

For Public Release

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Solicitor-client Privilege

September 7, 2021 Meeting of the Critical Election Incident Public Protocol Panel**ANNEX E****Scenario Exercise #3: "The Elbonian Candidate"****Scenario**

- Rumours emerge on various social media platforms that candidates in the Lower Mainland of Vancouver have received support during their nomination contests from a foreign hostile state. On social media, screenshots of messages in a foreign language promoting nomination contestants by the foreign country are widely shared as evidence. The messages provided detailed instructions, including for non-Canadians citizens, on how to register to be a member of the political party that ran the nomination contest and to how to vote for the contestant.
- Inject 1 – Traditional media begins to report on this story, and two narrative emerge:
 - a) That the foreign state is interfering with Canadian democracy, and that members of this group are complicit.
 - b) That these are baseless accusations that seek to create racial divisions and foster hate towards members of the group.
- Inject 2 - Lists of Canadian politicians at all levels and parties (federal to municipal) with affiliations to the foreign country begin to circulate online, noting that these candidates are traitors and that the political parties are compromised. The lists contain personal information on the candidates, escalating to destruction of personal property and racist graffiti.
- Inject 3 - Similar allegations and lists of candidates from the Greater Toronto Area, the National Capital Region, and Montreal are alleged to have received similar support from the same foreign country. Op-eds questioning the legitimacy of the candidates, and more indirectly our electoral process, begin to surface in the media.

Considerations

- The Cabinet Directive on the Critical Election Incident Public Protocol (Protocol) requires that any public announcement issued by the Panel only be made where the Panel determines that an incident or an accumulation of incidents has occurred that threatens Canada's ability to have a free and fair election, taking into consideration *inter alia* (i) the degree to which the incident(s) undermine(s) Canadians' ability to have a free and fair election; (ii) the potential of the incident(s) to undermine the credibility of the election; and (iii) the degree of confidence officials have in the intelligence or information.
- It may be useful to first clarify the intention of this scenario.
 - It appears the scenario involves the suggestion of foreign state interference, in that foreign language, endorsing that state's sponsored candidates to be nominated and voted for in a Canadian election.

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- The notion of “rumours” suggests that an important preliminary consideration will be the veracity of information, and notably whether it has or can be verified by members of the intelligence community or other actors.
- o A questions for consideration might include whether the actions, if true, falls under the remit of the Chief Electoral Officer or the Commissioner of Canada Elections, for instance by constituting a violation of the *Canada Election Act* (e.g., prohibition on undue influence by foreigners in s 282.4 or on use of foreign funds by third parties in Division 0.1 of Part 17).
 - Section 282.4 of the *Canada Elections Act* (CEA) prohibits certain persons or entities, including a foreign political party or government or agent, from unduly influencing¹ an elector to vote or refrain from voting, or to vote or refrain from voting for a particular candidate or registered party, at the election during an election period.
 - Sections 349.02 and 349.03 in Division 0.1 of Part 17 of the CEA *inter alia* prohibit (a) foreign entities from using funds for a partisan activity, for advertising, for elections advertising or for an election survey if the source of the funds is as foreign entity; (b) circumventing, or attempting to circumvent that prohibition; and (c) acting in collusion with another person for those purposes.
- o Inject 1 considerations: section 2(b) of the *Canadian Charter of Rights and Freedoms* expressly recognizes freedom of the press in Canada (see also *Denis v Côté*, 2019 SCC 44 at para 45-49). Consideration could be given to what if any comment might be offered by intelligence agencies.
- o Inject 2 considerations: Questions for consideration may include whether political parties are themselves positioned to address these matters and, to the extent there is destructive or criminal activity, whether law enforcement agencies are able to do so as well.
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August 26, 2021

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¹ Undue influence under this provision arises where the person or entity (a) knowingly incurring any expense to directly promote or oppose a candidate in that election, a registered party that has endorsed a candidate in that election or the leader of such a registered party; and (b) one of the things done by them to influence the elector is an offence under an Act of Parliament or a regulation made under any such Act, or under an Act of the legislature of a province or a regulation made under any such Act. Undue influence does not include (a) an expression of their opinion about the outcome or desired outcome of the election; (b) a statement by them that encourages the elector to vote or refrain from voting for any candidate or registered party in the election; or (c) the transmission to the public through broadcasting, or through electronic or print media, of an editorial, a debate, a speech, an interview, a column, a letter, a commentary or news, regardless of the expense incurred in doing so, if no contravention of subsection 330(1) or (2) (foreign broadcasting) is involved in the transmission.

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