



4 November 2024

Closing Submission to the Public Inquiry on Foreign Interference

Dear Commissioner:

Thank you for the opportunity to make a closing submission.

There is much anticipation around the release of your final report. The long gestation period between the first rumblings of foreign interference (FI) in the 2019 Federal Elections and the release of your report at the end of 2024 has allowed for a steady stream of information on FI to be leaked or publicly released, leading to rampant speculation on the issue. At the same time, the FI debate in Canada has become deeply politicized, with partisan actors seeking political advantage based on selective, self-serving interpretations of the “evidence”.

To a large extent, the public imagination on the FI problem has already been cast. Your report will have the unenviable task of re-setting perceptions and restoring trust in the institutions that are responsible for protecting Canadians from FI in our democracy. In that respect, the *education* function of this public inquiry is at least as important as the *fact finding* and *policy* functions.

Beyond what you can reveal about actual FI in GE43 and GE44, and in Canadian democracy more generally, I believe the greatest value-add of your final report will be *perspective*. By this I mean a calm and measured explanation to Canadians of the global context in which all countries operate -- a context in which foreign influence operations are exerted by all states and in all directions; where the line between influence and interference is blurry; and within which a country such as

Canada – with its large immigrant population and extensive international connections – is especially fertile ground for “foreign” ideas and influences.

There was a time when we celebrated “foreign influence” in Canada as a marker of our internationalist and multicultural credentials. The mood in this country today, however, is more inclined to view foreign influence as suspicious at best – even if the views expressed are not “foreign” at all but emanate from Canadian citizens whose opinions are shaped by their international backgrounds, knowledge, and experience.

The best example of how far we have strayed from our internationalist credentials is in the recent creation of a registry of foreign influence, which is as Orwellian as it sounds. The Foreign Influence Transparency Registry, which is part of Bill C-70, requires anyone who is “in association with” a foreign principal to register for taking part in activities “in relation to a political or governmental process in Canada”. It is very likely that the test of being “in association with” a foreign principal will default to the views held by the individual in question rather than any consistent and meaningful definition of what it means to be “in association with” that foreign principal.

If it were simply the case that registration was a nuisance for Canadians who might be captured under the expansive definition of the bill, that would be tolerable. After all, we already put up with a lot of bureaucratic form-filling that is of dubious value. The graver risk is for Canadians who, in good faith, fail to register because they do not consider themselves to be “in association with” a foreign entity and are subsequently prosecuted under Part 2 of C-70 for, among other things, *“the exercise of a democratic right in Canada”*. The maximum penalty for such an offence is life imprisonment.

I have elaborated on my concerns about C-70 in my submission of 8 October 2024, available at <https://senatoryuenpauwoo.ca/en/domestic-outreach/public-inquiry-on-foreign-interference-2024/submission-to-public-inquiry-on-foreign-interference-policy-phase/>. For the purposes of this submission, the point is a

more general one about how the bill exemplifies a turn in Canada towards parochialism and inwardness, almost to the point of xenophobia – all in the name of fighting FI.

Your report can go a long way in restoring balance to public perceptions around foreign interference/influence and preventing further excesses in any additional legislative actions taken by Parliament.

None of the above is to suggest that we should be complacent about FI or not seek better ways to thwart harmful acts. If anything, the revelations in recent weeks about India's targeted assassination of a citizen, on Canadian soil, and the role of China in mounting extensive cyberattacks on federal and provincial government networks, underscore the need for a robust response to such acts, and greater vigilance on the part of Canadians.

Indeed, the two examples above represent some of the most egregious forms of foreign interference, for which there should be no equivocation by all political parties on the need for better defenses against.

The killing of a Canadian by a foreign government is the most extreme form of what is popularly known as "transnational repression" (TNR). Lesser forms of TNR – including intimidation and threats to individuals and their families – are no less repugnant, and they constitute what I believe are the most troubling forms of FI currently faced by Canada. One of the positive aspects of C-70 is that it amends the Criminal Code to expand the ability of law enforcement to respond to many forms of TNR. Perhaps the Commission will offer suggestions for additional legislative or enforcement tools to deal with TNR, but it is probably prudent to allow some time to see how the new laws are working before considering more draconian measures.

If TNR and cyber hacking represent one extreme of the foreign interference/influence spectrum, for which we can all agree that there should be robust

measures against, many of the other FI allegations which were surfaced during the Inquiry are more ambiguous.

Some of the FI claims that have been widely cited during the inquiry and in the media simply do not stand up to scrutiny. Foremost are the allegations of FI around the campaigns of Mr Kenny Chiu and Mr Erin O'Toole during GE44 (see my submission of 6 February 2024 at <https://senatoryuenpauwoo.ca/en/domestic-outreach/public-inquiry-on-foreign-interference-2024/submission-concerning-allegations-of-foreign-interference-against-mr-erin-o-toole-and-mr-kenny-chiu-during-the-44th-general-election/>).

Other claims made by prominent witnesses, for example Mr Michael Chong and Ms Jenny Kwan, are not only cavalier and flimsy, but they amount to a smear on individuals and groups that is highly corrosive of Canada's multicultural identity. Both Mr Chong and Ms Kwan are said to have been "targeted" by the Chinese government, but their own testimony suggests that they and their families are not aware of any actual harm or threat directed at them. Could it be that the Chinese Embassy "targeted" Mr Chong and Ms Kwan only in the sense that they kept files on the two MPs, among other files that they keep on parliamentarians?

It may serve the media and political partisans that the idea of being "targeted" is interpreted in the most sinister light, but if there is a more plausible, and benign, interpretation that should be considered (such as those offered by senior national security and foreign affairs officials who testified at the Inquiry), I hope the Commission will see fit to make that known. To let stand a sensational claim as a bona fide example of FI is to feed a frenzy which can only lead to other spurious claims that hurt the innocent and poison the body politic.

For example, members of groups that have suffered from TNR have abused their standing in the Inquiry to recklessly name individuals and organizations as foreign agents or proxies, with no evidence whatsoever. While victims of TNR deserve sympathy and protection, they do a disservice to their cause – and harm to other

Canadians – by making unsubstantiated allegations in an environment of already heightened public anxiety around FI.

As a Senator, I have privilege and protections, not to mention a thick skin, to fend off such baseless claims, but I worry deeply about other Chinese Canadians who are vulnerable to the attacks of activist groups which, in the name of human rights and other noble causes, have no compunction in pointing the finger at anyone who holds a different view from theirs. There is no reason to believe that they, and others, will stop making reckless claims against innocent Canadians, emboldened as they have been by the Inquiry and by the privileged position that they occupied in its hearings. This is where your report can play a vital role in calling out reckless allegations. Failure to do so will not only mean further stigmatization of individuals and organizations; it will also expose them to the risk of prosecution under the draconian provisions of C-70.

Hence, the Commission has a vital role to play not only in revealing to Canadians the FI that may have taken place in recent years, but in also detailing and debunking false or exaggerated claims of FI that have become rampant. Not addressing unsubstantiated claims will only make the challenge of addressing genuine FI greater, because of the distraction caused by false claims, and the loss of public trust that will ensue.

All of which is to reiterate the four principles I advanced in my second submission to the Commission dated 4 March 2024, available at <https://senatoryuenpauwoo.ca/en/domestic-outreach/public-inquiry-on-foreign-interference-2024/submission-on-the-risk-of-systemic-discrimination-in-addressing-potential-foreign-interference-in-canada-s-democracy/>

1. Credibility

The Commission has had the opportunity to view thousands of pages of evidence in unredacted form. The public, on the other hand, has only received dribs and

drabs of information in the media, in the first instance through illegally leaked documents from anonymous sources. It will be important for the Final Report to weigh in on the credibility of media reporting based on those leaked documents, and to debunk any misreporting that may have taken place. It is curious that the Commission did not see fit to investigate the media's use of illegally leaked documents and the damage that was done to Canada's national security as a result. I hope the final report will include some commentary on the role of the media and its uncritical (even unethical) reliance on leaked documents from anonymous sources. In this regard, a recent article published in a Canadian International Affairs e-journal is illuminating:

<https://iaffairscanada.com/canadas-mccarthyism-and-the-spies-stirring-a-yellow-peril-scare/>

The question of credibility should extend to the national security and intelligence agencies themselves. My submission of 4 March 2024 discusses the risk of systemic bias by CSIS in its efforts to identify and combat foreign interference because of the way it uses sweeping generalizations and vague or ominous language to characterize the foreign interference threat from the People's Republic of China (PRC). It has done so in such a way as to allow for a very broad definition of what constitutes foreign interference and who might be implicated in it, which has in turn fed into public paranoia about a "China Threat".

For example, the Office of the Commissioner of Canada Elections (OCCE) used such a broad understanding of FI to conclude that PRC officials gave "impetus and direction" for a campaign against the Conservative Party of Canada during GE44. Specific examples cited, however, merely describe how Chinese diplomats expressed their country's positions on the bilateral relationship with Canada and lamented the rise of Anti-Asian racism in the wake of COVID-19¹. We may not like hearing this kind of criticism from a foreign government, but our diplomats do the same in the countries where they serve. The problem is not just that the OCCE is

¹ In fact, the speeches by Ambassador Cong Peiwu and Consul General Tong Xueling mentioned anti-Asian and anti-China sentiment in Canada without any reference to the Conservative Party of Canada.

guilty of sloppy research, faulty analysis, and very likely bias; it is also that by specifically claiming foreign officials give “impetus and direction” to certain individuals and groups to participate in an alleged FI campaign, the Commissioner of Elections is effectively inviting the RCMP to prosecute suspected individuals and groups under the draconian provisions of C-70.

Without any meaningful evidence, the OCCE claims that the anti-Conservative campaign was implemented by Chinese authorities and entities, as well as their supporters, through a “multi-pronged and layered approach using Chinese Canadian association individuals, Chinese Canadian business interests as well as the pervasive social media and printed, digital and broadcast media messaging.”. This is precisely the kind of all- encompassing definition of PRC FI that has plagued the Inquiry from its inception. It takes as a starting point the views or positions held by individuals and groups, which, if aligned with the Chinese government, are then assumed to be directed by Chinese officials. All too often, such claims of FI work backwards from the views of individuals and groups to find connections with the Chinese government or Chinese entities broadly defined, even when these links are innocent or tenuous.

It is deeply troubling, therefore, that the OCCE is seeking greater powers of enforcement and sanction based on such a poor understanding of diplomatic practice and seemingly without any regard for the consequences facing Canadians who may be harmed by their reckless claims. It is also deeply ironic that an office that has the responsibility for protecting the integrity of elections is in effect seeking legislative amendments that could curb the ability of some Canadians to exercise their democratic rights because of (benign) ties to a foreign government.

For the purposes of the Public Inquiry, the key question is whether the expansive framing of a foreign interference / espionage threat from the PRC threatens the civil rights of Canadians and if it explains the many unfounded allegations of interference and espionage on the part of Canadians with ties to the PRC, including politicians and their staffers, university professors, scientists and other

professionals, social service and cultural organizations, and other community leaders.

2. **Materiality**

I have been struck by the scant attention given to the materiality of different examples of alleged FI, in terms of their likely impact on Canadian society. It seems as if all claims of FI are treated as of equal importance, even though it is not difficult to see that some cases have the potential to have a much larger impact on an election, or more generally on Canadian views, than others. In comparing, for example, an attempt to discourage Canadian voters from supporting the Conservative Party through a social media campaign asserting that Erin O'Toole "almost wants to break diplomatic ties with China" with a verified tweet by former President Barack Obama endorsing Justin Trudeau in the same election, surely the latter would have a much larger material effect. To be clear, I do not believe either example constitutes unacceptable foreign interference, but it is telling that the former example is an FI cause célèbre whereas the latter doesn't even register.

During GE44, there was a multitude of viral posts on numerous social media outlets, including those in English, that contain blatant misinformation and disinformation. These posts were generally not flagged by intelligence agencies and received little attention during the inquiry. Research from the Media Ecosystem Observatory at McGill University and the University of Toronto provides examples of distorted information on Western-based social media that went viral during the 2021 election. It lists two trends in particular: mis- and disinformation from those who opposed pandemic health measures and vaccination policies, as well as claims of widespread voter fraud that were akin to narratives that emerged during and after the 2020 U.S. presidential election. In comparison to the WeChat posts that have generated so much attention, the much larger volume of disinformation around COVID-19 and voter fraud would surely have had greater reach and impact on Canadians before, during, and after GE44.

Perhaps the focus on WeChat rather than English language social media is based on the belief that the former is “state-controlled” whereas the latter is not. Setting aside whether this distinction is accurate, the more important question when it comes to protecting Canadian democracy is surely not “whether disinformation is from a state or non-state source” but “which instances of disinformation have the greatest *impact* on Canadians”.

The lack of any serious attention to non-state sources of FI is a major blind spot in the Inquiry. It would not take more than a few minutes scrolling through a Facebook or X feed to realize that the single biggest source of potential influence on Canadian democracy, by far, comes from south of the border. That this source of foreign influence (including rampant disinformation) does not fit a certain definition of “foreign interference” and therefore is excluded from analysis is akin to ignoring the rain pouring in through a gaping hole in the roof to focus on a drip under the kitchen sink.

Similarly, there has been a troubling lack of perspective on the part of witnesses in contextualizing the problem of domestic disinformation, including during an election. The problem of disinformation from foreign sources (especially state-directed sources) is surely only a drop in the ocean compared to disinformation that is propagated domestically -- by Canadians, for Canadians, as it were.

A good example is the recent provincial election in British Columbia, around which there was a torrent of disinformation, especially following the close result and subsequent delays in final tallies. Perhaps there are some who will claim that this disinformation came from or was caused by Moscow or Beijing, but any honest assessment will have to conclude that Canadians are quite capable of doing harm to their own democracy without the help of foreigners. This is even more true of the United States, and especially so around the upcoming US Presidential election.

US election disinformation narratives (such as election denialism) have already migrated north (notably Erin O Toole’s claim about having lost up to a dozen seats

due to FI) and it is a certainty that such narratives will be repeated in the run up to our own Federal elections. A final report that offers elaborate fixes to state-sourced FI in Canada but ignores the US as the overwhelmingly dominant and materially important source of foreign influence on Canadian democracy is tantamount to putting out campfires while the forest all around is burning.

3. Proportionality

The corollary to materiality is proportionality. Our national security and intelligence agencies should counter foreign interference from all sources, but they should place the greatest attention on the foreign interference threats that are the most material.

I believe transnational repression is the most egregious form of FI and that we should place the greatest attention to this issue, as C-70 seeks to do. Other instances of demonstrated FI also warrant attention, but in proportion to the potential risk -- by which I mean not only the risk of harm to Canadians, but also the threat that responses to FI may violate their rights and freedoms. Many of the FI claims around election interference engage questions of civil liberties, including the freedom of expression and the freedom of association. A response to FI threats that ends up curbing the democratic rights of Canadians is not only disproportionate; it would also run counter to the very purpose of the Inquiry, which is to protect Canadian democracy.

A proportionate and balanced response is especially needed in terms of Clause (a)(i)(C)(II) of your Terms of Reference, which directs the Commission to inquire into “the supports and protections in place for members of a diaspora who may be especially vulnerable and may be the first victims of foreign interference in Canada’s democratic processes”. As I have stressed in previous submissions, the “first victims” are as much the members of a stigmatized community subjected to reckless allegations of FI, as are those who have been targeted by TNR. This risk for diaspora communities has been heightened by an overly broad understanding

of foreign interference and the weaponization of FI by ideologically motivated actors, leading to the blacklisting of Canadians because of the views they hold.

There is a structural problem in the design of the Inquiry in that it privileges participants and witnesses who are motivated to provide examples of foreign interference, usually based on a particular geographic or political slant, and often based on hearsay or anecdote rather than genuine evidence.

This is not to deny or minimize the real threat of TNR against Canadians, including members of diaspora communities, but it is deeply troubling to see how some groups which do face TNR make allegations against other members of the diaspora simply because of a difference of views. Those who are on the receiving end of these allegations, and the broader diaspora community that is fearful of the stigmatization and discrimination that follows, were not given standing in the Inquiry and are generally ignored by the media.

Of the hundreds of witnesses that the Commission has heard from, only four were invited specifically to offer a perspective on threats to diaspora communities due to anti-FI zealotry, and their testimony was not even considered evidence. As you know, I applied for full participant status in the Stage 2 hearings in the hope of offering some balance to the cross-examination of witnesses but was denied.

4. Consistency

A proper appreciation for the credibility and materiality of information concerning FI threats to Canada would lead to not only a proportional response to the range of threats, but also a consistent one. If our security and intelligence agencies see fit to flag Chinese language social media posts in Canada that may constitute disinformation in an election campaign, why do they not treat the much larger volume of questionable material posted on English or French language social media in the same way?

And if Canadian politicians of Chinese descent are monitored for their interactions

with diplomats from the PRC, why is the same not done for other politicians who have interactions with diplomats from other countries? To what extent is the geopolitics of great power competition and influence from a powerful neighbour, rather than a sober assessment of the material risks faced by Canadians, a factor in the investigation choices of our national security and intelligence agencies?

Consistency requires that we take a position on foreign interference that we would expect of other countries when it comes to Canada. There is a fine line between legitimate diplomacy and foreign interference, one which CSIS says is crossed when the activity is deemed to be “detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person”. This is a useful working definition, and one which CSIS should cleave to and be fully transparent about. It is not clear, however, that a foreign diplomat or proxy advocating for better relations with his/her country meets that test.

For example, is the Team Canada effort (involving an amorphous coalition of government, business, labour, entrepreneurs, and civil society) to advance our country’s interests in the run-up to the 2024 US Presidential election much different from the PRC’s United Front activities to advance China’s interests in Canada with politicians at all levels of government? What about the news of UK Labour Party activists travelling to the United States to support the Democratic Party’s presidential candidate? Would an analogous situation in Canada qualify as unacceptable FI?

Lack of consistency in our approach to foreign interference/influence will be harmful to Canadian diplomacy and to our international reputation. We cannot, on the one hand, criticize another country for having a foreign agent registry that sets the registration threshold at 20 percent foreign funding when our own registry mandates enrollment simply based on being “in association with” a foreign principal. Likewise, we cannot keep tabs on and cultivate positive relationships with politicians and business leaders in other countries if we cast suspicion on similar actions on the part of foreign diplomats in Canada. We will be ignored every time we advocate for human rights in another country if we

reflexively brush aside as FI any observations by foreign representatives about discrimination or prejudice in Canada.

To be clear, the above examples are about normal diplomatic practice, not unlawful activities in the countries where the actions take place. We may be uncomfortable with some of the actions and statements of foreign actors in Canada, but that does not make those actions illegal. Our advocacy for human rights in other countries, after all, is also designed to make the local authorities uncomfortable – within the bounds of acceptable diplomatic practice.

The Need for Perspective

While there have been serious FI incidents in recent years -- most notably the targeted killing of a citizen -- Canadian democracy is not on the verge of collapse because of FI from state actors. There is no doubt that actions can be taken to improve the integrity of our elections, strengthen the antibodies of Canadians against disinformation, discourage threat actors from attempting FI, and improving information flow and decision making within government as well as between intelligence/law enforcement agencies and the public. The Commission will do a service to the country by helping Canadians think through these issues and advising the government on possible changes to policy and practice.

We would be misleading ourselves, however, if we thought that the issues the Inquiry has focused on are the most important threats to Canadian democracy, and that the relatively easy fixes that can be offered will bring peace and stability to the kingdom.

The present risk to our democratic system is not that we are underestimating the risk of FI, as the Inquiry has defined it; it is rather that we are verging on an overreaction to relatively unimportant sources of FI that will infringe on civil liberties while ignoring the far greater volume of non-state foreign and domestic sources of mis- and dis-information that are actively undermining Canadian values and trust in Canadian institutions. It is unfortunate that the Commission was not

given a mandate to also look at these questions, but I hope that the final report will at least comment on them. To reiterate the overarching point of this closing submission: the most important contribution your final report can make to our understanding of FI in Canada is to offer *perspective*.

Allow me to again thank you and your team for the diligence and professionalism with which the Commission has conducted itself, and to offer my best wishes as you prepare the all-important final report and bring the Inquiry to a close.

Yours sincerely,

A handwritten signature in blue ink, appearing to be "W. J. ...", written on a light-colored background.