against Canada and its interests."[67]

40. This case is instructive both for what it says and what it does not say. The reasons for decision set out that Ms. Zhang was employed with OCAO from 2008 to 2019. The hearings were March 22, and 30, 2023 and the decision was August 28, 2023. Ms. Zhang was accordingly engaged in inadmissible activity for eleven years without anything being done about it. It was only four years after her

[67] Ibid.

inadmissible activity ceased that she was found inadmissible.

41. There is no public record of anyone else in the OCAO or its successor United Front Work Department being found inadmissible to Canada. Yet, at least some of the persons in those organizations must have been involved in espionage for Ms. Zhang to have been found to be a member of an espionage organization even though she was not involved in espionage herself. From these facts one can conclude that the efforts of the Canada Border Services Agency ("CBSA") to react to foreign interference in Canada has been far from speedy and a long way from comprehensive.

42. Canada should not be a haven for members of terrorist, espionage and subversive organizations. Yet, there is an almost total absence of enforcement activity against non-citizen members of terrorist, espionage or subversive organizations who manifest in Canada their involvement in or commitment to terrorism, espionage or subversion, through membership in the prohibited organizations. The Minister of Public Safety should instruct CBSA officers to apply systematically, comprehensively and expeditiously the component of IRPA addressed to terrorist, espionage and subversive prohibited organizations against those non-citizens in Canada with sufficient manifest commitment in Canada to the goals and objectives of terrorist, spy and subversive organizations.

43. Another prohibition, the violation of which can be a form of foreign interference, is the prohibition against those persons convicted of an offence with a maximum sentence of at least ten years. The offence of criminal harassment, when proceeded by way of indictment, has a maximum term of imprisonment for a term not exceeding ten years.[68]

44. The Criminal Code provides that no person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage in listed acts that cause that other person reasonably, in all the circumstances, to fear for their safety or the safety of

[68] Criminal Code (R.S.C., 1985, c. C-46) at s 264.

anyone known to them. One of the listed acts is "engaging in threatening conduct directed at the other person or any member of their family".[69]

45. Foreign interference frequently takes this form of harassment, threats made to persons in Canada of harm to members of their family living in the country of the threatening entity if the persons in Canada fail to comply with the requests of those uttering the threats. Yet, there is no recorded prosecution for such an offence.

46. A search of CanLII for harassment and the Criminal Code lists 7,644 cases. There are 456 cases listed which address harassment and inadmissibility. Add the phrase "foreign interference" and the search turns up a grand total of zero cases. There is not even one reported case we could identify where inadmissibility has been sought of a non-citizen on the basis of a conviction for harassment which constituted foreign interference. Here too is an underutilized tool for combatting foreign interference.

47. In cases where the facts of foreign interference justify a prosecution for criminal harassment, those prosecutions should be engaged. Where convictions occur and the person convicted is a foreign national in Canada, the CBSA should seek the removal of the person from Canada.

48. A third form of inadmissibility which can be a form of foreign interference is inadmissibility on the ground of organized criminality. An important difference between this form of inadmissibility and inadmissibility for criminal harassment is that inadmissibility for organized criminality does not require prosecution and conviction for a crime in Canada. A person is inadmissible for organized criminality if the person is "a member of an organization that is believed on reasonable grounds to be or to have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment, or in furtherance of the commission of an offence outside Canada

[69] Ibid at ss 2(d).

that, if committed in Canada, would constitute such an offence, or engaging in activity that is part of such a pattern."[70]

49. Foreign interference rarely occurs as an isolated act. It is more typically a pattern of behaviour. The pattern of behaviour can take the form, as mentioned above, of criminal harassment. It is legally possible to seek the removal of a person for organized criminality when the person is engaged in criminal harassment as a form of foreign harassment, without the need for a criminal conviction of that harassment. A person, to be inadmissible under this rubric, does not personally have to have been engaged in criminal activity. Membership in an organization which engages in a pattern of criminal activity suffices. And, as noted earlier, membership is determined by criteria of length of involvement, degree of involvement and commitment to the goals of the organization, with commitment alone, if deep enough, potentially sufficing.

50. A search through CanLII of cases which addressed organized criminality and deportation, where appeals and judicial reviews challenging the deportations were dismissed, identifies 751 such cases. A sub-search to determine if any of those cases addressed foreign interference produces a total of zero. There is no public record we could identify where someone has been ordered deported from Canada on the basis of membership in a criminal organization where the criminal activity of the organization amounted to foreign interference. The Minister of Public Safety should instruct CBSA officers to apply systematically, comprehensively and expeditiously to criminal activity which amounts to foreign interference the component of IRPA prohibiting membership in organizations which engage in a pattern of criminal activity.

51. Finally, every person who enters Canada on a temporary basis, whether as a visitor or a student or a worker or as a businessperson, is allowed entry for a specific reason, with specific authorization and subject to specific terms and conditions. Doing something else on entry which has nothing to do with

[70] Immigration and Refugee Protection Act (S.C. 2001, c. 27) at s 37.

the reasons for entry, the grant of authorization or the terms and conditions of entry can lead to termination of the granted status. Those on study permits who do not study and instead spend their time on foreign interference, those on work permits who do not do the work specified in the work permit and instead work on foreign interference, and so on, lose their status in Canada and become removable from Canada as persons without status in Canada.

52. No one is given entry to Canada for the purpose of engaging in foreign interference in Canada. When someone who is granted entry to Canada on a temporary basis for whatever reason, on the basis of whatever authorization, subject to whatever terms and conditions, instead uses and abuses their entry to abandon their original purpose of entry and instead engage in foreign interference, the person can and should lose the status for which the person was granted entry. A person without status in Canada is removable from Canada.

53. Again here, legal reporting statistics tell a story. CanLII shows 184 which addressed loss of status and deportation where appeals and Court reviews were dismissed. A sub-search to determine if any of those cases addressed foreign interference here also produces a total of zero. There is no public record we could identify where someone has been ordered deported from Canada on the basis of loss of status where the cause of loss of status was foreign interference activity. The Minister of Public Safety should instruct CBSA officers to terminate systematically, comprehensively and expeditiously the temporary status of those in Canada who abuse their granted status to engage in foreign interference.

54. In addition to utilizing these various provisions to remove from Canada perpetrators of foreign interference, victims of foreign interference can and should be resettled in Canada. Refugee resettlement should be prioritized, particularly in instances where victims of autocracies remain in vulnerable positions in unsafe third countries, and/or used as leverage to threaten, silence, and intimidate loved ones in Canada.

B. Implement Sanctions on Perpetrators

55. The Canadian government can and should implement targeted sanctions on perpetrators of foreign interference and transnational repression. The relevant pieces of Canadian legislation are the United Nations Act, the Justice for Victims of Corrupt Foreign Officials Act ("Sergei Magnitsky Law"), the Special Economic Measures Act ("SEMA"), and the Freezing Assets of Corrupt Foreign Officials Act. Most frequently used in response to gross human rights violations are the Sergei Magnitsky Law and SEMA. The Sergei Magnitsky Law allows for the implementation of sanctions on foreign nationals who have engaged in significant corruption or gross violations of internationally recognized human rights. SEMA allows for the implementation of sanctions in the case of a grave breach of international peace and security, gross and systematic human rights violations, and/or significant corruption. SEMA is wider than the Sergei Magnitsky Law in that legal entities may also be sanctioned, whereas the Sergei Magnitsky Law may only be used to list and sanction individuals.

56. Although the Canadian government has noted that it has imposed sanctions in response to Russian mis- and disinformation,[71] no targeted sanctions have been imposed in response to gross human rights violations committed against Tibetans, Hongkongers, or Falun Gong practitioners.[72] No targeted sanctions have been imposed in response to gross human rights violations committed by Eritrean, Ethiopian, or Cuban officials.[73] This can and should be rectified.

57. Pursuant to the Budget Implementation Act 2022, assets belonging to sanctioned individuals or entities may be repurposed following an application to the Federal Court of Canada: they may be seized and sold, with the proceeds used to compensate victims. This can and should be used to provide support for victims of foreign interference and transnational repression.

58. Currently, there is no procedure which addresses requests for imposition of sanctions. There is no obligation on the Government even to consider requests for sanctions. Where the Government does

[71] CAN.DOC.000030 at 3.
[72] Transcript: Volume 28, TRN0000028 at 162.
[73] Ibid at 171.

consider a request for sanctions and makes a decision to deny the request, there is no obligation to inform the person or organization requesting the sanctions that the request has been denied. The result is that those who make a request for sanctions have no idea whether a decision has been made to deny the request, or the decision is still pending. Requesters are left in limbo.[74]

59. One common feature of foreign interference is secrecy. Some witnesses at the Inquiry went so far as to say that covert operations are an essential component of foreign interference. While that may be an exaggeration, it is certainly true that foreign interference is often covert. The effort to combat foreign interference should be its opposite, as open as possible. That openness should include a system for imposition of sanctions that is as visible as possible. We are far from that goal now. The various sanctions regimes should be restructured to reach that goal.

C. Ensure the Accessibility of Reporting Mechanisms

60. Reporting mechanisms are not accessible to those most vulnerable if they are not available in languages besides English and French. All reporting mechanisms, all complaints forms, and all outreach documentation that is important for building community resilience should be available in Uyghur, Mandarin, Tibetan, Tigrinya, Tamil, and Spanish languages, among others.

61. At present, multiple security and intelligence agencies appear to have contact numbers to which community members may report some incidents of foreign interference and transnational repression, to the extent that the incidents fall within the agency's mandate. However, none are available in multiple languages, several do not offer confidentiality protections, and none appear to be well advertised. Further, as each agency is limited to their mandate, it is unsurprising that community members report being shuttled around between different reporting mechanisms.[75]

[74] Transcript: Volume 32, TRN0000032.EN at 196.
[75] Transcript: Volume 6, TRN0000006 at 112.

62. The creation of a dedicated agency, and the creation of a dedicated hotline, with multiple language capabilities, community involvement, outreach, and confidentiality and anonymity options should be seriously considered.

63. Current deficiencies in the reporting structures should also inform the implementation of Bill C-70. As recommended by Ms. Fung, the establishment of a "multilingual national hotline and the use of friendly and secure online reporting systems" would assist victims to "report to the Foreign Interference Commissioner incidents of infiltration or foreign interference".[76]

IV. THE IMPORTANCE OF REPEALING OR TERMINATING HARMFUL EXISTING LAWS AND POLICIES

64. Canada should avoid cooperating with authoritarian regimes on criminal matters. Canada should not assist these regimes in removing individuals from Canada whom they accuse of crimes. Even in cases where there is evidence of wrongdoing, the accused may be targeted as a scapegoat. Since authoritarian regimes do not operate under the rule of law, they may be unable or unwilling to distinguish between the innocent and the guilty.

65. Countries with which Canada has extradition treaties are presumed to conduct fair trials, but no such presumption should apply to other nations. Cooperation in criminal matters with states with whom Canada does not have extradition treaties undermines Canada's extradition framework and should be avoided. Moreover, Canada's extradition framework should be regularly re-evaluated to ensure that no extradition agreements are in place with dictatorships. For instance, Canada currently has an extradition agreement with Cuba, although Cuba engages in mass arbitrary detentions, and fair trial rights are nonexistent on the island.

66. Improper cooperation with authoritarian regimes may occur via INTERPOL. INTERPOL's Red Notice

[76] Transcript: Volume 26, TRN0000026 at 145.

and Diffusion systems are abused by repressive states to harass and intimidate their targets overseas. The distinction between accusations of commission of ordinary law crimes and accusations that are political is difficult to draw when the accusations are made by repressive regimes, since as described these regimes often shift blame for their own wrongdoing to powerless scapegoats, accusing them of ordinary law crimes. Red Notices and Diffusions can cause problems to the targets, even if there is no extradition treaty between the source country and the country where the target resides, because of the endless rounds of security screening, secondary examinations and possible bars to entry when the targets travel. INTERPOL's Commission for Control can in theory decide that INTERPOL should withdraw a Red Notice on the basis that the accusation made is political in substance. However, decisions of this nature by the Commission are few and far between because of the difficulty of establishing the necessary facts in countries where the legal systems do not operate with full disclosure.

67. Another aspect of limiting mutual legal assistance with authoritarian regimes relates to the Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and Other International Crimes (Convention on Cooperation in International Crimes). This Convention is recent, dating from May 2023. The Convention obligates states parties to assist each other in bringing perpetrators of grave international crimes to justice. The Convention provides, in Article 30, that mutual legal assistance may be refused if the requested state has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's race, gender, color, mental or physical disability, sexual orientation, religion, nationality, ethnic origin, political opinions or belonging to a particular social group. Yet, there is a similar provision in INTERPOL and the INTERPOL Red Notice system is commonly abused by tyrannical states to go after their chosen targets. Complicating adherence to this mutual legal assistance Convention is the fact that reservations are limited. The reservation that would make the most sense for Canada is to limit the obligations that Canada owes under the Convention only to those states parties with which Canada has operative

extradition treaties. That way Canada cannot be roped into providing legal assistance to tyrannical regimes in going after their chosen targets. Yet, it is not clear that the Convention allows for such a reservation. If it does not, Canada should withdraw.

68. Finally, the Treaty Between Canada and the People's Republic of China on Mutual Legal Assistance in Criminal Matters is an active legal instrument, which is highly problematic. The Commission should recommend that this treaty be terminated on its six-month notice termination provision. There should not be similar treaties with other countries not subject to the rule of law.

V. BEYOND BILL C-70: ADDITIONAL PROPOSED LAWS AND POLICIES

69. Even with existing mechanisms consistently and systematically utilized, and counterproductive or harmful tools revoked or terminated, additional laws and policies are needed to address remaining gaps.

70. First, and as recommended by Ms. Fung, there is a need to ensure that Bill C-70 will be up and running before the 2025 federal election is called. The Canadian government should timely allocate sufficient funding for this purpose. Further regulations or provisions should be formulated to address specific forms of foreign interference in party candidate nomination campaigns, party leadership campaigns, and various social sectors, including, but not limited to, transnational repression or intimidation, harassment, mis- and dis-information campaigns, elite capture of politicians, bureaucrats and experts, intellectual property theft, United Front organization operations and espionage in political, community, media, academic and business sectors. Elected members of government and high-ranking civil servants should not be permitted to work with foreign states or foreign state entities after resignation from their posts or retirement. WeChat and TikTok should be banned in Canada; regulations should be enacted to prevent social media platforms, Chinese language forums and future AI bots from spreading fake news and disinformation; and a global engagement centre similar to that in the U.S. should be set up to preempt disinformation.

71. Further amendments to the Criminal Code are advisable. While there are several criminal offences that may be engaged by acts of transnational repression, there are no Criminal Code offences specific to transnational repression. This remains the case post- Bill C-70. This is a serious limitation of our legal frameworks for dealing with foreign interference.

72. Best practices can be gleaned by looking to other jurisdictions. For instance, Sweden, Norway and Switzerland have explicitly criminalized "refugee espionage", which refers to incidents where foreign authorities carry out intelligence activities against diaspora communities, refugees, political dissidents and regime critics who have sought safety abroad. This type of espionage violates the basic rights and freedoms of the individuals targeted, as well as Canada's sovereignty. It is not covered by the amendments contained in Bill C-70: not those that amended the Criminal Code and not those that amended the Security of Information Act.

73. The enactment of policies should include those that empower victims in their pursuit of justice, for instance, the enactment of clear public policy guiding Attorney General consent. Private prosecutions under various provisions including those contained in the Security of Information Act require Attorney General consent. Without transparency as to when such consent would be granted or withheld, access to justice for victims is limited. This constrains the ability of victims to pursue private prosecutions. If the Canadian government wants to enhance the ability of victims to seek redress, it should develop clear public policy outlining when the Attorney General's consent will or will not be provided.

74. The Canadian government has dedicated significant sums of money to funding programs to combat mis- and dis-information, but at a granular level, victims of foreign interference and transnational repression are too often left to cover many of their own out-of-pocket costs. These costs may be highly significant to some victims, particularly those who sought refuge in Canada from authoritarian regimes, leaving everything behind.

75. Community organizations have requested that the government create a specialized fund that can be

used to assist victims of transnational repression for things like emergency housing, personal security, new phones or laptops, and physical and mental health treatment.[77] Financial support should also be extended to supporting legal initiatives that victims may undertake. The Commission should include recommendations to this effect.

76. Most provinces and territories do operate victim compensation funds that may allow some victims of transnational repression to receive some compensation, but a specialized federal fund is warranted, due to the restrictions on existing provincial-level compensation schemes and the variability by province.[78] There is one federal compensation scheme for victims – the Canadians Victimized Abroad Fund ("CVAF") – but this would not apply to compensate for transnational repression occurring in Canada. The CVAF also contains several eligibility restrictions.[79]

77. In addition to providing services to targeted individuals, the Commission should consider the importance of providing support to build greater resilience within communities, reducing the vulnerability of potential targets. There are many ways that the Canadian government could invest in resources and infrastructure to improve the resilience of diaspora communities. On top of providing funding to communities to deal with incidents of transnational repression, communities should be given resources to build social connection. Many are completely disconnected from their families and communities back home. Strong community ties may help ease some of the stress and isolation these individuals feel. Organizations should receive funding to host community and cultural events. Communities should be supported to preserve their languages and cultures. Mechanisms should be implemented that encourage social and political engagement. Victims, communities and those at-risk should also be taught about their legal rights, including for seeking protection, justice, and reparations. Victims and communities identified as at-risk should be briefed on supports available and cyber

[77] HRC0000091 at 151-152.
[78] Ibid at 152.
[79] Ibid.

security. Any education offered should be provided in multiple languages.

78. Victims of foreign interference and transnational repression should be provided with physical and psychological support services. This is a proposal with which the Honourable William Blair agreed. When asked in cross-examination what he thought of communities' advocacy for the provision of physical and psychological support, he answered emphatically in the affirmative. He stated:

> "Yes, ma'am. I understand an awful lot of people that have come from these diaspora communities, based on the trauma that they've experienced in the countries that many of them have fled in order to come to Canada, and I think the services and support that we're able to provide to them will enable them to live rich, prosperous lives in Canada and to contribute to our nation."[80]

79. Efforts to combat foreign interference and transnational repression must account for collaborations between authoritarian regimes, and the links between repression at home and repression abroad. As discussed, the removal of RT and RT France is rendered meaningless with the continued authorization of Cubavision Internacional to broadcast in Canada. Other stations with links to other authoritarian regimes, including China, such as CCTV and CGTN, may need to be removed as well for similar reasons. And to the extent that dictators are emboldened by continued impunity to engage in transnational repression, this indicates that the Canadian government should not just combat transnational repression and foreign interference in isolation; rather, Canada should be taking a comprehensive approach to combat the pervasive impunity that continues to exist to shield dictators from consequences for the commission of mass atrocity crimes and gross human rights violations.

80. Canada should initiate a case against Sri Lanka at the International Court of Justice, and support civil society's efforts to have the International Criminal Court open a preliminary examination into crimes committed against Tamils on the territories of states parties to the Rome Statute. Canada should engage

[80] Transcript: Volume 33, TRN0000033 at 101.

with pro-democracy Cuban groups and support their efforts to combat the mass arbitrary detentions on the island, and sanction perpetrators responsible for the crackdown on pro-democracy protesters.

81. Canada should initiate a special stream to resettle refugees from Tigray, and recognize the genocide that has been committed against Tigrayans by Eritrean and Ethiopian forces in the region. Canada should implement sanctions on perpetrators, and pursue criminal prosecutions using universal jurisdiction laws. Canada should call for investigation by relevant authorities into the continued collection of the 2% "diaspora tax" on Eritrean refugees in Canada, and into the misuse of charitable funds and proxy organizations to intimidate and harass the Eritrean community.

82. Canada should take stronger measures to ensure that products created using Uyghur forced labour do not enter Canadian markets. Canada should initiate cases at the International Court of Justice concerning illegal refoulements of Uyghurs back to China in contravention of numerous international instruments. Canada should pursue reciprocity and empowerment of the Tibetan community in Canada. Canada should support the Hong Kong democracy movement, and Falun Gong practitioners. Canada should implement sanctions on perpetrators responsible for gross human rights violations against Tibetans, Hongkongers, and Falun Gong practitioners.

83. Finally, novel policy is warranted to respond to the situation raised in the 2024 National Security and Intelligence Committee of Parliamentarians ("NSICOP") report. Parliamentarians wittingly assisting foreign state actors should be identified publicly and removed from Parliament in a fair process. The House of Commons procedure for expulsion of Members is this: "The power of the House to expel one of its Members is derived from its traditional authority to determine whether a Member is qualified to sit. A criminal conviction is not necessary for the House to expel a Member; the House may judge a Member unworthy to sit in the Chamber for any conduct unbecoming the character of a Member. ... Expulsion terminates the Member's mandate: the House of Commons declares the seat vacant and orders the Speaker to address a warrant to the Chief Electoral Officer for the issue of a writ of election.

... If the motion is adopted, the Speaker addresses a warrant to the Chief Electoral Officer for the issue of a writ of election."[81]

84. This expulsion is the end of the process. What should precede it, to determine whether allegations against a Member of wittingly assisting a foreign state are well founded? HRC submits that the appropriate Minister to issue a preliminary finding against a parliamentarian would be the Attorney General of Canada. The Attorney General is a legal and not a political actor, representing the Government as a whole. Then, rather than have the preliminary finding be subject to review by a Federal Court judge, it should be subject to review by the Conflict of Interest and Ethics Commissioner. The current Commissioner is a former Federal Court judge. The procedure before the Conflict of Interest and Ethics Commissioner, after referral to the Commissioner by the Attorney General of the case of a Member of Parliament, would be adversarial. The representative of the Attorney General would advocate a Commissioner recommendation of expulsion from Parliament. The special representative of the Member would advocate against such a recommendation. The proceedings would not be public, but the decision of the Commissioner, either for or against a recommendation would be. In the reasons for decision, the evidence which could not be disclosed because disclosure would be injurious to national security or endanger the safety of any person, would be summarized. HRC submits that this is the procedure the Commissioner should propose.

[81] "House of Commons Procedure and Practice", Third Edition, 2017, Edited by Marc Bosc and Andre Gagnon, Chapter 4, https://www.ourcommons.ca/procedure/procedure-and-practice-3/ch_04-e.html.