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Submission in Response to the *Preparatory Document on the Policy Aspect of the Public Inquiry into Foreign Interference* in Federal Electoral Processes and Democratic Institutions

(September 2024)

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1. Summary

Democracy Watch's makes this submission in response to the initial *Preparatory Document on the Policy Aspect of the Public Inquiry into Foreign Interference* and the initial *Consultation Paper on the Policy Aspect of the Public Inquiry into Foreign Interference* (the "Inquiry" – full name: Public Inquiry into Foreign Interference in Federal Electoral Processes and Democratic Institutions). The Preparatory Document can be seen on the Inquiry website by clicking here, and the Consultation Paper can be seen by clicking here. Both documents were made available to participants on August 29, 2024, with responses required to be submitted by September 11, 2024.

There are significant loopholes and flaws in several federal Canadian laws (and provincial and territorial laws) that have made it legal to date to secretly and unethically 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.

The loopholes and flaws mean that secret foreign interference activities have been largely unregulated. No government agency or official has had any power to track, monitor, investigate, prosecute or penalize many unethical and undemocratic foreign interference activities that are allowed to be done in secret.

As a result it is, in fact, impossible to determine the extent and effects of foreign interference and influence activities in the past and now – before and during and between the 2019 and 2021 federal elections. This will remain impossible as long as the loopholes and flaws in the laws exist and enforcement remains ineffective.

Almost all the enforcement entities for all the key laws that protect Canada's democracy from foreign interference lack independence, and are ineffective, underfunded, slow to act, secretive and largely unaccountable. Many are also subject to political interference by the ruling party Cabinet which chooses them all through secretive, partisan processes, and most serve at the Cabinet's pleasure.

The enactment of Bill C-70 has only closed some of the loopholes, 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 (**See details** in the sections below, especially section 11).

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 arrangement and activities, or that they will comply with the provisions prohibiting such activities.

What is most likely is that, in response to Bill C-70, foreign governments, entities and individuals will use networks of foreign 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 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.

The extensive evidence of how the loopholes and weak enforcement systems in Canada's key democracy laws have been exploited by Canadians and Canadian businesses and organizations to secretly, undemocratically and unethically interfere in Canadian politics over the past few decades makes it clear not only that foreign governments and entities have also likely been exploiting these loopholes and weak systems through proxies and intermediaries, but also **makes it clear that the only way to stop foreign interference in Canadian political processes, including through disinformation, is to close these loopholes and correct these flaws to prevent it.**

Foreign interference activities will only be effectively prevented if changes are made to all of Canada's key democracy laws to prohibit and penalize all secretive, undemocratic and unethical ways of interfering in and influencing political processes across Canada, and if changes are made to ensure the enforcement of all these laws is fully independent, effective, well-resourced, transparent, timely and accountable.

As in so many areas of public policy, an ounce of prevention in the area of foreign interference is worth a pound of cure. If loopholes are left open or flaws left uncorrected in any law that foreign governments, entities and individuals can exploit to have secret, undemocratic or unethical influence over contestants, candidates, riding associations, party leaders, politicians, and public officials, those loopholes and flaws will likely be exploited. And if enforcement is tainted by political influence and is ineffective, secretive, underfunded, delayed and unaccountable, they will likely be exploited more.

Even if all the loopholes are closed and all the flaws corrected, if the enforcement system is ineffective then likely violators will be let off the hook. A weak enforcement agency that lacks funding and resources will likely only catch a foreign agent violating a law years after they have influenced a political process, and then the agency will likely keep the violation secret, and likely no penalty will be imposed.

There is extensive evidence that weak, secretive enforcement results in violators being let off the hook from the weak, secretive enforcement records over the past two decades by the federal Conflict of Interest and Ethics Commissioner, Commissioner of Lobbying, RCMP and Commissioner of Canada Elections and Elections Canada (**See details below** in sections 2, 3, 7 and 11).

In other words, changes must be made to effectively prevent foreign interference activities, and if those changes are not made then the activities will not only occur, but also activities will only be caught long after the interference has occurred, and the process that follows will take years more, with often no one being held accountable.

To help ensure that the Policy Phase results in strong recommendations for all the changes needed to prevent foreign interference activities, the sections below set out responses to the two main questions asked in the Consultation Paper:

1. What topics, themes or issues should the Inquiry address at policy roundtables?
2. Do you have suggestions of people to invite to participate in the roundtables?

beginning with section 2 below that sets out issue areas that the *Preparatory Document* does not address that definitely should be addressed during the Policy Phase given that loopholes in the laws in these areas allow for secret, unethical and undemocratic foreign interference in Canadian politics.

After section 2, the remaining sections provide responses to each subsection in Part 2 of the *Preparatory Document*. Part 2 of the *Document* sets out proposed hypotheses and theme areas for the Policy Phase, and possible questions for each area, and invites comments and suggestions on the hypotheses, themes and questions.

Unfortunately, as detailed below especially in section 2, and in other sections below, the Inquiry seems to be headed in a direction that may not address many key loopholes and flaws in Canadian laws that allow for secret, unethical and undemocratic foreign interference in Canadian politics, which would result in disinformation persisting without effective measures for stopping it and in continuing structural problems that make enforcement ineffective.

Also unfortunately, 64 of the 67 people in the initial Stage 2 Factual Phase hearings witness list released by the Inquiry on September 11 come from the government, Parliament and/or political parties (the three outsiders all come from one organization). The 64 witnesses, 52 of whom are Cabinet ministers or government representatives, are very unlikely to highlight loopholes and flaws in laws (or political party rules) and/or weak enforcement records, that they are responsible for or that benefit them and/or their political parties and supporters. In addition, the government has standing to advocate the government's interests through cross-examinations.

Democracy Watch continues to hope that, in its Stage 2 Factual Phase hearings, and also in its Policy Phase, the Inquiry will broaden its scope, witnesses and presentations on policy issues to cover all the loopholes and flaws in all of Canada's democracy laws, and the structural problems that cause weak enforcement, and will in its Final Report make strong recommendations to close all loopholes, correct all flaws, and make enforcement independent, effective, transparent, timely and accountable.

2. Problem areas of secret foreign interference not in *Preparatory Document* that should be addressed in Stage 2 and Policy Phase

Democracy Watch submitted to the Inquiry on March 23, 2024 a list of 10 suggested witnesses, and 140 suggested questions to ask them, to confirm the above loopholes and flaws in these areas, and the weaknesses in the enforcement systems (Click here to see the list).

Click here to see Democracy Watch's summary of the key loopholes in federal election, lobbying, ethics and political finance laws that allow for secret, undemocratic and unethical foreign interference in federal politics, and flaws in the laws that make enforcement weak, ineffective, secretive, delayed and unaccountable.

Click here to see Democracy Watch's final submission to the Inquiry after the Stage 1 Factual Phase of the Inquiry which also summarizes some of the loopholes and the enforcement entities that are subject to political interference and influence by the ruling party Cabinet, and that oversee enforcement systems that are ineffective, secretive, delayed and largely unaccountable.

Click here to see a summary list of the 17 key changes needed to laws across Canada to prevent, prohibit and penalize foreign interference activities, and ensure effective, transparent, timely and accountable enforcement of the prohibitions, changes that tens of thousands of Canadians want made.

It seems from the initial list of witnesses released by the Inquiry on September 11th for the Stage 2 Factual Phase hearings of the Inquiry that begin on September 16th (Click here to see the link to the list on the Inquiry's Public Hearings webpage) that the Inquiry will not hear from some key witnesses about loopholes and flaws in the lobbying, ethics, election, misinformation and disinformation, anti-money laundering and border security laws and their weak enforcement systems (including the lack of effective whistleblower protection) that all facilitate and allow for secret foreign interference activities aimed at undermining political processes and democratic institutions across Canada.

In order to examine the loopholes and flaws in the laws covering these areas that facilitate foreign interference, and weaknesses in the enforcement systems, Stage 2 of the Inquiry must hear from representatives of the Critical Election Incident Protocol Panel, the Commissioner of Lobbying, the Conflict of Interest and Ethics Commissioner, the Senate Ethics Officer, the Public Sector Integrity Commissioner, the Canada Border Services Agency (CBSA) and the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).

The Inquiry would also greatly benefit from presentations made during the Policy Phase that confirm the facts concerning the loopholes and flaws in these laws and their weak enforcement systems. Democracy Watch respectfully encourages that such presentations be made.

The *Preparatory Document* does not mention the following four problem areas or mentions them only briefly and in very general terms, even though loopholes and flaws in the laws in these areas, along with weak enforcement of the laws, allow for secret, unethical, undemocratic foreign interference activities in Canadian politics.

i. Secret, unethical lobbying is legal, lobbying law enforcement is very weak

While Department of Justice officials are being called to testify during the Stage 2 Factual Phase hearings this September-October, it remains to be seen whether they will be asked the key questions set out in Democracy Watch's list of 10 suggested witnesses and 140 key questions to ask them, section 6 (re: loopholes in federal loobying rules that allow for secret, unethical lobbying, and how the Commissioner of Lobbying is handpicked by the ruling party Cabinet through a secretive, partisan process).

The Commissioner of Lobbying is not currently scheduled to be called to testify during Stage 2, but should be called and asked those key questions listed in section 6.

Secret, unethical lobbying is allowed because of loopholes and flaws in the federal *Lobbying Act* (R.S.C., 1985, c. 44 (4th Supp.)) and the *Lobbyists' Code of Conduct*. It would be naïve to believe that foreign governments and entities will not exploit these loopholes to interfere in Canadian politics in secret. The *Act* allow does not require lobbying (which is defined as communicating with public office holders "in respect of" various legislative, spending, program, tax and subsidy initiatives) to be registered and publicly disclosed in the searchable, online Registry of Lobbyists (i.e. secret lobbying is allowed):

a) If the lobbying is done by someone who is not specifically paid for the lobbying activities (i.e. can someone arrange a contract with a client that specifically pays them only to provide strategic advice to a client, and then could lobby for that client for free without registering or disclosing their lobbying activities because they were not paid for those activities);
b) If the lobbying is done by a person employed by a business who lobbies less than 20% of their work time;
c) If the lobbying is done by a member of the board of directors of a business or other organization who is only paid for their expenses;
d) If the lobbying involves communication with a public office holder with respect to the office holder's enforcement, interpretation or application of any Act of Parliament or regulation that applies to the person or entity doing the lobbying;
e) If the lobbying is in respect of a federal tax credit, and;
f) If the lobbying is in respect of a federal government contract.

If you are not required to register your lobbying under the *Act*, you are not required to comply with the ethics rules in the *Lobbyists' Code* (weak as they are).

The *Act* and *Lobbyists' Code* together allow lobbyists to secretly fundraise and campaign for, or assist politicians and parties in other ways, and then lobby them right afterwards or soon afterwards. Lobbyists can do this with nomination contestants, election candidates, electoral district associations (EDAs), MPs, Senators, party leaders and Cabinet ministers and parties. The Commissioner of Lobbying is also allowed to secretly reduce the time period during which a lobbyist is prohibited from lobbying after doing favours for a policy-maker. Click here to see details about these loopholes in the *Act* and *Code*.

Click here to see a summary of the clinical studies conducted worldwide that show that even small gifts and favours influence the decisions of the recipients, and larger gifts and favours have more influence.

Under subsection 10.4(1.1), the Commissioner has significant leeway to essentially bury an investigation of alleged wrongdoing and let the person off in secret (with no public disclosure of their decision required), even if the person clearly violated the *Act* or the *Lobbyists' Code*.

The Commissioner also has no power to penalize anyone who violates the *Act* or the *Lobbyists' Code*.

Under subsection 4.1(1) of the *Lobbying Act*, the Commissioner of Lobbying is chosen by the ruling political party federal Cabinet through a secretive, partisan process (only courtesy consultation with the opposition parties is required, and an independent, merit-based search for qualified candidates is not required).

Under subsection 4.1(3), Cabinet may have full, unrestricted power to re-appoint the Commissioner for as many terms as it wants and, under subsection 4.1(4), the Cabinet alone appoints an Interim Commissioner for as many 6-month terms it wants (if the Commissioner is incapacitated or leaves office during their term). Click here to see details about how the current Commissioner of Lobbying was chosen through a secretive, partisan, Cabinet-controlled process.

Because the lobbying law enforcement regime is tainted by political influence, and ineffective, secretive, delayed and largely unaccountable, secret rulings letting lobbyists off the hook have happened repeatedly over the past few decades. Click here to see how the Commissioner of Lobbying and RCMP from 2008 to 2017 made almost 90 secret rulings that let off more than 100 lobbyists even though they violated the federal lobbying law or lobbyists' code.

Click here to see the PhD thesis of Democracy Watch's Co-founder Duff Conacher, which details in Chapter 4, section 4.5 the above-noted loopholes

and flaws that facilitate secret, unethical lobbying, and details in Chapter 7, section 7.2 how to close these loopholes and correct these flaws.

Because of these loopholes and flaws, the measures in recently enacted Bill C-70 will still effectively allow using lobbyists as proxies to secretly influence policy-making processes. 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.

Suggested witnesses on secret, unethical lobbying:

Stéphanie Yates, Professeure, Département de communication sociale et publique, Université du Québec à Montréal (UQAM)

Duff Conacher, PhD (Law) and Co-founder of Democracy Watch

ii. Secret corruption is legal, and anti-corruption law enforcement is weak

While the RCMP, Department of Justice and House of Commons officials are being called to testify during the Stage 2 Factual Phase hearings this September-October, it remains to be seen whether they will be asked the key questions set out in Democracy Watch's list of 10 suggested witnesses and 140 key questions to ask them, section 3 (re: loopholes in the *Criminal Code* that allow for bribery, and the RCMP's lack of independence from the ruling party Cabinet). It also remains unclear whether the Department of Justice and House of Commons officials will be asked the questions set out in section 7 (re: loopholes in federal ethics rules that allow for secret conflicts of interest and unethical decisions and actions by everyone in the federal government, and how the federal Conflict of Interest and Ethics Commissioner ("Ethics Commissioner") is handpicked by the ruling party Cabinet through a secretive, partisan process) and section 8 (re: loopholes in federal Senate ethics rules that allow for secret conflicts of interest and unethical decisions and actions by senators, and how the Senate Ethics Officer is handpicked by the ruling party Cabinet through a secretive, partisan process).

The Ethics Commissioner is not currently scheduled to be called to testify during Stage 2, but should be called and asked those key questions listed in section 7. The Senate Ethics Officer is not currently scheduled to be called to testify, but should be called asked those key questions listed in section 8.

The RCMP, Department of Justice and House of Commons officials should be asked during the Stage 2 Factual Phase hearings to confirm that it is unclear when exactly a person elected in a federal election, or appointed to Senate, becomes an "official" as defined in the anti-bribery section 118 of the *Criminal Code* (the section that defines "official" as it applies in the anti-bribery and other anti-corruption provisions in sections 119-125 of the *Code*), and unclear when exactly an elected person becomes an MP who is covered by the *Conflict of Interest Code for Members of the House*

of Commons ("*MP Code*") or a senator who is covered by the *Ethics and Conflict of Interest Code for Senators* ("*Senator Code*"). This loophole makes it legal to bribe someone who has been elected before they become an official or MP or Senator, which is an obvious way a foreign government or entity could use to interfere in Canadian politics.

An additional question to ask RCMP and Department of Justice officials during the Stage 2 Factual Phase hearings is to confirm the loophole in the *Criminal Code*, under clause 121(1)(b), that says it is legal for an individual or entity that has dealings with a government institution to give an official or employee of that institution a commission, reward, benefit or advantage, and under 121(1)(c) it is legal for the official or employee to accept the benefit, if they have "the consent in writing of the head of the branch of government with which the dealings take place."

The federal *Conflict of Interest Act* (S.C. 2006, c. 9, s. 2) (*COI*) allows Cabinet ministers, their staff, and top government officials to have secret investments in businesses, including foreign-owned or controlled businesses, and including foreign-state controlled businesses, as long as the investments are put into a trust.

The *COI* allows Cabinet ministers, their staff, and top government officials to profit from decisions in which they participate.

Under the *COI*, anyone or any business or other entity can give a secret gift worth up to $500 annually to a Cabinet minister, their staff, and/or top government officials and their identity will not be disclosed publicly.

The *MP Code* has 10 significant gaps that allow MPs: to be dishonest; to have secret investments (including in foreign companies); to have secret jobs (including at foreign companies and organizations and at foreign-government owned or controlled entities that operate in Canada); to profit from decisions in which they participate, and; to accept unlimited "sponsored travel" junkets from foreign governments, entities and individuals.

There are no ethics rules or code that applies to the staff of MPs, which makes them an obvious proxy/intermediary for a foreign government, entity or individual to bribe or influence in order to have influence over an MP.

In 2022-2023, MPs added a new loophole to the *MP Code* that allows anyone to give to an MP the "benefit" of sponsoring an intern in their office, and that this allows lobby groups, including foreign-government or foreign-business or entity-funded groups, to place interns as spies in MP offices.

Click here to see a summary of the clinical studies conducted worldwide that show that even small gifts and favours influence the decisions of the recipients, and larger gifts and favours have more influence.

Under subsection 45(2) of the *COI*, and section 27 of the *MP Code*, the Ethics Commissioner has leeway to essentially bury an investigation of alleged wrongdoing and let the person off in secret, even if they have clearly violated the *COI* or *MP Code*.

The Ethics Commissioner has no power to penalize anyone who violates the key ethics rules in the *COI* (and only a fine of maximum $500 for failing to file accurate financial statements on time) or in the *MP Code*.

Under subsection 81(1) of the *Parliament of Canada Act*, the Ethics Commissioner is chosen by the ruling political party federal Cabinet (only courtesy consultation with the opposition parties is required, and an independent, merit-based search for qualified candidates is not required). Under subsection 81(3) the *Parliament of Canada Act*, Cabinet may have full, unrestricted power to re-appoint the Commissioner for as many terms as it wants and, under subsection 82(2), the Cabinet alone appoints an Interim Commissioner for as many 6-month terms it wants (if the Commissioner is incapacitated or leaves office during their term).

Click here to see details about how the previous Ethics Commissioner Mario Dion was handpicked by the Trudeau Cabinet through a secretive, partisan, Cabinet-controlled process in which the Cabinet misled opposition party leaders and failed to consult with them in any meaningful. Commissioner Dion was handpicked by the Trudeau Cabinet even though he had a record of eight unethical actions while he was Integrity Commissioner.

Click here to see details about how the current Ethics Commissioner Konrad von Finckenstein was chosen through a secretive, Cabinet-controlled process by the Trudeau Cabinet.

Under the *Senator Code*, Senators are allowed to profit from decisions in which they participate. Also, anyone or any business or other entity can give a gift worth up to $200 annually to a Senator and their identity will not be disclosed publicly.

There are no ethics rules or code that applies to the staff of Senators, which makes them an obvious proxy/intermediary for a foreign government, entity or individual to bribe or influence in order to have influence over an MP.

Under subsection 20.1(1) of the *Parliament of Canada Act*, the Senate Ethics Officer is chosen by the ruling political party federal Cabinet (only courtesy consultation with the Senate opposition parties is required, and an independent, merit-based search for qualified candidates is not required). Under subsection 20.2(1) the *Parliament of Canada Act*, Cabinet may have full, unrestricted power to re-appoint the Officer for as many terms as it wants and, under subsection 20.2(2), the Cabinet alone appoints an Interim Officer

for as many 6-month terms it wants (if the Officer is incapacitated or leaves office during their term).

Under the Senate inquiry process, the Officer has leeway to essentially bury an investigation of alleged wrongdoing and let the person off in secret, even if they have clearly violated the *Senator Code*.

The Officer has no power to penalize anyone who violates the *Code*.

Because the federal ethics rules enforcement regime is tainted by political influence, and ineffective, secretive and largely unaccountable, secret rulings letting politicians, top government officials and MPs off the hook have happened repeatedly over the past few decades. Click here and click here to see how the Ethics Commissioner from 2007 to 2017 made more than 200 secret rulings that let off an unknown number of federal politicians and senior government officials who violated ethics laws, and also issued public rulings that let off more than 85 federal politicians and senior government officials for clear violations of the federal ethics laws. Click here to see how current Ethics Commissioner von Finckenstein buried eight ethics complaints, and gutted three key ethics rules, in his first six months as commissioner.

Click here to see the PhD thesis of Democracy Watch's Co-founder Duff Conacher, which details in Chapter 4, sections 4.1 to 4.4 the above-noted loopholes and flaws that facilitate secret, unethical conflicts of interest and unethical decisions and action, and details in Chapter 7, section 7.1 how to close these loopholes and correct these flaws.

Suggested witnesses on corrupt, unethical practices:

Gerry Ferguson, Professor Emeritus and former University Distinguished Professor, Faculty of Law, University of Victoria, and editor *Global Corruption: Law, Theory and Practice, 4th edition* (2022)

Duff Conacher, PhD (Law) and Co-founder of Democracy Watch

iii. Whistleblower protection is weak and much worse than in other countries

While Department of Justice officials are being called to testify during the Stage 2 Factual Phase hearings this September-October, it remains to be seen whether they will be asked the key questions about Canada's flawed whistleblower protection laws and weak enforcement system for those laws.

The federal Public Sector Integrity Commissioner is not currently scheduled to be called to testify during Stage 2, but should be called along with critics of the current law because protecting whistleblowers is key to ensuring effective enforcement of any law, including laws to prevent foreign interference.

People who blow the whistle on wrongdoing in Canada, including on foreign interference activities, are not protected when blow the whistle, and are also not protected from retaliation after they report wrongdoing.

An international report on whistleblower protection ranked Canada last out of 62 countries that were evaluated. Click here to see details.

While private member Bill C-290, which will correct some of the flaws in the federal whistleblower protection system, has been passed by the House of Commons and is at first reading in the Senate, even if it is enacted Canada's system will still be far from meeting best-practice standards.

The Public Sector Integrity Commissioner, like most of the other heads of the key federal democratic good government enforcement agencies, is also handpicked through a secretive, partisan, Cabinet-controlled process.

A key step in effective enforcement to prevent foreign interference is to establish a best-practice whistleblower protection system that protects anyone who blows the whistle on violations of any of the laws that apply, including empowering enforcement agencies for these laws to pay for a lawyer to advise whistleblowers of their rights, to reward whistleblowers if their claims are proven, and to protect them from retaliation and penalize anyone who retaliates against them. Click here to see details.

Suggested witnesses on whistleblower protection:

David Hutton, Senior Fellow, Whistleblowing Initiatives Steering Committee, Centre for Free Expression

Ian Bron, Senior Fellow, Whistleblowing Initiatives Steering Committee, Centre for Free Expression

iv. Money-laundering laws and enforcement are weak, and weakly enforced

While Department of Justice officials are being called to testify during the Stage 2 Factual Phase hearings this September-October, it remains to be seen whether they will be asked the key questions about Canada's flawed anti-money laundering laws and weak enforcement system for those laws.

Representatives of the Canada Border Services Agency (CBSA) and the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) are not currently scheduled to be called to testify during Stage 2, but should be called because there is a well-documented, direct connection between the activities of money laundering

Garry W. Clement, former RCMP officer and Director, Proceeds of Crime, should also be called to testify and present on this issue.

3. Response to subsection 2.1 of Preparatory Document

Subsection 2.1 sets out proposed issues and questions to explore in the area of Democracies in Theory and Practice, and also sets out some hypotheses in this area.

Overall, the proposal to discuss the balancing of democratic rights and freedoms is fine and, of course, necessary given that effectively preventing foreign interference requires restrictions on political activities and freedom of expression. The proposed questions in subsection 2.1 are also generally fine.

However, paragraph 9 contains a problematic statement concerning misinformation and disinformation that says "*efforts to limit disinformation that might poison the information environment may risk limiting access to diverse perspectives that enrich that environment.*"

Disinformation (and misinformation) is false information and, as a result, it is not that it "might" poison the information environment, it is clear that it will poison the information environment. The only question is the extent of how much it will poison the information environment, determined by how many voters are exposed to any false claim.

The Commissioner's initial May 2024 report (click here to see it) contained an equally problematic statement in the first paragraph on page 26 that: "Even falsehoods can be a legitimate exercise of freedom of expression during an election, so long as it is not state-sponsored or amplified."

Democracy Watch's position is that false claims are always an illegitimate exercise of freedom of expression, whether or not they are state-sponsored or amplified. False statements mislead voters, and so they are a clear violation of the fundamental *Charter* section 3 right of all voters to cast an informed ballot. Protecting the right to cast an informed ballot is more important than protecting the right of people and entities to mislead voters.

Canada at the federal, provincial, territorial and municipal level already has many legal provisions that prohibit false claims, including in election laws. The problems are that the laws are incomplete and inconsistent and so they allow for disinformation and misinformation, and are ineffective because the enforcement agencies lack key enforcement powers and also lack independence from the ruling party Cabinet which makes them vulnerable to political interference and influence and undermines their legitimacy.

However, carefully designed and properly structured laws and enforcement systems to prevent and prohibit disinformation and misinformation can be established, and do not risk limiting access to diverse perspectives that enrich the information environment as they will only prohibit and penalize people and entities who make false claims that poison the information environment. To remove the risk of the government or any political party controlling the definition of what is true or false, the enforcement agencies must be fully independent from the government and all parties,

with the heads of the agencies and employees appointed and hired through a fully independent process.

With regard to proposed question 2 in paragraph 11, Democracy Watch suggests not spending much time at all considering a different test than the *Oakes* test for balancing conflicting values. Whatever the test maybe, to be constitutional any change to the law will be subject to a review by the courts under section 1 of the *Charter* concerning whether it is a "reasonable limit" that "can be demonstrably justified in a free and democratic society" and any test is going to involve some process that weighs the evidence of the effects of the activities undertaken individuals and entities, and limiting those activities, that will end up deploying similar general questions as the *Oakes* test does simply because there are inescapable evidence and legal questions that need to be answered in any such interpretation test. In addition, the wording of section 1 of the *Charter* is very unlikely to change, and that the Inquiry has no role in suggesting to the courts what legal interpretation method to use when considering section 1 in any case.

With regard to proposed questions 3-5, for summary information and detailed research concerning the answers to these questions:

a) Click here to see Democracy Watch's summary of the key loopholes in federal election, lobbying, ethics and political finance laws that allow for secret, undemocratic and unethical foreign interference in federal politics, and flaws in the laws that make enforcement weak and ineffective.

b) Click here to see Democracy Watch's final submission to the Inquiry after the Stage 1 Factual Phase of the Inquiry which also summarizes some of the loopholes and the enforcement entities that are subject to political interference and influence by the ruling party Cabinet, and that oversee enforcement systems that are ineffective, secretive and largely unaccountable.

c) Click here to see a summary list of the 17 key changes needed to laws across Canada to prevent, prohibit and penalize foreign interference activities, and ensure effective enforcement of the prohibitions, changes that tens of thousands of Canadians want made.

d) Click here to see list of 10 suggested witnesses, and 140 suggested questions to ask them, to confirm these loopholes and most of the weaknesses in the enforcement systems that Democracy Watch submitted to the Inquiry on March 23, 2024. As noted above in section 2, it seems from the initial list of witnesses released by the Inquiry on September 11 for the Stage 2 Factual Phase hearings that the Inquiry is not headed toward hearing from some key witnesses from government institutions that oversee laws that have serious loopholes and flaws that facilitate foreign interference, and weak enforcement systems. If these witnesses from these federal government institutions are not called during Stage 2, the Inquiry should ensure that presentations are made during the Policy Phase that confirm the facts concerning the loopholes and flaws and weak enforcement systems that all facilitate secret foreign interference activities across Canada.

e) Click here to go to the University of Ottawa's uO Research site to see the PhD thesis of Democracy Watch's Co-founder Duff Conacher, which details in Chapters 3 and 4 many of the loopholes in Canada's key federal democracy

protection laws that allow for secret, undemocratic and unethical influence in federal politics, including by foreign governments and entities and their proxies, and which sets out in Chapters 6 and 7 workable, best-practice recommendations for closing these loopholes.

f) Click here to see how the Commissioner of Canada Elections (CCE) and Chief Electoral Officer (CEO) of Elections Canada kept secret how they dealt with more than 3,000 complaints filed with them between 1997 and 2011 about violations of the *Canada Elections Act* (*CEA*), and tried to deny an *Access to Information Act* request for the records concerning how they addressed the complaints because the records may make the Commissioner look bad.

In addition, under the *CEA*, the CEO of Elections Canada is nominated through a process controlled entirely by the ruling political party Cabinet, a process that is not required to include consultation with opposition parties nor an independent, merit-based search for qualified candidates. And then the CEO choses the CCE using any process the CEO wants. While a majority of the House of Commons is required to pass a resolution confirming your appointment as CEO, if the ruling party has a majority in the House that resolution will very likely be approved. Click here to see article about the federal Cabinet changing its choice of the current CEO in May 2018 just a few weeks after telling the NDP that another person would be appointed (no public explanation was ever provided for the change).

Suggested witness(es) for roundtable on section 2.1 issues:

J. E. Michel Bastarache, former Supreme Court of Canada Justice, author of the majority ruling in Harper v. Canada (Attorney General), 2004 SCC 33 (CanLII)

Duff Conacher, PhD (Law) and Co-founder of Democracy Watch

4. Response to subsection 2.2 of Preparatory Document

Subsection 2.2 sets out proposed issues and questions to explore in the area of Foreign Intervention and Diplomatic Practice, and also sets out some hypotheses in this area.

Overall, the proposal to explore this area is fine, as are the suggested questions.

5. Response to subsection 2.3 of Preparatory Document

Subsection 2.3 sets out proposed issues and questions to explore in the area of Electoral Integrity: Nomination Contests and Leadership Contests, and also sets out some hypotheses in this area.

Overall, the proposal to explore this area is fine. The proposed questions in subsection 2.3 are also generally fine.

However, paragraphs 17 and 18 do not cover the scope of the problems with nomination contests and political party leadership contests. Both types of contests are not only wide open to foreign interference because of loopholes and flaws in "*rules around membership and voting, voting procedures, proof of citizenship and residency requirements, or consistency of rule enforcement"* but also because:

a) Political parties control and operate both nomination contests and party leadership contests and, as long as they do this, they have very little incentive to disclose and deal with any foreign interference activities that are discovered because disclosure would embarrass the party. This is especially serious for party leadership contests because if a foreign interest captures a party leader they will essentially capture the operations of the entire party, including its decisions and actions in policy-making and parliamentary processes. Elections Canada should be operating these contests in the same way it runs elections and by-elections. Click here to see the PhD thesis of Democracy Watch's Co-founder Duff Conacher, which details in Chapter 6, sections 6.3 and 6.4 how to ensure fair contests run by Elections Canada.

b) Third parties (individuals and interest groups) are allowed, in secret with no registration or public disclosure, to collude with contestants in both types of contests and spend an unlimited amount of money supporting or opposing contestants. Click here to see the PhD thesis of Democracy Watch's Co-founder Duff Conacher, which details in Chapter 3, sections 3.26 to 3.29 the loopholes that allow for secret third-party activities in these contests, and details in Chapter 6, sections 6.11 to 6.14 how to close these secrecy loopholes.

c) Disclosure of who is bankrolling nomination contestants does not happen until after the contest is over (unlike in leadership contests where disclosure of donors and lenders is required during the contest). Click here to see the PhD thesis of Democracy Watch's Co-founder Duff Conacher, which details in Chapter 3, section 3.24 the loophole that allows for this secrecy, and details in Chapter 6, section 6.9 how to close this secrecy loophole.

d) Nomination contestants and party leadership contestants are allowed to choose their own auditor for the contest expenses, which allows them to choose a "friendly" auditor who will overlook questionable expenses. Click here to see the PhD thesis of Democracy Watch's Co-founder Duff Conacher, which details in Chapter 3, sections 3.24 and 3.25 the flaw that allows for this self-enforcement, and details in Chapter 6, section 6.9 how to correct it.

The enactment of Bill C-70 has only closed some of these loopholes and corrected some of these flaws. 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, which details the loopholes still left open by Bill C-70.

Suggested witness(es) for roundtable on section 2.3 issues:

William Cross, Professor of Political Science, Carleton University

Duff Conacher, PhD (Law) and Co-founder of Democracy Watch

6. Response to subsection 2.4 of Preparatory Document

Subsection 2.4 sets out proposed issues and questions to explore in the area of Electoral Integrity: Political Financing, and also sets out some hypotheses in this area. Overall, the proposal to explore this area is fine.

However, paragraphs 21-23 ignore significant inequities, flaws and secrecy loopholes in Canada's political finance system, and the fact that spending limits are arbitrary, contradictory and, in some cases, meaningless. These secrecy inequities, loopholes and flaws facilitate foreign interference, and mean Canada's political finance system is not actually effectively transparent, fair or a level playing field and is completely unregulated in key ways, as follows:

e) See the article in the *Journal of Parliamentary and Political Law*, Vol. 18-2 (pp. 349-388) by Democracy Watch Co-founder Duff Conacher that summarizes how the Supreme Court of Canada (SCC) and other courts' rulings have been inconsistent in upholding key principles of equality, integrity and transparency in their rulings on Canada's political finance system. This article is an update and expansion of Chapter 2 of the PhD thesis of Democracy Watch's Co-founder Duff Conacher (Click here to see the thesis).

a) **The claim in paragraph 22 that "*Financial contributions have been recognized as an important form of political expression in public debate and in jurisprudence on the regulation of third parties*" is, at best, an exaggeration.** The 2004 SCC ruling in *Harper* that is cited in paragraph 22 does not contain such a comment concerning contributions. Canadian courts have not ruled specifically on the issue of the constitutionality of contributions/donations other than in two cases. First, in the in the case *McCann c. Municipality of Pontiac*, 2017 QCCA 61 (CanLII), the court expressed support for Quebec's strict donation limit (See paras. 64, 73-76 and 82-84). Secondly, in the case *Maheux c. Procureur général du Québec*, 2023 QCCS 235 (CanLII), the court held that Quebec's annual donation limit of $100 does not violate subsection 2(d) of the *Charter* (paras. 295-299) or section 3 (paras. 300-301) or section 7 (para. 351), and while it violates subsection 2(b) of the *Charter* (paras. 287-288) the court upheld the limits under section 1 because they comply with every factor in the *Oakes* test (paras. 305-350 – especially given the context of the public funding provided to parties and candidates under Quebec's system, and including achieving in proportional ways the rational objectives of equality as the basis of democracy, and of making it very difficult to undertake fundraising schemes in which people funnel donations through others). Canadian courts will also issue rulings on the constitutionality of donation limits in the next couple of years in the *Charter* case *O'Leary v. Canada (Attorney General)* in which Kevin O'Leary is challenging federal donation limits, and in the *Charter* case Pierre Karl Péladeau has filed challenging Quebec's annual donation limit.

b) Click here to see a summary of the clinical studies conducted worldwide that show that even small gifts and favours influence the decisions of the recipients, and larger gifts and favours have more influence.

c) **A large majority of donors donate only $75 annually to any of the main federal parties.** But the federal individual donation and loan limit under the *Canada Election Act* (*CEA*) of $3,450 (in 2024, which increases by $25 annually) to *each* federal party and its electoral district associations (EDAs). This allows those who can afford it to donate or loan up to 45 times what most donors donate to *each* party, making top donors/lenders very valuable to parties. Wealthy donors who donated more than $1,000 annually (which only 5% of donors do) provided on average 30% of the average total amount raised by the 5 main federal parties each year from 2016 to 2023. Click here to see Democracy Watch's infographic webpage that summarizes how Canada's political finance system is undemocratic, unfair and corrupting.

d) **Allowing large annual donations facilitates the secret funnelling of large amounts of money from foreign governments and entities through Canadian proxies/intermediaries to contestants, candidates, EDAs and parties**, as only a few proxies and their family members are needed in order to donate tens of thousands of dollars. As well, one person can hold a fundraising event for a contestant, candidate, EDA or party, with dozens of guests each donating the maximum amount allowed, or send out an email to dozens of people who each donate the maximum, and their identity is allowed to remain secret under the *CEA* even though they have raised tens of thousands of dollars. Click here to see a summary of the funnelling that has occurred at the federal level and in every province that has limited donations.

e) **Another donation loophole in the *CEA* is that the identity of donors who donate less than $200 are not required to be disclosed.** This also facilitates the secret funnelling of donations from foreign governments, entities and individuals.

f) **Another donation loophole in the *CEA* is that volunteer labour is unregulated**, and the identities of volunteers is not required to be disclosed, no matter how many favours they do for a contestant, candidate, EDA, party or politician. This facilitates foreign governments and entities secretly funding and using proxies to do unlimited favours.

g) **Another donation loophole in the *CEA* is that donations are allowed to nomination contestants, EDAs and candidates from outside the electoral district.** This facilitates foreign interference by allowing funnelling of donations to any district in the country, as happened in 2015 and 2016 when donors from B.C., some of whom were formerly connected to China's government, donated large amounts to a riding in Ontario and to Prime Minister Trudeau's riding in Quebec.

h) **Another donation loophole in the *CEA* is that anyone and any entity** (including a foreigner or a foreign-government or foreign-entity funded Canadian citizen, permanent resident or entity) **can pay an unlimited amount of the expenses** for "care" or litigation of a nomination contestant, election candidate or party leadership contestant, an unlimited amount of the personal expenses of a nomination or leadership contestant, and up to $5,000 to compensate an election candidate's representatives at polling stations, as well as give a secret gift worth up to $500 to a candidate.

i) **Another loophole in the donation limits in the *CEA* is that a business, organization or individual (including a foreign business, organization or individual) can provide products and/or services to contestants, candidates, EDAs and parties and payment does not have to be provided for 3 years after the product or service is provided.** So while direct loans cannot be made by businesses or organizations, and while direct loans from individuals are limited to $3,450 annually (which is, as described above in (b), much too high an amount), a business, organization or individual can "loan" products and/or services worth an unlimited amount of money to contestants, candidates, EDAs and parties for 3 years. Under Ontario's election law, payments for products and services must be made within 30-60 days or the non-payment will be considered to be a donation or loan subject to the donation and loan limit.

j) Another donation loophole is that, by decision of Elections Canada (i.e. not in the *CEA* as a statutory provision), a celebrity (including a foreign-government or foreign-entity funded Canadian citizen or permanent resident who is a celebrity) who usually charges for public appearances can appear at a nomination or leadership contest or candidate or party campaign event for free and, unlike every other contributor or supplier, it is not counted as a contribution or an expense (NOTE: Only their costs of travelling to the event are counted as a contribution (or an expense if the campaign pays the costs).

    NOTE: Click here to see the PhD thesis of Democracy Watch's Co-founder Duff Conacher, which details in Chapter 3, sections 3.8 to 3.13 the above-noted loopholes and flaws that facilitate using donations and loans as a means of foreign interference, and details in Chapter 6, section 6.5 how to close these donation and loan loopholes and flaws.

k) **Third parties (individuals and interest groups) are allowed, in secret with no registration or public disclosure, to spend an unlimited amount of money supporting or opposing contestants**, and to collude with contestants in nomination contests and party leadership contests, and.

l) **Third parties are allowed to spend an unlimited amount of money to influence a public policy-making process between elections.**

m) **An individual voter, or a private, numbered corporation with just one or a few shareholders (who may be fronts for the actual foreign "beneficial owners" of the corporation), is allowed to spend as a third party up to approximately $1.1 million in the federal pre-election period and up to approximately $610,000 during the federal election period** (as of 2024 – the limits increase annually by the rate of inflation) on advertising and/or other political outreach activities. Not only were these spending limits set arbitrarily, one or a few voters are allowed to spend the same amount as a citizen group that has thousands, tens of thousands or hundreds of thousands members/supporters. Allowing one or a few voters to spend so much money facilitates foreign interference as it means a foreign government or entity only has to fund one or a few Canadian proxies/intermediaries in order to reach millions of Canadian voters with advertising and social media posts that

further their foreign interests. Spending limits for third parties should be based on the actual number of voters the third party represents.

n) **Foreign-owned and controlled businesses and organizations operating in Canada (as long as they are not foreign government-controlled) are allowed under the *CEA* to spend money on advertising and political activities as third parties to influence political processes and elections.** There is a strong argument that, given they do not vote, and that their employees and executives can speak for themselves as voters, the business itself should be prohibited from spending money in ways aimed at affecting policy or elections, in the same way that businesses and organizations are prohibited from making donations and loans.

o) **Third parties are also not required under the *CEA* to count the costs of producing an image or video that is posted online or on social media** (but not as a paid advertisement) or costs of paying individuals and entities to like or share images or videos that the third party has posted, as part of its expenses that are covered by the spending limit, and that the Chief Electoral Officer (CEO) has recommended that these costs be counted.

p) **There are no clear rules in the *CEA* to prohibit businesses, organizations and individuals (including foreign governments, entities and individuals) from establishing online "media" outlets inside or outside of Canada that are actually third-party advocacy outlets aiming to influence political processes and elections, including through misinformation, and are possibly funded by a foreign government, entity or individual.** Click here to see an article, and click here to see a second article, and click here to see a third article, about the recently exposed example of Russian-funded Tenet Media that has intervened as a pseudo-media outlet, but really as a partisan third-party advocacy organization, in Canadian and U.S. politics in the past several months.

q) **Third parties are not required to register unless they spend $500 in a pre-election or election period.** Sections 51 and 57 of current federal Bill C-65 propose to increase the registration thresholds to $1,500, even though the costs of reaching voters through email, texts, robocalls, websites and social media posts (including AI generated audio and videos) is exponentially lower than past TV, radio and print media advertising costs. Increasing these thresholds will allow for more secret, foreign-funded third-party interference. The registration threshold should be either maintained at $500 or lowered.

r) **Third parties are not required to disclose their donors and spending details unless they raise or spend $10,000 during the pre-election period or the election period.** This threshold is much too high, and facilitates foreign funding of third parties. Hundreds of thousands of voters, even millions in some cases, can be reached through social media advertising for less than $10,000. The disclosure threshold should also be $500.

s) **Third parties are not required to disclose all their donors, and can hide them as "own funds".** Even if a third party raises or spends $10,000, it is not required to disclose all or even any of its donors. A third party can raise

an unlimited amount funds from any source (including foreign governments, foreign entities, and foreign individuals) for the organization's general activities and then, when a pre-election or election campaign period occurs, transfer those funds into its campaign account and, after the election, disclose it only as its "own funds" thereby hiding the actual source of those funds.

t) **Third parties can transfer funds to another third party, which hides the actual source(s) of the funds.** A third party can also raise an unlimited amount of funds from any source, transfer an unlimited amount to another third party, and then that third party is only required to disclose the other third party as the donor, not the actual source of the funds. As a result, even if Bill C-65 is enacted and partially closes the "own funds" loophole, this loophole can continue to be exploited by foreign governments and entities.

NOTE: Sections 52-60 and 86-87 of current federal Bill C-65 propose changes to somewhat close the "own funds" and "transfer funds" loopholes. The sections propose to prohibit third parties from using any funds that were not donated by Canadian citizens or permanent residents to pay for pre-election and election expenses, and to require third parties to disclose the identity of anyone who donated a total of more than $200. There are two exemptions:

1. If less than 10% of the third party's total revenue (not including government grants or contributions) during the previous fiscal or calendar year came from donations, then it can use its "own funds". This essentially means unions that receive almost all their revenue from union dues, and businesses and any organization that receives more than 90% of their revenues from sales of products and services, will still be able to use their "own funds" and also transfer funds between them, and;

2. Subsections 54(5) and 59(5) exempt individuals who act as third parties from the "own funds" prohibition. This will allow foreign governments and entities to fund and use individuals as foreign agent proxies. As set out above in (m), the way to stop this is to only allow individuals to spend a very small amount, given that they only represent themselves.

u) **Third parties are not required to disclose all their donors and spending for election activities until months after voting day.** Even if a third party raises or spends $10,000, nd doesn't exploit the "own funds" or "transferred funds" loopholes, it is not required to disclose all its donors and election campaign spending before election day. True, third parties are required to disclose interim returns after raising or spending $10,000, and again 21 days before election day, and again 7 days before election day. However, a donor can easily promise to donate to the third party to cover all its expenses, and make the donation during or after the last week of the campaign period, and their identity would then not be required to be disclosed until months later.

NOTE: Click here to see the PhD thesis of Democracy Watch's Co-founder Duff Conacher, which details in Chapter 3, sections 3.26 to 3.29

and 3.32 the above-noted secrecy loopholes and spending limit flaws that facilitate using proxy "third parties" (including pseudo "media" outlets) for foreign interference, and details in Chapter 6, sections 6.11 to 6.14 and 6.17 how to close these secrecy loopholes and restrict secret, unethical and undemocratic spending by third parties (including pseudo "media" outlets) all the time, spending that facilitates foreign interference.

v) **Another related significant loophole in the *CEA* is that foreign governments, political parties, businesses, unions, organizations and individuals are allowed to try to induce voters to vote, not vote, or vote in a specific way**. Subsection 282.4(1) of the *CEA* prohibits foreigners doing this, but then clause 282.4(2)(a) exempts any action that does not involve expenses and 282.4(3) (together with section 330) allows three ways that would be the most usual ways a foreigner would try to influence a voter in Canada, including through online disinformation (as section 330 only applies to broadcasting). Provisions 282.4(2)(a) and 282.4(3) should be repealed, and 282.4 changed to prohibit attempting to do what the section prohibits.

w) **Unlike for contestants in party leadership contests in which disclosure is required during the contest, it remains a secret who is bankrolling contestants, candidates, EDAs and parties until months after voting day**, and EDAs only disclose their donors annually, and parties only quarterly. This facilitates secret foreign interference via donations and loans through the entire pre-election and election periods and beyond, and between elections. Click here to see the PhD thesis of Democracy Watch's Co-founder Duff Conacher, which details in Chapter 3, sections 3.22 to 3.25 the loopholes that allow for this secrecy, and details in Chapter 6, sections 6.9 and 6.10 how to close these secrecy loopholes.

x) **Contestants, candidates, EDAs, parties and third parties are allowed to choose their own auditors for their expenses**, which allows them to choose a "friendly" auditor who may not bring a high level of scrutiny to bear on questionable expenses. Click here to see the PhD thesis of Democracy Watch's Co-founder Duff Conacher, which details in Chapter 3, sections 3.22 to 3.25 and 3.29 the flaws that allow for this self-enforcement, and details in Chapter 6, sections 6.9, 6.10 and 6.14 how to correct these flaws.

The enactment of Bill C-70 has only closed some of the loopholes and corrected only some of these flaws. 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, which details the loopholes still left open by Bill C-70.

Suggested witness(es) for roundtable on section 2.4 issues:

Lisa Young, Professor of Political Science, University of Calgary

Duff Conacher, PhD (Law) and Co-founder of Democracy Watch

7. Response to subsection 2.5 of Preparatory Document

Subsection 2.5 sets out proposed issues and questions to explore in the area of Disinformation, Digital Space and Democratic Processes, and also sets out some hypotheses in this area.

Overall, the proposal to explore this area is fine. The proposed questions in subsection 2.5 are also generally fine.

However, as noted above in section 3, Democracy Watch is concerned that the Inquiry has not fully confronted the severity of issue of disinformation and has somewhat exaggerated the difficulties of preventing disinformation. Like paragraph 9 in the Preparatory Document, paragraph 29 proposes that there is a conflict between ensuring "access to reliable information" and preventing disinformation. But disinformation is false, unreliable information which violates the fundamental *Charter* section 3 right of all voters to cast an informed ballot, so there is no conflict.

Paragraph 29 also expresses concern that preventing disinformation conflicts with ensuring freedom of expression and protection of privacy, but Democracy Watch's position is that it does not. Long before social media existed, freedom of expression was restricted through libel and defamation laws to prevent damaging false claims and several types of false claims were prohibited in Canadian election laws and other laws. In addition, just because social media now exists, it does not mean that some new right to anonymously make false claims during elections or libel or slander others has been established.

In the same way that yelling "Fire!" in a crowded theatre as a false claim when there is no fire is illegal because it is likely to cause harm, posting false claims about politicians, laws, public policies and political processes must be made illegal because they are likely to cause harms.

According to the Supreme Court of Canada, only expression that "conveys or attempts to convey meaning" relating to "the pursuit of truth, participation in the community, or individual self-fulfillment and human flourishing" that is protected by s. 2(b) of the *Charter* (*Irwin Toy Ltd. v. Quebec (Attorney General),* 1989 CanLII 87 (SCC), pp. 976—979 and 1009; *Ford v. Quebec (Attorney General)*, 1988 CanLII 19 (SCC), paras. 54-57). False claims do not relate to the pursuit of truth because they are false, they mislead the community, and they harm the self-fulfillment and flourishing of others because they undermine their ability to cast an informed vote and to make informed choices about what positions they support in policy-making processes.

The danger of disinformation should not be understated. A disinformation campaign does not have to fool all of the people even some of the time, let alone all of the people all of the time, to affect election results. Instead, in most elections, it only has to fool a small percentage of voters in order to change the election result.

As well, even if the questionable claim can be proven that anonymously posting on social media has provided an avenue for people to blow the whistle on actual wrongdoing by anyone or any entity, the much more fair, effective, systemic and sustainable way to provide an avenue for whistleblowing is to establish best-practice whistleblower protection systems for every government and business sector and area of society in which wrongdoing occurs.

As set out above in section 3, Canada at the federal, provincial, territorial and municipal level already has many legal provisions that prohibit false claims, including in election laws, as well as perjury laws, libel and defamation law, and in securities, tax, welfare and immigration laws. The problems are that the laws are incomplete and inconsistent and so they allow for disinformation and misinformation, and are ineffective because the enforcement agencies lack funding or enforcement powers or have weak enforcement policies and practices, and also are all chosen by, and in many cases serve at the pleasure of, the ruling party Cabinet, which makes them vulnerable to political interference and influence and undermines their legitimacy.

The *CEA* only prohibits false statements about some aspects of a federal political party leader, party official or election candidate, and the Commissioner of Canada Elections (CCE) and Chief Electoral Officer (CEO) of Elections Canada have both stated publicly that the provision in the *CEA* is unenforceable. Click here to see summary of how limited the provision in the *CEA*, and how it allows most false claims, and click here to see details.

In addition, because of an incorrect interpretation by the Commissioner of Canada Elections in a March 2018 decision, the *CEA* only prohibits a fraudulent false claim by a politician that misleads voters in an election (when, in fact, unlike in B.C.'s election law, fraud is not required to be proven under the provision in the *CEA*). False election promises by politicians are a key disinformation problem that politicians and many commentators ignore, even though false promises violate the s. 3 Charter right of voters to cast an informed ballot as much as any other type of disinformation.

Current Bill C-65 adds more provisions to the *CEA* that prohibit false claims but, even if Bill C-65 is enacted before the next election, many very damaging false claims will still be legal during elections, and between elections. Bill C-65 has passed at second reading and is currently awaiting review by a House of Commons committee. Bill C-65 proposes to amend the *CEA* by adding section 92.1 and 92.2 (prohibiting false information in a nomination application form); expanding sections 481 and 482 (impersonating the CEO); adding section 482.01 (prohibiting various false claims including re: election results), and sections 82 and 92 and subsection 90(2) of Bill C-65 add these measures to the list of offences in the *CEA*.

The federal *Lobbyists' Code of Conduct*, Rule 2.1, prohibits registered lobbyists from making false claims in their lobbying communications but, as detailed above in subsection 2(i), many loopholes in the federal *Lobbying Act* allow for lobbying without registering, and the *Lobbyists' Code* only applies to registered lobbyists so many lobbyists are not required to comply with the *Code*.

Almost all commentators in Canada on the issue of disinformation have proposed ineffective measures such as requiring social media companies to make their algorithms public. But most people already know that social media companies' algorithms promote false claim posts (and other provocative posts), but this public knowledge has not led the companies to change their practices in any substantive way. The companies like false claim posts because those posts create arguments, re-posting, and counter-posting – all of which keeps people engaged on their platform longer, which increases their revenue from advertising.

Many commentators, and the federal government, have also proposed for the past several years the ineffective and unrealistic measure of expecting that members of the public can educate themselves to the point of knowing everything to the point where they will never be fooled by a false claim post. Several federal government programs and funding streams have been dedicated to this façade of a solution, ignoring the fact that many experts and mainstream media outlets, with all their resources and knowledge and expertise, have been repeatedly fooled by social media posts making false claims.

In contrast to these ineffective measures, the two national surveys conducted in the past few years show that **70-75 percent of Canadian voters support regulating social media companies to prohibit and quickly remove false social media posts and fake accounts.** Click here to see one survey (p. 5) and click here to see the other (pp. 15-16).

At its 2023 national policy convention, the Liberal Party of Canada passed a resolution calling on the federal government to enact "truth in political advertising" law enforced by an independent body with the power to impose penalties (click here, p. 17). The Citizens' Assembly on Democratic Expression's 2022 report (click here, pp. 52-53) calls for an independent online communications enforcement agency, but does not specify the many measures that are needed to ensure its independence.

Carefully designed and properly structured laws and enforcement systems to prevent, prohibit, and penalize disinformation and misinformation can be established.

Yes, there is the long-recognized danger that government institutions and political parties should not be deciding which political speech is true. To remove the risk of the government or any political party controlling the definition of what is true or false, the enforcement agencies must be fully independent from the government and all parties, with the heads of the agencies and employees appointed and hired through a fully independent process, and with a guaranteed adequate enforcement budget from Parliament (not the government), full investigative powers, and required to impose significant penalties for all violations.

Unfortunately, several commentators have generally proposed that the ruling party Cabinet should appoint the heads of enforcement agencies. This would completely undermine the legitimacy of the enforcement agency and allow the public to

justifiably claim that the agency is censoring social media posts that the ruling party (or political parties overall) does (or do) not like.

An enforcement agency on disinformation must, like the enforcement agency for any democratic good government law, be fully independent.

Four reports from commentators, from the TMU Leadership Lab (click here), the Media Ecosystem Observatory (click here and click here), and the Public Policy Forum's Canadian Commission on Democratic Expression (click here), recommend that enforcement agencies be established to investigate and rule on complaints about online disinformation. However, incredibly, the reports, as well as the report of the Government of Canada's Expert Advisory Group (click here), express concern for protecting legitimate dissent and freedom of expression, but don't in any way address the issue of ensuring that enforcement is fully independent from the government, and from all political parties, including through having the heads of enforcement agencies appointed by a fully independent committee made up of people who have no ties to the government or to any political party.

Suggested witness(es) for roundtable on section 2.5 issues:

Jean Pierre Kingsley, former Chief Electoral Officer of Elections Canada

Duff Conacher, PhD (Law) and Co-founder of Democracy Watch

Yoshua Bengio, Professor of Computer Science, Université de Montréal and member of the Leadership Team of Mila - Quebec Artificial Intelligence Institute

8. Response to subsection 2.6 of Preparatory Document

Subsection 2.6 sets out proposed issues and questions to explore in the area of Canada's National Security Apparatus, and also sets out some hypotheses in this area.

Overall, the proposal to explore this area is fine. The proposed questions in subsection 2.6 are also generally fine.

Suggested witness(es) for roundtable on section 2.5 issues:

Stephanie Carvin, Associate Professor of International Relations at the Norman Paterson School of International Affairs, Carleton University

Wesley Wark, Senior Fellow, Centre for International Governance Innovation

9. Response to subsection 2.7 of Preparatory Document

Subsection 2.7 sets out proposed issues and questions to explore in the area of Whole-of-Society Approach, Public Engagement and Civic Education, and also sets out some hypotheses in this area.

Overall, the proposal to explore this area is fine. The proposed questions in subsection 2.7 are also generally fine.

In answer to proposed question #2 in paragraph 35, raising awareness of the danger of foreign interference will only contribute to a loss of confidence in Canada's democratic institutions if governments and political parties continue to refuse to enact effective measures to prevent foreign interference.

In answer to proposed question #5 in paragraph 35, as mentioned above in section 7, increasing media and digital literacy is fine, but it is a façade of a solution that will not stop the harms of foreign interference. Many commentators, and the federal government, have proposed for the past several years the ineffective and very questionable claim that media and digital literacy programs will educate members of the public to the point where they will never be fooled by a false claim post or other foreign interference activity. Several federal government programs and funding streams have been dedicated to this façade of a solution, ignoring the fact that many experts and media outlets, with all their resources and knowledge and expertise, have been repeatedly fooled by, and shared, social media posts making false claims.

It is simply naïve to believe that voters can protect themselves from foreign interference. The only way to prevent foreign interference is to effectively prevent it by making changes to all of Canada's democracy laws to ensure that it is clearly and strictly prohibited for anyone, in any way, to secretly, unethically and/or undemocratically interfere in or influence any political process, and to ensure enforcement of those prohibitions is independent, well-resourced, effective, transparent, timely and accountable.

10. Response to subsection 2.8 of Preparatory Document

Subsection 2.8 sets out proposed issues and questions to explore in the area of Canada's "Plan to Protect Democracy". Overall, the proposal to explore this area is fine. The proposed questions in subsection 2.8 are also generally fine.

In answer to the questions in paragraph 38, the federal government's Critical Election Incident Public Protocol Panel is not independent as it is made up of public servants who were chosen by, and serve at the pleasure of, the Prime Minister. Also, the Cabinet Directive for the Protocol has several flaws, as follows:

1. It is not legally binding on the Panel, and there are no penalties if the Panel violates any part of the Protocol;

2. The section 6.0 process sets a much-too-high threshold for informing the public of interference (the interference essentially must threaten the ability of the entire national election to be free and fair – instead, the threshold should be any threat to the election in any electoral district);
3. Even if the Panel decides (by consensus) that the interference meets the threshold, the section 5.0 process does not set any deadline by which the Panel is required to inform anyone of the interference;
4. The section 9.0 Assessment also does not set any deadline by which a so-called "independent" report is required to be released about the effectiveness of the Protocol at "addressing threats" during the previous election, and;
5. The section 9.0 Assessment is done by whomever the ruling party Cabinet chooses, so the assessor is not independent in any way. After the 2021 federal election, the Trudeau Cabinet chose Morris Rosenberg, former head of the Trudeau Foundation when the Foundation received a $200,000 donation from two China-connected businessmen, to do the assessment.

If the Panel members are not all replaced by individuals who are fully independent of the government and all political parties, and who are chosen through a process that does not involve politicians from any party, and if the flaws in the Protocol are not corrected, then the Panel will continue failing to publicize and confront foreign interference instead of reporting it publicly and taking actions to stop it.

The Panel should also be re-named the "Critical Political Process Incident Public Protocol Panel" and it should operate all of the time, not just during elections.

11. Response to subsection 2.9 of Preparatory Document

Subsection 2.9 sets out proposed issues and questions to explore in the area of Enforcing, Deterring and Prosecuting Foreign Interference Activities, and also sets out some hypotheses in this area. Overall, the proposal to explore this area is fine. The proposed questions in subsection 2.9 are also generally fine.

However, subsection 2.9 completely ignores the key factor of the need to have fully independent and impartial enforcement of any law, especially democracy laws, that has been highlighted in almost every section above in this submission.

Every enforcement entity and system must meet the standard of the public perceiving that it appears to be, and is, fully independent and impartial. If this standard is not fulfilled, then the legitimacy of enforcement actions will be significantly undermined, and defiance, not compliance, will result.

One only has to view the recent history of the enforcement of political/democracy laws in the U.S., which has elected, partisan sheriffs, attorneys general and judges, to see how a system that even appears to lack independence from politicians allows many to question whether enforcement actions are motivated by partisanship instead of by the evidence and the law (i.e. to question whether there is a rule of law).

The following enforcement officials, who all play key roles in monitoring, overseeing, and preventing foreign interference, all lack functional independence from the ruling party Cabinet because they are chosen by and serve at the pleasure of the ruling party Cabinet, and so can be removed from their position at any time for any reasons, set out in Democracy Watch's final submission to the Inquiry last April after the Stage 1 Factual Phase of the Inquiry (click here):

a) All members of the Critical Election Incident Protocol Panel;
b) Clerk of the PCO;
c) RCMP Commissioner and Deputy Commissioner, and the Commanding Officer of each Division of the RCMP;
d) Director of CSIS;
e) Chief of the Communications Security Establishment ("CSE");
f) President and Executive VP of Canada Border Services Agency, and;
g) Director of Financial Transactions and Reports Analysis Centre of Canada.

And while other watchdogs serve fixed terms, they are all chosen through secretive, partisan, Cabinet-controlled processes that allows the Cabinet to install weak functionaries in these positions instead of strong watchdogs. The federal Chief Electoral Officer, Ethics Commissioner, Commissioner of Lobbying, Senate Ethics Officer and Public Sector Integrity Commissioner, all of whom also play key roles in monitoring, overseeing, and preventing foreign interference, have fixed terms in office but are all chosen by the ruling party Cabinet.

The Federal Court of Appeal ruled unanimously that the Cabinet is biased when choosing watchdogs that enforce laws that apply to government and politician actions and decisions (Click here for details).

The governing party Cabinet is required to consult with opposition party leaders before making their final choice of some of these watchdogs but essentially forces its choice on the opposition. As the appointment process for the Ethics Commissioner and Commissioner of Lobbying in 2016-2017 showed, the Cabinet's definition of "consultation" is to hide and mislead opposition leaders about how many qualified candidates there are, and then send them one candidate's name and tell them that is the person being appointed a week later (Click here for details).

The current Ethics Commissioner Konrad von Finckenstein was also chosen through a secretive, partisan, Cabinet-controlled process (Click here for details).

Under recently enacted Bill C-70, the new Foreign Influence Transparency Commissioner will also be chosen through a secretive, partisan, ruling party Cabinet-controlled process.

All of these officers and commissioners, except the Chief Electoral Officer, can also be re-appointed to further terms in office by the Cabinet alone. This gives all of them the incentive towards the end of each term to enforce the law in a way that

pleases the Cabinet so that they will be re-appointed. None of them should be permitted to serve more than one term in office.

All of the enforcement entities are allowed to make secret rulings, so they can act in ways that inhibit the public from being able to tell whether they are actually enforcing the law or enforcing it improperly. Again, as set out above in section 2:

- the Commissioner of Lobbying and RCMP from 2008 to 2017 made almost 90 secret rulings that let off more than 100 lobbyists even though they violated the federal lobbying law or lobbyists' code (Click here for details);
- the Ethics Commissioner from 2007 to 2017 made more than 200 secret rulings that let off an unknown number of federal politicians and senior government officials who violated ethics laws, and public rulings that let off more than 85 federal politicians and senior government officials for clear violations of the federal ethics laws (Click here and click here for details), and;
- the current Ethics Commissioner buried eight 8 complaints, and gutted 3 key ethics rules, in his first 6 months as commissioner (Click here for details).

And again, as set out above in section 3, **the Commissioner of Canada Elections (CCE) and Chief Electoral Officer (CEO) of Elections Canada kept secret how they dealt with more than 3,000 complaints** filed with them between 1997 and 2011 about violations of the *Canada Elections Act* (*CEA*), and tried to deny an *Access to Information Act* request for the records concerning how they addressed the complaints because the records may make the Commissioner look bad (Click here for details).

In addition to regularly issuing secret rulings, these enforcement agencies are enforcing loophole-filled laws, with limited resources and long delays in any enforcement action, and they are unaccountable if they decide to bury an investigation. As the Federal Court of Appeal has ruled, a decision by a watchdog to end an investigation cannot be reviewed by the courts, no matter how unjustifiable the decision was (Click here for details).

The enactment of Bill C-70 has only closed some of the loopholes that allow for secret, undemocratic and unethical foreign interference activities.

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, which detail the loopholes still left open in the Bill. 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.

Due to loopholes in Bill C-70, the following secret foreign interference and influence activities will continue to be legal, and foreign agents will not be required to register and disclose them in the Foreign Influence Registry (FIR) whenever it is actually established because these activities are not specifically mentioned or covered by the provisions in the new *Foreign Influence Transparency and Accountability Act* (S.C. 2024, c. 16, s. 113):

1. Activities to interfere in political party leadership contests;

2. Communications with nomination and party leadership contestants who are not MPs or Cabinet ministers, and election candidates who are not ministers;
3. Communications with people who have been elected as MPs or appointed as Senators but have not yet taken office;
4. Communications with territorial politicians and public officials, and provincial and municipal government appointees;
5. Communications with judges and lieutenant governors;
6. A foreign agent using a lobbyist as a "proxy" for their influence activities (many changes are needed to lobbying laws across Canada to prevent this), and;
7. A foreign agent using staff, volunteers, friends, family and associates of contestants, candidates and parties as a "proxy" for their activities.

In addition, another major loophole left open by the provisions in Bill C-70 is that a foreign agent in Canada is allowed to have a secret arrangement with a foreign business, organization or individual, not controlled by a foreign government, to interfere in Canadian politics.

This means foreign organizations and/or individuals can fund, oversee and direct the activities of foreign agents in Canada, and the foreign agents would not be required to register or disclose their arrangements or activities. It would be naïve to assume that foreign governments and entities they control will not create front networks of proxy intermediaries (whether businesses, organizations or individuals) that they do not seem to control or direct to exploit this loophole.

The U.S. *Foreign Agents Registry Act* (*FARA*) does not have this loophole – anyone or any entity that has an arrangement with any foreign incorporated or established entity to interfere in U.S. politics is required to register in the U.S. Democracy Watch's full submission on Bill C-70 linked above, in point #B.14, calls for such arrangements with all foreign businesses to be required to be registered in Canada, with all activities disclosed, to match the U.S. requirements.

To see analyses of Bill C-70 from three law firms that make similar points about the loopholes and weak enforcement system, click here and click here and click here.

As well, Bill C-70 gives the federal Cabinet dangerously broad discretion to:

1. Exclude foreign interference arrangements from the list of prohibited activities that are also required to be disclosed;
2. Exclude public officials from the list of people foreign agents are required to disclose if they communicate with them;
3. Limit the amount of information required to be disclosed in the FIR and to not require regular updates;
4. Decide when the provisions that establish the FIT Commissioner and the FIR will come into force, and be extended to provincial, municipal and Indigenous politicians and public officials and, if amended, also territorial politicians and public officials (there are no deadlines in the Bill).

Another key enforcement measure is to ensure that it is a violation to attempt or conspire to violate any provision in any of Canada's key democracy laws.

As well, all penalties should be increased to a level that will actually discourage violations, which means the cost of the penalty multiplied by the chance of getting caught must be greater than the gain from the violation. Penalties should also be on a sliding scale that increases to match the wealth of the violator.

Another key measure is to prohibit police forces from fundraising or selling products. Because donations from foreign agents and other relationships can easily cause conflicts of interest that undermine fair, effective law enforcement actions, police forces should be prohibited:

1. from doing fundraising for their foundations or other causes they support (for example to the Toronto Police Service);
2. from giving top donors special access to their chief, such as happens at the Toronto Police Chief's annual gala;
3. from raising funds from the public, such as the National Police Federation and the Ontario Police Officers' Association do, and;
4. the RCMP should be possibly also be prohibited from selling promotional products through The Mountie Shop and Gadar Promotions because of the difficulty of tracking where the revenue goes and whether any of foreign companies supply the shop.

As well, a new, fully independent, effective, transparent and accountable anti-foreign interference, anti-corruption and anti-money laundering police force should be established. The RCMP and FINTRAC lack independence from the ruling party Cabinet, and the RCMP has been ineffective and secretive in investigating the SNC-Lavalin and Aga Khan scandals, and in enforcing the federal lobbying law and anti-money laundering law, and FINTRAC also has a weak enforcement record.

Suggested witnesses on effective enforcement:

Gerry Ferguson, Professor Emeritus and former University Distinguished Professor, Faculty of Law, University of Victoria

Garry W. Clement, former RCMP officer and Director, Proceeds of Crime

Duff Conacher, PhD (Law) and Co-founder of Democracy Watch

In conclusion, as detailed above, prevention through prohibiting all secret, unethical and undemocratic activities in political processes and elections, combined with fully independent, well-funded, effective, transparent, timely and accountable enforcement systems that are required to impose high penalties, are key to stopping foreign interference activities across Canada.

The usual type of loophole-filled prohibitions, combined with ongoing politically influenced, ineffective, underfunded, secretive, delayed and unaccountable enforcement systems, will allow for continued secret foreign interference in political processes and elections across Canada.