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Bureau du Conseil privé

Ottawa, Canada
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MEMORANDUM FOR THE MINISTER OF INTERGOVERNMENTAL
AFFAIRS, INFRASTRUCTURE AND COMMUNITIES

via: Paul MacKinnon

**CRITICAL ELECTION INCIDENT PUBLIC PROTOCOL:
INDEPENDENT EVALUATION PROCESS**

(For Information)

SUMMARY

- This note seeks to inform you of PCO-DI's proposed approach to undertaking the independent assessment of the Critical Election Incident Public Protocol (the Protocol). The independent evaluation is required per the 2021 Cabinet Directive issued on May 17, 2021^{s. 39 - Cabinet Confidence}.
- The independent evaluation will follow a similar process as was done for the evaluation following the 2019 General Election, including issuing a sole source contract to an individual with experience and knowledge of national security, elections, and political sensitivities. A short list of possible candidates under consideration can be found in **Annex A**.
- The contract for the evaluation will be put in place as soon as possible given that the review relies on interviews with participants. PCO-DI is aiming to have the classified report for the Prime Minister and the National Security and Intelligence Committee of Parliamentarians finalized by the spring of 2022. An unclassified, public version would follow.
- PCO-DI will continue to keep you apprised of developments as required over the coming months.

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Background

- The 2019 Cabinet Directive on the Critical Election Incident Public Protocol (the Protocol) required an independent assessment of the Protocol. The purpose of the assessment was to help inform whether to establish the Protocol on a regular basis, and if so, to identify areas for improvement or adjustment.
- It was determined that a sole source contract was the most effective and efficient mechanism to ensure that the contract was awarded to an individual with the appropriate skills and qualifications, and that a final report is delivered in a timely manner. Additionally, the cost ceiling of a sole source was appropriate for the scope and scale of the review.
- PCO-DI awarded a sole-source contract to complete the assessment to James Judd, former CSIS Director and long-time civil servant. The contract was for 30 working days, and the total cost of the evaluation was \$24k before taxes.
- The assessment, completed in spring 2020, focused on the model, the processes in place, and the usefulness and timeliness of the information given to the Protocol Panel, comprised of the Clerk of the Privy Council, the National Security and Intelligence Advisor to the Prime Minister and the deputy ministers of Justice, Global Affairs and Public Safety. The evaluation did not focus on the outcomes of the Panel's deliberations and decision-making (**Annex B** - Summary of Recommendations).
- The 2021 Cabinet Directive, s. 39 - Cabinet Confidence, contained key changes to the 2019 Protocol, including incorporating all but one of the recommendations from the evaluation undertaken by James Judd. The recommendation that was not included was to have the Protocol in place before the pre-writ period, which would be inconsistent with the principle of the caretaker convention (**Annex C** - Summary of Changes).

Considerations

- The current Cabinet Directive requires an independent assessment without the specific requirement to inform whether to establish the Protocol on a permanent basis. As with the previous report, a classified copy will be sent to the Prime Minister and the

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National Security and Intelligence Committee of Parliamentarians, and an unclassified version will be publicly available.

- A sole source contract worked well in 2019. The dollar value was sufficient for the consultant to do a thorough review, and given the specific expertise required, a sole source ensured that the person selected had the appropriate background, which included experience and knowledge of national security, elections, and political sensitivities.
- Although this is an independent evaluation, it is anticipated that the effectiveness of the amendments to the Protocol will be examined.
- Ideally, the contract would be issued in January, and the report ready by the spring of 2022.

Next Steps

- The 2019 process will be used to guide the current Protocol evaluation:
 - Identify an individual to complete the assessment and write the reports;
 - Issue a sole source contract;
 - Obtain security clearance for the contractor;
 - Focus on the process and the impact of the amendments to the 2021 Protocol rather than the Panel's decision-making;
 - Support the contractor to complete the work, including providing workspace, access to documents and contact information;
 - Review the report for factual accuracy;
 - Forward the report to the PM and the NSICOP, as well as provide you with a copy; and
 - Prepare for the release of the public version.
- In the coming weeks, PCO-DI will reach out to potential candidates (**Annex A** - List of Potential Candidates).
- Once a candidate is identified, PCO-DI will work with PCO-Procurement to issue a contract, and begin the security clearance process.

Allen Sutherland

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Attachments (3)
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Annex A

Possible Candidates for 2021 Protocol Evaluation

Greta Bossenmaier:

Greta Bossenmaier served as the National Security and Intelligence Advisor to the Prime Minister from May 2018 to December 2019. Prior to that, Greta was the Chief of the Communications Security Establishment. She has also held several high-ranking positions including: Senior Associate Deputy Minister, International Development; Deputy Minister, Afghanistan Task Force, Privy Council Office; Associate Deputy Minister, Foreign Affairs; and Executive Vice-President, Canada Border Services Agency

Rennie Marcoux:

Rennie Marcoux was the first Executive Director of the National Security and Intelligence Committee of Parliamentarians Secretariat. Prior to that she was Chief Strategic Policy and Planning Officer at the RCMP, Assistant Secretary to the Cabinet, PCO, Security and Intelligence, and Assistant Director, CSIS.

John Forster:

John Forster is the former Chief of CSE and a former Deputy Minister of DND. He retired in 2017.

John Simms:

John H. Sims, Q.C. is a former deputy minister of justice and deputy attorney general of Canada, a position he held for five years until his retirement in the spring of 2010. Since leaving the public service, Mr. Sims has taken part in a number of projects, including one with the CBA in Nepal on the development of a new democratic constitution. He is also the vice-chair of the Canadian Bar Associated Committee on Access to Justice, and the Ad hoc privacy commissioner and the Ad hoc information commissioner for Canada.

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Annex B

Recommendations from the Evaluation Report on the 2019 CEIPP (Protocol)

1. Implement the Protocol for the next election using the same model and Panel membership. Prepare Panel members early, starting with new members. The high threshold and decision by consensus should be maintained, as well as the support and participation from the same departments and agencies. The rationale is that this model has already been accepted by the parties and there is the ability to maintain some consistency in membership. An accompanying media strategy should also be developed.
2. The Protocol should also cover the pre-writ period, recognizing this may not be possible in the event of an election triggered by a non-confidence vote.
3. Privy Council Office support teams (Democratic Institutions and Security and Intelligence) should monitor any international developments, with particular attention paid to any evolution in tactics by malign actors and any developments in defensive counter-measures taken by target countries (legal, regulatory and operational). This can also include academic and think-tank research.
4. Immediately establish the same relationships with the political parties, particularly with respect to guidance and support around cyber issues as the parties are likely targets beyond simply the election period.
5. Conduct an evaluation on the extent to which the social media platforms lived up to the Canada Declaration on Electoral Integrity Online. Once complete, hold discussions with the platforms on the Government's expectations for the next election. Participation in the Paris Call could possibly inform any new agreements.

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Annex C

Primary Changes to the 2021 Protocol

1. Removing references to a specific election to ensure the Protocol is in place for the next election and obviating the need to return to Cabinet before every election. This change reflects the Judd report recommendation to have the Protocol in place by the next election and the NSICOP's suggestion to establish it on a permanent basis.
2. Aligning the Protocol's mandate period with the Caretaker Convention to ensure the Protocol is in place in the event that there is no clear election result or there is a delay in the election result. This change reflects lessons learned from the 2020 U.S. election and ensures precaution in the context of the pandemic and the expected increase in mail-in ballots. This said, when the Chief Electoral Officer (CEO) appeared before PROC on October 22, 2020, he stated that he does not believe that an increase in mail-in ballots would lead to a significant delay in results.
3. Specifying the Panel's ability to consult with the CEO to address media criticisms that Elections Canada was not represented on the Panel despite its responsibility for election administration.
4. Adding a clause to explicitly provide an avenue for political parties to bring forward concerns. This new clause reflects direction received from Minister LeBlanc's office to ensure that the Panel is in tune with what political candidates are hearing and experiencing on the campaign trail.
5. Adding a clause to ensure that the Panel can assess information that may come from outside the security and intelligence community. This supports the Panel's deliberations in instances that information comes to the attention of the government through, for example, civil society or industry representatives.
6. Including an ongoing requirement for an independent evaluation after each general election to ensure continuous improvement and relevance of the Protocol in the evolving threat context. An alternative would be to simply recognize the NSICOP's ability to evaluate the Protocol should it decide to do so, without the requirement for an independent evaluation.