

**PUBLIC INQUIRY INTO FOREIGN INTERFERENCE IN FEDERAL
ELECTION PROCESSES AND DEMOCRATIC INSTITUTIONS**

WRITTEN SUBMISSIONS OF MICHAEL CHAN (STAGE 2)

1. Michael Chan and his counsel have not been present at the Stage 2 hearings but have followed them to the extent they may impact on Mr. Chan.
2. Mr. Chan would like to share concerns arising out of certain of the evidence given at the recent hearings.

The General Issue – CSIS Leaks

3. Certain witnesses (October 8-10) have testified about a warrant application signed by the Hon. William Blair and the process that was followed in his signing of the application.
4. In its Stage 2 hearings the Commission has taken steps to prevent a breach of the Canadian Security Intelligence Service Act, RSC 1985 (the “CSIA”) in connection with such testimony – including seeking to prevent the revelation of the details of the person being investigated as part of this warrant application.
5. Mr. Chan thanks the Commission for its efforts in this regard.
6. However, he notes the practical reality is that (unknown) CSIS employees had already disclosed to the press the identity of the person who was the subject of that warrant and so wide publicity had already occurred.¹
7. It is noteworthy that it may be that after many weeks of testimony the only concrete evidence of illegality that has come forward is violations of the CSIA by unknown CSIS employees.

¹ Counsel for Mr. Chong also indicated this on Sept. 27, 2024 (transcript page 154-5) and counsel for the Attorney General objected to this.

8. Indeed, the inference to be drawn as a whole is that some employees of an agency entrusted with protecting Canadians act as if they are above the law.
9. Mr. Chan suggests that the Commissioner should comment on this in her report.
10. This is especially the case as there appears to have been multiple violations of the CS/A by CSIS employees (some directed at Mr. Chan and some at others).²
11. The leaking of classified (and, quite possibly, inaccurate) information³ about Canadians also raises significant issues of the protection of individuals in our society. The Hon. William Blair addressed this, in part, in his testimony when he commented on leaks as follows:⁴

I am also concerned that it (i.e. leaks) would potentially have the effect of identifying someone who's not accused of a crime but who was the subject of an investigation, And I've been engaged in many of those investigation and the protection of that process, the integrity of the investigation and the protection of their rights as citizens needs to be considered in the release of that information.

12. A recent court case which deals with leaks by CSIS employees also reflects this concern:⁵

[11] ... Nor is intelligence proof. Indeed, intelligence can include false information planted by the hostile state or non-state actor. In the absence of evidence, an unsanctioned leak by CSIS agents is a piece of raw, and potentially mischievous, data. One must also consider the real world impact of such leaks on Canadians who may be the targets.

[82] ... The information from within CSIS effectively originates from an opaque box, and neither Mr. Ke nor anyone else can challenge it. Moreover, if the information turns out to be wrong, CSIS is not mandated to withdraw it and is not in the business of correcting the information. Thus, the reporting of an assertion by members of the national intelligence service carries with it a weight of reliability and *incontestability* as a source, and not as an alleger of a mere position.

² *Ke v. Cooper, et al.*, 2024 ONSC 5532 (CanLII) indicates that three separate CSIS employees provided classified information to one reporter.

³ In Mr. Chan's submissions on the Phase 1 hearings he outlined the evidence of witnesses which warn us of the potential frailty of information generated by the activities of our security services. Mr. Chan relies on his previous submissions in this regard.

⁴ October 9, 2024 transcript, at page 97.

⁵ *Ke v. Cooper, et al.*, 2024 ONSC 5532 (CanLII) at para 11 and 82.

13. There must also be concern with the possible motives of CSIS leakers. The Rt. Hon. Donald Johnston has noted that malice (as a motive) by the leakers cannot be ignored.⁶ The courts have also separately questioned the motives of CSIS employees and the possibility that there were political motivations behind the leaks.⁷
14. Mr. Chan believes this issue is worthy of reference in the final report.

Application of This Issue to Mr. Chan

15. The concrete example of what Mr. Chan has been through shows the danger of CSIS leaks.
16. Here the press, in the context of the Stage 2 hearings, has repeated previous articles indicating that CSIS employees (in violation of the law) had identified that Mr. Chan was the person being investigated in the warrant application.
17. A press report, based on CSIS leaks, also asserts that the main basis for the warrant application was the belief by CSIS that Mr. Chan, who it is alleged was under the influence of the Chinese government, had orchestrated a campaign that persuaded the Prime Minister's aides to back Han Dong as the Liberal nominee in Don Valley North.
18. As set out in Mr. Chan's submissions in connection with Phase 1, he and Liberal party officials all testified in Phase 1 that there was no such involvement by Mr. Chan.⁸

⁶ First Report of the Special Rapporteur, at page 17.

⁷ *Ke v. Cooper, et al.*, 2024 ONSC 5532 (CanLII) at para 19.

"The evidence showed that Mr. Cooper and his editors at *Global News* knew that the agents were hoping, by going to the media, to influence national politics by embarrassing their political masters."

⁸ The Special Rapporteur in his First Report (page 23) also stated:

"LPC officials disagree with the assertion that Tan Geng was "ousted" by Mr. Chan. They stated that Mr. Geng was not permitted to run as a candidate for the LPC due to a personal matter that had nothing to do with Mr. Chan."

19. Simply put, the premise/belief upon which the warrant application was apparently made was factually incorrect.
20. The leaks place Mr. Chan in a Kafkaesque position. He knows that the rumours spread about him in connection with the Don Valley North nomination are untrue. He voluntarily assisted (at his own expense) the Commission in interviews and testimony to allow it to correct these falsehoods. He knows that the evidence of others both before this Commission and before the Special Rapporteur confirm his testimony.
21. Yet the leaked falsehoods continue to be spread in the press and through social media when they comment on the Commission's work.
22. CSIS itself will not step forward to stop this by saying that the rumours were in fact untrue. Nor will CSIS step forward and confirm that nothing of concern was found in its electronic surveillance of Mr. Chan.
23. All of this has placed a considerable personal toll on Mr. Chan and his family.
24. The credible evidence the Commission has as a result of its work should allow it to publicly find the rumours spread by unknown CSIS employees about Mr. Chan to be false.
25. It is submitted the Commission should not, by failing to address this, force Mr. Chan to continue to live under the unjustified clouds of suspicion caused by the leaks.
26. As importantly, the Canadian public should not be left with the false impression that a former longstanding Ontario cabinet minister has somehow conspired with or assisted a foreign government in connection with the federal electoral process. This was one the main fact allegations that triggered this inquiry and it is just not true.



MILLER THOMSON LLP
Counsel for Michael Chan