



democracy Watch  
émocratie en surveillance

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Commissioner of Canada Elections  
ATTN: Commissioner Caroline J. Simard  
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Ottawa, Ontario  
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Via Email to: [info@cef-cce.ca](mailto:info@cef-cce.ca)

February 28, 2023

**RE: Request for ruling on possible violations of the *Canada Elections Act* provisions prohibiting donations from entities to election candidates, funneling of donations, and/or collusion between a party, candidate, candidate's agent and a third party**

Dear Commissioner Simard,

Based on the evidence set out in this letter, Democracy Watch requests as soon as possible, and definitely well before the next federal election, a full investigation and public report on the situation involving China-sponsored third-party interest groups and individuals supporting or opposing election candidates in Canada's 2019 and 2021 federal elections. In your investigation, Democracy Watch also requests that you take into account other evidence that may be revealed through the current Procedure and House Affairs Committee hearings or other committee processes in the future.

A public report is needed in this situation so that Canadians have confirmation that you conducted a full investigation, and also for you to explain any decisions not to prosecute anyone involved. Of course, if you prosecute, impose an Administrative Monetary Penalty (AMP) or reach a compliance agreement with anyone involved in these situations, there will be a public report of those actions.

## A. The 2019 and 2021 election interference situations

According to reports by Global News, sources claim that the Canadian Security Intelligence Service (CSIS) provided to the federal government the following information:

1. During the 2019 election at least 11 Liberal and Conservative candidates received funds from a network of third-party interest groups and individuals based in Canada, and China's government was the source of the funds – see article at: <https://globalnews.ca/news/9253386/canadian-intelligence-warned-pm-trudeau-that-china-covertly-funded-2019-election-candidates-sources/>
2. The network of groups and individuals received a total of about \$250,000 from a Toronto-based organization coordinated by a Toronto businessman, and China's government Consulate in Toronto was the source of the funds and directed the distribution of the funds – see article at: <https://globalnews.ca/news/9280974/china-interference-canada-election-investigation-toronto-businessman/> and <https://globalnews.ca/news/9364386/china-election-interference-canada/>
3. That a Liberal election candidate and a former Ontario Liberal MPP and Cabinet minister were part of the network – see article at: <https://globalnews.ca/news/9504291/liberals-csis-warning-2019-election-candidate-chinese-interference/>.

According to the *Globe and Mail*, sources claim that CSIS provided to the federal government information about the 11 candidates but not about funding being transferred to them – see article at:

<https://www.theglobeandmail.com/politics/article-trudeau-csis-china-funding-election/>

and about the former Ontario Liberal MPP and Cabinet minister – see article at:

<https://www.theglobeandmail.com/politics/article-csis-warned-trudeau-about-toronto-area-politicians-alleged-ties-to/>

and also about China-sponsored interference also in the 2021 election in support of the Liberals and against the Conservatives – see article at:

<https://www.theglobeandmail.com/politics/article-china-influence-2021-federal-election-csis-documents/>

including funneling donations by paying for campaign volunteers, and candidates reimbursing donors the amount not covered by the federal donation tax credit.

## **B. The *Canada Elections Act* rules, and applicability to these situations**

The situations described in section A raise questions about whether anyone or any entity has violated any of the following provisions of the *Canada Elections Act* (*CEA*), among other possible violations (such as making cash donations of more than \$20, which is prohibited by section 371 of the *CEA*).

### **1. Illegal for third party (individual, business or group) to use foreign funding for pre-election and election activities**

Sections 349.01 and 349.02 of the *CEA* prohibit third parties (individuals, businesses or groups) from accepting contributions for election activities from foreign nationals, corporations that do not carry on business in Canada, unions that do not have bargaining rights in Canada, foreign political parties or foreign governments or their agents, and section 349.03 prohibits colluding with a person or entity to circumvent the foreign-funding prohibition.

### **2. Illegal foreign donations, donations that exceed limits, donations of another's money**

Subsection 363(1) of the *CEA* prohibits someone who is not a Canadian citizen or permanent resident from making a donation to a candidate or party. Section 367 prohibits someone making a donation that exceeds the annual limit.

Subsection 370(1) prohibits someone making a donation using someone else's or some entity's money (including volunteering while being paid by someone else or some other entity).

### **3. Illegal spending by third party without registration**

Sections 349.6 and subsection 353(1) require registration by a third party (individual, business or group) if it spends more than \$500 during the pre-election period or the election campaign period.

### **4. Illegal collusion between third party and candidate or party**

Section 351.01 of the *CEA* prohibits collusion between a third party and a party (ss. 1), candidate (ss. 2) or associated person (ss. 3) in order to influence the third party's activities during an election campaign, while section 349.3 prohibits such collusion during the pre-election period.

A violation of these three subsections of section 351.01 is an offence requiring intent under clause 496(2)(b), (c) or (d) of the *CEA* (respectively).

Under section 24 of the *Criminal Code of Canada* (R.S.C., 1985, c. C-46) an attempt to commit an offence is also a violation of the law.

Sections 349.3 and 351.01 of the *CEA* are clearly intended to prohibit a wide range of types of connections and relationships of candidates and parties with third parties. Democracy Watch's position is that, to find a violation of these sections, you are not required to find proof that the third party undertook an activity, advertisement or survey because of the sharing of information with a candidate or party or their representatives. Instead, all you need to find is evidence that information was shared "in order to influence" the third party.

**C. Request for investigation and public ruling as soon as possible under section 510 of the *Canada Elections Act***

The Supreme Court of Canada has ruled in several cases that Canadians have a right under the *Canadian Charter of Rights and Freedoms* to free and fair elections. Illegal donations, spending and/or collusion between parties, candidates or their representatives and third parties make elections unfair as it misleads voters about the actual support a party has amongst voters, and can also assist both to exceed spending limits or donation limits.

Given all of the above, and given the public interest in having a public ruling before another election occurs on whether the alleged illegal election interference activities occurred during the 2019 or 2021 pre-election or election periods, Democracy Watch requests that you conclude your investigation under section 510 of the *Canada Elections Act* and issue a public ruling as soon as possible.

Given sections 349.3 and 351.01 were only added to the *CEA* in 2019, if you find clear evidence that subsection has been violated by anyone, Democracy Watch's position is that it would be negligent for you to fail to initiate, under subsection 511(1) of the *CEA*, a prosecution.

The courts are the proper place for these new sections to be defined in law and in practice, finally, and for the determination to be made concerning whether the anyone violated the subsection. You should not substitute your judgment for the judgment of the courts concerning the legally correct interpretation and application of these sections to these situations.

Sincerely,



Duff Conacher, Board member of Democracy Watch  
On behalf of the Board of Directors of Democracy Watch