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Preventing Foreign Interference is the Only Effective Way to Stop Foreign Interference

Final Submission to the Public Inquiry into Foreign Interference in Federal Electoral Processes and Democratic Institutions

(November 4, 2024)

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1. Summary of How Preventing Foreign Interference is the Only Way to Stop Foreign Interference

There are significant loopholes and flaws in several Canadian laws (and provincial, territorial and municipal laws) that make it legal for anyone or any entity, Canadian or foreign, to secretly, unethically and undemocratically interfere in Canadian politics, especially given that enforcement of many of the laws is ineffective. The loopholes are in the elections, political finance, lobbying, ethics, anti-money laundering and border security laws, including loopholes that allow for anonymous, secret online disinformation and misinformation campaigns.

Until all of these loopholes are closed and flaws corrected, and enforcement is made effective, it will remain effectively legal to secretly, unethically and undemocratically interfere in Canadian politics.

In September, Democracy Watch submitted to the Inquiry a Response to the *Preparatory Document on the Policy Aspect* and the initial *Consultation Paper* of the Inquiry which summarized many of the key loopholes and flaws in laws (Click here to see the Response). In October, Democracy Watch submitted to the Inquiry 4 policy papers setting out detailed information and recommendations for key changes needed to close all of these loopholes and correct all of these flaws, and a 5th policy paper that sets out detailed information and recommendations to make enforcement independent from political interference and influence, and well-resourced, effective, transparent, timely and accountable.

Given these detailed submissions, Democracy Watch hopes that it will hear over the next month from those involved in drafting the final report, and is happy to clarify any of the information or recommendations set out in any of the 5 policy papers. **See brief summaries of the 5 policy papers in Parts 4-8 below. PLEASE NOTE: Recommendations for key changes that were not included in the five policy papers are set out in Parts 4 and 8 below.**

Unfortunately, through its hearings since last January, the Inquiry has not heard any testimony, or asked any questions, about the following 10 significant loopholes that make secret, unethical and undemocratic foreign interference legal and easy to do:

1. Secret lobbying is legal, including of political party officials.
2. Secret fundraising of unlimited amounts of money for contestants, EDAs, candidates and parties is legal, including by lobbyists.
3. Secret campaigning for contestants, EDAs, candidates and parties is legal, including by lobbyists.
4. Secret investments by Cabinet ministers, MPs, Senators and their staff, and by top government officials, are legal.
5. It is legal for MPs and Senators to do other secret work while serving as an MP or Senator.

6. It is legal to bribe someone who has just been elected as an MP or just announced as a Senator, before they take their oath of office.
7. There are no ethics rules for the staff of MPs and Senators, and they are allowed to have secret investments, and do other work in secret.
8. Anyone and any entity, including a foreign business, organization or individual, are allowed to pay an unlimited amount of various expenses of an election candidate.
9. Lobbyists can give secret gifts to election candidates, and secretly sponsor interns in MP offices.
10. Businesses, organizations and individuals, including those that are foreign-owned or funded, can provide a loan of products and services worth an unlimited amount of money to parties etc. for up to 3 years, which makes a mockery of Canada's limits on donations and loans;

In addition, there are other significant loopholes and flaws that have been mentioned only briefly during the Inquiry's hearings even though they also make secret, unethical and undemocratic foreign interference legal and easy to do:

1. Third-party businesses (including foreign-owned businesses), interest groups and individuals can secretly spend an unlimited amount of money supporting or opposing a nomination contestant or party leadership contestant, or trying to influence a policy-making process.
2. One individual, or a corporation or organization with just a few shareholders/members, can spend more than $1.6 million, as much as a citizen group that has tens of thousands of members, trying to influence a federal election, and an unlimited amount to try to influence a policy-making process, with no disclosure of the sources of its funding, which makes it easy for a foreign governments, entities and individuals to secretly funnel through just a few "proxies" large amounts of money to be spent trying to influence an election or policy-making process.
3. Foreign governments, parties, businesses, unions, organizations and individuals are allowed to try to influence voters in federal elections.
4. Canada's donation limits allow wealthy donors to give $3,450 annually to each party, 45 times more than the $75 that 75% of voters donate annually to each party, and this high donation limit make it easy for foreign governments, entities and individuals to secretly funnel through just a few "proxies" large amounts of money to contestants, candidates, EDAs and parties.
5. While making some false claims are illegal under Canadian election law and other laws, it is still legal for anyone or any entity, including politicians, parties, contestants, EDAs and candidates, to post and distribute disinformation about politicians, parties contestants, candidates and their policies (including the results of statistically invalid (and therefore misleading) surveys and polls) right through election day, and through an entire policy-making process, and there is no independent, effective enforcement system to remove or block access to online disinformation.

6. It is not clearly illegal for a third-party business, interest group or individual, including foreign-owned and/or funded businesses, interest groups and individuals, to set up an online pseudo-media outlet/website that is actually a third party aiming to influence elections or policy-making processes, and there is no clear enforcement power to block access in Canada to such websites.
7. Unlike political party leadership contestants, and third parties, nomination contestants, election candidates and parties are not required to disclose their donors until after voting day. As well, EDAs only disclose their lists of annual donors once a year, 6 months after the end of the year.
8. Contestants, candidates, EDAs and parties choose their own auditors, which makes it easy to choose a friendly auditor who will cover up questionable donations and expenses.

The enactment of Bill C-70 only closes some of these loopholes. Click here to see Democracy Watch's full submission to the House of Commons on Bill C-70, and click here to see a summary of the submission.[1] As detailed in 2 of the 5 policy papers Democracy Watch submitted to the Inquiry, current Bill C-65 will, if enacted, also only partially close some of these loopholes.

It would be very naïve to believe that all, or even many, foreign agents will comply with the provisions of Bill C-70 that require registering and disclosing their foreign interference activities, or with the provisions prohibiting such activities.

More likely is, in response to Bill C-70, foreign governments, entities and individuals will use networks of other entities and individuals as intermediaries who will have arrangements with networks of individual Canadians and permanent residents, and the organizations they are involved in, to act as foreign "proxy" agents here. These networks will obscure and make it very difficult to establish that any of those individuals or organizations are under the direction of, or have an arrangement with, a foreign government, entity or individual.

Therefore, as in many areas of public policy, and as many Inquiry witnesses said, it is clear that an ounce of prevention in the area of foreign interference is worth a pound of cure. Foreign interference will only be prevented if, as our policy papers detail, all the loopholes are closed, flaws corrected and enforcement strengthened.

Even if all the loopholes are closed and flaws corrected, no law enforces itself. The Inquiry has heard little about the systemic flaws in the enforcement entities for all the key laws that protect Canada's democracy from foreign interference. All of the enforcement entities lack independence from the ruling party Cabinet which chooses them all, except the Commissioner of Canada Elections, through secretive, partisan processes. Almost all of the heads of the watchdogs serve at the pleasure of

[1] NOTE: Because Bill C-70 was rushed through Parliament, little time was provided to analyze it. As a result, please disregard point #B1 in the submission on Bill C-70 as it was made due to a misreading of one of the Bill's provisions.

Cabinet. As a result, it is justifiable for the public to view anti-foreign interference watchdogs as being too much under the influence and control of the ruling party Cabinet. In addition:

1. None of the watchdogs are required to do audits or inspections or other effective enforcement actions.
2. All the watchdogs are allowed to make secret rulings, and to bury investigations without any public disclosure, and decisions to bury investigations cannot be challenged in court.
3. None of the watchdogs are required to investigate or rule on allegations of wrongdoing in a timely manner, and are usually slow to act.
4. Money laundering and proceeds of crime enforcement is weak.
5. Whistleblower protection is weak or non-existent for reporting violations.

As well, the federal lobbying and ethics watchdogs cannot impose any penalties for violations of key anti-foreign interference rules and, as several Inquiry witnesses pointed out, the penalties in other areas are too weak to discourage violations.

As has been shown clearly by the weak enforcement records over the past 20 years of the federal ethics, lobbying and election commissioners, and the RCMP, weak enforcement means dozens of violations of laws will either not be caught or the violators will be let off the hook in secret, making foreign interference activities effectively legal even in areas in which they are illegal.

Democracy Watch has submitted a 5th policy paper to the Inquiry setting out key changes to make every enforcement entity fully independent, well-resourced, transparent, timely and accountable.

On another unresolved issue, Democracy Watch urges the Inquiry to be forthright over the next month, and in its final report, concerning the total number of pages and documents that the federal Cabinet refuses to disclose to the Inquiry. Every conclusion set out by the Commissioner in the final report should be qualified if the Cabinet refuses to disclose all of its records.

Finally, a key role of the Inquiry is to recommend measures to effectively prevent, prohibit and penalize foreign interference. Democracy Watch urges your Honour not to let politicians or political parties off the hook by failing to recommend any measure just because they may not like it or may not implement it.

Democracy Watch hopes that, in its final report, the Commissioner will make strong recommendations to close all loopholes, correct all flaws, and make enforcement independent and effective. Canadians are counting on you. Thank you for the opportunity to make this final submission, and for the opportunity to participate as an intervener in the Inquiry, and best wishes in completing your final report.

2. The Unresolved Issue of Cabinet Documents Being Withheld from the Inquiry

At the top of page 5 of the Commissioner's initial report released on May 3, 2024, it said that the Commissioner had "had access to the relevant documents without any redactions for reasons of national security". However, there was a footnote at that point of the report, and the footnote stated that:

> "Some documents contain redactions for Cabinet confidence, solicitor-client privilege or protection of personal information. Discussions as to the applications of these privileges is ongoing."

Those two statements contradict each other. It was not possible for the Commissioner to know whether the Inquiry had access to all relevant documents unless the Commissioner had seen all Cabinet documents, and all parts of all Cabinet documents.

After learning about the documents being withheld from the Inquiry last January, Democracy Watch filed a request via email with the Inquiry on February 8th for disclosure by the Inquiry of details about the documents. Democracy Watch followed up on that request several times by email, and repeated the request in part 1 on pages 1-2 of its submission filed on April 15th following the Stage 1 Factual Phase hearings, which can be seen on the Inquiry website by clicking here.

No one at the Inquiry responded to Democracy Watch's request, until the above disclosure in the footnote on page 5 of the Commissioner's initial report on May 3rd.

In May, the Privy Council Office (PCO) disclosed to the *Globe and Mail* that:

> "As of May 17, 2024, approximately 9% of the 33,000 documents provided by the government contain one or more redactions. Other documents covered entirely by these exemptions have not been provided to the commission."

And that:

> "Discussions about document collection, production and appropriate disclosure have been, and remain ongoing."

(Click here to see the *Globe and Mail* article). Based on this statement from PCO, approximately 3,000 documents provided by Cabinet to the Inquiry contain one or more redactions. PCO refused to disclose to the *Globe and Mail* the total number of other Cabinet documents that were being completely withheld from the Inquiry.

The House of Commons Standing Committee on Procedure and House Affairs held a hearing on June 20 concerning the refusal by Cabinet to disclose all of its records. Click here to see the hearing webpage. Given the above disclosure by PCO, it was very strange to see Minister Dominic LeBlanc and National Security Adviser Nathalie Drouin claim at the hearing that the Cabinet had disclosed all "relevant" documents to the Inquiry, statements that contradict what was stated by the PCO.

In the 6th Notice to the Public issued by the Inquiry on September 13th, paragraphs 14-16 state that "discussions with the Government of Canada regarding Cabinet confidence have borne fruit" and that the Inquiry now had access:

> "to those confidential Cabinet documents that came into existence on or after January 1, 2018, and that were prepared and used by officials from CSIS, or other officials involved in national security, to brief Cabinet or its committees on matters related to foreign interference that are strictly operational in nature"

and that "Discussions with the Government regarding additional information subject to Cabinet Confidence continue."

On October 21st, Democracy Watch emailed the following request to the Inquiry:

> Has the Commission received all Cabinet confidence records from the federal Cabinet and Privy Council Office (PCO)? If not, given that Commissioner Hogue disclosed in paragraphs 14-16 of this September 13, 2024 document about the Stage 2 Factual Phase hearings that the Cabinet had turned over more Cabinet confidence records but not all records, and those newly disclosed records provided key information that the Commission needs to actually fulfill its mandate of determining what happened during the 2019 and 2021 pre-election and election periods, how many Cabinet confidence records, and how many pages in total, have not yet been disclosed to the Commission? And when will all the Cabinet confidence records be disclosed to the Commission?
>
> Specifically, given the recent testimony of Rob Stewart, Zita Astravas and Minister Bill Blair that raised many questions about what exactly happened with a CSIS warrant, can the Commission confirm that it has confirmed with the Cabinet and PCO that they have disclosed all the emails and other records of communications between these three people during the 54-day period in question after the warrant was sent from CSIS and when it was approved by Minister Blair?

Other than acknowledging receipt, no one at the Inquiry has responded.

Democracy Watch urges the urges the Inquiry, and the Cabinet, to be fully transparent and proactively disclose and highlight over the next month, and in the Inquiry's final report, the total number of pages and documents that the federal Cabinet refuses to disclose to the Inquiry.

In addition, given access to all Cabinet documents is needed by the Inquiry in order for it to fulfill its mandate, if the Cabinet refuses to disclose all of its records, every factual conclusion set out by the Commissioner in the final report concerning what occurred concerning the 2019 and 2021 federal elections, and between those elections, should be preceded by the statement:

> "As far as the Commissioner has been able to determine, given that the Cabinet has not disclosed all of its records,…"

3. The Supreme Court's Egalitarian Model is the Best Framework for Recommendations to Prevent Foreign Interference

In its 1997 ruling in the case *Libman v. Quebec*, the Supreme Court of Canada ruled for the first time since the *Charter* was enacted in 1982 on the issue of statutory restrictions on political spending, specifically in that case on spending during a referendum campaign period. Mr. Libman challenged the very restrictive statutory provisions in Quebec's *Referendum Act* that allowed only very low-level spending by individuals or groups that did not become affiliated organizations of official, registered yes or no "national committees" during a referendum. The Supreme Court overturned the Québec courts' rulings that the restrictive provisions infringed freedom of expression but were justifiable as a reasonable limit under section 1 of the *Charter*, and instead found that the limits were unreasonably low and, therefore, violated section 1 because they did more than "minimally impair" voter rights.[2] However, the Court also ruled that each person should only be allowed to spend a relatively small amount participating in and trying to influence a referendum because they only represent one voter, and each organization should only be allowed to spend an amount based on the number of voters who support the organization.

In *Libman*, the Supreme Court first set out key factors and principles that form the basis of what came to be called the "egalitarian model" for political processes, and the Court then extended and applied the model to other parts of Canada's political system in its subsequent rulings in the *Harper*, *Figueroa* cases, and in other key cases. One of the factors established by the Court is that the rules and practices in each process are assessed based on the system itself, not based on outcomes that result from the system, such as the result of an election.[3]

The first of 3 key principles of the egalitarian model is that the system should uphold, as much as possible, while taking into account "a broad range of social factors"[4] and also practical considerations to ensure effective representation,[5] the fundamental democratic equality principle of 1 person, 1 vote[6] so as to ensure that, again as much as practically possible, every voter has a close to substantively equal opportunity to participate in, or influence, an electoral process or a policy-making process.[7]

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[2] *Libman v. Quebec (Attorney General)*, 1997 CanLII 326 (SCC), [1997] 3 SCR 569, paras. 74-77 ("*Libman*").
[3] *Harper v. Canada (Attorney General)*, [2004] 1 SCR 827, 2004 SCC 33 (CanLII), paras. 64 and 95-99 ("*Harper*"). *Figueroa v. Canada (Attorney General)*, [2003] 1 SCR 912, 2003 SCC 37 (CanLII), para. 29.
[4] *Figueroa v. Canada (Attorney General)*, [2003] 1 SCR 912, 2003 SCC 37 (CanLII), paras. 24 and 108 ("*Figueroa*"), citing *Reference re Prov. Electoral Boundaries (Sask.)*, 1991 CanLII 61 (SCC), [1991] 2 SCR 158, pp. 181 and 184.
[5] *Reference re: Prov. Electoral Boundaries*, paras. 170, 183-85 and 188.
[6] *Libman*, paras. 41, 47 and 61; *Harper*, paras. 61-63.
[7] *Reference re: Prov. Electoral Boundaries*, pp. 183; *Harper*, para. 73.

The second key principle is that the public must perceive, and have confidence in, the fairness and integrity of every aspect of the system. To express this in reverse, every aspect of the system must appear to be fair and to have integrity, and actually be fair and have integrity, in order for the public to have confidence in the system.[8]

And the third key principle is that limits on spending cannot be so low as to prohibit expression and participation in the election at a level that is meaningful nor to prohibit the flow of adequate information for voters to make informed decisions.[9] Therefore, by extension, all information voters need to make informed decisions must be provided to voters, and information provided to voters must be required to be accurate or they will not be able to make informed decisions.

As is clear from the above, ensuring that the rules for all political processes comply with these three principles will ensure that all political processes will be effectively required to offer a substantively equal opportunity for substantively equal participation and influence in the process, and all participation will be effectively required to be honest, ethical, transparent, representative and democratic.

To put it another way, if all of Canada's political process rules are changed to comply with the principles of the Supreme Court's egalitarian model, no voter, and no business, organization or other type of non-governmental entity, will be allowed to participate more or have more influence than anyone else in an election or policy-making process, except for the people who serve as political party officials or as campaign staff or significant volunteers for nomination contestants, election candidates, electoral district associations (EDAs), political parties and party leadership contestants. As well, if the rules comply with the model's principles, the favours provided by these campaign staff and significant volunteers will be disclosed to voters, and the conflicts of interest created by the favours effectively neutralized by prohibiting these staff and volunteers from lobbying the politicians they help elect and/or by requiring the politicians to recuse themselves from decision-making processes that affect the interests of the campaign staff and significant volunteers.

As Democracy Watch's 5 policy papers details (summarized below in Parts 3-7), such rules, if independently and effectively enforced, will actually prevent foreign interference by preventing secret, unethical and undemocratic influence activities in elections, nomination and party leadership contests, and all policy-making processes. In contrast, half-measures that leave open loopholes and flaws and/or are ineffectively enforced by people who are chosen by and serve the ruling-party Cabinet will facilitate ongoing secret, unethical and undemocratic foreign interference activities in elections, contests and policy-making processes.

[8] *Harper*, paras. 23-24, 63, 79, 82-83, 91-92, 97, 99, 101-104, 108-109, 120, 122, 142 and 146; *Libman,* paras. 41, 52 and 84.
[9] *Libman*, para. 41; *Harper*, paras. 15, 61-63 and 67-70.

4. Foreign Big Money Funneling Through Donations and Loans Will Only Be Stopped by Making Donation and Loan Rules Egalitarian

Democracy Watch's policy paper entitled *Stopping Foreign Big Money Funneling* submitted to the Inquiry details how existing regulations of political donations and loans are weak and allow for secret, unethical and undemocratic influence in elections and political policy-making processes across Canada, which facilitates foreign interference in these processes. Click here to see the paper.

As detailed in the paper, Quebec is the only jurisdiction that has a system that actually prevents big money from being funnelled through "proxies" and, as a result, is the only jurisdiction with a system that effectively prevents foreign interference.

The paper sets out clear and detailed evidence showing that the current federal annual donation and loan limits, which are 45 times higher than the $75 that 75% of donors donate annually, make it easy for foreign governments, entities and individuals to secretly funnel through just a few "proxies" large amounts of money to nomination contestants, candidates, electoral district associations (EDAs), parties and party leadership contestants, including through donations funnelled to nomination contestants, candidates and EDAs from outside the electoral district.

In addition, the paper sets out 6 additional loopholes in federal donation and loan rules that allow for secret, unethical and undemocratic influence in Canadian politics that facilitates foreign interference, including that:

1. Nomination contestants, election candidates and party leadership contestants are allowed to donate large amounts of their own money to their own campaigns (which makes it easy for foreign funneling of large amounts of money through them).
2. Anyone or any entity is allowed to offer a benefit, advantage, including a fake job, to someone who is considering being a nomination or party leadership contestant or is not yet registered as an election candidate, and employers are allowed to offer paid leave to election candidates (which makes it easy for a foreign-owned or controlled business or organization to support a candidate in a very valuable way that exceeds the donation and loan limits significantly).
3. Anyone and any entity, including a foreign business, organization or individual, can pay an unlimited amount of various expenses of an election candidate.
4. Businesses, organizations and individuals, including those that are foreign-owned or funded, can provide a loan of products and services worth an unlimited amount of money to parties etc. for up to 3 years, which makes a mockery of Canada's limits on donations and loans.

5. A celebrity, including a foreign celebrity, who usually charges for public appearances is allowed to appear for free at an event for a contestant, EDA, candidate or party.

The paper also details the following secrecy and weak enforcement loopholes in Canada's political donations and loans system:

1. Secret fundraising of unlimited amounts of money for contestants, EDAs, candidates and parties is legal, including by lobbyists, and anyone or any entity can give a secret gift to an election candidate, including lobbyists.
2. Secret campaigning for contestants, EDAs, candidates and parties is legal, including by lobbyists.
3. The identities of volunteers are not required to be disclosed, no matter how much time they spend volunteering and doing favours for contestants, EDAs, candidates and parties (which makes it easy for foreign governments, entities and individuals to fund "volunteers" as "proxies" to secretly infiltrate campaigns, EDAs and parties);
4. The identities of donors who donate less than $200 are not required to be disclosed (which allows for secret funneling of foreign money in amounts of less than $200);
5. Unlike political party leadership contestants, and third parties, nomination contestants, election candidates and parties are not required to disclose their donors until after voting day. As well, EDAs only disclose their lists of annual donors once a year, 6 months after the end of the year, and;
6. Contestants, candidates, EDAs and parties choose their own auditors, which makes it easy to choose a friendly auditor who will cover up questionable donations and expenses, and original receipts are not required to be disclosed to Elections Canada.

The paper sets out 20 recommendations for correcting the inegalitarian flaws in the limits on donations and loans listed above.

PLEASE NOTE: Democracy Watch has realized that, due an administrative error, a draft version of the paper was submitted to the Inquiry that did not include the following additional 11 recommendations for closing the secrecy loopholes and correcting weak enforcement flaws set out above:

1. Require nomination contestants, leadership contestant, and candidates to disclose, before voting begins, a summary of any type of paid work they have done in the year before the contest or election campaign period

began, including the list of anyone who has paid them, in an online, searchable database on Elections Canada's website.

2. Require nomination contestants, leadership contestant, and candidates to disclose, before voting begins, a list of business sectors in which they have had investments in the past five years; whether they own a home or other residential properties, and; a list of businesses or other entities for which they have worked or lobbied in the previous five years, in an online, searchable database on Elections Canada's website.
3. Require nomination contestants, candidates and leadership contestants, to disclose, before voting begins, all gifts they have received or been promised to be given during the contest or election campaign period, and during the pre-contest and pre-election period, in an online, searchable database on Elections Canada's website.
4. Require nomination contestants, election candidates, EDAs, parties and leadership contestants to disclose, in a searchable online database on Elections Canada's website, any contributions or loans (of money, property, use of property or services) they have received, including promises or pledges to contribute anything in the future, during the exploration/preparation pre-contest/pre-election period, and to make this disclosure when they register for the first time, or register for a contest or election.
5. Require nomination contestants, election candidates, parties and leadership contestants to disclose, in a searchable online database on Elections Canada's website, and a few days before advance voting begins (including a few days before mail-in ballots are required to be mailed), and then again a few days before the main voting day, any contributions or loans (of money, property, use of property or services) they have received, including promises or pledges to contribute anything in the future, during the contest/campaign period. For EDAs and parties, the disclosure must be of all contributions received since their last required disclosure. For candidates, if their campaign receives a transfer from their EDA or party, their disclosure must include identify the donors who donated to the EDA/party or cross-reference to the EDA/party disclosure of those donors. The same rules should apply if a candidate receives a transfer from another EDA.
6. Require nomination contestants, election candidates, parties and leadership contestants to disclose, in a searchable online database on Elections Canada's website and before voting begins, the identity of anyone who fundraised for them, either through solicitations or by organizing or holding fundraising events, during the exploration/preparation pre-contest/pre-election period and contest/election period. People who do fundraising should be identified including any current or recent work they have done for anyone or any

business or entity, and the fundraising disclosure should include details about how much was raised and how it was raised.

7. Require party leaders, Cabinet ministers, and all MPs who run in a nomination contestant, election or party leadership contest to disclose all of their travel and their associates' travel in an online, searchable database on Elections Canada's website, to ensure that MPs do not use funds provided to them under the federal travel allowance program for their campaign or their party's campaign.
8. Require nomination contestants, election candidates, parties and leadership contestants to disclose, in a searchable online database on Elections Canada's website and before voting begins, the identity of anyone who worked for them for pay or provided any other benefit or advantage during the exploration/preparation pre-contest/pre-election period and contest/election period, including for each worker any current or recent work they have done for anyone or any business or entity. Low-level workers would be disclosed only to Elections Canada.
9. Require nomination contestants, election candidates, parties and leadership contestants to disclose, in a searchable online database on Elections Canada's website and before voting begins, the identity of anyone who volunteered for them during the exploration/preparation pre-contest/pre-election period and contest/election period, including for each volunteer any current or recent work they have done for anyone or any business or entity. Low-level volunteers would be disclosed only to Elections Canada.
10. Require Elections Canada to disclose publicly after each election or contest the total number of workers and volunteers on the campaigns of each party and its EDA candidates, and averages per EDA, and also for contestants, to allow tracking of the level of citizen volunteer participation in campaigns, which could inform future policy decisions concerning how to equalize the opportunity to run for all contestants, candidates and parties based on their actual level of voter support.
11. Make Elections Canada the auditor for nomination contestants, election candidates, EDAs, parties and leadership contestants.

In addition, as has been highlighted by several witnesses at the Inquiry, and as it relates to both donations and the third-party activities addressed in Part 5 below, it has been made very clear that the Commissioner's final report should recommend the following concerning voting during nomination contests and party leadership contests:

> "As in elections, only citizens who are 18 years of age or older should be allowed to vote in nomination contests and political party leadership contests."

5. Foreign Big Money Funneling Through Third Parties Will Only Be Stopped by Making Third-Party Rules Egalitarian

Democracy Watch's policy paper entitled *Stopping Undemocratic Foreign Interests* submitted to the Inquiry details how many third-party activities are completely unregulated, and all existing regulations of third-party activities are weak and allow for secret, unethical and undemocratic influence in elections and political policy-making processes across Canada that facilitate foreign interference, including examples from the 2019 and 2021 federal elections. Click here to see the paper.

The paper details how federal third-party rules, and the rules in the seven provinces that regulate third parties, fail to comply with the principles of the Supreme Court of Canada's egalitarian model in thirteen specific ways, which can be summarized as:

1. Third-party businesses (including foreign-owned businesses), interest groups and individuals can secretly spend an unlimited amount of money supporting or opposing a nomination contestant or party leadership contestant, or trying to influence a policy-making process, with no disclosure of their spending activities or sources of their funding.
2. Even if current Bill C-65 is enacted, one individual, or a corporation with just a few shareholders/members, can spend more than $1.6 million, as much as a citizen group that has tens of thousands of members, trying to influence a federal election, and an unlimited amount to try to influence a policy-making process, with no disclosure of the actual sources of their funding.

These two loopholes make it easy for foreign governments, entities and individuals to secretly funnel through just a few "proxies" large amounts of money to be spent trying to influence a contest, election or policy-making process.

3. It is not clearly illegal for a third-party business, interest group or individual, including foreign-owned and/or funded businesses, interest groups and individuals, to set up an online pseudo-media outlet/website that is actually a third party aiming to influence elections or policy-making processes, and there is no clear enforcement power to block access in Canada to such websites.
4. It is not clearly illegal for a third-party business, interest group or individual, including foreign-owned and/or funded businesses, interest groups and individuals, to set up an online pseudo-survey company that is actually a third party aiming to use fake or statistically invalid survey results to influence elections or policy-making processes, and there is no prohibition on posting such survey results on websites or on social media.
5. Third parties choose their own auditors, which makes it easy to choose a friendly auditor who will cover up questionable donations and expenses.

The paper sets out 17 detailed recommendations, including needed amendments to current Bill C-65, for ensuring that third parties are only allowed to spend during pre-election and election periods, and during policy-making processes, in transparent, ethical and democratic ways.

6. Foreign Secret, Unethical Lobbying Will Only Be Stopped by Making Lobbying and Ethics Rules Egalitarian

Democracy Watch's policy paper entitled *Stopping Secret Unethical Foreign Interference Through "Proxy" Lobbyists* submitted to the Inquiry details how many lobbying activities are completely unregulated, and all existing regulations of lobbying activities are weak and allow for secret, unethical and undemocratic lobbying during elections and political policy-making processes across Canada that facilitate foreign interference. Click here to see the paper.

The paper also details the loopholes and flaws in ethics rules for Cabinet ministers, their staff, Cabinet appointees, MPs, Senators and their staff, and federal government employees, that allow for secret, unethical private interests by public officials, and unethical, undemocratic foreign interference and influence by lobbyists and relations with lobbyists during elections and policy-making processes.

The paper proposes the framework of the following three principles, which align with the key principles of the Supreme Court's egalitarian model, for regulating lobbying and relations between public officials and lobbyists and the private interests of public officials to prevent foreign interference:

1. Overall, the rule that should apply to all political situations and processes is that lobbyists are prohibited from doing or proposing anything that places any public official in an apparent of conflict of interest, and from lobbying in any way that is improper (so that the public can have full confidence in the appearance of, and actual, fairness and integrity of all processes);
2. Comprehensive, loophole-free requirements to require registration of, and public disclosure of, all lobbying and lobbying spending and sources of funding (to inform voters), and;
3. Relative, substantive equality of opportunity for relative equality of participation and influence in the government and political decision-making system, based on actual level of voter support (with no more than a 5-10 percent variation in the equality of opportunity and influence).

The paper details how the current federal *Lobbying Act* and *Lobbyists' Code of Conduct*, and the *Conflict of Interest Act* and *MP Code* and *Senator Code* and federal government employees' *Code* all do not comply with any of these principles. As a result, due to loopholes in the acts and codes, secret, unethical lobbying is allowed, including by "proxy" lobbyists for foreign governments, entities and individuals, and secret, Cabinet ministers, their staff, Cabinet appointees, MPs, Senators, their staff and federal government employees are all allowed to have secret, unethical private interests and relationships with lobbyists, including "proxy" lobbyists.

The following are some of the key loopholes set out in the paper:

1. Secret lobbying is legal, including of political party officials;

2. Secret fundraising of unlimited amounts of money for contestants, EDAs, candidates and parties is legal, including by lobbyists;
3. Secret campaigning for contestants, EDAs, candidates and parties is legal, including by lobbyists;
4. Secret investments by Cabinet ministers, MPs, Senators and their staff, and by top government officials, are legal;
5. It is legal for MPs and Senators to do other secret work while serving as an MP or Senator;
6. It is legal to bribe someone who has just been elected as an MP or just announced as a Senator, before they take their oath of office;
7. There are no ethics rules for the staff of MPs and Senators, and they are allowed to have secret investments, and do other work in secret;
8. Anyone and any entity, including a foreign business, organization or individual, are allowed to pay an unlimited amount of various expenses of an election candidate;
9. Lobbyists can give secret gifts to election candidates, and secretly sponsor interns in MP offices.

The paper also sets out how the provisions of Bill C-70, as enacted, do not close these loopholes (again, Click here to see Democracy Watch's full submission to the House of Commons on Bill C-70, and click here to see a summary of the submission).[10]

The paper sets out 31 recommendations for closing the loopholes to require disclosure of all lobbying, to prohibit unethical lobbying, and to prohibit public officials from having unethical relations with lobbyists and from having other private interests that undermine policy-making processes that uphold the public interest.

7. Disinformation Will Only Be Stopped by Preventing, Prohibiting and Penalizing Disinformation in Egalitarian Ways

Democracy Watch's policy paper entitled *Misinformed: Canada's Incomplete, Inconsistent, Ineffective and Partisan Anti-Disinformation System, and How to Make it Effective* submitted to the Inquiry details exactly what is set out in its title, how to make Canada's anti-disinformation system complete, consistent, effective and non-partisan. Click here to see the paper.

The paper also details how the enactment of Bill C-70 has only closed some of the loopholes in terms of regulating disinformation, and it establishes a very weak, ruling-party Cabinet controlled enforcement system, with no requirement that enforcement will be effective, well-resourced, transparent, timely or accountable.

[10] NOTE: Because Bill C-70 was rushed through Parliament, little time was provided to analyze it. As a result, please disregard point #B1 in the submission on Bill C-70 as it was made due to a misreading of one of the Bill's provisions.

Click here to see Democracy Watch's full submission to the House of Commons on Bill C-70, and click here to see a summary of the submission.[11]

Part 2 of this policy paper summarizes some of the main theoretical frameworks and arguments for combatting disinformation, while Part 3 summarizes the difficulties with combatting disinformation. Part 4 summarizes the history and incomplete and inconsistent current state of the rules in the various federal laws and codes prohibiting disinformation during elections (by candidates, political parties and the public (sub-part 4.1)) and between elections (by politicians, their staff, Cabinet appointees, and government employees, and lobbyists (sub-part 4.2)).

Some of the past and existing federal enforcement systems and penalties are also summarized in Part 4 of the paper, including some of the key cases of disinformation in recent history that have not been prevented. Part 5 sets out 14 changes needed to make each existing rule prohibiting disinformation effective, and each existing enforcement and penalty system effective and non-partisan.

8. Enforcement Must Be Independent, Well-Resourced, Effective, Transparent, Timely and Accountable to Actually Stop Foreign Interference

Democracy Watch's policy paper entitled *Turning Weak Lapdogs into Effective Watchdogs* submitted to the Inquiry details key changes to make every enforcement entity fully independent, well-resourced, transparent, timely and accountable. Click here to see the paper.

Even if all the loopholes detailed in the policy papers summarized above in Parts 4-7 are closed and flaws corrected, no law enforces itself. The Inquiry has heard little about the systemic flaws in the enforcement entities for all the key laws that protect Canada's democracy from foreign interference.

All of the enforcement entities lack independence from the ruling party Cabinet which chooses them all through secretive, partisan processes, and all are underfunded, slow to act, secretive and largely unaccountable, and this ineffective enforcement makes foreign interference activities effectively legal even in areas in which they are illegal:

1. In addition to the Cabinet choosing all the watchdogs except the Commissioner of Canada Elections, the heads of most of the key watchdogs, including CSIS, the RCMP, FINTRAC and all members of the Panel of Five, serve at the pleasure of the Cabinet,

[11] NOTE: Because Bill C-70 was rushed through Parliament, little time was provided to analyze it. As a result, please disregard point #B1 in the submission on Bill C-70 as it was made due to a misreading of one of the Bill's provisions.

As a result, it is completely justifiable for the public to view all of the anti-foreign interference watchdogs as being too much under the influence and control of the ruling party Cabinet. In addition:

2. None of the watchdogs are required to do audits or inspections or other effective enforcement actions;
3. All the watchdogs are allowed to make secret rulings, and to bury investigations without any public disclosure, and decisions to bury investigations cannot be challenged in court;
4. None of the watchdogs are required to investigate or rule on allegations of wrongdoing in a timely manner;
5. Money laundering and proceeds of crime enforcement is weak, and;
6. Whistleblower protection is weak or non-existent for reporting violations of all the laws.

As well, as the paper details, the federal lobbying and ethics watchdogs cannot impose any penalties for violations of key anti-foreign interference rules and, as several Inquiry witnesses pointed out, the penalties in other areas are too weak to discourage violations.

As the paper details, the weak enforcement records over the past 20 years of the federal ethics, lobbying and election commissioners, and the RCMP, show clearly that weak enforcement means dozens of violations of laws will either not be caught or the violators will be let off the hook in secret, making foreign interference activities effectively legal even in areas in which they are illegal.

The paper sets out 28 key changes needed to make every enforcement entity fully independent, well-resourced, transparent, timely and accountable.

PLEASE NOTE: Democracy Watch adds the following two recommendations to the list of 28 recommendations set out in the policy paper:

1. Given the CRTC plays a key role in regulating broadcasts from foreign media and pseudo-media outlets, section 3 of the *Canadian Radio-television and Telecommunications Commission Act* (R.S.C., 1985, c. C-23 – Click here to see the *Act*), should be changed to require a fully independent appointment process for the members of the CRTC, and to remove the possibility of re-appointment. In addition, the CRTC must be required to do regular audits and inspections to ensure compliance, and to issue public rulings on every decision (including a decision not to investigate a situation) in a timely manner.
2. Democracy Watch's position is that no politician should be involved in approving law enforcement warrants because that allows the politician's political concerns to taint the warrant approval process which dangerously

undermines fair, effective law enforcement, and so subsections 21(1), 21.(1), 22, 22.1(1), 22.21(1) and 23(1) of the *CSIS Act* (R.S.C., 1985, c. C-23 – Click here to see the *Act*) should all be amended to remove the requirement that the Minister approve the warrant, and to remove the power of the Minister to give any employee the power to apply for a warrant (only the Director should be allowed to apply), and subsection 7(2) of the *CSIS Act* should also be amended to remove the requirement to consult with the Deputy Minister before applying for a warrant under sections 21, 21.1 or 23. These changes will not be enough to shield the process from political interference as long as the Director is chosen by and serves at the pleasure of the ruling party Cabinet. As a result, in addition, section 4 of the *CSIS Act* should be changed from the Director being chosen by and serving at the pleasure of Cabinet to, instead, require a fully independent appointment process for the Director of CSIS, and to make the Director's appointment for a fixed term of 5-7 years with dismissal only possible for cause, and with no possibility of re-appointment.

As Democracy Watch's policy paper sets out, this must be the structure and operational rules for all watchdogs that enforce anti-foreign interference measures in order to comply with the Supreme Court's egalitarian principles of giving voters key information they need to participate in elections and all political processes, and giving voters reason to have confidence in the appearance of integrity, and actual integrity, in the enforcement of all anti-foreign interference laws.

9. Conclusion

Given the detailed policy submissions Democracy Watch has made to the Inquiry, it hopes to hear from those involved in drafting the final report, and is happy to clarify any of the information or recommendations set out in any of its five policy papers.

Democracy Watch urges the Commissioner to be transparent in the final report concerning documents withheld by the Cabinet, and not to let the parties off the hook by failing to recommend any measure just because the parties may not like it or may not implement it.

Democracy Watch hopes that, in the final report, the Commissioner will make strong recommendations to close all loopholes, correct all flaws, and make enforcement independent and effective, and to recommend all measures needed to prevent, prohibit and penalize foreign interference and influence in Canadian politics.

Canadians are counting on you. Thank you again for the opportunity to make this final submission, and for the opportunity to participate as an intervener in the Inquiry, and best wishes in completing your final report.