

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

WRITTEN CLOSING SUBMISSIONS – STAGE 1 HEARINGS

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TABLE OF CONTENTS:

I. OVERVIEW.....1

II. IMPACT OF FOREIGN INTERFERENCE ON DIASPORA COMMUNITIES.....2

III. INADEQUACIES OF EXISTING MECHANISMS LEADING TO INTELLIGENCE GAPS.....12

Global Affairs Canada’s Rapid Response Mechanism.....13

CSE’s Canadian Centre for Cyber Security.....13

The Royal Canadian Mounted Police’s National Security Information Network.....14

Elections Canada and the Office of the Commissioner of Canada Elections.....15

Internal Party Mechanisms.....18

IV. THE COMMISSION SHOULD CONFIRM THAT FOREIGN INTERFERENCE DID IMPACT THE 2019 AND 2021 ELECTIONS AT THE ELECTORAL DISTRICT LEVEL.....19

I. OVERVIEW

1. The Public Inquiry into Foreign Interference in Federal Electoral Processes and Democratic Institutions (“the Commission”) held its Stage 1 hearings between March 27 and April 12, 2024. The Stage 1 hearings focused on foreign interference that may have occurred in the 2019 and 2021 federal elections, any potential impacts on the integrity of those elections, as well as the flow of information to senior decision-makers during the election periods and the weeks following, and actions taken in response. 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 Canadians Human Rights Group of Manitoba, Security and Justice for Tigrayans Canada, and the Alliance of Genocide Victim Communities – is participating as a party to represent the diaspora communities’ perspectives. Participants were invited to provide closing submissions in writing following the conclusion of the Stage 1 hearings to the Commission by April 15, 2024.
2. In these closing submissions, HRC highlights impacts of foreign interference on diaspora communities to illustrate the point, acknowledged by numerous government actors, that diaspora community members most often bear the brunt of foreign interference, and this manifested itself in the context of the 2019 and 2021 federal elections. Evidence that came out in the Stage 1 hearings further demonstrated the limitations of the mechanisms designed to protect diaspora community members from foreign interference in the context of the elections. The inaccessibility of complaints mechanisms is illustrated by, among other things, a dearth of language capabilities, confidentiality protections, and narrow mandates. Diaspora community members themselves testified in the course of the hearings that existing complaints mechanisms are inaccessible. The evidence further illustrated that the poor communication goes both ways: diaspora community members are infrequently reporting to the national security agencies, and national security agencies are infrequently communicating with diaspora communities. HRC submits that in light of this evidence, the Commissioner should confirm, as a

reasonable possibility,¹ that foreign interference impacted the 2019 and 2021 elections at the electoral district level and should recommend significant systemic changes to structures meant to help gather intelligence and information about electoral interference so that the relevant bodies can properly assess the state of electoral interference in the future. 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 targeted diaspora face implicit threats and disenfranchisement from elections and other democratic processes and institutions.

II. IMPACT OF FOREIGN INTERFERENCE ON DIASPORA COMMUNITIES

3. The impact of electoral foreign interference on diaspora communities is significant. In the context of the 2019 and 2021 federal elections, numerous government actors testified to the existence of foreign interference on the part of the PRC government. Canadian Security Intelligence Service (“CSIS”) Director David Vigneault testified, both on April 4 and again on April 12, that foreign interference on the part of the PRC government took place in the context of both the 2019 and 2021 federal elections.² Nathalie Drouin testified as well that foreign interference occurred.³ In all instances, diaspora community members are some of the most highly impacted. That diaspora community members often bear the brunt of foreign interference is a reality of which numerous government actors are aware. Janice Charette, in response to cross-examination by Ms. Kakkar, stated that “some of the most difficult and injurious impacts of [foreign interference] are on...diaspora communities”.⁴ David Vigneault likewise identified diaspora communities as “one of the most significant targets of foreign interference.”⁵ In his testimony before the Commission, Prime Minister Justin Trudeau specifically spoke to the Chinese diaspora in Canada “who are often the first

¹ As to the appropriate standard of proof, see Office of the United Nations High Commissioner for Human Rights “Commissions of Inquiry and Fact finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice” at section 7 page 62, https://www.ohchr.org/sites/default/files/Documents/Publications/CoI_Guidance_and_Practice.pdf.

² Transcript: Volume 10, TRN0000010 at 186; Briefing to the Prime Minister’s Office on Foreign Interference Threats to Canada’s Democratic Institutions, CAN004495 at 2. [Note to reader: The page numbers in transcripts correspond to the number on top of the page on the transcript, not the overall PDF document.]

³ Transcript: Volume 12, TRN0000012, at 155.

⁴ Ibid at 180.

⁵ Transcript: Volume 10, TRN0000010 at 149.

targets of interference efforts by a foreign state, by that foreign state.”⁶ Minister Dominic LeBlanc explained in his 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.”

4. The PRC government’s interference activities in the 2019 and 2021 elections likely generated a foreign interference ecosystem in which diaspora were targeted and disenfranchised from the top down and from the ground up. Activities that target diaspora in this way begin outside of election period. Government actors are aware that “attempts by foreign nations to interfere in Canadian Democracy begin before the election writ is dropped, often many months of years before.”⁷ Attempts by foreign state actors to target diaspora community members likewise occurs months and years before elections.⁸ This creates a significant environment of fear⁹ that pre-exists an election period and may only intensify as an election period begins.

5. As explained by Grace Wollensack in her presentation on March 27, 2024, targeted communities may be subject to disinformation campaigns aimed at alienating them from receiving political support outside of an election period:

“PRC’s efforts to spread hateful disinformation to elected political representatives included providing such disinformation to all politicians in all levels of government, impersonating members of the Chinese community, and sending politician members that echo or repeat inaccurate and harmful disinformation about Falun Gong, often insulting and threatening, and impersonating Falun Gong practitioners and sending messages to politicians designed to make the PRC’s information about Falun Gong appear credible.”¹⁰

6. Such campaigns then appear to ramp up around election time:

⁶ Transcript: Volume 14, TRN0000014 at 162.

⁷ Elections Security Brief for Minister LeBlanc, CAN002096 at 4.

⁸ Transcript: Volume 6, TRN0000006 at 63-65, 87-89, 114-115, 117-119, 127, 167.

⁹ Ibid at 80-82, 101-102, 130-131.

¹⁰ Ibid at 119.

“The hate campaigns have become more active in the past of the election...This effort has led to politicians to refrain from supporting or interacting with Canadian Falun Gong community without knowing that’s hate campaigns behind it to manipulate them.”¹¹

7. It is within the context of such campaigns, contributing to an ecosystem of foreign interference, that the PRC government engaged in activities to silence the voices of political candidates and parties that championed targeted diaspora communities’ issues, publicly opposed the human rights violations committed against them, and proposed policy initiatives that would better protect them during the 2019 and 2021 elections. We submit that this has created an environment in which other political leaders and parties may be reticent to do the same, for fear of losing seats or facing similar treatment by foreign governments engaged in political interference. This is supported by the experience of Mr. Tohti who heard from a Member of Parliament following the 2021 election that they may not be as vocal in the future on diaspora community issues because it may have contributed to their loss.¹² Mr. Tohti noted that the isolation of targeted diaspora communities from political support is “exactly what the Chinese government wants.”¹³

8. Surrounding the 2019 and 2021 general elections, Erin O’Toole, Jenny Kwan, Michael Chong and Kenny Chiu all testified in the Stage 1 hearings that they believed they became targets of PRC government interference at least in part because of their strong stances in support of the Uyghur, Hongkonger, and/or Falun Gong communities.¹⁴ Targeted disinformation campaigns carried out through Chinese language media and social media platforms meant to mislead Chinese-Canadian voters as to the nature of a particular candidate’s advocacy efforts and policy goals. This is supported by intelligence findings that indicate that

“The PRC uses its control and influence over Chinese language media (e.g. newspapers, radio stations) and social media applications (e.g. WeChat) as means of asserting influence over the

¹¹ Ibid at 120.

¹² Ibid at 106.

¹³ Ibid at 106.

¹⁴ Transcript: Volume 9, TRN0000009 at 63, 132, 178-180, 236-238.

Chinese diaspora. The PRC promotes pro-PRC narratives, spreads disinformation, and guides public discourse on PRC-related issues, while minimizing or suppressing and at times censoring content it deems “anti-China.”¹⁵

9. Regarding indicators that these campaigns were directed by the PRC, expert Benjamin Fung noted:

“[r]eproducing the same text nearly verbatim is very typical of CCP propaganda. A small deviation from a source text might prompt repercussions against the author if it’s thought to convey the wrong meaning. As a result, authors will often hesitate to make even small changes and will hew closely to the original text.”¹⁶

10. Mr. Chiu confirmed he noticed a pattern in similar messaging in the disinformation shared about him surrounding the election, where “even the insults are identical.”¹⁷ Intelligence suggested it is likely that campaigns targeting the Conservative Party, Erin O’Toole and Kenny Chiu were directed by the PRC:

“We also observed online and media activities aimed at discouraging Canadians, particularly of Chinese heritage, from supporting the Conservative Party, leader Erin O’Toole, and particularly Steveston-Richmond East candidate Kenny Chiu...the timing of these efforts to align with Conservative polling improvements; the similarities in language with articles published by PRC state media; and the partnership agreements between these Canada-based outlets and PRC entities; all suggest that these efforts were orchestrated or directed by the PRC.”¹⁸

11. Targeted campaigns were coupled, in the instance of Kenny Chiu, with an effective shunning from Chinese language news media coverage¹⁹, which meant that any effort to counter the

¹⁵ Country Summary: People’s Republic of China, CAN.SUM.000005 at 4.

¹⁶ Transcript: Volume 9, TRN0000009 at 133.

¹⁷ Ibid at 133.

¹⁸ Briefing to the Prime Minister’s Office on Foreign Interference Threats to Canada’s Democratic Institutions, CAN004495 at 3.

¹⁹ Transcript: Volume 9, TRN0000009 at 230, testimony from Michael Chong, “I heard that one radio station in particular, I believe it was AM 1320 I believe is the call sign, in Vancouver, instructed 2 of their on-air broadcasters not to either interview or

disinformation/misinformation being circulated was thwarted. Candidates who supported diaspora community issues were also disinvented from key community events that may have garnered them support.²⁰

12. At the same time the PRC targeted candidates and parties it deemed ‘anti-China,’ it “clandestinely and deceptively interfered in both the 2019 and 2021 general elections” by supporting candidates that were “viewed to be either ‘pro-PRC’ or ‘neutral’ on issues of interest to the PRC government.”²¹ Intelligence has determined that the PRC likely leveraged proxies to support the state’s preferred candidates in Greater Vancouver, for example:

“In the course of the 43rd General Election of Canada in 2019, some People’s Republic of China (PRC) officials likely favoured particular political candidates and political parties and clandestinely leveraged Canadian and Canada-based intermediaries (PRC proxy agents) to support the PRC’s preferred candidates in Greater Vancouver.”²²

13. This support has manifested in “direct and indirect financial support to Canadian electoral candidates” by the PRC and direction to certain Chinese language media by PRC threat actors “to support specific candidates.”²³

14. Intelligence agencies are aware of the dual approach of stifling dissent among candidates and parties that support targeted diaspora and supporting candidates who are ‘pro-PRC,’ as shown in a summary of intelligence prepared by the Commission:

say Kenny Chiu's name on air. One of them interviewed Kenny Chiu and was terminated, I was told, from his show, and the other person mentioned Kenny Chiu's name on air and had his hours significantly reduced.”

²⁰ People’s Republic of China Officials Foreign Interference Activities in Greater Vancouver in the 2019 General Election, CAN.SUM.000003 at 1.

²¹ Briefing to the Prime Minister’s Office on Foreign Interference Threats to Canada’s Democratic Institutions, CAN004495 at 2.

²² People’s Republic of China Officials Foreign Interference Activities in Greater Vancouver in the 2019 General Election, CAN.SUM.000003 at 1.

²³ People’s Republic of China – Threat Actors, Contact with Candidates and Staff, and Funding of Threat Actors, CAN.SUM.000010 at 2; Briefing to the Prime Minister’s Office on Foreign Interference Threats to Canada’s Democratic Institutions, CAN004495 at 2.

“The PRC uses incentives given directly to a person or indirectly to those close to them, and can include prestigious invitations to important cultural or national events (often in the PRC), expense paid trips to the PRC, preferential business opportunities or incentives, expedited visa access, and political support (including financial support). Conversely, disincentives can include denial of travel visa (to include exit bans on family residing in the PRC), harassment and intimidation (including of family members in the PRC), economic coercion... and community isolation.”²⁴

15. From the ground up, evidence that emerged in the context of the Stage 1 hearings revealed that the existence of the implicit threat of punishment for supporting a candidate that opposed the PRC government’s actions, to both Chinese-Canadian voters and their family members still living in China, impacted the voting decisions of at least some Chinese-Canadian electors. The Commission heard from Ms. Kwan, who explained that some of her former constituents who otherwise would have voted for her, told her that they did not vote for her because of their fear that their family in China would be punished. Ms. Kwan noted that in some cases, her former constituents avoided voting altogether in fear that the PRC government would find out and seek retribution.²⁵ Ms. Kwan also explained that fear of reprisal for supporting candidates that stand up for targeted diaspora communities and oppose the human rights violations committed by the PRC government is constant, explaining that “these kinds of sentiments sometimes it precedes the campaign, sometimes it’s after the campaign. It kind of just continues, and it kind of just doesn’t stop.”²⁶

16. A central aspect of the intimidation and harassment of diaspora community members is the leveraging of threats to family members living abroad. This was a reality echoed by nearly all members of

²⁴ Country Summary: People’s Republic of China, CAN.SUM.000005 at 3.

²⁵ Transcript: Volume 9, TRN0000014 at 167-168, 180-181.

²⁶ Transcript: Volume 14, TRN0000014 at 167-169.

the diaspora panel in their presentations before the Commission.²⁷ As noted by Mehmet Tohti in his presentation before the Commission:

“...when it comes to [the] individual level, it is about threat. It is about hijacking of your family members to force you or compel you to live within the rule of hostile regime in a democratic country like in Canada and force you to be an informant and use all of the arresting power, just like proxies in institutions or covert legions underground, just like police stations, just to chase you and put pressure on you to stop what you are doing.”²⁸

17. Indeed, such threats to family are not without teeth. Mr. Tohti described an incident in January 2023, right before he was meant to appear in Parliament for the vote on the M-62 motion for the resettlement of Uyghur refugees in Canada, where he received a call from Chinese state police. The police put a relative of his on the phone who told Mr. Tohti that his mother and two sisters were dead. Mr. Tohti explained that this call was meant to send a message to him implying that this is the cost he would keep paying if he continued his advocacy.²⁹ It is this kind of threat, and this understanding among targeted diaspora communities that family members may face consequences, that informs the foreign interference ecosystem surrounding an election.

18. Findings from intelligence agencies support this reality. Agencies have found that the PRC, for example, “is known to target and/or leverage family as part of its foreign interference and other threat activity...”³⁰ A branch of the CSIS Assistant Director Requirements Directorate found that “[d]iaspora communities can be pressured to vote in accordance with its preference using sticks and carrots” noting that “many members of this diaspora community are afraid that the PRC will know who they voted for and do not dare vote against the country's express preferences.”³¹ A representative of the branch “believes that the

²⁷ Transcript: Volume 6, TRN0000006 at 64, 70, 79-80, 89-97, 167.

²⁸ Ibid at 89-90.

²⁹ Ibid at 93-94.

³⁰ Briefing, CAN004079_R01 at 2.

³¹ Transcript: Volume 10, TRN0000010 at 235; *In Camera* Examination Summary: A Branch within the CSIS ADR Directorate, WIT0000043 at para 11.

PRC's ultimate objective is to condition the response of the diaspora community, so that they vote in a certain way without having to be told to."³²

19. It is not just the PRC government which engages in this type of intimidation and harassment. For instance, as Hamed Esmailion explained to the Commission in his presentation on March 27, 2024:

“My parents, they’re banned to leave the country. My mother is 73 years old. My father is 74. They planned to travel to Canada in November to participate in the fourth anniversary of the downing of Flight PS752. Their passport was confiscated and now they know that they can’t leave the country, at least for six months. We don’t know what happens after six months. And I can say about other family members of the victims in Iran, also they have been tortured, they have been prisoned. And we have several reports supporting that fact...
...[Iranian-Canadians’] family members are under pressure. Even we have had members who met Canadian Parliament members here and their family members in Iran have been pressured or have been interrogated.”³³

20. Consequently, the Commission should stay attuned to allegations and information about foreign interference, including foreign electoral interference, by authoritarian regimes besides those noted in the Commission’s terms of reference. Just as CSIS noted that PRC authorities may be emboldened in their electoral interference efforts by the 2021 defeat of former Richmond MP Kenny Chiu,³⁴ officials from other authoritarian regimes, including Iran, Cuba, and Eritrea, may be similarly emboldened, and Canada may experience rising threats of foreign electoral interference from these regimes in the future.

21. It is important for government actors as well as the Commission to understand that coercion of targeted diaspora communities can and does happen through the use of implicit threats. Ms. Kwan’s former

³² Transcript: Volume 10, TRN0000010 at 234-235; *In Camera* Examination Summary: A Branch within the CSIS ADR Directorate, WIT0000043 at para 11.

³³ Transcript: Volume 6, TRN0000006 at 64, 70.

³⁴ Briefing, CAN004079_R01 at 1.

constituents, for example, may not have received phone calls from PRC agents spelling it out for them they their family members would be punished if they voted for Ms. Kwan. It is likely, however, that even if they were not explicitly threatened with such retribution, these Chinese-Canadians understood, knowing what the PRC government is capable of, that such retribution was possible or even likely to occur.

22. Azam Ishmael, in response to cross-examination by Ms. Teich, agreed that authoritarian regimes may detain and/or interrogate their citizens arbitrarily, and that authoritarian regimes engage in hacking and other monitoring of their citizens' devices.³⁵ He agreed with Ms. Teich, although he stated that he “[had not] really thought of [it before] ... too in-depth”, that “even the fear of these possibilities might make members of diaspora communities vulnerable to coercion in a nomination race or an election”.³⁶ CSIS Director David Vigneault likewise explained that there exists a

“...direct and implied threat, that if you are not supporting -- even if you're here in Canada, in Ottawa, or you're in the -- you're in Paris, or you're in Trois-Rivières, you will be subjected...The arm of the PRC can touch you directly or indirectly in a way, but people understand, you know, they have this element of coercion on top of them. That coercion translates into things that, you know, may be done to you in Canada, loss of opportunity, loss of access, denial of visas for to go back to see your family members back in the PRC, threats to you here, but also threats to your families, your loved ones back in China. So that ecosystem, starting from the Party, translating into the actions of the State, and now they're reaching out anywhere around the world to try to control what is happening with the Chinese population...”³⁷

³⁵ Transcript: Volume 8, TRN0000008 at 94.

³⁶ Ibid at 95.

³⁷ Transcript: Volume 10, TRN0000010 at 157.

23. In combination, these realities create an environment of fear, for all members of targeted diaspora communities, that is all consuming and that follows into the writ period. As noted by Mr. Tohti:

“...foreign interference. Just it touches your life. It touches your safety. It touches your security. It touches your family comfort. It touches your career. It touches your future. You don’t get sleep and you don’t know what kind of bad news you are receiving when you wake up tomorrow morning.”³⁸

24. In her presentation before the Commission, Ms. Wollensack aptly summarized the issue, noting that the engagement of a network of actors by the CCP to carry out foreign interference has

“...creat[ed] an invisible but a persuasive hand, controlling Canadian communities to serve the CCP’s interest, eroding Canadian values and the sovereignties. Canada must take effective and urgent measures to respond to this phenomena before it is too late.”³⁹

25. We submit that in combination, the CCP’s interference activities in the 2019 and 2021 elections likely generated a foreign interference ecosystem in which diaspora were targeted and disenfranchised from the ground up and from the top down. From the ground up, the pre-existing environment of transnational repression and implicit threat of retribution against themselves or their family should they vote for their preferred candidate or engage in voting at all often kept them from exercising their democratic rights. From the top down, candidates and parties that champion diaspora issues and oppose the PRC government’s commission of human rights violations were targeted. This creates a chilling effect among candidates and parties with regard to advocacy for diaspora concerns and makes their concerns invisible among the Canadian public.⁴⁰ Such an environment may even lead to fewer diaspora members pursuing roles in

³⁸ Transcript: Volume 6, TRN0000006 at 101-102.

³⁹ Ibid at 129.

⁴⁰ Transcript: Volume 9, TRN0000009 at 63-64.

politics. Mr. Chiu, for example, noted that he may not have run for office at all had he known he would be targeted and that his country would not protect him, instead simply letting him “drown.”⁴¹

26. Notably, David Morrison made it clear in his testimony that threats from foreign actors, whether explicit or implied, puts that action “over the line into foreign interference.”⁴² We submit that it is with these definitions of foreign interference and malign foreign influence in mind that the Commissioner must view the experiences of targeted diaspora surrounding the 2019 and 2021 elections.

III. INADEQUACIES OF EXISTING MECHANISMS LEADING TO INTELLIGENCE GAPS

27. As noted by David Vigneault, feedback from intelligence bodies is important to ensure that resources are being allocated correctly.⁴³ Feedback, Mr. Vigneault explained, is necessary to ensure that “someone can take action or be better informed” and is critical for intelligence agencies like CSIS because it helps the agency see the best picture possible to make the best possible decisions as to how to respond to foreign interference.⁴⁴ We submit that feedback from diaspora communities is a fundamental source of such information. However, members of targeted diaspora have found that there is no point in reporting incidents of foreign interference to such agencies, or law enforcement. Mr. Tohti, in his presentation before the Commission, noted that trying to report incidents “is a waste of time” and often targeted diaspora “don’t get any result[s].”⁴⁵

28. We submit that the inaccessibility and narrow scope of the existing mechanisms likely results in significant under-reporting of foreign interference incidents targeting diaspora community members, including surrounding the 2019 and 2021 federal elections. This means that the agencies and bodies that need this information to respond to foreign interference surrounding elections and inform bodies such as the SITE Task Force and Panel of Five have an incomplete picture of the foreign interference ecosystem

⁴¹ Ibid at 117.

⁴² Transcript: Volume 10, TRN0000010 at 22.

⁴³ Ibid at 144-145.

⁴⁴ Ibid at 144-145.

⁴⁵ Transcript: Volume 6, TRN0000006 at 100.

within which the 2019 and 2021 elections took place. Logically speaking, this also means that the bodies that make determinations as to the integrity of these elections likely did not have the information they needed to sufficiently do so. Based on the evidence that emerged over the course of the Stage 1 hearings, significant deficiencies are evidence across all of the existing mechanisms designed to collect information or intelligence surrounding foreign interference, including Global Affairs Canada’s Rapid Response Mechanism, the Canadian Centre for Cyber Security housed at the Communications Security Establishment (“CSE”), the Royal Canadian Mounted Police’s National Security Information Network, Elections Canada (“EC”) and the Office of the Commissioner of Canada Elections (“OCCE”).

Global Affairs Canada’s Rapid Response Mechanism

29. Canada’s Rapid Response Mechanism (“RRM Canada”), which was created in 2018 and is housed under Global Affairs Canada is limited to monitoring open-source platforms for mis- and dis-information.⁴⁶ While this is a laudable and important initiative, it is naturally limited in its ability to collect information from members of diaspora communities concerning foreign interference incidents. Since RRM Canada is limited to monitoring public, open-source platforms, it cannot monitor or combat harassment or intimidation of diaspora community members, or mis- and dis-information that occurs in the course of private communications or on closed platforms. Evidence that emerged in the course of the Stage 1 hearings specifically demonstrated that Chinese social media platforms, which may be primary platforms of engagement for Chinese-Canadians, are often a “black box” for RRM Canada.⁴⁷

CSE’s Canadian Centre for Cyber Security

30. The Canadian Centre for Cyber Security is the online mechanism that allows the public to report cyber incidents, including those related to potential electoral interference, to the CSE.⁴⁸ This mechanism is

⁴⁶ Transcript: Volume 11, TRN0000011 at 61-62.

⁴⁷ Transcript: Volume 9, TRN0000009 at 29-30, 131-132; Transcript: Volume 11, TRN0000011 at 206-207.

⁴⁸ Transcript: Volume 10, TRN0000010 at 106.

limited along the same lines. First, its scope is necessarily limited to cyber incidents, which means that diaspora community members facing harassment or intimidation cannot make use of the online reporting tool. Second, as emerged in the course of the Stage 1 hearings, this online reporting mechanism is only available in English and French.⁴⁹ This makes the mechanism inaccessible to diaspora community members who do not speak English or French, thereby excluding those diaspora community members who are likely most vulnerable to foreign interference incidents.

31. The CSE provides educational materials to the public, which may include threat assessments, sharing information to help Canadians identify disinformation, and through the creation of a dedicated webpage on cyber threats to elections.⁵⁰ However, as Daniel Rogers stated in response to cross-examination by Ms. Taylor, he was only aware of this information being available in English and French.^{51,52}

The Royal Canadian Mounted Police’s National Security Information Network

32. Individuals, including from diaspora communities, may report foreign interference incidents, including during election periods, to the RCMP’s National Security Information Network.⁵³ Mark Flynn testified as part of the Stage 1 hearings that members of diaspora communities have not, in the past, generally been aware that they can contact the RCMP with complaints in this manner.⁵⁴ He testified that this is something that the RCMP is generally working to improve, including by putting out material in multiple languages that encourages members of the public to report incidents. He testified that the RCMP is now actively working “to gain trust and confidence in the community”, and that this “has resulted in an

⁴⁹ Ibid at 107.

⁵⁰ Ibid at 107-108.

⁵¹ Ibid at 107.

⁵² Beyond the CSE educational materials, numerous CSIS witnesses testified to the publication in multiple languages of a document titled “Foreign Interference and You”, intended to provide useful information for the public including diaspora communities regarding threats of foreign interference. This 8-page document, however, is general in nature and contains only limited information. It does not contain any links to bodies or agencies to which victims of foreign interference can report incidents. It does not contain links to complaints forms or tip lines. See: RCD0000007.

⁵³ Transcript: Volume 10, TRN0000010 at 64.

⁵⁴ Ibid at 66.

increased number of calls that have come into [the] tip line, as well as direct communication outside of the tip line in reporting activities of concern”.⁵⁵

33. Despite these efforts at improvement, Mark Flynn stated that the National Security Information Network (colloquially known as the “tip line”) is available primarily in English and French.⁵⁶ He stated that “there are mechanisms if someone does reach out [in another language] that [they] can engage”, but acknowledged that this “is an area that [they] need to pay attention to going forward”.⁵⁷ He further testified that when it comes to the availability of confidentiality protections, he was not aware of that being advertised in multiple languages.⁵⁸

Elections Canada and the Office of the Commissioner of Canada Elections

34. Stéphane Perrault, the Chief Electoral Officer of Canada, testified regarding the mandate and activity of Elections Canada during the course of the Stage 1 hearings. He detailed Election Canada’s capabilities of protecting against foreign interference activities, which include securing IT infrastructure from cyber-attacks; protecting infrastructure as well as the safety of the polls and returning officers; making sure Canadians have the right information about the voting process (i.e., understanding when and where they can vote); administering the regime which includes measures related to political financing and protecting against the undue influence of money; and making recommendations to Parliament concerning improvements to the Elections Act.⁵⁹ Notably, none of the detailed capabilities involved protecting against harassment, intimidation, or coercion of diaspora communities.⁶⁰ The extent to which Elections Canada conducts online monitoring of mis- and dis-information is restricted to open sources and specifically so as to ensure that “voters were well-informed and could exercise their voting right.”⁶¹ In other words, Elections Canada is only concerned with mis- and dis-information that would impair electors’ abilities to vote, for

⁵⁵ Ibid at 67.

⁵⁶ Ibid at 67.

⁵⁷ Ibid at 68.

⁵⁸ Ibid at 69.

⁵⁹ Transcript: Volume 7, TRN0000007 at 16-17.

⁶⁰ Ibid at 16-17.

⁶¹ Ibid at 42-43.

example, if electors' are being wrongly told that they must be vaccinated in order to exercise their democratic right to vote.⁶² If that occurs, Elections Canada might combat that type of misinformation by putting the correct information on their website and/or engaging in media interviews to ensure that people have the correct information.⁶³ Elections Canada had no relationship with WeChat and no access to private conversations.⁶⁴ They cannot get involved in nomination contests.⁶⁵

35. The Office of the Commissioner of Canada Elections (“OCCE”) similarly did not engage with WeChat in the lead-up to either the 2019 or 2021 elections.⁶⁶ They similarly do not engage in nomination contests. The OCCE does not engage in online monitoring; they have an analytics team that conducts passive collection, but they only do so in response to a specific complaint.⁶⁷ Generally, the OCCE relies on complaints to take action. As noted in the OCCE institutional report provided to the Commission, “[i]n order to carry out its work, the OCCE primarily relies on the public to submit complaints when they believe there is wrongdoing under the [Canada Elections Act]”.⁶⁸ This presents a significant problem when the OCCE’s web form for lodging complaints is only available in English and French and provides only limited confidentiality.⁶⁹

36. In cross examination with Ms. Teich, Caroline Simard agreed that “it’s certainly a consideration” that the OCCE’s limited ability to offer confidentiality and multiple languages on the complaints form might prevent some complainants from coming forward or participating in the office’s investigations or reviews.⁷⁰ Although Yves Côté initially asserted that “if a would-be complainant didn’t speak either French or English, they could find a way through the website to write in their own language [and] people at the reception ... would have it translated”, he acknowledged in cross-examination with Ms. Teich that to his

⁶² Ibid at 44.

⁶³ Ibid at 44-45.

⁶⁴ Ibid at 44-45.

⁶⁵ Ibid at 62.

⁶⁶ Ibid at 45-46, 121.

⁶⁷ Ibid at 121.

⁶⁸ Institutional Report, The Office of the Commissioner of Canada Elections (OCCE), CEF.IR.0000001.EN at 1.39.

⁶⁹ Transcript: Volume 7, TRN0000007 at 209-210.

⁷⁰ Ibid at 210.

knowledge that has never happened.⁷¹ Mr. Côté expressed in his witness statement that despite the OCCE’s work “to increase its visibility”, he believes “relatively few ordinary citizens are aware of the Office’s existence”.⁷² Further, Mylène Gigou confirmed in cross-examination with Ms. Teich that the OCCE has not worked to establish and strengthen relationships with diaspora community organizations.⁷³ She agreed that would be valuable.⁷⁴

37. As noted in the OCCE’s institutional report, “the work conducted by the OCCE has not resulted in any formal measures being taken, or charges laid, in relation to foreign persons or entities have influenced or attempted to influence an election.”⁷⁵ This is not surprising given the limitations noted above and the lack of engagement with diaspora communities. Further, and as noted in the OCCE’s institutional report, a significant portion of the complaints received that are identified by complainants as involving foreign interference, do not in fact fall within the OCCE’s mandate.⁷⁶ This does not imply that foreign interference did not or has not occurred – in fact it has occurred per the testimony of David Vigneault, Nathalie Drouin, and others, as described – this is more so a reflection of the narrowness of the OCCE’s mandate and the narrowness of what is prohibited under the Canada Elections Act. The OCCE may only address violations of the Canada Elections Act or the Referendum Act. There are only a handful of provisions that are relevant to foreign interference, and they are all interpreted narrowly.

38. Section 282.8 of the Canada Elections Act prohibits attempts to influence a person to vote or refrain from voting by any pretense or contrivance. To make out an offence under this provision requires finding (a) pretense or contrivance, (b) to influence or attempt to influence an elector’s vote, and (c) an elector versus general influence on a community.⁷⁷ The offence requires that a specific perpetrator be identified,

⁷¹ Ibid at 210.

⁷² Stage 1 Interview Summary: Yves Côté, Mylène Gigou and Al Mathews, WIT0000029_EN at 22.

⁷³ Transcript: Volume 7, TRN0000007 at 207.

⁷⁴ Ibid at 207-208.

⁷⁵ Institutional Report, The Office of the Commissioner of Canada Elections (OCCE), CEF.IR.0000001.EN at 2.19.

⁷⁶ Ibid at 2.03.

⁷⁷ Stage 1 Interview Summary: Caroline Simard and Carmen Boucher, WIT0000026_EN at 34.

as well as a specific victim⁷⁸ Further, obtaining evidence outside of Canada is difficult if not impossible, particularly if agents of a foreign state are alleged to be involved in the subject matter of the investigation.⁷⁹ It would also be a challenge, for this and other provisions, to pursue any prosecution if a perpetrator is not in Canada, as “generally all criminal laws cannot be implemented extraterritorially”.⁸⁰

39. Section 282.4 of the Canada Elections Act prohibits foreign persons or entities from unduly influencing an elector to vote or refrain from voting in a certain way. For influence to be “undue”, this offence requires either (a) knowingly incurring an expense to directly promote or oppose a candidate or party, or (b) that one of the acts committed by the foreign person or entity to influence the elector be an offence under an Act of Parliament.⁸¹

40. Finally, section 349.02 prohibits the use of foreign-sourced funds for partisan activity, election advertising, election survey and advertising. Co-mingling of funds, and routing funds through domestic proxies, present challenges for the OCCE to make out an offence under this section.⁸²

Internal Party Mechanisms

41. Numerous witnesses testified to the fact that nomination contests are run by their respective parties, and that they, for the most part, govern themselves.⁸³ Stage 1 hearings did not produce a significant amount of evidence concerning the internal party complaints mechanisms across multiple parties, but the evidence did describe the internal party complaints mechanisms of the Liberal Party of Canada; this arose in the context of the described irregularities in the Don Valley North nomination contest.

42. According to a topical summary of intelligence prepared by the Commission, on the Don Valley North Liberal Party nomination race “intelligence reported after the election indicated that veiled threats

⁷⁸ Ibid at 34-35.

⁷⁹ Institutional Report, The Office of the Commissioner of Canada Elections (OCCE), CEF.IR.0000001.EN at 3.17.

⁸⁰ Transcript: Volume 7, TRN0000007 at 168.

⁸¹ Stage 1 Interview Summary: Caroline Simard and Carmen Boucher, WIT0000026_EN at 36.

⁸² Ibid at 39.

⁸³ See, for example, Transcript: Volume 7, TRN0000007 at 10.

were issued by the PRC Consulate to the Chinese international students, implying their student visas would be in jeopardy and that there would be consequences for their families back in the PRC if they did not support Han Dong.”⁸⁴ In his evidence before the Commission, Azam Ishmael, Chair of the Liberal Party of Canada, shared his opinion that the nomination contest complied with the party rules, and he based his opinion, at least in part, on the fact that “no one accessed the permanent appeal process”, which he described as “the Party’s internal dispute resolution mechanism”.⁸⁵ However, according to the Liberal Party of Canada By-laws, the Liberal Party’s permanent appeals process is only available to candidates and nominees.⁸⁶ Mr. Ishmael indicated in cross-examination with Ms. Teich that a voter could request standing to lodge a complaint using the mechanism, but that he has never seen a case like that.⁸⁷ This may be because that option is not advertised. Mr. Ishmael indicated that a voter may know they can do this based on the documents that are transparently available on the Liberal Party of Canada’s website⁸⁸, but the Liberal Party by-laws specifically state that only candidates and nominees may utilize the permanent appeals process⁸⁹, so it is unclear how, if at all, it would occur to an voter to request standing to lodge a complaint in this fashion. In any case, Mr. Ishmael confirmed that the Liberal Party does not have the language capabilities to receive complaints in languages besides English and French⁹⁰, which makes this mechanism inaccessible to those most vulnerable.

IV. THE COMMISSION SHOULD CONFIRM THAT FOREIGN INTERFERENCE DID IMPACT THE 2019 AND 2021 ELECTIONS AT THE ELECTORAL DISTRICT LEVEL

43. It is evident that foreign actors targeted diaspora communities surrounding the 2019 and 2021 elections. It is also evident that the reporting mechanisms available were not sufficient to capture the extent of electoral interference as it affected targeted diaspora communities. As such, the bodies that determine

⁸⁴ Don Valley North (DVN) Liberal Party Nomination Race, CAN, SUM000001 at 2.

⁸⁵ Stage 1 Interview Summary: Azam Ishmael, WIT0000032_EN at 14-17.

⁸⁶ Procedure for the Permanent Appeals Committee, HRC0000031 at 4.2.

⁸⁷ Transcript: Volume 8, TRN0000008 at 92.

⁸⁸ Ibid at 92.

⁸⁹ Procedure for the Permanent Appeals Committee, HRC0000031 at 4.2.

⁹⁰ Transcript: Volume 8, TRN0000008 at 94.

the extent to which the integrity of the 2019 and 2021 elections have been comprised likely did not have the full picture of the extent of foreign interference at the time. In this context, we submit that the Commissioner cannot take the positions of government bodies that foreign interference did not happen to an extent that threatened the integrity of the elections, at face value. The fact that even some intelligence and information was gathered by the various agencies and bodies tasked with monitoring and combating foreign interference, with regard to coercion of diaspora community voters in the 2019 and 2021 federal elections, despite the aforementioned limitations – suggests that electoral interference was likely a much larger issue than relevant bodies have suggested.

44. With the above findings in mind, we submit that the Commissioner should confirm, as a reasonable possibility,⁹¹ that foreign interference impacted the 2019 and 2021 elections at the electoral district level and should recommend significant systemic changes to structures meant to help gather intelligence and information about electoral information so that the relevant bodies can properly assess the state of electoral interference in the future. One of the pillars of the Canadian democratic system demands that every vote counts, ensuring citizens the right to vote freely. What we have heard over the course of 15 days has indicated that foreign actors actively targeted diaspora communities during the 2019 and 2021 elections, and that while foreign actors were targeting these communities, our systems were failing those most vulnerable by not making mechanisms accessible. Minister William Blair articulated that there is a “need for us to do more to make sure we reach out to those communities, make [the tip lines and web forums for public reporting] available to them in ways which are both language and culturally appropriate”.⁹² As Erin O’Toole articulated during his examination-in-chief, “one vote matters in our democracy, and I think we have to do a little bit more, particularly for the Chinese/Canadian population, but also some other diaspora organizations to make sure that they're not being intimidated to exercise their full rights here.”⁹³

⁹¹ As to the appropriate standard of proof, see Office of the United Nations High Commissioner for Human Rights “Commissions of Inquiry and Fact finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice” at section 7 page 62, https://www.ohchr.org/sites/default/files/Documents/Publications/CoI_Guidance_and_Practice.pdf.

⁹² Transcript: Volume 14, TRN0000014 at 87-88.

⁹³ Transcript: Volume 9, TRN0000009 at 35-36.