



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

Enquête publique sur l'ingérence étrangère dans les
processus électoraux et les institutions démocratiques
fédéraux

Public Hearing

Audience publique

Commissioner / Commissaire
The Honourable / L'honorable
Marie-Josée Hogue

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II Appearances / Comparutions

Commission Lead Counsel / Procureure en chef de la commission	Shantona Chaudhury
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Commission Research Council / Conseil de la recherche de la commission	Geneviève Cartier Nomi Claire Lazar Lori Turnbull Leah West
Commission Senior Policy Advisors / Conseillers principaux en politiques de la commission	Paul Cavalluzzo Danielle Côté
Commission Staff / Personnel de la commission	Annie Desgagné Casper Donovan Michael Tansey

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Appearances / Comparutions

Ukrainian Canadian Congress	Donald Bayne Jon Doody
Government of Canada	Gregory Tzemenakis Barney Brucker
Office of the Commissioner of Canada Elections	Christina Maheux Luc Boucher
Human Rights Coalition	Hannah Taylor Sarah Teich
Russian Canadian Democratic Alliance	Mark Power Guillaume Sirois
Michael Chan	John Chapman Andy Chan
Han Dong	Mark Polley Emily Young Jeffrey Wang
Michael Chong	Gib van Ert Fraser Harland
Jenny Kwan	Sujit Choudhry Mani Kakkar
Media Coalition	Christian Leblanc Patricia Hénault
Centre for Free Expression	John Mather Michael Robson

IV Appearances / Comparutions

Churchill Society	Malliha Wilson
The Pillar Society	Daniel Stanton
Democracy Watch	Wade Poziomka Nick Papageorge
Canada's NDP	No one appearing
Conservative Party of Canada	Michael Wilson Nando de Luca
Chinese Canadian Concern Group on The Chinese Communist Party's Human Rights Violations	Neil Chantler
Erin O'Toole	Thomas W. Jarmyn Preston Lim
Senator Yuen Pau Woo	Yuen Pau Woo

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Ottawa, Ontario

--- Upon commencing Monday, January 28, 2024 at 10:00 a.m.

COMMISSIONER HOGUE: I would like to take this opportunity to thank the representatives of Public Services and Procurement Canada for their cooperation and availability in organizing the venues in such a way that everyone can work effectively and the public feels welcome.

My name is Marie-Josée Hogue and I have been appointed Commissioner to preside over the Commission's work and bring it to a successful conclusion. I usually serve as Judge on the Quebec Court of Appeal, and although I will be returning to my duties when the Commission's work is completed, I have been devoting myself entirely to the Commission's work since mid-September.

I would like to thank the Chief Justice of Quebec, the Honourable Manon Savard, for agreeing to temporarily relieve me of my duties as a Judge.

Welcome to you all wherever you are here in this room, listening on television or via webcast. Thank you for your interest in the Commission's work. It demonstrates the importance you attach to our democracy and your commitment to ensuring its protection.

I am accompanied today by some of the Commission staff. Ms. Shantona Chaudhury is the Commissioner's lead counsel. You'll get to know her and appreciate her work. I'm certain about that. Many of the counsel on her team are also here today and you will have the opportunity to see them in action this week.

1 I'm also accompanied by Professor Geneviève
2 Cartier, our research counsel chair. Her team has identified
3 experts with the knowledge required to assist the Commission
4 in carrying out its mandate. I will come back to the role of
5 these experts later.

6 I would like to thank them all for their
7 commitment as well as those who work behind the scenes,
8 executive directors, communications managers, editors,
9 assistants, translators, interpreters, administrative and
10 technical staff and security personnel. Without them, it
11 would simply be impossible to carry out the mandate entrusted
12 to us.

13 Before turning to the Commission's intended
14 work, I would like to recall the context that gave rise to
15 its creation, what the role of a commission of inquiry is,
16 and the mandate that has been entrusted to us here. I will
17 then give an overview of the work the Commission wants to
18 undertake and how we intend to do it.

19 Allegations that foreign governments are
20 attempting to interfere in Canadian elections have been
21 circulating for some time, but these allegations were
22 particularly prevalent in 2022 when some media outlets
23 reported that they had received information suggesting
24 foreign interference in the 2019 and 2021 federal elections.

25 In the wake of these revelations, some
26 members of Parliament have publicly asserted that they
27 themselves have been the target of foreign interference and
28 that they were not notified about it in good time by Canadian

1 authorities.

2 Given the importance of protecting our
3 democracy, these allegations have sparked significant debate
4 and discussions, both at the political level and in the
5 media. Thus, in March 2023, the government of Canada
6 appointed the Right Honourable David Johnston as independent
7 special rapporteur asking him to determine whether foreign
8 governments had indeed attempted to influence election
9 results, either by interfering with voters or with the
10 candidates themselves.

11 He was also asked to review, where
12 appropriate, the information and actions taken by the federal
13 government in relation to the threat of foreign interference
14 and to determine whether it will be advisable to investigate
15 the matter further.

16 ...submitted a public report together with a
17 confidential annex on the 23rd of May, 2023. In his report,
18 he concluded that foreign governments had attempted to
19 influence candidates and voters in the last two elections,
20 but without compromising the integrity of the elections.

21 He also expressed the opinion that the way
22 the information on this matter had been circulated was
23 problematic, adding, however, that nothing he had seen led to
24 the conclusion that the Prime Minister or any Minister or
25 their respective offices had refrained voluntarily or through
26 negligence from acting on information they may have received
27 relating to acts of foreign interference. He recommended
28 that an additional public process other than a public

1 Commission of Inquiry, given the amount of related classified
2 documents, be undertaken to further examine the threat posed
3 by foreign interference.

4 There is no need to revisit the events that
5 subsequently led to the special rapporteur's resignation.
6 Suffice it to say that on the 7th of September, 2023, with
7 the agreement of all the recognized political parties, the
8 Government of Canada established by Order in Council the
9 present Commission of Inquiry and appointed me Commissioner.
10 I took office shortly after, on the 18th of September.

11 I would like to say a few words on the nature
12 and role of a Commission of Inquiry.

13 A Commission of Inquiry is a public
14 institution created by the government and entirely
15 independent of it in the pursuit of its work. It has
16 considerable leeway in all its decisions relating to the way
17 it chooses to proceed. It is not bound by conclusions
18 arrived at by others called upon to study similar matters.

19 That being said, the Commission has to carry
20 out its powers as stated in the constitutive mandate while
21 respecting procedural fairness.

22 The role of a Commission of Inquiry is to
23 investigate the facts in order to understand what happened in
24 a given situation. Under its mandate, it carries out an
25 objective search of the truth while identifying specific
26 matters, draws conclusions and make recommendations to the
27 government.

28 Subject to some constraints I will come back

1 to later, those facts are made public.

2 The role of a Commission of Inquiry is to
3 investigate the facts in order to understand what happened in
4 a given situation. Its objective is to search for the truth.
5 Seeking to understand what happened in order to inform the
6 public and make recommendations to the government, it
7 attempts to identify all relevant facts and then draw
8 conclusions. Subject to certain constraints, to which I will
9 return later, it makes these facts public.

10 The process followed by a Commission of
11 Inquiry is therefore not an adversarial one like that of a
12 civil or commercial proceeding, nor an accusatory one like
13 that of a criminal trial. It is not the role of a Commission
14 of Inquiry to seek to identify guilty parties or those
15 responsible. There is no plaintiff or defendant, nor
16 accused. That being said, the Commission makes public its
17 observations even if these may undermine the reputation of
18 some persons and organizations.

19 The Commissioner's lawyer and I are neutral
20 and impartial. We represent the public interest and our goal
21 is to uncover the truth, whatever it may be.

22 The Commission lawyers and I are neutral and
23 impartial. We represent the public interest and our goal is
24 to uncover the truth, whatever it may be.

25 You will note throughout its work that the
26 Commission counsel will work together with the lawyers of the
27 participants, be they parties or intervenors. This is
28 standard practice in a Commission of Inquiry. Everyone must

1 work towards the same goal, understanding what happened,
2 learning from it and making recommendations for the future.

3 This idea of cooperation is so important that
4 the rules of practice and procedure adopted by the Commission
5 expressly impose an obligation on counsel to cooperate with
6 one another. It even goes so far as to provide for the
7 possibility of participants or their lawyers to suggest to
8 Commission counsel topics to explore with witnesses or
9 questions to ask them.

10 This cooperation is essential if the
11 Commission is to be effective and make good use of the very
12 limited time at its disposal.

13 That being said, I may choose to allow some
14 intervenors or their lawyers, as the case may be, to ask
15 certain witnesses questions on specific subjects if I feel,
16 along the way, that it may be useful in better understanding
17 certain facts. This is a discretionary power that I will
18 retain throughout the hearings and exercise as necessary.

19 The applicable rules of evidence are also
20 flexible, as the Commission is not bound to adhere to strict
21 rules of evidence in the same way that courts generally are.
22 This flexibility is just as essential to enable the
23 Commission to effectively carry out its work within the
24 limited time allocated. Thus, I can allow evidence to be
25 presented in multiple ways provided, of course, that in doing
26 so I uphold procedural fairness.

27 As Commissioner, I indeed have the obligation
28 to ensure that the rights of all are respected.

1 Since I am presiding over the hearings and it
2 will be up to me to draw conclusions from the evidence being
3 presented, I want to stress that I have not yet seen that
4 evidence. I have discussed with the Commission counsel the
5 subjects that seem relevant to me and the way in which the
6 hearing should be conducted, but I have chosen to participate
7 neither in the meetings with potential witnesses nor in the
8 review of the documents obtained.

9 I have chosen this approach to ensure that I
10 have no preconceived ideas and I will adhere to it throughout
11 the Commission work.

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13 will be up to me to draw conclusions from the evidence being
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18 neither in the meetings with potential witnesses, nor in the
19 review of the documents obtained. I have chosen this
20 approach to ensure that I have no pre-conceived ideas and I
21 would adhere to it through the Commission's work.

22 That being said, my team and I will make
23 every effort to get to the bottom of things and understand
24 what the country has faced and what it may still be facing in
25 terms of foreign interference.

26 Foreign interference in our democratic
27 institutions is a very serious issue. It requires us to
28 investigate, analyze and reflect as thoroughly as possible in

1 order to ultimately identify the best ways to counter it or,
2 if it is not possible to prevent it entirely, to limit its
3 effects.

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11 order to ultimately identify the best ways to counter it or,
12 if it's not possible to prevent it entirely, to limit its
13 effects.

14 In conformity with the terms of the Order in
15 Council, the Commission, in the first stage of the factual
16 phase of its work, must examine whether China, Russia or
17 other actors, state or non-state -- you probably know that
18 the Commission is also interested in India -- interfered in
19 the 2019 and 2021 federal elections and, if so, we must also
20 assess the repercussions that these acts or attempts to
21 interfere may have had on the integrity of the elections both
22 nationally and at the constituency level.

23 The Commission must then examine, where
24 appropriate, the way in which information obtained in this
25 regard circulated and the measures that could have been taken
26 in response.

27 In conformity with the terms of the Order in
28 Council, the Commission, in the first stage of the factual

1 phase of its work, must examine whether China, Russia, or
2 other actors, state or non-state -- you probably know that
3 the Commission is also interested by India -- interfered in
4 the 2019 and 2021 Federal Elections; and if so, we must also
5 assess the repercussions that these acts or attempts to
6 interfere may have had on the integrity of the elections,
7 both nationally and at the consequence level.

8 The Commission must then examine, where
9 appropriate, the way in which information obtained in this
10 regard circulated, and the measures that could have been
11 taken in response.

12 The Commission will draw up and submit the
13 first report on these issues by the 3rd of May at the latest.

14 In the second stage of the factual phase, the
15 Commission must analyze the country's capacity and means to
16 detect, prevent and counter foreign interference, paying
17 attention to three main considerations:

18 First, how information is created, exchanged,
19 assessed and disseminated, and how advice for senior
20 decision-makers, including elected officials, is formulated.

21 Secondly, the support and protection measures
22 in place to protect members of a diaspora who may be
23 particularly vulnerable and become the first victims of such
24 interference.

25 Finally, the mechanisms that were in place to
26 protect the 2019 and 2021 elections from foreign interference
27 compared to those that were in place in more recent elections
28 before 2019.

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6 assessed, and disseminated, and how advice for senior
7 decision-makers, including elected officials, is formulated.

8 Secondly, the support and protection measures
9 in place to protect members of a diaspora who may be
10 particularly vulnerable and become the first victims of such
11 interference.

12 Finally, the mechanisms that were in place to
13 protect the 2019 and 2021 elections from foreign
14 interference, compared to those that were in place in more
15 recent elections.

16 Finally, in the policy phase of its work, the
17 Commission will think of ways to ameliorate state's capacity
18 to detect, prevent, and counter foreign interference, as well
19 as, if applicable, ways in which relevant information is
20 communicated to interested persons, and then formulate
21 recommendations.

22 Finally, in the policy phase of its work, the
23 Commission will think of ways to improve the state's capacity
24 to detect, prevent and counter foreign interference as well
25 as, if applicable, ways in which relevant information is
26 communicated to interested persons, and then formulate
27 recommendations.

28 The Commission will draw up a second report

1 on this subject which, in addition to its factual
2 conclusions, would include all of these recommendations
3 regarding the issues raised in its mandate. This report must
4 be submitted no later than the 31st of December, 2024.

5 The Commission is thus facing two major
6 challenges: the time available to it and the fact that the
7 vast majority of documents and information to which we will
8 have access in the course of our work and on which we will
9 base our conclusions are likely to be so-called classified
10 documents.

11 The limited time that it has provided for in
12 its mandate is there, but there's also the need to quickly
13 study the matter of foreign interference and think of ways of
14 quickly formulating recommendations to increase the
15 government's capacity to detect it and to counter it. If
16 that time constraint can be lifted through the collaboration
17 work we've mentioned that related to the process of
18 classified documents, this would require specific work and
19 this is what we'll be delving into in the next week.

20 When we talk about intelligence and
21 classified information, we are talking about documents and
22 information that cannot be made public, but a public inquiry,
23 as the name indicates, is intended to clarify the public.
24 The mandate that was given to it requires a fundamental
25 duality, respect the laws and regulations that apply to
26 classified information and maximize the transparency of its
27 deliberations.

28 Luckily, the Inquiry will be resorting to

1 lots of experienced counsel who are experienced in evidence
2 when it comes to classified documents and intelligence, and
3 some of them have been recognized by the Federal Court for
4 acting as *amicus curiae*, or friends of the Court when this
5 Court had to resolve disputes in this matter.

6 Specifically to determine the challenges,
7 limitations and the possible dangers related to public
8 disclosure of classified information and intelligence related
9 to national security, the Order in Council requires that
10 there be some *in camera* deliberations. These are preliminary
11 deliberations related to national security confidentiality,
12 and this is what we'll be doing this week.

13 Why describe it as...

14 In fact, the work we will undertake this week
15 consists of first understanding the constraints arising from
16 the fact that many of the relevant pieces of information and
17 documents are classified; and secondly, considering the best
18 ways for the Commission to make public as much information as
19 possible during the hearings of Stages 1 and 2, and in its
20 reports.

21 During these preliminary hearings, we will
22 hear from factual witnesses and recognized experts who, as we
23 wrote in our second notice to the public, will help the
24 Commission and the public understand both the risk that may
25 arise from the disclosure of classified information, and the
26 practices that can be adapted to allow the disclosure of as
27 much information as possible. While adhering to applicable
28 legal and national security constraints.

1 Here is what we are considering as a work
2 schedule, subject, of course, to what we discover in the
3 course of the Inquiry.

4 Let us first clarify that the two phases of
5 the work, which I referred to earlier, cannot be completely
6 separated from each other. The investigation that has begun
7 and the evidence that will be introduced at each series of
8 public hearings, whether they relate to Stage 1 or Stage 2,
9 can and most certainly be useful in enabling us to understand
10 the situation in its entirety. Based on what we hear during
11 this week's hearings, the Commission will work to make
12 disclosable the classified documents and information it has
13 already received, and will continue to receive, as it carries
14 on with the Inquiry concurrently -- I should say, as much as
15 possible.

16 Based on what we hear during this week's
17 hearings, the Commission will work to make disclosable the
18 documents and information it has already received and will
19 continue to receive as it carries out with the Inquiry
20 concurrently.

21 Once that is done, we will again hold public
22 hearings, probably at the end of March 2024, which will focus
23 on the issue raised in the first phase of our work.

24 The Commission will also hold *in camera*
25 hearings as provided for in its mandate. Considering the
26 amount of classified information, it is very likely that will
27 happen.

28 That being said, the Commission will try to

1 find ways to communicate the essence of the information
2 obtained, for instance, by means of summary.

3 It is also possible that certain persons
4 called upon to testify before the Commission who fear for
5 their safety or the safety of members of their family request
6 that their identity be protected or certain information
7 provided be kept confidential. Such requests may lead to the
8 need for *in camera* hearings.

9 It is also possible that certain persons
10 called upon to testify before the Commission, who fear for
11 their safety or the safety of members of their family,
12 request that their identity be protected, and/or certain
13 information provided be kept confidential. Such requests may
14 lead to a need to hold *in camera* hearings.

15 In this respect, I would like to point out
16 that the Commission has adopted rules of practice and
17 procedure which contain a number of measures designed to
18 safeguard those who provide us with information. These
19 rules, though technical in nature, are well worth consulting
20 for those interested in the Commission's work. They are
21 available on the Commission's website under "Documents". As
22 for measures that may be taken to safeguard certain
23 individuals, please refer specifically to Rules 51 and 82 to
24 85.

25 We must retain the fact that the Commission
26 is very aware of the fact that we may need to protect the
27 identity of some witnesses or some information that citizens
28 or groups share with the Commission. Those who ask that

1 their identity be protected would have made their requests
2 before their testimony or before providing information.

3 Generally speaking, the important thing to
4 remember is that the Commission is well aware that it may be
5 necessary to protect the identity of certain witnesses or
6 certain information that citizens or groups will communicate,
7 and that I will not hesitate to do so when I deem it
8 appropriate. In fact, those who request that their identity
9 be protected will know of my decision in this regard before
10 they undertake to testify or provide information and
11 documents.

12 It is also my intention to ensure that
13 everyone's rights are respected during *in camera* hearings.
14 Therefore, I may choose to limit the scope of testimony or to
15 disregard certain information that may be communicated to me
16 during such hearings in private if I deem it necessary in
17 order not to jeopardize the reputation or rights of citizens
18 who, it must be said, would not in such circumstances have
19 the opportunity to submit said testimony or information to
20 cross-examination.

21 I would also like to remind you that
22 testifying will not be the only means available for relaying
23 information to the Commission. The Commission intends to set
24 up a process that will enable all those who wish to do so to
25 submit their comments and suggestions to the Commission and
26 to share relevant experiences they may have in relation to
27 issues within the Commission's mandate. This process will be
28 user friendly and will allow those communicating information

1 in this way to request that their identity and certain shared
2 information be protected.

3 The Commission has established an email
4 address to facilitate sharing of confidential information.
5 Strict measures have been put in place to protect the
6 confidentiality of information sent via the email address,
7 also available on the Commission website.

8 At present, it is planned that the public
9 hearings during which the Commission will examine the
10 country's capacity and means to detect, prevent, and counter
11 foreign interference, Stage 2, will take place in September
12 2024. The factual investigation of Stage 2 will take place
13 and will be followed by hearings on the policy phase of the
14 Commission, which will bring to light the research council's
15 work. Further details about the council members are -- may
16 be found on the website.

17 Concurrently, and throughout this work, the
18 Commission will collaborate closely with the research
19 directorate, which has set up a research council made up of
20 four academics whose combined skills cover all aspects of the
21 Commission's mandate. The council's role is to design and
22 implement a research program that will support the Commission
23 in all aspects of its mandate. Experts will then be invited
24 to produce reports or take part in public roundtable
25 discussions with the aim of providing the insights the
26 Commission needs, in particular, with a view to submitting to
27 the government relevant and realistic recommendations on ways
28 to detect and counter interference, or at the very least, to

1 minimise its impacts.

2 For the time being, however, we must get on
3 with our preliminary hearings, and to do so, I give the floor
4 to Mrs. Chaudury. Thank you.

5 **--- OPENING REMARKS BY/REMARQUES D'OUVERTURE PAR MS. SHANTONA**

6 **CHAUDHURY:**

7 **MS. SHANTONA CHAUDHURY:** Thank you,
8 Commissioner. Good morning, everyone.

9 My name is Shantona Chaudhury, and I am lead
10 counsel to the Foreign Interference Commission.

11 I'm lead counsel for the Foreign Interference
12 Commission.

13 I am joined here today, in person and
14 remotely, by a number of Commission counsel who have been
15 working very hard to put this week's hearings together in a
16 very short time. Gordon Cameron, Erin Dann, Jean-Philippe
17 MacKay, Natalia Rodriguez, Daniel Sheppard, Hannah Lazare,
18 Siobhan Morris, and Nicolas Saint-Amour.

19 As the Commissioner explained, this week's
20 preliminary hearings are mandated by Clause a(i)(d) of the
21 Commission's terms of reference, which direct the Commission
22 to hold public hearings at the outset of its mandate on
23 national security confidentiality.

24 It is important to understand that this week
25 is not yet about the actual substance of the Commission's
26 mandate. The Commission's investigation is ongoing. We
27 will, of course, have public hearings in due course. As the
28 Commissioner mentioned, we anticipate holding those hearings

1 in late March with respect to Clauses a(i) (A) and a(i) (B) of
2 the terms of reference, and in September, with respect to
3 Clause a(i) (C).

4 But for this week, the topic at hand is
5 national security on confidentiality. Over the course of the
6 week, we will be hearing from experts, former officials, and
7 current fact witnesses in an effort to explore the challenges
8 involved in dealing with classified information, and
9 importantly, to identify how the Commission can best meet
10 those challenges.

11 I'll present a general overlook of the
12 schedule for the week.

13 Today's day is about an introduction. We are
14 asking all the participants or their lawyers to introduce
15 themselves, then the lawyers of the Commission will make two
16 presentations. The first one will be about the general
17 operation of Commissions of Inquiry in general and, more
18 specifically, the functioning of this Commission.

19 The second phase will -- the second
20 presentation will tackle the issue of confidentiality around
21 national security by dealing with some concepts that will be
22 explored in more detail this week.

23 Tuesday and Wednesday will be dedicated to
24 expert consultations, whereas Thursday and Friday will be
25 reserved to depose witnesses on facts.

26 On Tuesday, we will hear a panel of
27 university scholars specialized in relevant topics.

28 On Thursday, a panel of current officials in

1 the national security and intelligence community will
2 testify, David Vigneault, Director of the Canadian Security
3 Intelligence Service, CSIS, Elliot Tlab, Deputy Chief of
4 Signals Intelligence at the Communications Security
5 Establishment, or CSE, and Dan Rogers, Deputy National
6 Security Intelligence Advisor to the Prime Minister.

7 The witnesses will be examined by Commission
8 counsel, followed by cross-examination by the parties.

9 On Friday morning, Dominic LeBlanc, Minister
10 of Public Safety, Democratic Institutions and
11 Intergovernmental Affairs, will testify. He, too, will be
12 examined by Commission counsel, followed by cross-examination
13 by the parties.

14 On Friday afternoon, the Commissioner will
15 hear closing submissions from the participants, and that will
16 conclude the week.

17 ...that is very important and very demanding.
18 Thank you.

19 **COMMISSIONER HOGUE:** Thank you.

20 So I now invite the participants or their
21 lawyers to introduce themselves. In the case of associations
22 or organizations, I will appreciate that you indicate which
23 interests you represent. The Commission already knows, but I
24 think it's a good idea for everyone attending the hearings to
25 know it, too.

26 So let's start with the Government of Canada.

27 **--- OPENING REMARKS BY/REMARQUES D'OUVERTURE PAR Me GREGORY**

28 **TZEMENAKIS:**

1 **Me GREGORY TZEMENAKIS:** Please allow me to
2 make two very brief introductory observations.

3 First, it is foundational to Canada's
4 democracy that Canadians have confidence in free and fair
5 elections. The Government of Canada is committed to
6 supporting the work of the Inquiry and in reinforcing the
7 confidence of Canadians.

8 Second, as we enter into these hearings on
9 the challenges posed by dealing with largely classified
10 information, we will offer a perspective that looks at the
11 full range of public interests, including ensuring that
12 Canadians are well informed of the risks of foreign
13 interference.

14 There are tools that would allow us to
15 achieve this goal while upholding the public interest in
16 protecting certain categories of information.

17 Thank you.

18 **COMMISSIONER HOGUE:** So we can go on with the
19 Office of the Commissioner of Canada Elections.

20 **--- OPENING REMARKS BY/REMARQUES D'OUVERTURE PAR Me CHRISTINA**

21 **MAHEUX:**

22 **MS. CHRISTINA MAHEUX:** ...next few days by my
23 colleague, Luc Boucher, who is not here today.

24 The Commissioner of Canada Elections is the
25 independent representative to make sure that the federal law
26 is applied in Canada. Foreign interference in democratic
27 federal processes is a challenge that the Commission of
28 Canada Elections, Caroline Simard, takes very seriously.

1 The BCEF thanks the Commissioner for the
2 opportunity that we have in participating. We are happy to
3 contribute and collaborate in realizing this important
4 mandate.

5 Thank you.

6 **COMMISSIONER HOGUE:** Thank you very much.

7 The Human Rights Coalition.

8 **--- OPENING REMARKS BY/REMARQUES D'OUVERTURE PAR MS. HANNAH**

9 **TAYLOR:**

10 **MS. HANNAH TAYLOR:** Commissioner Hogue,
11 participants and fellow counsel, valued members of the media
12 and the public, my name is Hannah Taylor, counsel for the
13 Human Rights Coalition. My pronouns are she or they, and I
14 can be referred to as "Ms. Taylor" or "Counsel Taylor".

15 My co-counsel for these hearings is David
16 Matas, sitting to my right, whose pronouns are he/him and who
17 can be referred to as Mr. Matas.

18 The Human Rights Coalition is comprised of
19 eight community organizations engaged in work for the rights
20 of several diaspora communities particularly vulnerable to
21 transnational repression and the effects of foreign
22 interference in Canada. These organizations are Human Rights
23 Action Group, Uyghur Rights Advocacy Project, Falun Gong
24 Human Rights Group, Canada-Hong Kong Link, Democratic Spaces,
25 HIDMONA-Eritrean Canadians Human Rights Group of Manitoba,
26 Security and Justice for Tigrayans Canada and the Alliance of
27 Genocide Victim Communities.

28 Thank you for the opportunity to participate

1 in the Commission's work.

2 **COMMISSIONER HOGUE:** Thank you.

3 Let's go now with the Russian-Canadian
4 Democratic Alliance.

5 **--- OPENING REMARKS BY/REMARQUES D'OUVERTURE PAR MR.**

6 **GUILLAUME SIROIS:**

7 **MR. GUILLAUME SIROIS:** Good morning. I'm
8 Guillaume Sirois from Power Law. I will be representing the
9 Russian-Canadian Democratic Alliance for the Commission,
10 along with my colleague, Mark Power.

11 The RCDA's core mission is to support the
12 development of the Russian-Canadian community around the
13 ideals of democracy, human rights, civil liberties and the
14 rule of law.

15 Regarding the national security
16 confidentiality hearings, the RCDA is concerned that no
17 witnesses from the diaspora will be heard.

18 ...first victims of foreign interference.
19 They have the most interest in having more information about
20 this threat and on the actions of the government in response
21 to this threat.

22 The Russian-Canadian Democratic Alliance will
23 hope that the Commission will meet its mandate to maximize
24 transparency for the public, but this transparency should
25 restore public trust in its democratic institutions, but it
26 also gives to the diaspora critical information to better
27 protect itself against foreign interference.

28 Thank you.

1 **COMMISSIONER HOGUE:** Thank you, Mr. Sirois.
2 The Canadian Ukrainian Congress. I think
3 they are on the video.

4 **--- OPENING REMARKS BY/REMARQUES D'OUVERTURE PAR MR. JON**
5 **DOODY:**

6 **MR. JON DOODY:** Good morning, Commissioner.

7 **COMMISSIONER HOGUE:** Good morning.

8 **MR. JON DOODY:** My name is Jon Doody. I
9 represent the Ukrainian Canadian Congress along with Donald
10 Bayne.

11 The Ukrainian Canadian Congress is the voice
12 of Canada's Ukrainian community. It's an umbrella
13 organization representing the national, provincial and local
14 Ukrainian organizations within Canada, and our interest is in
15 particular on how Russia's interference has impacted
16 Ukrainian Canadians specifically.

17 Thank you.

18 **COMMISSIONER HOGUE:** Thank you.

19 Michael Chong?

20 **--- OPENING REMARKS BY/REMARQUES D'OUVERTURE PAR MR. GIB van**
21 **ERT:**

22 **MR. GIB van ERT:** My name is Gib van Ert.
23 With me is Fraser Harland, and we are counsel for the
24 Honourable Michael Chong, MP.

25 **COMMISSIONER HOGUE:** Han Dong?

26 **--- OPENING REMARKS BY/REMARQUES D'OUVERTURE PAR MR. MARK**
27 **POLLEY:**

28 **MR. MARK POLLEY:** Good morning, Commissioner.

1 I'm Mark Polley and I'm accompanied by Jeffrey Wang and also
2 online by Emily Young. And we represent the Honourable MP
3 Han Dong.

4 Thank you.

5 **COMMISSIONER HOGUE:** Thank you.

6 Jenny Kwan?

7 **--- OPENING REMARKS BY/REMARQUES D'OUVERTURE PAR MR. SUJIT**

8 **CHOUDHRY:**

9 **MR. SUJIT CHOUDHRY:** Good morning,
10 Commissioner. My name is Sujit Choudhry. I'm counsel for
11 Jenny Kwan, Member of Parliament for Vancouver East.

12 I'm joined by my co-counsel, Mani Kakkar.

13 Thank you.

14 **COMMISSIONER HOGUE:** Thank you.

15 Michael Chan, I think, is on video, or his
16 counsel.

17 **--- OPENING REMARKS BY/REMARQUES D'OUVERTURE PAR MR. JOHN**

18 **CHAPMAN:**

19 **MR. JOHN CHAPMAN:** Yes, Madam Commissioner.
20 It's John Chapman. I and my colleague, Andy Chan, represent
21 Mr. Chan. And Andy is on the Zoom as well.

22 **COMMISSIONER HOGUE:** Thank you.

23 And we have the Centre for Free Expression.

24 **--- OPENING REMARKS BY/REMARQUES D'OUVERTURE PAR MR. JOHN**

25 **MATHER:**

26 **MR. JOHN MATHER:** Yes. Good morning,
27 Commissioner. My name is John Mather. I'm attending this
28 morning with my colleague, Michael Robson. We represent the

1 Centre for Free Expression.

2 The CFE is a non-partisan research public
3 education and advocacy centre based out of the Toronto
4 Metropolitan University. Among other things, the CFE
5 advocates for the public's right to information about its
6 government and public institutions.

7 The right to information is a fundamental
8 component of the right to free expression. If Canadians are
9 deprived of information about their government, there cannot
10 be informed public discourse, and informed public discourse
11 is a foundation of genuine democracy.

12 The CFE welcomes and thanks the Commissioner
13 for the opportunity to participate in the Commission's
14 process and to assist the Commission in achieving its mandate
15 to maximize transparency. Transparency is necessary to
16 ensure Canadians have confidence in their elections.

17 Canadians have the right to know what
18 happened, how their government responded and the ongoing
19 threats that may persist and we hope, through this process,
20 that the Canadians will not be left in the dark.

21 Thank you.

22 **COMMISSIONER HOGUE:** Thank you.

23 The Churchill Society.

24 **--- OPENING REMARKS BY/REMARQUES D'OUVERTURE DE MS. MALLIHA**
25 **WILSON:**

26 **MS. MALLIHA WILSON:** Good morning.

27 **COMMISSIONER HOGUE:** It's going to be on
28 video, I think.

1 **MS. MALLIHA WILSON:** Yes. Good morning,
2 Madam Commissioner and Commission Counsel. My name is
3 Mahilla Wilson. You can refer to me as Ms. Wilson or
4 Counsel Wilson.

5 The Churchill Society for the Advancement of
6 Parliamentary Democracy is a non-partisan charitable
7 organisation that facilitates discussion and debate about
8 Canada's parliamentary democracy. Our work celebrates and
9 upholds the integrity of democratic institutions. And our
10 direct interest in this inquiry stems from that work, and our
11 participation will serve as a bulwark against the erosion of
12 public confidence in these institutions by reassuring our
13 many supporters that our voice is heard. Thank you.

14 **COMMISSIONER HOGUE:** Thank you.

15 The Pillar Society.

16 **--- OPENING REMARKS BY/REMARQUES D'OUVERTURE DE MR. DANIEL**
17 **STANTON:**

18 **MR. DANIEL STANTON:** Good morning,
19 Commissioner. Bonjour à tous. I'm Dan Stanton. I'm on the
20 board of directors of the Pillar Society.

21 Formed in 1994, the Pillar Society is an
22 organisation of former members of the Canadian Security
23 Intelligence Service and members of the former RCMP Security
24 Service. We have a very particular set of skills relating to
25 intelligence collection, human source assessment and
26 protection, as well as the disclosure of intelligence and the
27 intelligence to evidence challenge.

28 As noted by the Commissioner in her rationale

1 for accepting Pillar's application, and I quote:
2 "As former members of Canada's
3 intelligence community, Pillar
4 Society members may offer a different
5 perspective than current
6 representatives of CSIS and other
7 government bodies. I acknowledge
8 that the Pillar Society may present a
9 different perspective on a range of
10 intelligence and machinery of
11 government issues, and that the
12 Commission would benefit from diverse
13 viewpoints." (As read)

14 The Pillar Society is very honoured and
15 enthusiastic about participating in this inquiry. Thank you.

16 **COMMISSIONER HOGUE:** Thank you.

17 Democracy Watch.

18 **--- OPENING REMARKS BY/REMARQUES D'OUVERTURE DE MR. WADE**

19 **POZIOMKA:**

20 **MR. WADE POZIOMKA:** Good morning,
21 Madam Commissioner. My name is Wade Poziomka, and I, along
22 with my colleague, Nick Papageorge, represent Democracy Watch
23 national nonprofit and nonpartisan organisation advocating
24 for democratic reform, government accountability, and
25 corporate responsibility.

26 **COMMISSIONER HOGUE:** The Conservative Party
27 of Canada, I think on video.

28 **--- OPENING REMARKS BY/REMARQUES D'OUVERTURE DE MR. NANDO De**

1 **LUCA:**

2 **MR. NANDO De LUCA:** Good morning,
3 Madam Commissioner. My name is Nando De Luca. I'm appearing
4 on behalf of the Conservative Party of Canada.

5 **COMMISSIONER HOGUE:** Good morning. Thank
6 you.

7 The Chinese Canadian Concern Group on the
8 Chinese Communist Party's Human Rights Violations.

9 **--- OPENING REMARKS BY/REMARQUES D'OUVERTURE DE MR. NEIL**

10 **CHANTLER:**

11 **MR. NEIL CHANTLER:** Good morning,
12 Madam Commissioner, Commission Counsel, participants, and
13 counsel. My name is Neil Chantler, and I am counsel for the
14 Chinese Canadian Concern Group on the Chinese Communist
15 Party's Human Rights Violations.

16 The Concern Group is a grassroots
17 organisation formed in 2020. Its members are Hong Kong
18 immigrants to Canada with a wide range of backgrounds and
19 professions, including journalists, professors, engineers,
20 and religious leaders, many of whom have been the target of
21 foreign interference.

22 The Concern Group's mission is to observe and
23 expose human rights violations by the Chinese Communist Party
24 and China's influence on Canada's political, economic, and
25 academic arenas. The Concern Group looks forward to
26 contributing to this inquiry, and has been granted intervenor
27 standing in the fact finding phase and standing in the policy
28 phase of the inquiry. Thank you.

1 **COMMISSIONER HOGUE:** Thank you.

2 Senator Pau Woo, I think on video.

3 **--- OPENING REMARKS BY/REMARQUES D'OUVERTURE DE SENATOR YUEN**

4 **PAU WOO:**

5 **SENATOR YUEN PAU WOO:** I am independent
6 Senator representing British Columbia.

7 I am very pleased to be part of this
8 Commission and look forward to working with all of you.

9 **COMMISSIONER HOGUE:** Thank you.

10 Erin O'Toole. I think his counsel is on
11 video.

12 **--- OPENING REMARKS BY/REMARQUES D'OUVERTURE DE MR. TOM**

13 **JARMYN:**

14 **MR. TOM JARMYN:** Good morning, Commissioner.
15 My name is Tom Jarmyn, and, along with my colleague, Preston
16 Lim, we represent the Honourable Erin O'Toole. Mr. O'Toole
17 was first selected as a member of parliament for Durham in
18 2012, and was the leader of the Conservative Party of Canada
19 during the 2021 election. And we look forward to
20 participating in this process. Thank you.

21 **COMMISSIONER HOGUE:** Thank you.

22 The Media Coalition.

23 **--- OPENING REMARKS BY/REMARQUES D'OUVERTURE DE MR. CHRISTIAN**

24 **LeBLANC:**

25 **MR. CHRISTIAN LeBLANC:** My name is Christian
26 LeBlanc. I am accompanied by Patricia Hénault, and we will
27 be there today and tomorrow.

28 The Media Coalition is formed by CTV, Global,

1 Dorstar, CBC Radio Canada, Quebecor Media and La Presse
2 newspaper.

3 We're here to assist and, as much as we can,
4 guide the Commission on what we think are very important
5 principles of publicity. And on confidentiality matters, we
6 know that the Commission is very keenly aware of that, and
7 I'm glad that it was repeated this morning.

8 And we will be here to make sure and defend
9 the right of the public to information and at the disposal of
10 the Commission to do so. Merci.

11 **COMMISSIONER HOGUE:** Thank you.

12 And I think the last one is the NDP, but they
13 are not present this morning if I am right.

14 Did I cover everyone, or am I missing anyone?
15 I don't think so. Just think -- everyone has been covered.
16 Perfect.

17 So we'll go on, and I realise I don't have
18 the....

19 It's -- is it time for the break? I think
20 so, huh, because it's 10:54? Yes? Okay. So we'll take the
21 break.

22 **THE REGISTRAR:** We are now in recess for
23 10 minutes, or 20 minutes.

24 --- Upon recessing at 10:55 a.m./

25 la séance est suspendue à 10h55

26 --- Upon resuming at 11:20 a.m./

27 la séance est reprise à 11h20

28 **THE REGISTRAR:** Order, please.

1 This sitting of the Foreign Interference
2 Commission is back in session.

3 **COMMISSIONER HOGUE:** So I would invite Maître
4 Natalia Rodriguez to come to the podium, I think, to make the
5 first presentation.

6 **--- PRESENTATION BY/PRÉSENTATION PAR MS. NATALIA RODRIGUEZ:**

7 **MS. NATALIA RODRIGUEZ:** Thank you, Madam
8 Commissioner.

9 Good morning, everyone. My name is Natalia
10 Rodriguez and I'm Commission Counsel. Today's presentation
11 will be an overview of Commissions of Inquiry generally, and
12 also, a look into the Foreign Interference Commission
13 specifically.

14 If any of the participants have any questions
15 about this presentation or the presentation that will follow
16 in the afternoon, please feel free to email the Commission
17 with any questions.

18 So as an overview, I will be looking at the
19 mandate of the Foreign Interference Commission, the history
20 of Commissions of Inquiry, different types of Commissions of
21 Inquiry, the fact of the fundamental principle of
22 independence that all Commissions enjoy, the type of process
23 which is inquisitorial and not litigation in nature, the
24 usefulness of Commissions of Inquiry. I will also then look
25 at some other investigative or policy inquiries as compared to
26 Commissions of Inquiry. And then finally, we will take a
27 look at the Foreign Interference Commission and some of the
28 characteristics of this Commission in particular.

1 Just having a little technical difficulties
2 with the clicker. Oh, there we go. Thank you very much.

3 So to start, the Foreign Interference
4 Commission has an overarching mandate to examine and assess
5 foreign interference in federal electoral processes and
6 democratic institutions, particularly with respect to the
7 2019 and 2021 general elections, and to make recommendations
8 with respect to that mandate to the government.

9 Commissions of Inquiry have a long history in
10 Canada. In fact, the federal *Inquiries Act* was enacted in
11 1867. So since Confederation, there have been 373 federal
12 Commissions of Inquiry, including this one, so this is number
13 373. And Commissions of Inquiry have covered and looked into
14 many of the most pressing issues of those times, including
15 inflation, health, the environment, pipelines, terrorism, and
16 missing and murdered Indigenous women and girls.

17 There are three different types of
18 Commissions of Inquiry. The first is investigative
19 inquiries, and those make findings of fact about an incident
20 or an institutional or systemic problem. For example,
21 allegations of corruption and the proposed recommendations
22 based on those fact findings to government.

23 This type of inquiry is set up to investigate
24 a past events or a series of events. And as the Supreme
25 Court of Canada said in 1995, it is often in the wake of
26 public shock, horror, disillusionment, or skepticism in order
27 to uncover the truth. This type of Commission of Inquiry
28 examines the conduct of individuals and organizations that

1 may be relevant to past events. And the mandate and purpose
2 here is to explain what went wrong and why. It's not to
3 ascribe any kind of liability, civil, criminal or otherwise.

4 Now the second type of Commissions of Inquiry
5 is the policy inquiry. For example, the Royal Commission of
6 Aboriginal Peoples. And these are more informal than
7 investigative inquiries. The focus here is on research,
8 consulting and developing policy options for government.
9 Commissions of this type are mandated to examine a particular
10 area of public policy and to make recommendations for future
11 policy direction. The primary task here is to gather
12 information about an issue and to use it to create a
13 blueprint for future legislation and policy.

14 Now the third type of Commissions of Inquiry
15 are the blended Commissions of Inquiry, which have both an
16 investigative and a policy function. And the last example
17 that we have on the federal front is the Public Order
18 Emergency Commission, which concluded in February of last
19 year.

20 Now this one, this type of inquiry can be
21 often more complex because it has two completely different
22 stages. And so each stage demands a particular type of
23 evidence and analytical tools. Each requires its own kind of
24 expertise and its own workload, and sometimes its own
25 dedicated team. So to manage these practical and analytical
26 challenges, the Terms of Reference, which is the mandate that
27 is given to the Commission by the government, may divide the
28 inquiry's work into two separate phases; the first being a

1 quasi-judicial phase of fact finding, and the other one is a
2 less legalistic research process to formulate policy
3 recommendations.

4 Now the Foreign Interference Commission, as
5 you have likely guessed, is a blended type of commission.
6 There is an investigative phase, which is set out in the
7 Terms of Reference clause A-1(a) and A-1(d) -- sorry, A-1(b)
8 and A-1(c), and there's a policy phase, which is set out in
9 the Terms of Reference, clause A-1(e).

10 Now, this Commission of Inquiry is unique in
11 that it also has a third type of stage that doesn't fit quite
12 nicely into the investigative or policy phase, and that's set
13 out in Clause D of the Terms of Reference, which require
14 preliminary hearings into national security confidentiality,
15 and that's what we're doing today.

16 Now, commissions of inquiry are based on a
17 fundamental principle of independence. Commissions of
18 inquiry are established by government, and its terms of
19 reference, or its mandate, is also provided to the commission
20 by the government. However, commissions of inquiry are
21 independent from the Executive Branch, and owe allegiance
22 only to the people of Canada. They are non-partisan, and
23 they carry out their work in an independent, impartial, and
24 neutral manner. They are not beholden to political
25 interests, but rather the work is done in the public
26 interest.

27 Once the terms of reference that are drafted
28 by the government are in place, the government no longer has

1 any control or direction over the process or the procedure of
2 the Inquiry. This is unless the Terms of Reference are
3 amended by Order in Council. So the commission receives its
4 mandate and carries out that mandate in an independent
5 manner.

6 Another feature of commissions of inquiry is
7 that they are not part of the justice system; they're not
8 part of the judicial system. They're a different type of
9 process that is not akin to what many lawyers may be familiar
10 with, which is the litigation process. This is not a
11 litigation process; it is not an adversarial process.

12 So in an adversarial system, which is the
13 system that we have here in Canada, there are two advocates,
14 each side representing the interests of one party, and
15 there's also a neutral decision-maker, who hears arguments
16 from both sides and makes a decision.

17 However, a commission of inquiry is not that.
18 It is more akin to an inquisitorial system, which is used in
19 many civil law systems around the world, including in many
20 European countries, where a judge investigates and decides
21 the case.

22 In this case, a commission is also
23 investigating the facts, although there is no civil or
24 criminal liability, as I mentioned.

25 In the report of the Ipperwash Inquiry, the
26 Commissioner said:

27 "A public inquiry is more
28 inquisitorial than adversarial, in

1 that the objective of those involved
2 in the process is to uncover the
3 truth, rather than to establish
4 liability." (As read)

5 In this case, evidence is called by
6 Commission counsel, not by the counsel for the parties or the
7 participants. There are no strict rules of evidence like you
8 would have in a courtroom, but there are still principles of
9 fundamental justice that are observed, and procedural
10 fairness.

11 Commissioners draft their Rules of Procedure
12 that govern their inquiries, generally with the input from
13 participants; so again, a very different type of process than
14 litigation.

15 Why are commissions of inquiry useful? Well,
16 they provide an independent and non-partisan review of
17 events, issues in government; they're able to tackle long-
18 term and complex issues; they're free from many of the
19 institutional impediments or red tape that can sometimes
20 constrain other branches of government, and they're also
21 subject to judicial review.

22 The objectives here are informing and
23 educating the public, politicians, and government, and making
24 recommendations that are aimed at resolving issues and
25 developing policy.

26 Commissions of inquiry have a wide range of
27 investigative powers. Because each commission of inquiry is
28 unique, has a unique mandate, a unique timeline, and it

1 established under unique circumstances, the commission can be
2 staffed with expertise that accord with those specific needs
3 of that commission.

4 Now, there are other bodies and entities that
5 also fulfil a function in our democracy, looking into issues,
6 be they factual issues or policy issues. For example, there
7 are Parliamentary committees that look into some of these
8 issues; there's departmental investigations; the policy
9 branches of departments also fulfil some of this function.
10 There are government and intergovernmental task forces;
11 advocacy groups and think tanks often carry out some of this
12 work. And then on the criminal side, there's criminal
13 investigations and prosecutions. However, all of these are
14 very different from commissions of inquiry and serve a
15 slightly different purpose.

16 Parliamentary committees, how do they compare
17 to commissions of inquiry? Well, they can compel evidence,
18 like commissions of inquiry can, but they are partisan by
19 nature. So that's one distinction.

20 The work of the Parliamentary committee can
21 also die, or be dissolved, if Parliament is dissolved in the
22 middle of their work. They also have no structured format
23 for questioning witnesses and reviewing documents.

24 Departmental investigations are established
25 under Part II of the *Inquiries Act*. They can also compel
26 evidence; however, they are not independent from government
27 as they are established and overseen by a government
28 Minister. They're normally limited in scope, and the scope

1 is the business of that department and the conduct of
2 official duties in the service of that department. So
3 they're not looking at broader issues beyond those of their
4 department.

5 Departments generally have policy branches,
6 and they also carry out some policy work; however, they do
7 not have the ability to compel evidence; they're not
8 independent from government; there's no public oversight or
9 transparency into what goes on in those departments, and they
10 often are consumed by more urgent shorter-term tasks and
11 shorter-term issues within the government, and so this may
12 limit their ability to tackle long-term or more complex
13 policy issues.

14 Government and intergovernmental task forces
15 do not have the power to compel evidence, and they are not
16 independent from government.

17 Advocacy groups and think tanks, as I
18 mentioned, sometimes carry out some of this policy work.
19 They do not have the ability to compel evidence. They are
20 often animated by a particular ideological perspective, and
21 they often lack the resource and expertise for effective
22 investigation, policy-making such as that done by a
23 commission of inquiry.

24 Criminal investigations and prosecutions,
25 obviously very different. They focus on individuals'
26 criminal liability in either defending or proving a charge,
27 so very limited in scope.

28 And so those are some other investigatory

1 bodies that carry out similar, and at times, overlapping work
2 but have very different features than commissions of inquiry.

3 Now, commissions of inquiry are created and
4 funded by legislation. The Government of Canada under
5 section 2 of the *Federal Inquiries Act*, created the Foreign
6 Interference Commission through an Order in Council on
7 September 7, 2023.

8 The *Inquiries Act* allows the Governor in
9 Council to establish an inquiry to investigate any matter
10 connected with the good government or public business of
11 Canada. And this Order in Council of September 7, 2023
12 included the terms of reference for this Commission, and
13 we'll look at those Terms of Reference in a little bit more
14 detail.

15 So after the Foreign Interference Commission
16 completes its report and submits it, it does not play any
17 role in implementing any recommendations.

18 There were four additional Orders in Council
19 that relate to this Inquiry, three of them were made on
20 September 7th. The first designated the Commission as a
21 funded government department under the *Financial*
22 *Administration Act*, which is necessary for funding to have
23 the Commission's work go forward. The second amended the
24 *Security of Information Act* to permanently bind the
25 Commissioner and her staff to secrecy under the Act. The
26 third amended the *Canada Evidence Act* to allow the
27 Commissioner and staff to review classified information. And
28 there was a final Order in Council with respect to this

1 Inquiry on December 21st, and that extended the first
2 deadline of the first report to May 3rd, 2024.

3 So this chart provides an overview of the
4 terms of reference. As I mentioned, there is a clause A, B,
5 C, D, and E. A, B, and C, refer to the factual phase of the
6 inquiry; clause D relates to these hearings that are being
7 held this week with respect to national security
8 confidentiality, and clause E sets out the requirement that
9 the Commissioner make policy recommendations.

10 So clause A, as we are probably all familiar
11 with, requires the Commissioner to examine and assess
12 interference by China, Russia, and other foreign states or
13 nonstate actors, with respect to the 2019 and 2021 general
14 elections, as well as any impacts on those elections, and to
15 confirm the integrity of and any potential impacts on those
16 elections.

17 Clause B requires the Commissioner to examine
18 and assess, with respect to the 2019 and 2021 elections, the
19 flow of information to senior decisionmakers, the flow of
20 information between the Security and Intelligence Threats to
21 Elections Taskforce and the Critical Election Incident Public
22 Protocol Panel, and to also examine and assess actions taken
23 in response to the flow of information.

24 Clause C requires the Commissioner to examine
25 and assess the capacity of relevant federal departments,
26 agencies, institutional structures, and government processes
27 to detect, deter, and encounter any form of foreign
28 interference directly or indirectly targeting Canada's

1 democratic processes, with some specific issues to look at as
2 well, including the effect on members of the diaspora groups.

3 Clause D, as I mentioned, is the clause in
4 the terms of reference that establishes these hearings with
5 respect to classified and national security information and
6 intelligence, and to identify challenges, limitations, and
7 potential adverse impacts associating with the disclosure of
8 this type of information to the public.

9 And as I mentioned, clause E is the clause
10 that requires policy recommendations.

11 So the work of the Commission, as we've just
12 seen, is quite vast, and it is divided up into different
13 phases and stages of work. So this chart sets out the
14 different stages in order, chronological order. So on the
15 very left, we have the preliminary hearings that we're
16 conducting this week, and that refers to clause D of the
17 terms of reference.

18 Next, is Stage 1 of the fact finding phase,
19 and that will encompasses -- encompass clauses A and B. So
20 it's looking at foreign interference in the 2019 and 2021
21 general elections, as well as the flow of information in
22 relation to those elections and foreign interference. After
23 that, the Commission's initial report is due on May 3rd,
24 2024, and we saw the Order In Council that extended that
25 deadline.

26 Stage 2 of the fact finding phase is set out
27 in clause C of the terms of reference, and that relates to,
28 generally, the government's capacity to detect, deter, and

1 counter foreign interference, as well as its capacity to
2 protect vulnerable diaspora members and other specific
3 issues.

4 And finally, when that phase is concluded,
5 the fact finding phase is concluded, the policy phase, which
6 is set out in clause E, will have its moment to shine, and
7 then a final report is due December 31st, 2024.

8 So while the government provides the
9 Commission with its terms of reference, and therefore, its
10 scope of work, the Commission establishes the guiding
11 principles which are akin to a lens through which it will
12 carry out its work. Generally, most commissions of inquiry
13 establish some guiding principles, and these are -- the ones
14 appear on this slide are the five that the Commission on
15 foreign interference will be using as its lens through which
16 to guide its work. And these are also set out at
17 paragraph 11 of the Rules of Practice and Procedure.

18 So the first one is transparency. The
19 Commission's proceedings and processes must be as open and
20 available to the public as is reasonably possible, consistent
21 with the requirements of national and personal security and
22 other applicable confidences and privileges.

23 Fairness. The Commission will work to assure
24 fairness to the public and the participant throughout the
25 proceedings. The Commission will take into account and
26 balance the interests of the public, including the right to
27 be informed; the interests of individuals, and the interests
28 of national security. The Commission will afford fair

1 treatment to all those involved or implicated.

2 The third guiding principle is thoroughness.
3 The Commission will examine the relevant issues with care so
4 that there can be no doubt that the questions raised by the
5 Commission's mandate are explored and answered as thoroughly
6 as possible within the timeframe allocated.

7 Expeditiousness. The Commission is operating
8 under a very tight schedule and must conduct its work
9 accordingly.

10 And finally, proportionality. The Commission
11 will allocate the limited investigative and hearing time
12 available in proportion to the importance and relevance of
13 matters to the Commission's mandate and the relative
14 contributions that the Commissioner determines each
15 participant is able to make to an issue, with the objective
16 of ensuring that the time available to the Commission, which
17 again I must stress is brief, is directed to properly
18 fulfilling the Commission's mandate.

19 Transparency is of utmost importance in the
20 Foreign Interference Commission. It's a primary objective of
21 commissions of inquiry to inform the public as to what has
22 happened and why. However, much of the information produced
23 to the Foreign Interference Commission is classified in its
24 nature, and we'll hear more about that in the presentation in
25 the afternoon, and its disclosure could prejudice national
26 security. So the Commission must find a balance that informs
27 the public without jeopardising national security.

28 The terms of reference specifically require

1 that the Commission maximise public transparency but take the
2 necessary steps to protect national interests. The terms of
3 reference also mandate in clause D these public hearings to
4 help achieve the right balance.

5 In conducting its work, the Commission has
6 certain powers, as I mentioned before. It can summon
7 witnesses. It can require them to produce documents and
8 things that the Commissioner deems necessary to the inquiry.
9 It can receive and review any relevant document, and this is
10 set out in our terms of reference. It can hire experts,
11 clerks, reporters, assistants, and counsel to assist the
12 inquiry. And finally, it can hold public and in-camera
13 hearings.

14 Now, we recently concluded the standing phase
15 of the Commission, and some members of the public may be
16 wondering what that's all about. So we thought we would give
17 a little brief explanation.

18 Standing means an opportunity to participate
19 directly in the proceedings with certain rights. Standing is
20 given to those that can contribute to the work of the
21 commission and have either a substantial and direct interest
22 in the subject matter of the Commission or have some unique
23 experience or expertise that is likely to provide the
24 Commission with assistance in its work that it could not
25 otherwise get.

26 Now, each commission determines how it would
27 like to establish a standing and if there are different
28 categories of standing. In this Commission, there are three

1 types of standing.

2 A party refers to an entity with standing in
3 all or part of the factual inquiry; an intervenor has
4 standing in the factual inquiry, and is usually an entity or
5 individual with some interest in the subject matter of the
6 Commission, but not as direct of an interest as a party; and
7 then we also have standing in the policy phase, which is
8 simply standing at this point.

9 And when we refer to a participant, we're
10 referring to an entity with standing, either party standing,
11 intervenor standing, or simply standing, if we're talking
12 about the policy phase.

13 Briefly on the role of Commission counsel,
14 Commission counsel are chosen and retained by the
15 Commissioner, and they're drawn largely from private
16 practice. Now the benefit here is that Commission counsel
17 can be chosen sometimes with respect to the expertise that
18 they bring to the table, particular experience that they may
19 have. Each group of Commission counsel is different and
20 unique and can respond to the needs of that particular
21 Commission.

22 Like the Commissioner, Commission counsel are
23 independent, neutral and impartial. They do not take the
24 side of any participant. Commission counsel do liaise with
25 participants, however, to facilitate their participation.

26 Thank you.

27 Commission counsel generally conduct the
28 investigation. They request document productions from

1 participants and others. They identify and interview persons
2 with relevant information and potential witnesses. They
3 review documents. They also help to organize the hearings.
4 They lead evidence at the hearings, and they ensure that all
5 relevant information is introduced into the record.

6 Commission counsel also assists the
7 Commissioner in drafting rules, drafting decisions, and the
8 final report. And as well, Commission counsel advise the
9 Commissioner as needed.

10 So the parties, intervenors and witnesses
11 have different rights. The parties have full rights to
12 participate, including the right to access documents in
13 advance of the hearing and to question witnesses.

14 Intervenors have notice of public hearings
15 and they have the right to attend public hearings as
16 participants. They may make oral and written submissions as
17 the Commissioner directs. They receive exhibits from the
18 public hearings, and they may have other rights, including
19 the right to question witnesses when that right is
20 specifically granted by the Commissioner.

21 Now witnesses that are not part of a group
22 that is represented as a participant can have legal
23 representation present when they testify, and they can also
24 ask for any exceptional measures if needed, for example, to
25 remain anonymous.

26 Now a public inquiry would not be a public
27 inquiry without public involvement. There are different ways
28 in which the public can get involved in the Commission's

1 work. The first is by attending the public hearings. So we
2 know that there are people attending virtually on Zoom, there
3 are people watching the hearings that are being live-streamed
4 from the website, and there's also people here in the room,
5 and we would encourage the public to attend the hearings,
6 either online or in person. We welcome you here at 395
7 Wellington.

8 We also have the Commission's website, which
9 already has a lot of information on there, including the
10 Rules of Practice and Procedure, Rules of Standing and
11 Funding, all of the Orders in Council that I mentioned, the
12 Terms of Reference, all of the decisions that have been
13 released so far, and there will be more information on the
14 website forthcoming, including the schedule of proceedings,
15 policy papers as they are developed, and all of the exhibits
16 that are entered into evidence at the hearings.

17 The Commission's also developing a public
18 consultation process to hear directly from affected Canadians
19 and those who want to provide information to the Commission.
20 And as the Commissioner mentioned this morning, we have
21 established a confidential email address for individuals who
22 have confidential information to share with us, to get in
23 contact with the Commission.

24 That is a brief overview of Commissions of
25 Inquiry and the Foreign Interference Commission. Thank you
26 very much.

27 **COMMISSIONER HOGUE:** Thank you, Maître
28 Rodriguez.

1 We are a bit ahead of time, but I think it's
2 -- everyone will be happy to have a bit more time for lunch,
3 so we'll break for lunch, and we'll come back at 1:45. Thank
4 you.

5 **THE REGISTRAR:** Order, please. The hearing
6 is in recess until 1:45.

7 --- Upon recessing at 11:51 p.m./

8 La séance est suspendue à 11h51

9 --- Upon resuming at 1:44 p.m.

10 La séance est reprise à 13h44

11 **THE REGISTRAR:** Order, please. The sitting
12 of the Foreign Interference Commission is back in session.

13 **COMMISSIONER HOGUE:** Good afternoon. So our
14 next presentation will be made by Gordon Cameron. He's also
15 Commission counsel. So, Mr. Cameron, if you want to go at
16 the podium, please?

17 --- PRESENTATION BY/PRÉSENTATION PAR MR. GORDON CAMERON:

18 **MR. GORDON CAMERON:** Good afternoon. As the
19 Commissioner's mentioned, my name's Gordon Cameron, and the
20 title of this presentation is "The Foreign Interference
21 Commission and Classified Information". And one thing to say
22 at the outset is that this whole week is about that topic,
23 and indeed, tomorrow we will have a series of -- a panel of
24 academic experts, the next day, former senior public
25 officials in the National Security space, and then current
26 incumbent officials and a Minister. So there will be
27 detailed and at different levels academic, practical, and
28 current working discussions of this topic. What is happening

1 this afternoon is an overview to help prepare everybody, both
2 for listening to what's going to come up in the week and for
3 understanding how the Commission is handling the issue of its
4 management of classified information.

5 And so if there are questions out -- that
6 occur to you out of what I'm saying this afternoon, please
7 save them, because they're probably going to be answered by
8 what you're going to hear later in the week. If there's
9 something else that at the end of the week remains
10 unanswered, you can -- as Ms. Rodriguez said, send us an
11 email, but this will just be a very high-level overview of
12 the Commission's work with classified information. And the
13 topics we're going to discuss are -- the Table of Contents
14 looks quite predictable.

15 We're going to start with some definitions
16 and terminology, and that's not insignificant because the
17 Commission has noticed both in the input it's getting from
18 parties and in coverage by the media that the definitions and
19 terminology sometimes do matter to getting -- to
20 understanding properly what's going on with the Commission's
21 work with classified information.

22 We're going to talk about what classified
23 information is, why we use that term, and then how the
24 Commission works with classified information, how we're
25 handling it both mechanically and from issues of policy. And
26 then we're going to talk finally about the particular type of
27 information, classified information that the Commission is
28 noticing is coming to its attention in the foreign

1 interference context as opposed to some other threat that
2 might also generate classified information.

3 Now, at the risk of oversimplification, it is
4 quite useful to make a reasonable simplification and simply
5 talk about classified information.

6 You will see in the documents to which you've
7 had reference already and that will come up later in the
8 hearing the expression "sensitive or potentially injurious
9 information". That's language out of the *Canada Evidence*
10 *Act*. We have a very complete, very complete analysis of that
11 for you tomorrow.

12 And also, there's another expression you
13 might have seen if you've read the Commission's Terms of
14 Reference, and that is "information whose disclosure could be
15 injurious to the critical interests of Canada or its allies,
16 national defence or national security". That phrase appears
17 in this Commission's Terms of Reference in the Order in
18 Council establishing the Commission. It is derivative of
19 language in the *Canada Evidence Act*, but it is custom for us.
20 It was made specific for this Commission.

21 And the reason I'm introducing these concepts
22 under the discussion of classified information is in effect
23 to say you needn't be distracted by the more technical terms
24 for the purposes of this discussion or, frankly, for the
25 purposes of most of your understanding of this Commission's
26 work with classified information because that expression,
27 "classified information", will cover certainly for practical
28 purposes all of the work that we will be doing and all of our

1 discussion when you're making submissions to the Commission
2 or when you're trying to analyze the information that you're
3 seeing.

4 There will be times when you will see the
5 lawyers descend into the more technical language out of the
6 legislation or out of the Terms of Reference because there
7 are places where it could matter but the actual technical
8 terminology from the legislation be used, but for our
9 purposes we're going to be well served just with the
10 expression "national" -- sorry, "classified information".

11 And the topic of this day or this week we've
12 called "National Security Confidentiality", which is an
13 expression those of us who work in the field are very
14 familiar with. It is the umbrella term for those situations
15 in which classified information is necessary and typically
16 where it interfaces with litigation or with the public or
17 something and there is a need for confidentiality that is
18 classification of information for reasons of national
19 security. So this is what we call our NSC week, or our
20 "National Security Confidentiality" week to talk about these
21 terms.

22 Information is classified by the government
23 when the -- and it is classified by the government, by the
24 way. It is exclusively the province of the government to
25 classify information. And it does that when it assesses that
26 it's necessary to restrict the disclosure of the information
27 and, importantly, both within the government and outside the
28 government in order to protect some aspect of the Canadian

1 national public interest.

2 Now, that might seem fairly trite, but
3 there's a fair bit packed into that paragraph -- and as we'll
4 see when we move into some of the subdivisions of this, there
5 are different levels of classification, so not all classified
6 information is the same. And predictably, it follows a range
7 from merely confidential -- and I don't want to understate
8 the potential significance of confidential information, but
9 it is at the lower level of sensitivity, but it is at the
10 lower level of sensitivity to what I've called here very,
11 very secret information which can be at the -- you know, the
12 most sensitive information that the government classifies.

13 And the differences in the levels -- and
14 we're going to look at several of those levels and ascribe
15 some qualities to each of them, but what you'll see in the
16 next few slides is that the differences in the levels are
17 driven by the different levels of harm that it is feared
18 could arise from the disclosure of the information outside of
19 the permitted audience, so that could be outside of a
20 government department, outside of a very small group of
21 people within a government department, outside of the
22 government itself to the public to other nations, potentially
23 to our adversaries, et cetera. So all of these things are
24 taken into consideration when the government is deciding at
25 what level it should classify information.

26 Now, unhelpfully for the vocabulary here, the
27 first category I'm going to talk about is technically not
28 classified information; it's protected information. But

1 functionally, we have to approach it at the same level. It
2 still is information that the government has decided needs to
3 be controlled in its circulation, needs to have restricted
4 access.

5 The difference between protected information
6 and classified information is that protected information
7 pertains to situations in which the harm from disclosure
8 would be to an individual -- sorry, an individual or at least
9 something less than the national interest, than Canada's
10 national interest.

11 It's important because the Commission will --
12 anticipates receiving a fairly substantial volume of
13 protected information. That doesn't mean that the protection
14 of the information isn't significant because, of course,
15 there could be very serious harm. There are levels within
16 protected information, one of which is very serious harm to
17 an individual. So it could still be critically important
18 that the information remain confidential. It just doesn't
19 affect the national public interest at the federal government
20 level.

21 Then -- so if you move from protected
22 information into what technically is called classified
23 information, there are three categories: confidential,
24 secret and top secret. And as I said before, these
25 categories are established based on the anticipated harm that
26 could come from disclosure outside the audience for which the
27 information was assembled.

28 So confidential information is disclosure

1 that could cause some injury if disclosed and injury to the
2 national interest.

3 Secret information, that is, information that
4 gets the classification "secret", is information the
5 disclosure of which could cause serious injury again to the
6 national interest.

7 And finally, top secret information is
8 information the disclosure of which could cause exceptionally
9 grave injury to the national interest. And if you were to
10 look at the government policy on security, those adjectives
11 would be applied in exactly that context.

12 We haven't made these up. Those are the
13 exact terms that are used by the people who classify the
14 information to decide whether they, on looking at a document,
15 should be classifying it as confidential, secret or top
16 secret.

17 And then a point -- and a complication that
18 we'll add here, but it's important because it might arise in
19 the context of some of our discussions, is that within top
20 secret information, there are further categorizations for
21 information that is -- and the expression I've used in the
22 slide is ultra sensitive. So it is at least top secret, but
23 a decision has been made by the people who have assembled the
24 information that it should only be disclosed within an even
25 more restricted audience than would otherwise be available
26 with top secret information, so -- sometimes this is called
27 compartmentalization or control systems that are used even
28 with top secret information.

1 And though the -- there is nothing
2 technically above top secret, the expression "top secret and
3 above" has just come into the parlance as the way of
4 describing both top-secret information and the various sub-
5 compartments of especially sensitive top-secret information
6 that might arise.

7 A point that I'll just digress on briefly
8 here is that when we're talking about a document and its
9 classification at the confidential, secret, or top-secret
10 level, that designation of the document doesn't mean that
11 every word in that document is at the top-secret level; that
12 is, that the disclosure of any, say, sentence in that
13 document could cause exceptionally grave harm to the national
14 interest. It could mean that one sentence in that document
15 could cause that type of harm and the rest of the document
16 might -- I say "only", but this is still substantial, only be
17 at a secret level or perhaps not even necessarily classified
18 upon itself. But when a person's creating a document and
19 that document is what is going to be circulated, if there's
20 one item of information in there that is at the top-secret
21 level, obviously, the whole document has to be classified as
22 top secret. I mention that because when we come later to
23 discussion of things like redactions, that fact that not the
24 whole document needs to be top secret, that doesn't flow
25 necessarily from the designation or classification of it as
26 top secret.

27 Now one of the points we wanted to make sure
28 the parties and the public were completely alert to is that

1 this Commission has access to all of the categories I just
2 described, of classified information, obviously, protected
3 and classified information, protected, secret, top secret,
4 any compartmentalization, any information relevant to foreign
5 interference that the Commission has requested from the
6 government will be given to us regardless of its
7 classification of or regardless of its compartmentalization,
8 regardless of its otherwise restricted information within
9 government. There might only be three people within
10 government who are entitled to see the document, but the
11 Commission will see it. So there's nothing -- no information
12 withheld from the Commissioner or Commission counsel on the
13 basis that it would be -- that it is classified or otherwise
14 protected on grounds of national security.

15 Now, this didn't come about without a
16 considerable amount of work on the part of the Commission,
17 and the government, and everybody else to make it possible
18 for the Commission to have this unrestricted access to
19 classified information. And so one thing that -- and for
20 those of you who are wondering why the hearings didn't start
21 the day after the Order in Council came out, one thing that
22 had to happen was that the Commissioner and all Commission
23 counsel had to be security cleared to the highest levels and
24 indoctrinated to all of those top secret and above
25 compartmentalizations of, so that the Commissioner and all
26 Commission counsel would have access to all of the classified
27 information. There will be controls within the Commission
28 about who sees what, but we are at least all, as the lawyers

1 would say, *prima facie* qualified to see that information.

2 Another thing that had to happen before we
3 could have you here today and get started on the public
4 hearings is that the Commission had to have premises that it
5 could examine this information in, and those premises are not
6 just any board room in a building in Ottawa. They have to be
7 specially constructed, so that they are both secure as to
8 access, secure as to potential eavesdropping, that all of the
9 computers, everything has to be unhackable. So there's a
10 huge infrastructure program that has to take place when a --
11 when you get literally a pop-up entity like a Commission of
12 Inquiry that is suddenly going to be given access to the most
13 sensitive information that the government holds, there's an
14 incredible machine that had to come into place to get
15 premises, to get computers, to get infrastructure, to get
16 personnel properly cleared, et cetera. All of that has
17 happened. We're well underway in the course of the work, but
18 that is a -- one of the consequences of the fact that the
19 Commission has access by virtue of its Terms of Reference to
20 all of this information.

21 Another consequence is that because we have
22 been given this information, all of us, the Commissioner,
23 Commission counsel, any staff who have access to the
24 information, are by law -- we also swore oaths, but we are --
25 by virtue of at least the *Security of Information Act* and
26 some of the legislation, permanently, as in until we die,
27 bound to secrecy for all of this information.

28 Now here is the -- what you might call the

1 inflection point in the discussion, because so far we've been
2 talking about the unrestricted access that the Commission has
3 to all of the classified information. And what has to be
4 understood to appreciate the way you are going to see the
5 Commission's work unfold over the coming months is that
6 there's a difference between having access to classified
7 information and having the authority to disclose it. And you
8 might even put that more categorically than there being a
9 difference between them, which is having access to classified
10 information accords no authority to disclose it. And as a
11 matter of fact, as I was just saying in relation to the
12 Commission being permanently bound to secrecy, often access
13 to classified information is prohibitive of ever being able
14 to disclose it because you are in that category of people who
15 are not allowed to disclose.

16 And this is not just something unique to
17 public Commissions of Public Inquiry or this Commission,
18 obviously. There are other entities out there that work with
19 these same restrictions, and NSIRA and NSICOP are good
20 examples. You also encounter this in some tribunals. Courts
21 sometimes have similar issues where the Commission has access
22 to classified information but no authority at all to disclose
23 it to the public, or indeed, as government controls itself
24 within its various departments, the Commission doesn't have
25 authority to disclose it to people in the government who
26 aren't authorized to receive it.

27 So analogous to that, analogous to the lack
28 of authority to disclose it is the Commission does not have

1 any authority to unilaterally declassify information. So we
2 can't look at a document and say this is classified as top
3 secret, but in our view, it only needs to be classified as
4 secret or confidential or not classified at all. The
5 Commission has no authority to render information disclosable
6 unilaterally.

7 And so the question you might ask is what do
8 we do then? You know, what good is it that we have access to
9 all of this classified information in a public inquiry if the
10 Commission doesn't have any authority to disclose it? And
11 the answer is that because of the restrictions on disclosure,
12 what the Commission will do, and what other Commissions have
13 done in the past, is make representations to the government
14 to achieve maximum transparency, which is, of course, within
15 the Commission's Terms of Reference and something that is
16 central in the way all of the work will be done.

17 Now there are -- I'm going to look here at
18 several of the tools that we use to make representations to
19 government and try to give some examples, or at least
20 elaborate for you about what it means for us to do this kind
21 of work. I'm going to start -- this could have warranted, in
22 retrospect, a slide of its own, but just so that you
23 understand how we get to this stage where we've got
24 classified information, and the Commission has an interest in
25 disclosing some part of that document to the parties and to
26 the public. The process would start with the Commission
27 identifying some -- and this would be a rolling process, but
28 some documents that it thought important that the parties,

1 and perhaps ultimately the public, have to participate in the
2 Commission's work. And so a request -- and bearing in mind,
3 the Commission is looking at the totally unredacted document.
4 It is looking at a bare document with all of the information
5 in it. The Commission would then send off a request to the
6 government, here are 10, 50, a hundred, whatever number of
7 documents that the Commission has identified as appropriate
8 for disclosure to the parties or the public. Would you, the
9 government, render them disclosable? So here they are in
10 their bare form. Would you send them back to us in a form
11 that we can then disclose to the public? And you've seen, if
12 you've looked at the consultation paper and the results of
13 that, what that looks like when it comes back. Sometimes the
14 document is almost completely redacted, sometimes it's almost
15 complete disclosed, depending on the volume of classified
16 information in that document.

17 So if we then look at that stage in that
18 sequence of events, picture the Commission has now received
19 back a batch of these documents that it wants to disclose to
20 you, and it's -- the documents say it's got a document with
21 four lines of redaction in it, the first representation, the
22 first category of representation that the Commission can make
23 to the government is to basically disagree with the
24 government that a redaction belongs there. To simply say it
25 is our view that there is no injury from the disclosure of
26 what is underneath this redaction; and therefore, that
27 redaction can be just lifted and the words can go out in
28 their current form. So that's a lift of a redaction, and

1 that's the kind of representation we might make say for the
2 first of the four redactions in the document that we come
3 across.

4 Then the second type of thing, we might
5 across say the second redaction, where the Commission agrees
6 that those words would cause injury if disclosed. That the
7 redaction is a fair redaction because if that redaction
8 weren't there, there would be injury from the disclosure of
9 those words.

10 What the Commission might then say is, though
11 we can't use those words, we can reframe the point in a way
12 that gets the gist of those redacted words across without any
13 injury. So we, in effect, filter out the classified
14 information from the redacted words, reframe it, and this
15 process is called summarisation.

16 And so when you see a document, what you
17 might see is a redaction and then a textbox on top of it,
18 like "discussion of target's movements", or something like
19 that, that is vague. It allows the reader to sort of follow
20 through the document in ways that redactions cannot sometimes
21 be very frustrating in preventing, is sometimes you come
22 across a redaction and then an unredacted sentence, but you
23 can't make sense of the unredacted sentence because it
24 obviously flowed from the redacted sentence. So if we can
25 get a summary of that redaction that allows the reader to
26 make sense, perhaps, of some of the gist of what was
27 redacted, but especially so that they can then make sense of
28 the rest of the whole document, that's the other tool we have

1 when we are trying to get disclosure.

2 So in this case, sorry, in both cases, the
3 argument is what we propose for disclosure need not be
4 classified. Either the classification was never warranted or
5 the words can be reframed and summarised in a way that
6 doesn't require classification that allows disclosure to the
7 public.

8 The third approach that the Commission can
9 take is to look at -- let's -- so let's take the third of the
10 redactions on the page. And we look at it, and we say, A,
11 this is a legitimate redaction, so there would be some
12 injury, and no matter how hard we think about it, we can't
13 think of any way of reframing this or summarising it or
14 "gisting" those words so that it could be disclosed, it's
15 just plain injurious any way you deal with that redaction.

16 But if the Commissioner decides that the
17 public interest in disclosure of that information is so
18 important, that even though there could be some injury from
19 its disclosure, it should be disclosed to the public, then we
20 would make that representation to the government.

21 So those are the -- that is the sort of tier
22 -- tiered approach to getting maximum disclosure of the
23 information: lifting redactions where possible, summarising
24 where possible, and where none of that is possible, but the
25 information is very important, convincing the government that
26 it's simply in the public interest to disclose it even though
27 there could be some injury from that disclosure.

28 Now, well you might say, how is the

1 Commission going to argue with the government on any of these
2 points that a redaction should be lifted? Who are we to say
3 that information shouldn't classified? Who are we to come up
4 with summaries that don't disclose classified information?
5 Or why would the government be persuaded by anything we said
6 about the public interest in disclosure?

7 And needless to say, as you've probably
8 figured out, the Commissioner saw this coming a long way
9 away, and so Commission has counsel and advisors who are
10 experienced in exactly this type of work. For some of us,
11 this is literally our day job. It's making these types of
12 representations to the government, in the context of other
13 public inquiries, as Commission counsel; in public inquiries
14 dealing with national security information as *amici*; in
15 public inquiries dealing with national security information;
16 a lot of work in the Federal Court, which is where most of
17 the national security litigation ends up under the *Canada*
18 *Evidence Act*, as I say, about which you'll hear a lot
19 tomorrow. So this is just a job that we will have to do to
20 bring the expertise and the experience that counsel in this
21 field have gained to be able to make those representations.

22 Now, moving to another point here. Given the
23 volume of classified information that is generated in the
24 course of the government's investigation of foreign
25 interference, it is possible that the Commissioner will end
26 up having, not only examining classified documents, but
27 hearing oral testimony in the absence of the public. That
28 is, that if someone is going to speak to information that has

1 to be classified, if a witness is going to speak to that, or
2 answer questions about classified information, that that will
3 have to take place in a closed hearing, what we call
4 *in-camera* hearings.

5 And by the -- for the same reasons that the
6 Commission doesn't have authority to simply disclose the
7 classified information and documents that she receives, she
8 doesn't have authority, absent the agreement of the
9 government, to permit anyone to attend those closed hearings,
10 other than the Commission and government lawyers. So you
11 have documentation that's classified, there could also be
12 oral testimony that is classified and it would be heard in a
13 closed proceeding.

14 A way to mitigate, it's never going to be
15 perfect, but a way to mitigate the fact that the
16 unsatisfactory situation of people whose interests are
17 affected by what goes on *in-camera*, is for Commission counsel
18 to consult with the parties before going *in-camera*, before
19 going into a hearing to which the parties aren't admitted,
20 about the topics that are expected to be discussed and the
21 points that you and your clients want explored in those
22 *in-camera* hearings. That might have already been made
23 evident to us from other submissions that have been made in
24 the course -- by the time we end up in an *in-camera* hearing,
25 but we can't be too clear in -- we want to be very clear that
26 an important part of making the *ex parte in-camera* hearings
27 work is input from the parties and their counsel about issues
28 that they would like to see explored.

1 And again, this is a process. That is,
2 counsel who are going to go into an *in-camera* hearing,
3 consulting with the other people who can't go to that hearing
4 but whose interests are affected, this is a process that
5 Commission counsel here are familiar with from other
6 contexts. It's what we do in other national security
7 litigation where we're trying to elicit information of
8 interest to parties who can't be present in the closed
9 proceedings.

10 And again, the testimony, the oral testimony
11 that is received *in-camera* will, to the extent it is dealing
12 with injurious information, be classified the same way it
13 would be in a document. It would appear on paper or
14 electronically, I suppose these days as a transcript, but
15 that would be a classified transcript. And so the Commission
16 will again in that process go through the same attempt to
17 maximise transparency by getting out to the parties as much
18 of that information that was received *in-camera* as is
19 possible.

20 Now the bullet there is really just to bring
21 these two concepts together, that for both documents and for
22 *in camera* testimony the Commission can attempt to persuade
23 the government to disclose information, but the decisions
24 will be made by the government. By those within the
25 government responsible for the information. And you will
26 have witnesses on Thursday and Friday who will be responsible
27 for those decisions, and it will be their job to explain how
28 they will deal with situations in which the Commission is

1 approaching them for the disclosure of information that they
2 had at that time classified.

3 Now, it's not exclusively persuasive, as the
4 lawyers in the room know. If there is disagreement between
5 the Commission and the government on a point that is
6 important enough to warrant litigation, the Commission can --
7 to use their vernacular -- take the government to court. It
8 can bring an application in the Federal Court, or more
9 probably announce that it intends to disclose information and
10 that will prompt the government to bring an application in
11 federal court.

12 And the matter, this question of does the
13 information need to be classified? Is there injury from it?
14 The Court might be able to come up with a summary that the
15 government and the Commission couldn't realize an agreement
16 on. That whole discussion moves over to the Federal Court
17 where a Judge -- Federal Court Judge would hear
18 representations and it wouldn't then be simply a question of
19 the Commission trying to persuade the government.

20 The Commission would be making submissions to
21 a Federal Court Judge, the government would be making
22 submissions to a Federal Court Judge, and a Federal Court
23 Judge would decide whether the information needs to be
24 withheld from the public. And that would be the same
25 analysis of in that case, is the information injurious and if
26 it is injurious is it nonetheless -- is there a weight of
27 public interest that justifies disclosure of the information,
28 even though there could be some injury to the public

1 interest.

2 So that covers both the process, the types of
3 information we're dealing with, the ways we are going to
4 encounter it, the ways we're going to deal with it, and
5 hopefully the way we will get maximum transparency to the
6 parties; and if we don't, that we end up in court.

7 This is -- the next topic is somewhat
8 different. It's not so much about the process as why this
9 process has assumed so much importance in this particular
10 public inquiry. And part of this is not so much a message
11 from the Commission to the parties and to the public, as a
12 message that the Commission is getting from the government
13 and thought it useful to put in this context here, because it
14 is very much related to the discussion of how much of this
15 classified information we will be able to get disclosed to
16 the parties and the public.

17 And the position of the government and our
18 understanding on looking at the volume of information that is
19 coming to us classified at a very high level, is that the
20 type of information that intelligence agencies gather when
21 investigating foreign interference tends to be especially
22 sensitive. And there are several reasons that we can see for
23 this, or that we've been advised about for this.

24 One is that the methods used to gather
25 foreign interference information often include highly
26 sensitive source, such as human sources whose lives are at
27 risk, or technologies, that is investigative techniques or
28 methods the government has of gathering information that it

1 simply does not want our adversaries to know about.

2 Another reason is that the disclosure of
3 foreign interference information can be especially harmful to
4 Canadians, individuals, or the Canadian public interest.
5 That of course is closely linked to the first one, the first
6 point.

7 And another point, and again, this will be
8 for the witnesses on Thursday to -- to convince you of, or
9 explain in greater detail. Any disclosure of foreign
10 interference information that comes out of this Commission of
11 Inquiry will be analyzed -- I say very sophisticated
12 intelligence agencies. I think most people would observe
13 among the most sophisticated intelligence agencies in the
14 world will be analyzing every bit of information that comes
15 out of this Commission of Inquiry.

16 And they have the ability as we've seen just
17 in popular culture and in what we know from our own
18 understanding of the ability to aggregate information, these
19 intelligence agencies have massive databanks of information
20 and have the ability to take the crumbs that come out of this
21 inquiry and combine them with that information and draw
22 conclusions that are very difficult to predict. That's part
23 of the problem is it's hard to know what they can do with the
24 information.

25 All we know is that we are dealing with
26 foreign intelligence agencies that if there is a way to
27 extract every drop of value from any piece of information
28 that comes out of this Commission, they have that ability

1 because of their sophistication of their intelligence
2 apparatus.

3 And so, a very large proportion of the
4 information that has been given to the Commission to date is
5 classified at the very highest levels.

6 The process is ongoing. We are still asking
7 for and receiving information, and so we don't have
8 definitive -- we don't have the data to make a definitive
9 analysis yet, but we've been working in this area for, some
10 of us, all of our careers, and we are able to observe that of
11 the information the Commission is receiving, a very high
12 proportion of it is classified at top secret or above,
13 typically above.

14 And we were able to come up with a rough
15 comparison, just to give -- I know that for some of you, you
16 were involved in the Public Order Emergency Commission or are
17 able to have reference to it. Just this is a rough
18 comparison because we are still in the process of gathering
19 documents and haven't even gotten to the stage of admitting
20 exhibits. We don't have an apples-to-apples comparison. We
21 can't compare exhibits to exhibits here.

22 But on the logical inference that there is
23 going to be a rough order of magnitude relationship between
24 the volume of documents that come in and their
25 classification, and the number of exhibits that get filed,
26 it's we think, still illustrative that in the Public Order
27 Emergency Commission, which remember -- or if you weren't
28 there I'll remind you, I'll tell you -- it was a public

1 inquiry that involved a high volume of national security
2 information.

3 Those of you who were involved in it got used
4 to seeing highly redacted, totally blacked out pages, because
5 there was a high volume of classified information. And yet,
6 less than half of a percent of the documents filed as
7 exhibits -- but these would all have been in the closed
8 proceedings -- were classified as top secret. And again,
9 it's a rough comparison.

10 But to date, 80 percent of the documents that
11 the Commission has received are classified at some level, and
12 80 percent of those are classified at top secret or above.
13 So acknowledging that it's not -- that we're comparing
14 exhibits to raw production, it's not really an apples to
15 apples comparison. Just you can see the difference in the
16 proportionate level of classification. You had a national
17 security public inquiry in POEC, but it did not generate
18 nearly so much top secret and above classified exhibits as
19 can be anticipated in this hearing.

20 Now, these are the challenges we face, but
21 the Commission has been mandated, and you've seen this in the
22 terms of reference and in all of the public statements of the
23 Commission. It is dedicated to making as much of this
24 information public as is possible within the law, and it has
25 the tools to do it. Frankly, if any Commission of Inquiry
26 could do it, this one can.

27 And this week of hearings is where we hope to
28 get your input on how we can do that better. Because some of

1 you have national security litigation experience, all of you
2 represent clients who have perspectives that aren't nearly as
3 familiar to us as they will be to you, and so it will be
4 input from you, both during this week, when you tell us how
5 better to get redactions lifted, how better to get summaries
6 prepared, how better to convince the government that
7 information should be disclosed, even though it's potentially
8 injurious. That is how we will be even better equipped is
9 from input from you, both this week during this hearing and
10 on an ongoing basis as we consult you to help us get through
11 this with as much disclosure as possible.

12 Thank you.

13 **COMMISSIONER HOGUE:** So that is it for today.
14 Now, tomorrow, in order to allow yourself to prepare your
15 day, we'll be having a full day of work, so we'll be starting
16 at 10:00 a.m. and we expect to finish, depending, of course,
17 how things happen, at around 4:30 p.m.

18 So hoping to see you tomorrow morning. Have
19 a good evening.

20 **THE REGISTRAR:** Order, please.

21 The hearing is now adjourned for the day.

22 --- Upon adjourning at 2:28 p.m./

23 L'audience est ajournée à 14 h 28

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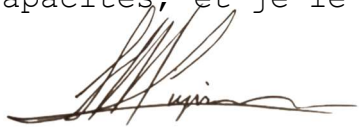
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C E R T I F I C A T I O N

I, Sandrine Marineau-Lupien, a certified court reporter,
hereby certify the foregoing pages to be an accurate
transcription of my notes/records to the best of my skill and
ability, and I so swear.

Je, Sandrine Marineau-Lupien, une sténographe officiel,
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