Stage Two Written Closing Submissions
Participant: MP Jenny Kwan
Counsel: Sujit Choudhry and Mani Kakkar

Overview

Over more than eleven weeks of factual hearings in two stages, this Commission has heard important evidence on foreign interference (FI) in the last two Canadian elections and how our institutions have addressed, or failed to address, FI activity. Some of the key themes that have emerged from all of this evidence are (i) the shadow of suspicion cast on parliamentarians after the NSICOP Report, (ii) the vulnerability of political party processes to FI, (iii) the partisan conduct and response to FI threats, and (iv) the lack of appropriate mechanisms at the federal level to combat the impact of FI on the Canadian electorate and non-government actors (from political parties to parliamentarians).

In response to these emerging themes, MP Kwan requests that the Commissioner consider the following six recommendations:

1. Establishing a parliamentary process to assess allegations of parliamentarians who are witting or semi-witting participants in foreign interference to raise the cloud of suspicion over all parliamentarians. This kind of suspicion is damaging to parliamentarians and the Canadian electorate's trust in its political institutions.
2. Regulating nomination races and leadership contests, which have proven to be particularly vulnerable to FI.
3. Circumscribing the role of the NSIA to prevent them from being a block or gatekeeper of intelligence on FI.

4. Establishing an independent body to take over the roles of the Panel of Five and DMCIR (defined below). The independent body should have a broader mandate (educating non-government actors on FI, addressing instances of FI, and deciding when briefings to non-government actors is necessary or appropriate). This body should also have more robust tools to deal with the reality of FI as involving small or innocuous events that have a cumulative impact.
5. Making findings of fact to clarify the concern that a warrant in an FI investigation took 54 days to approve – a delay far outside the usual 4 to 8 days it typically takes to do so.
6. The unique risks of TikTok flowing from its indirect ownership by the PRC should be addressed by requiring ByteDance to divest and by regulating the transfer of data to governments engaged in FI. In addition, there should be a public education campaign regarding the risks of using TikTok.

Adopting the above recommendations will assist the Commissioner in her task of helping Canada protect its democratic institutions from the increasing threat of FI in our elections.

Recommendation 1: A parliamentary process should be established to assess allegations of parliamentarians who are witting or semi-witting participants in foreign interference

a. A cloud of suspicion and confusion has been cast over parliamentarians after the NSCIOP report, which requires a process to clear the air

An important focus of the Commission's Stage 2 Factual Hearings has been the unclassified June 2024 Report of the National Security and Intelligence Committee of Parliamentarians (NSICOP).[1] NSICOP concluded that "Parliamentarians are, in the words of the intelligence services,

[1] COM0000363.

semi-witting or witting participants in the efforts of foreign states to interfere in our politics".[2] It also stated that the activities "may be illegal" – that is, criminal – but nonetheless would be "unlikely to lead to criminal charges" because of the intelligence-to-evidence conundrum, i.e., the difficulty of preserving confidential sources in the face of the presumption of innocence.[3] However, NSICOP had no difficulty in concluding that "all the behaviours are deeply unethical and … contrary to the oaths and affirmations Parliamentarians take to conduct themselves in the best interest of Canada".[4]

The NSICOP did not chart a path forward. The lack of a clear roadmap for how to proceed has created an unacceptable state of affairs. As MP Kwan testified, the NSICOP Report has created a "cloud of suspicion on parliamentarians", because it makes these allegations but does not identify the Parliamentarians in question.[5] The NSICOP Report is a matter of parliamentary privilege, since the unjust damaging of the reputation of a parliamentarian can impede them from the fulfillment of these duties.[6] The NSICOP Report has besmirched the collective reputation of all parliamentarians. But the reputational damage has been most severe for parliamentarians of Chinese and Indian heritage, because the NSICOP Report – consistent with the evidence presented before the Commission – identifies China and India as the principal perpetrators of FI activity in Canada. Indeed, after the release of the NSICOP Report, MP Kwan was harangued by protestors on Parliament Hill who shouted at her, "Are you a traitor?"

[2] COM0000363, para. 164.
[3] COM0000363, para. 164.
[4] COM0000363, para. 164.
[5] JK0000078, para. 7.
[6] See MP Kwan's remarks in the House of Commons. Hansard, June 18, 2024.

After Stage 2 hearings, the suspicion has been coupled with confusion regarding the accuracy of the NSICOP's findings. During the Commission's hearings, witnesses, in particular the CSIS panel, provided additional evidence that complicated the picture painted by NSICOP. The CSIS panel testified about certain factual errors contained in the report and certain errors in the CSIS intelligence on which NSICOP relied. CSIS also disagreed with NSICOP's characterization of the activities of some parliamentarians. Some examples include:

- in relation to the allegation that an MP had "worked to influence their colleagues on India's behalf and proactively provided confidential information to Indian officials", Bo Basler testified that CSIS had not concluded that the MP had wittingly engaged in FI, and did not list that MP's activities on the list of FI activities in the CSIS Institutional Report.[7]
- NSICOP alleged an MP had provided confidential information to India, based on CSIS intelligence. Basler testified that the MP was a different MP, and the CSIS intelligence was mistaken.[8]
- The NSICOP Report described "a textbook example of FI that saw a foreign state support a witting politician", which Basler confirmed was not a CSIS conclusion; moreover, CSIS could not conclude that the MP was even aware that they were participating in FI – which contradicts the NSICOP report.[9]

[7] COM0000363, para. 55; Sept 27 hearing, p. 112, lines 8-18; WIT0000136, para. 49.
[8] COM0000363, para. 55; Sept 27 hearing, p. 114, lines 1 to p. 116, line 9; WIT0000136, paras. 61, 62.
[9] COM0000363, para. 56; Sept 27 hearing, p. 118, lines 7-19; WIT0000136, para. 67.

- The NSICOP report accused an MP of disclosing confidential information to a foreign intelligence officer, whereas CSIS concluded the information was unclassified.[10]

Although CSIS did not say so expressly, the overall message from the CSIS testimony was that the NSICOP Report had overstated its conclusions. The National Security and Intelligence Advisor (NSIA), M. Nathalie Drouin, shared this view. Her conclusion was that she had "seen inappropriate behaviours" and a "lack of judgment and, in the case of some individuals, maybe I would trust them a bit less, but I saw no MPs responsible for espionage, sabotage or putting the security of Canada at risk".[11] This was consistent with her testimony – and those of many other federal government witnesses – that intelligence is not evidence, and interpretations of the same intelligence can differ "depending on your expertise and where you're coming from".[12] Parliamentarians and the Canadian public are left with serious allegations by NSICOP that have cast a shadow of suspicion on all parliamentarians while being told that NSICOP may have been mistaken for reasons that cannot be fully explained in light of the classified nature of the intelligence. This situation is harmful for parliamentarians and the Canadian public alike.

b. A partisan stalemate at the highest levels makes a process for clearing the air urgent and necessary

On the last day of the hearing, the Prime Minster testified, unprompted, that he had "the names of a number of parliamentarians, former parliamentarians, and/or candidates in the Conservative Party of Canada who are engaged, or at high risk of, or for whom there is clear

[10] COM0000363, p. 25, box; Sept 27 hearing, p. 130, lines 2-18; WIT0000136, para. 7a.
[11] October 9, 2024 hearing transcript, p. 107, lines 5-13.
[12] October 9, 2024 hearing transcript, p. 106, lines 21-27.

intelligence around foreign interference."[13] This was new information that was not contained in any of the unclassified documents on the record – specifically, the NSICOP Report, the Prime Minister's interview summary, or the summary of his *in-camera* testimony, except for the following paragraph:[14]

> In one case, the NSIA gave him information on significant FI involving opposition parties. He told his NSIA, CSIS and others at the time that they needed a plan to respond. He said this new information was explosive. However, it was not good for a democracy that he use his role as Prime Minister, while also leader of the Liberal Party, to avail himself of information he obtained about potential FI involving opposition parties if it could be perceived as being used to embarrass them. The Prime Minister was open to guidance from the Commission on how best to handle such situations.

It is reasonable to conclude that this information was classified, and that the Prime Minister disclosed for a partisan purpose. Only on cross-examination did the Prime Minister acknowledge that he had the names of current and former Liberal parliamentarians, and candidate, who are at risk of being compromised by FI.[15] The only reasonable conclusion is that the Prime Minister's initial disclosure was selective – which reinforces the conclusion the Prime Minister's disclosure was partisan.

In addition, the Prime Minister's unprompted disclosure was not accompanied by any of the caveats and qualifications that CSIS and the NSIA offered regarding the NSICOP Report. In relation to current and former Conservative politicians, the intelligence was "clear". While we do not know the party affiliation of the parliamentarians whose conduct NSICOP assessed, in light of

[13] October 16, 2024 hearing transcript, pp. 63-64, lines 23-28.
[14] WIT0000164, para. 26.
[15] October 16, 2024 hearing transcript, p. 141, lines 8-18.

the Prime Minister's evidence, the only reasonable conclusion is that some are current or former members of the Liberal Party of Canada. If so, the Prime Minister has cast doubt on the veracity of NSICOP's conclusions regarding past or present members of his own party on the basis that NSICOP has misunderstood intelligence products, while making fresh allegations against members of an opposition party without any qualifications or caveats about the underlying intelligence. If the Prime Minister has done so, this would be a shocking politicization of intelligence that has no place in a constitutional democracy governed by the rule of law.

The CSIS testimony and the Prime Minister's testimony has made a bad situation even worse. It is imperative that there be a process to clear the air. The government's position appears to be that party leaders are the mechanism to address FI concerns within political parties. The Prime Minster testified that intelligence about suspected compromised political candidates and parliamentarians ought to be shared by CSIS with party leaders, who should obtain a top-secret security clearance first.[16] With this information in hand, party leaders could take appropriate steps within the scope of their authority. For example, they could rely on intelligence as the basis to decline to sign off on a candidate, because party leaders have "absolute discretion on who gets to run".[17] However, if this information comes too late, the Prime Minister testified that party leaders cannot remove nominees from the ballot (clearly, a reference to the allegations of FI in the nomination race in Don Valley North).[18]

[16] WIT0000164, para. 27.
[17] WIT0000164, para. 28.
[18] WIT0000164, para. 43.

By contrast, the power of party leaders over sitting MPs is much more limited. A party leader, including the Prime Minister, cannot fire an MP. At most, they can remove MPs from caucus.[19] The Prime Minister could also prevent MPs in their party from taking on certain roles – for example, serving in Cabinet or sitting on certain committees.[20] Presumably, an opposition party leader could take comparable steps regarding official critic roles and committee membership. It is a matter of public record that the Leader of the Official Opposition has declined a security clearance. The Prime Minister testified that this rendered that party leader unable to address these allegations.

Events that transpired since the Prime Minister's testimony underline how, on its own, a process focused on party leaders is inadequate, because it could fall prey to partisan politics. The Leader of the Official Opposition alleged in a public statement released shortly after the Prime Minister testified that he "lying" in his testimony that morning.[21] Specifically, the Leader stated that he received a briefing on October 14, 2024 from GAC Deputy Minister Morrison, NSIA Drouin, and CSIS Director Dan Rogers, regarding FI by India, during which these allegations were not shared with him. Moreover, the Leader references classified briefings (in the plural) provided to his Chief of Staff, Ian Todd, which did not address these allegations. While the PCO Institutional Report references at least one such classified briefing to Todd, as did the evidence of Nabih Eldbes, we

[19] WIT0000164, para. 43.
[20] WIT0000164, para. 41.
[21] https://x.com/pierrepoilievre/status/1846615484650701007?s=12&t=0FlH8bPVWkcR3L-0nyatMg.

simply do not know what happened.[22] The Leader also called for the Prime Minister to publicly release the names, but said the Prime Minister would not because he was "making it up".[23]

The Prime Minister insists that the Leader of the Official Opposition get a security clearance as have the leaders of other political parties. The Leader of the Official Opposition counters that the Prime Minister has the authority to declassify intelligence and provide it to him without the need for him to receive a security clearance.[24] At present, it is unclear if the Leader of the Official Opposition will receive a briefing, and if so, how detailed it will be. The Prime Minister has apparently directed CSIS to deliver the intelligence to the Leader without the need for him to obtain security clearance.[25] If so, this would likely be a threat reduction measure under the *CSIS Act*, which tightly circumscribes the release of classified intelligence, unlike if the Leader of the Official Opposition had the appropriate security clearance. Until there is a significant change, there is a stalemate at the highest levels of our political institutions over questions that go to the very heart of our constitutional democracy.

c. Recommendation: a standing process to address allegations of FI by parliamentarians

The need for a process to clear the air was imperative after the NSICOP Report. It has now become urgent, especially since there must be a federal election by Fall 2025, in which individuals alleged to have participated in FI may be candidates. The Commission has undertaken to review the allegations before the NSICOP. We hope the Commission will be as forthcoming as possible in

[22] CAN.DOC.0000011 and WIT0000110, paras. 47-49.
[23] https://x.com/pierrepoilievre/status/1846615484650701007?s=12&t=0FlH8bPVWkcR3L-0nyatMg.
[24] Ibid.
[25] Tunney, Catherine, "Trudeau says he's asked spy agencies to share foreign interference information with Poilievre," CBC News, October 30, 2024.

its public report. We anticipate, however, that since the relevant intelligence is classified, it is inevitable that any detailed findings will also be classified. Moreover, the Commission is not a standing body that will be able to address future allegations against parliamentarians. Nor is the alternative suggested by Drouin – criminal prosecutions – sufficient on its own.[26] FI activity by parliamentarians likely falls on a spectrum from instances of bad judgment, on the one hand, to criminal acts on the other. The criminal legal process will only capture extreme activity. Moreover, the timeframe of prosecutions and appeals, which can take many years, is a poor fit with the electoral calendar. The intelligence-to-evidence conundrum poses barriers to effective criminal prosecutions as well. Furthermore, there should be a range of responses, that are proportionate to the seriousness of the conduct, including for activities that fall well short of a crime, for which criminal sanctions may be inappropriate.

MP Kwan proposes a parliamentary process, with the following key elements.

First, the legal basis for the process would be parliamentary privilege, pursuant to which Parliament has the authority over its members, to set certain standards for their conduct, to assess their conduct against those standards, and to take appropriate steps if members fail to meet those standards, ranging from censure and reprimand, through to suspension and even expulsion.

Second, this process would be centered on a parliamentary committee. There are a variety options. These include the House of Commons Procedure and House Affairs Committee (PROC), the parallel committee in the Senate – the Rules, Procedures and the Rights of Parliament Committee (RPRD) – or a joint House/Senate Committee. The mandate of these committees is

[26] October 9, 2024, hearing transcript, p. 110, lines 27-28; p. 111, lines 1-4.

rooted in parliamentary privilege, and they have historically been independent of the government. An alternative would be to expand the mandate and powers of NSICOP to address these allegations – NSICOP 2.0 – through a revised set of procedures set out below. Consideration should be given to providing members of NSICOP with further guidance or training on the use of intelligence products in order for NSICOP to best fulfill its expanded role.

Third, the committee's process must balance transparency, national security and procedural fairness. The committee should meet *in camera* to review allegations. It should receive evidence from the security and intelligence agencies, including CSIS, the CSE and RCMP. This would require committee members to have the requisite security clearance, as NSICOP members already do. The committee should receive evidence and submissions from parliamentarians, who must be given a chance to defend themselves. In cases where the allegations are based on classified intelligence, the committee may proceed *ex parte* in the absence of the parliamentarian, but should use other mechanisms to ensure procedural fairness, such as security cleared special advocates (as exist under the *Immigration and Refugee Protection Act*) or *amicus curiae* (whom are frequently appointed by the Federal Court in matters arising under section 38 of the *Canada Evidence Act*).

Fourth, the committee should report to Parliament, with proposed next steps in relation to the parliamentarians. This part of the process would necessarily be public, although there may classified information which the committee could not disclose. An important consideration is the declassification of intelligence reviewed by the committee, to maximize public transparency to the greatest extent possible.

Recommendation 2: Nomination processes and leadership contests should be regulated

The NSICOP Report and the Commissioner's Initial Report both highlight the vulnerabilities of political processes. The 2019 Don Valley North nomination contest is a prime example of how such vulnerabilities can be exploited and the disproportionate impact such FI can have on election outcomes.

NSICOP described the FI activity as the PRC "Consulate knowingly [breaking] the Liberal Party of Canada's rule that voters in a nomination process must be living in the riding." The proceeding three sentences of the report are deleted, but NSICOP notes, "the sentences noted that the students reportedly lived outside the riding, were provided with fraudulent residency paperwork…" Then NSICOP states, "CSIS assessed that the PRC's foreign interference activities played a *** significant role in Mr. Dong's nomination, which he won **** by a small margin. By *successfully interfering* in the nomination process of what can be considered a safe riding for the Liberal party of Canada, the PRC was well-positioned to ensure its preferred candidate was elected to Parliament."[27] (emphasis added)

When testifying before the Commission in Stage 2, Basler indicated that everything he, on behalf of CSIS, could say publicly about the Don Valley North nomination contest is contained in a summary provided by CSIS.[28] That summary does not deny or confirm the above excerpted portion of the NSICOP report. No part of the CSIS panel's testimony (or any other panel) casts doubt on the correctness of the underlying intelligence reviewed by NSICOP.

[27] COM0000363, p. 31.
[28] CAN.SUM.0000019.

NSICOP also concluded that "foreign actors also targeted party leadership campaigns." The proceedings sentences and paragraph of the NSICOP Report were deleted but NSICOP notes that, "the sentences described two specific instances where PRC officials allegedly interfered in leadership races of the Conservative Party of Canada," and "the paragraph described India's alleged interference in a Conservative Party of Canada leadership race."[29]

In light of what NSICOP describes as successful FI by the PRC in a nomination contest, and multiple alleged accounts of FI by India in Conservative leadership races, it is clear that political processes need to be regulated (not run by) appropriate federal government agencies such as Elections Canada, with other government agencies having the ability to address any potential or actual FI.

MP Kwan proposes that nomination and leadership contests for all parties have stricter rules for identifying who can vote in a nomination contest. Elections Canada should cooperate by providing any electoral lists or information that would assist the parties in verifying the identity of potential members / voters.

Elections Canada may consider adopting a blanket regulation that applies to all political parties that limits voting in nomination processes and leadership contests to Canadian citizens and permanent residents. Limiting voting to Canadian citizens and permeant residents does not prevent others from being involved with political parties or Canadian democracy in other ways (including as volunteers).

[29] COM0000363, paras. 72-74.

An independent body (as proposed in Recommendation 4 below) should monitor and take appropriate steps to address any FI activity targeting nomination races and leadership contests.

Political parties and candidates should be given training on how to identify potential FI activities and who they can report instances of potential FI to within and outside of their organization. Political parties should be required to report any instances of FI they become aware of to the relevant government agency or the independent body (as proposed in Recommendation 4 below).

To allow for the above proposals to be effectively implemented, political parties should be provided support (resources, knowledge and funds) by the government. The nature of the support should be determined in consultation with the political parties. Failing to provide adequate support will leave political parties unable to effectively implement the changes needed to strengthen political processes at the heart of Canadian democracy.

Recommendation 3: The role of the NSIA should be formalized in legislation

The National Security and Intelligence Advisor (NSIA) is a key position in Canada' national security architecture. However, the mandate of the NSIA, and their relationship to the heads of other security and intelligence agencies – principally, the Director of CSIS – is not set out in a legal instrument. Moreover, it appears that the role of NSIA has been fluid and evolving, in part depending on the professional expertise of other senior officials. For example, Prime Minister Trudeau testified that since former Clerk Ian Shugart had a significant foreign policy background, the NSIA played a different role.[30]

[30] October 16, 2024, hearing transcript, p. 9, lines 15-28.

The absence of a formal legal mandate for the NSIA, however, has created serious challenges regarding the federal government's response to FI. The evidence before the Commission, as well as the NSICOP report, shows that the NSIA has served as a gatekeeper and editor of important intelligence products regarding FI generated by CSIS that were intended for the Prime Minister.[31] The principal example is the CSIS Targeting Paper, which was examined in detail in the National Security Intelligence Review Agency Report of May 2024.[32] CSIS prepared a report on PRC FI activities against federal political actors, which was finalized in June 2021. In the view of CSIS, this report was the most comprehensive analysis ever prepared on this topic to that date. Moreover, CSIS Director David Vigneault testified that the intended audience for the report was the Prime Minister.[33]

However, the CSIS report was not initially circulated, for a mixture of reasons that included its sensitivity. In late 2022, at the urging of the author of the report, CSIS initiated the process of publishing the report, which was circulated on February 13, 2022. However, on February 22, 2022, the report was made inaccessible by CSIS Director Vigneault at the request of NSIA Jody Thomas. The PCO and CSIS provided differing accounts of what exactly transpired – CSIS informed NSIRA that the NSIA had expressed concerns that the distribution list was too long, given the extremely sensitive content of the report, whereas the PCO informed NSIRA that the NSIA had disagreed with the characterization of some PRC activity as FI, which she viewed as diplomatic practice.

[31] COM0000364, paras. 121-133.
[32] COM0000364, paras. 121-133.
[33] September 27, 2024, hearing transcript, p. 74, lines 10-11.

There was a high-level meeting to discuss the report on February 24, 2023, which was attended by Director Vigneault, NSIA Thomas, the Clerk, the Chief of CSE, the Deputy Ministers of Public Safety and Global Affairs Canada, and the author – which underlines the significance of the report. At the NSIA's request, the CSIS analyst prepared a version of the report on March 9, 2023 specifically for the Prime Minister. But this report was never delivered to the Prime Minister. According to the NSIRA, the PCO and the NSIA's position was that this report was not intended for the Prime Minister – which sits in tension with the understanding of CSIS that the Prime Minister was the intended audience. Director Vigneault only learned that the report had not been provided to the Prime Minister when he was contacted by NSIRA. In his evidence before the Commission, Director Vigneault stated that he was "very surprised" because the paper was "very pertinent".[34]

The fate of the CSIS Targeting Paper illustrates the shortcomings of an undefined mandate for the NSIA. The NSIA has emerged as an editor of intelligence products, and a gatekeeper to the Prime Minister. The reason is that key line ministers did not escalate these issues to the Prime Minister. For example, there is no evidence of the involvement of the Minister of Public Safety in the disagreement between NSIA Thomas and Director Vigneault at the time – the Hon. Marco Mendicino. It is unclear if these issues were brought to him for direction, and whether he was advised to take them up with the Prime Minister. A related issue is the persistent disagreement of opinion between CSIS and GAC over whether certain activity is FI or diplomatic activity. Minister of Foreign Affairs Melanie Joly testified that she had been unaware of FI by the PRC until April 2023 – even though evidence sets out a few dozen demarches to the PRC dating back to Fall 2021, which

[34] WIT0000135, para. 55.

the Minister appears to have been unaware of.[35] It is unclear if GAC briefed the Minister of Foreign Affairs on its disagreements with CSIS – and if CSIS briefed the Minister of Public Safety on the same. Had they both done so, those Ministers could have intervened with the Prime Minister, possibly triggering a discussion about these issues in Cabinet.

So while NSIA Thomas, CSIS Director Dan Rogers, and former NSIA Janice Charette emphasized that "ministerial accountabilities" are important, this presupposes that Ministers are engaged on these issues.[36] And if Ministers are not engaged, the NSIA can fill the vacuum left by the absence of Ministerial accountabilities. In essence, the NSIA has exercised Ministerial powers, by resolving disputes among Deputy Ministers. In all likelihood, the NSIA has done so with the support or acquiescence of the Clerk. This is profoundly undemocratic.

There is no easy solution to this situation. MP Kwan proposes the following initial steps.

First, the role of the NSIA must be defined in law to clarify that the NSIA can provide feedback and input on intelligence products but cannot determine their content or block their distribution. The NSIA should be prohibited from being an editor and gatekeeper. Formalizing the role of the NSIA in law should also include terms of reference that define the relationship between the NSIA and the heads of the other security agencies, in particular the Director of CSIS.

Second, disagreements between the NSIA and the heads of the security and intelligence agencies (CSE, CSIS, and RCMP) should be addressed at the appropriate Deputy Minister table (e.g. the Deputy Ministers' Committee on Intelligence Response), in the first instance. If these senior

[35] October 10, 2024, hearing transcript, p. 167, lines 1-28, p. 171, lines 1-28; CAN023929_0001; CAN047008_0001.
[36] See generally the October 9, 2024 panel with CSIS Director Daniel Rogers, NSIA Nathalie Drouin, Clerk John Hannaford, former NSIA Jody Thomas, and former Clerk Janice Charette.

officials are unable to resolve their disagreements, the officials should provide options to their respective Ministers. Those Ministers can then assess these options, and attempt to resolve disputes at the Ministerial level, and if necessary, with the Prime Minister and Cabinet. But in parallel with that Minister-led process, the Director of CSIS must have a direct line of communication with the Prime Minister, who has a special responsibility for national security. The NSIA should not be able to limit access to the Prime Minister, or prevent CSIS reports from reaching the Prime Minister the Director of CSIS wishes to provide. Third, Ministerial mandate letters for the Ministers of Foreign Affairs and Public Safety should expressly set out their responsibilities with respect to countering FI. But ultimately, the solution lies in a culture of strong Cabinet governance, where civil servants empower their Ministers to raise issues with the Prime Minister and the PMO.

Recommendation 4: An independent body should be established to replace the Panel of Five and the Deputy Ministers' Committee on Intelligence Response

A key issue for the Commissioner to address in the Stage 2 Factual Hearings and the Policy Phase is whether there are serious gaps in the mechanisms available to address FI when it comes to making the public and those outside of the government aware of certain FI activity. The Panel of Five established under the Critical Election Incident Public Protocol (CEIPP), which decides whether or not FI incidents warrant a public announcement during the caretaker convention, and the Deputy Ministers' Committee on Intelligence Response (DMCIR), which performs a similar function outside the caretaker convention for by-elections are insufficient because they lack sufficiently robust tools to address FI and they are susceptible to partisan (mis)conduct.

Instead, MP Kwan proposes the establishment of a more robust and independent body that can:

- monitor and take steps to counter FI during political and governmental processes (as defined by Bill C-70), including elections, nominations and leadership contests, at both the national and subnational level at all relevant times;
- decide whether briefings should be provided to parliamentarians and political parties and party leaders regarding relevant incidents of FI activity at all times; and
- inform Canadians of an instance or instances of FI during elections or by-elections that meet a relevant threshold.

An independent body of this nature should be established by legislation with clear terms of reference. Legislation would vest this independent body with delegated authority, both during and outside the caretaker period.

a. The current approach is too limited with respect to when and how instances of FI can be addressed

The Panel of Five operates during the general election, when the caretaker convention limits Ministerial power to routine operations. The Panel of Five is comprised of five senior public officials tasked with informing the Canadian public of a FI incident(s) that would threaten the integrity of the elections. The Panel of Five uses considerable judgment to determine if the very high threshold is met by assessing:[37]

- the degree to which the incident(s) undermine(s) Canadians' ability to have a free and fair election;
- the degree or confidence officials have in the intelligence or information; and

[37] CAN0000457.

- the potential of the incident(s) to undermine the credibility of the election

If the threshold is met, the Panel of Five has some flexibility in its response, from a notice of election interference to setting the record straight or mitigation. However, its response is limited to an announcement to the public. The threshold is a high bar to meet and if met, the Panel of Five has one option in response – an announcement.[38]

DMCIR, on the other hand, operates outside the caretaker convention when by-elections occur. Since ministers are vested with their full powers during by-elections, DMCIR operates slightly differently. The Deputy Ministers on DMCIR assess the threshold with respect to a given incident(s) of FI, but then each Deputy Minister takes the matter back to their respective Ministers for action. In theory, this could mean that DMCIR has more possible responses available to it than the Panel of Five. However, in his testimony, Allen Sutherland suggested that the outcome would be the same irrespective of whether the FI incident(s) occurred during the general election (when the Panel of Five is the decision-maker) or during a by-election (when DMCIR/the relevant Ministers would be the decision-makers).[39] Even though this conclusion seems at odds with the differences between the Panel of Five and DMCIR's structures, it would also be illogical for there to be greater or different protections against FI during a by-election than a general election.

Irrespective of whether the decision-maker is the Panel of Five or DMCIR, the approach of a high threshold and singular (or similarly limited) response is mismatched with the reality of FI activity.

[38] Ibid.
[39] September 26, 2024, hearing transcript, p. 182, lines 1-20.

First, the evidence before this Commission shows that FI can be accomplished through the cumulative impact of smaller or seemingly innocuous incidents, which are unlikely to trigger the threshold as described above. This problem is reflected in the Commissioner's first report, in which each incident before the Panel of Five and its decision that the threshold was not triggered is described:

- No announcement was made when allegation of financial support of certain candidates in the Toronto area by PRC officials were brought forward because there was ambiguity and lack of clarity in relation to intent and purpose. The Panel of Give asked national security agencies to monitor the situation and report back.[40]
- No announcement was made when the Buffalo Chronicle published false stories about Prime Minister Trudeau, because Buzzfeed and the Toronto Star had published articles of their investigations showing the allegations in the Buffalo Chronicle to be false.[41]
- No announcement was made when false narratives regarding Kenny Chiu were brought to the Panel of Five's attention but were difficult to attribute to the PRC.[42]
- No announcement was made when false narratives regarding Erin O'Toole were brought to the Panel of Five's attention on the basis that such narratives had died down prior to election day.[43]

[40] *Initial Report of the Public Inquiry into Foreign Interference in Federal Electoral Processes and Democratic Institutions* (May 3, 2024), p. 120
[41] Ibid, pp. 121-122.
[42] Ibid, pp. 128-132.
[43] Ibid, pp. 128-132.

- No announcement was made when potential PRC interference through a campaign event hosted by Fred Kwok for a Liberal candidate in Vancouver East were flagged in a SITREP provided to the Panel of Five by the SITE Taskforce.[44]

What is clear from the above list is the many ways in which FI can be conducted, from the use of proxies to covertly carry out a foreign actor's interests, to the use of "slush funds", to the deplatforming of candidates by key community organizations. MP Kwan does not take issue with the reasonableness of the Panel of Five's decision at the time in each incident to determine that the threshold had not been met, and to not trigger the treshold. However, the above list of (potential) FI activity reflects the gaps inherent in the current approach and the heavy reliance on the media ecosystem cleansing itself.[45]

Second, this Commission has often seen evidence that certain Canadian voters are more likely to be targets of FI, such as members of the Indian or Chinese diasporas. The above list shows that many of the (potential) FI incidents (outside of the Buffalo Chronicle) were directed at local diaspora communities. The high threshold and singular response approach does not account for this reality when it focuses on Canadian voters as a whole or election integrity at a national level.

b. The current approach is susceptible to partisan (mis)conduct

When it comes to potential instances of FI, the Panel of Five (and supposedly DMCIR) are heavily circumscribed and as such, many potential responses are left to other government actors, often politicians – whether the Prime Minister, Ministers, the Privy Council, or the Leader of the Opposition. The above list of incidents assessed by the Panel of Five in the last two elections and

[44] Ibid, pp. 136-137.
[45] Ibid, p. 132.

certain evidence before the Commission show that particular MPs or parties are often targeted. Given that political parties and their candidates are central to elections, this way of conducting FI activities makes sense and also leaves room for partisan (mis)conduct.

In fact, this Commission has come across a number of instances where questions of partisan (mis)conduct have been credibly raised (even if left ultimately unanswered because the relevant information is classified), including:

- the Privy Council office instructing Facebook to remove posts related to the false narrative about Justin Trudeau initially published in the Buffalo Chronicle, while not taking any similar steps in other cases of alleged false narratives, such as those targeting Kenny Chiu or Erin O'Toole;[46]
- a significant delay by the Prime Minister's Office in responding to a request by CSIS to brief MPs;[47]
- the Leader of the Official Opposition refusing to be security cleared on the basis that Prime Minister Trudeau (the Liberal leader) was lying or hindering his ability to speak openly about the allegations of FI;[48] and
- the Prime Minister revealing potentially classified information about allegations of FI activity by Conservative MPs and seeking this Commission's recommendations regarding acting on sensitive information of FI activity related to another party's members.

[46] Ibid, pp. 121-122, 128-132.
[47] October 16, 2024, hearing transcript, p. 21, lines 1-16.
[48] https://x.com/pierrepoilievre/status/1846615484650701007?s=12&t=0FlH8bPVWkcR3L-0nyatMg.

What becomes clear from the above examples are all the ways in which the responses of government officials and politicians can be viewed by Canadians as potentially or actually being motivated by partisan politics. Partisan responses undermine Canadians' confidence in their institutions and harm Canada's ability to combat FI.

c. The current approach does not align with Bill C-70 as enacted

The current approach of addressing FI is too circumscribed to federal elections and overlooks subnational elections and political party processes. Bill C-70 makes significant changes to the legal landscape by adopting a broader definition of "political or governmental processes", which explicitly include political processes (such as nomination processes and leadership contests) and subnational elections. Broadening the definition is welcome given this Commission's first report and the NSICOP report. Both reports agreed that political party processes remain especially vulnerable and FI in nomination processes can have a disproportionate impact on election integrity in ridings that are "safe seats" for a particular party.

d. An independent body with a broader mandate and more robust tools to address FI should be recommended

In light of the above, MP Kwan proposes the establishment of an independent body empowered by legislation:

- to monitor any FI activity (including but not limited to disinformation campaigns) during political and governmental processes, including elections, by-elections, and nominations and leadership contests, at both the national and subnational level.

- to respond to any monitored FI activity using a robust set of appropriate powers, including, but not limited to, the power to (i) make an announcement to all or a subset of the Canadian electorate on its own accord or in conjunction with another government agency (i.e. Elections Canada), (ii) provide a briefing (in consultation with CSIS or another relevant agency) regarding an FI incident to an MP, political candidate, party staff or leader, subject to appropriate requirements (i.e. security clearance), and (iii) provide training directly or in conjunction with relevant government agencies to non-government actors, such as political parties, on how to recognize and combat FI in political processes, and to parliamentarians on how to safeguard against unwitting or semi-witting engagement with FI actors or their proxies.
- to apply a sliding scale of thresholds to a sliding scale of responses (i.e. with a higher threshold for a response that involves greater intrusion on rights such as free speech or involve greater risk, such as a briefing which includes classified information).
- to exercise its functions at the subnational level in coordination with subnational security agencies and electoral authorities as needed.
- to be continually informed by the SITE taskforce of any relevant FI activity, whose terms of reference should also be expanded to match Bill C-70's definition of a political or governmental process.

In addition, the Rapid Response Mechanism (RRM) should be housed in an appropriate ministry. RRM should enhance its expertise and increase its capacity to monitor platforms such as TikTok and WeChat.

Recommendation 5: The Commissioner should make factual findings on the CSIS warrant

The Commission must make findings of fact regarding the CSIS Warrant which took 54 days to approve. Every aspect of the process raises questions.

First, it appears that CSIS provided advance notice regarding the warrant to the Minister of Public Safety, Bill Blair and his Chief of Staff, Zita Astravas – but we do not know *why* advance notice was given. Michelle Tessier from CSIS testified that she briefed Astravas about the warrant so it did not arrive without warning – at least six weeks in advance.[49] Public Safety Deputy Minister Rob Stewart testified that it "would have taken CSIS some time to get the Minister and his staff comfortable with this particular warrant", but did not elaborate on the grounds of national security.[50] There are also inconsistencies in the evidence. Astravas asserted Blair had discussed issues related to the warrant with Director Vigneault a number of times prior to the application arriving – whereas Blair only recalls one discussion.[51] Astravas stated that Blair was aware the warrant was forthcoming, while Blair stated that he first became aware of it on the day he signed it.[52]

Second, the normal process for CSIS was not followed. Astravas understood Minister Blair's expectation that warrants be processed quickly, and her general practice when a warrant application was submitted was to advise the Minister to attend a SCIF.[53] Astravas would flag a warrant for Minister Blair to sign, the Minster would not know there was a warrant for him to sign

[49] WIT0000121, p. 12; WIT0000134, p. 73; September 27, 2024, hearing transcript, p. 143, lines 1-28.
[50] WIT0000154, p. 10.
[51] WIT0000158, p. 16; October 11, 2024, hearing transcript, p. 58, lines 20-28.
[52] Astravas: WIT0000157, p. 31 vs. Blair: WIT0000156, p. 11.
[53] WIT0000158, p. 32.

unless Astravas informed him of such.[54] But she did not advise Minister Blair to attend a SCIF for this warrant, or flag it, until the day he signed it (nearly 54 days after she first became aware of the warrant) – and did not explain why she did not take that step.[55] Astravas testified that her role was to ensure necessary clerical procedures had been complied with, and only asked questions for her own understanding.[56] But Astravas asked questions about the threshold to obtain a warrant, and an internal CSIS email expressed the concern that based on her questions, the warrant would not be approved.[57] Minister Blair expected to be advised of such internal discussions, but he was not.[58] Astravas requested a second meeting with CSIS to discuss the Vanweenan list – which she had never done before – and was interested in the impact on persons from being on the list.[59]

Third, the warrant took much longer to process than other CSIS warrants. Most CSIS warrants were processed within 4 to 8 days, whereas this warrant took 54 days to approve.[60] Although Astravas testified that this was an exceptionally busy time, two other CSIS warrants before the Minister at the same time were approved within 4 to 8 days, as one would expect.[61] Astravas testified that Director Vigneault had not flagged the warrant as a priority, and that renewals took less time to process – but there is no evidence that the two other warrants were renewals or were flagged as a priority.[62]

[54] WIT0000153, pp. 20-21.
[55] October 9, 2024, hearing transcript, p. 259 lines 1-28.
[56] WIT0000158, p. 20.
[57] WIT0000158, pp. 23, 33.
[58] WIT0000158, p. 6.
[59] WIT0000158, p. 29.
[60] October 9, 2024, hearing transcript, p. 257, lines 6-28.
[61] WIT0000156, p. 10; WIT0000157, p. 33; WIT0000158, p. 39.
[62] October 9, 2024, hearing transcript, p. 257, lines 6-28.

The Commission must answer why there were so many departures from standard procedure for this warrant. Was it because Astravas sought to protect the target? Did she seek to protect the names on the Vanweenan list? Were these individuals prominent members of the Liberal Party? Did they include Cabinet ministers?

Recommendation 6: TikTok's unique risks should be addressed by legislation and public education

TikTok, unlike other platforms, has been described in a CSIS Analytical Brief as, "…the People's Republic of China's first Western-centric social media application [that] has the potential to be exploited by the PRC government to bolster its influence and power overseas, including in Canada." CSIS goes on to say, "The highly addictive short-video application, owned by PRC's ByteDance, allows [redaction] access to sensitive user data. [redaction] Despite assurances to the contrary, personal data on TikTok users is accessible to China."[63] The same Analytical Brief specifies that although claims have been made that user data is stored in the United States and Singapore, an internal company document from ByteDance's internal audit and risk control department confirms that data stored in servers located outside China is also possibly retained on Chinese based servers.[64]

The concerns raised by this Analytical Brief are shared by MP Kwan, who testified, "this information confirms my fears about TikTok. And what I'm worried about is that the general public does not know this."[65]

[63] Ibid.
[64] Ibid.
[65] September 18, 2024, hearing transcript, p. 122, lines 5-13.

In light of this evidence, MP Kwan recommends a multifaceted approach to dealing with TikTok.

First, the government should consider forcing TikTok to divest from its Canadian subsidiary or face a ban in Canada (with the application not being offered on Canadian app stores). Whether this outcome can be accomplished through existing legislation (i.e. *Investment Canada Act*) or new legislation should be evaluated by the government.

Alongside making this change, the government should consider an educational campaign to address how such a ban does not flow from anti-Chinese sentiment, but from a real concern regarding the FI activities in which the PRC is engaged. It is important to stop anti-Chinese rhetoric from being used to block initiatives meant to prevent the PRC from engaging in FI and transnational repression. Doing so is not the same as approaching Canadians who are also members of the Chinese diaspora with suspicion (in other words, McCarthyism targeting diaspora communities), which is clearly wrong. The same is true for the foreign registry and other amendments enacted by Bill C-70.

Second, the flow of user data to servers accessible by China or other countries engaged in FI should be regulated as a more fulsome and long-term solution. Another application may take TikTok's place, and the issue of the flow of user data to countries that engage in FI will once again be paramount. As such, legislation banning the transfer of user data to countries engaged in FI, and audits to enforce such provisions, should be considered.

Third, the government should consider investing in public education campaigns on the unique risks of TikTok. It is unclear how aware Canadian users are about the risks associated with

TikTok not just for themselves but how it can be used by FI actors to help undermine liberal democracies while advancing those FI actor's political interests and propaganda.

Fourth, recommendations should be made to political parties, their leaders, and their candidates to ban the use of TikTok. The same ban could be recommended for the personal devices held by government officials and parliamentarians in the interest of safeguarding against FI threats to Canada's national security.

Conclusion

The Commission's mandate addresses profoundly important issues that go to the heart of our constitutional democracy. Through the factual phases, it has been provided with a large amount of information, which has sometimes been conflicting. Moreover, the hearings have closely examined the institutions, norms and processes governing our response to foreign interference. The Commission must be completely unflinching in its assessment of the weaknesses of these institutions. It is also vital for the Commission's legitimacy in the eyes of the Canadian public that it be unflinching in setting out who in the government knew what, when they knew it, and what they did – or did not do – about it.