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Ministerial Authorities To Manage Foreign Interference

Overview:

- The Government of Canada has a broad set of authorities to address national security concerns, including foreign interference. Foreign interference itself, is a complex, multi-dimensional threat. It includes everything from threats, harassment or intimidation by foreign states, to covert attempts to influence policy-makers in Canada. In recognition of this complexity, the authorities outlined below pertain not only to foreign interference in the context of national security and the national interest more broadly, but also to those critical sectors most affected by foreign interference. This is not a comprehensive list, but rather an illustration of how, together, these bolster Canada's approach to countering foreign interference.

Foreign Interference Authorities

- The Government of Canada has the following tranches of authorities that relate to foreign interference:

1. National Security Authorities

- *Canadian Security Intelligence Service Act – Minister of Public Safety:*
 - Provides CSIS the mandate to investigate activities suspected of constituting threats to the security of Canada and to report these to the Government of Canada. Section 12 of the Act allows CSIS to gather information pertaining to those individuals or organizations suspected of engaging in activities that may threaten the security of Canada including espionage, sabotage, political violence, terrorism, and clandestine activities by foreign governments (Section 12 warrants are subject both Minister of Public Safety and Federal Court oversight and authority).
- *Security Offences Act (SOA):*
 - The RCMP conduct criminal investigations of suspected threats to the security of Canada, as defined in the *CSIS Act*, pursuant to the SOA.
- *National Security Act, 2017:*
 - An omnibus bill, the Act included several significant updates to authorities, as well as review, oversight and accountability. These included establishing the National Security and Intelligence Review Agency (NSIRA), and the Office of the Intelligence Commissioner; and the *Security of Canada Information Disclosure Act* (domestic information sharing) and the *Avoiding Complicity in Mistreatment by Foreign Entities Act*. The Act included several consequential amendments, most notably to the *CSIS Act* and the *CSE Act*, to enhance powers to address national security threats, including foreign interference.

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- Section 16 provides Foreign Intelligence to the Government of Canada in accordance with the Government's Intelligence Priorities, including Foreign Interference. Section 17 provide cybersecurity services to help protect Federal Systems and Systems designated of Importance to the Government of Canada. This includes Elections Canada and the House of Commons. Section 18 allows CSE to carry out activities to help protect Federal Systems and Systems designated of Importance to the Government of Canada. For Section 18 activities, the Minister of Foreign Affairs is consulted. Section 19 allows CSE to carry out activities to degrade, disrupt, influence, respond to or interfere with the capabilities, intentions or activities of a foreign individual, state, organization or terrorist group as they relate to international affairs, defence or security. The Minister of Foreign Affairs has to consent to the activity.

2. Critical Sectors

Democratic Processes and Government Institutions

- *Canada Elections Act* – Minister of Intergovernmental Affairs, Infrastructure and Communities:
 - Regulates federal elections in Canada and includes provisions related to foreign interference in the electoral process. For example, Part 17 of the Act prohibits foreign entities or individuals from making contributions to political parties or candidates, and it requires political entities to disclose the sources of their funding, including any foreign contributions.
- *Lobbying Act* – President of the Treasury Board:
 - Requires individuals or organizations who lobby on behalf of foreign entities or governments to register and disclose their activities. While the Lobbying Act is primarily focused on promoting transparency and accountability in the lobbying process, it may indirectly relate to foreign interference if lobbying activities are conducted on behalf of foreign entities or governments. The Lobbying Act requires disclosure of the identity of clients or employers, which may include foreign entities, and the Act also prohibits lobbying that involves providing false or misleading information, which could potentially be related to foreign interference efforts. This includes disclosing the nature of their lobbying efforts, their clients or employers, and the financial compensation received.

Communities

- *Criminal Code of Canada* - Minister of Justice and Attorney General of Canada, **Minister of Public Safety**, and Minister of Agriculture and Agri-Food:

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- Includes provisions that criminalize various acts related to foreign interference as it may affect communities in Canada, such as threats of intimidation or harassment.

o) Heritage Canada (TBD)

- Heritage Canada works closely with PCO Democratic Institutions to promote a healthy digital information space for Canadians, notably by raising resilience against hateful, divisive and harmful content. Digital Citizenship Contribution Program & Digital Democracy Project!

International Affairs and Defence

- o *Department of Foreign Affairs, Trade and Development Act* – Minister of Foreign Affairs, Minister for International Trade and Minister for International Development:
 - Under the Act, GAC undertakes activities related to diplomatic engagement, promoting democracy, and democratic resilience.
- o *Foreign Missions and International Organizations Act*:
 - The FMIOA is the primary vehicle for addressing privileges and immunities and diplomatic and consular law in Canada. It enables Canada to meet its treaty obligation in these areas, while supporting Canada's membership in international organizations. The Act implements Canada's treaty obligations in the *Vienna Convention on Diplomatic Relations* (VCDR), the *Vienna Convention on Consular Relations*, the *Convention on the Privileges and Immunities of the United Nations*, headquarters and hosting arrangements with organizations hosted in Canada, and other bilateral and multilateral agreements with international organizations in which Canada is a member. In advance of the 2019 and 2021 elections, all diplomatic missions in Canada were reminded of these conventions.
- o *G7 Rapid Response Mechanism (RRM)*:
 - Although not legislated, Canada is the permanent secretariat to the G7 RRM. It convenes G7 RRM members and observers to drive the annual Action Plan and coordinate G7 efforts. RRM Canada also monitors the digital information environment for foreign state-sponsored disinformation, including during general elections. It also supports Canada's international engagement on foreign state sponsored disinformation.

Economic-based National Security and Research Security

- o National Security Guidelines for Research Partnerships:

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- The Guidelines better position researchers, research organizations and Government funders to undertake consistent, risk-targeted due diligence of potential risks to research security.
- *Special Economic Measures Act:*
 - While the Act does not make specific mention of foreign interference, sanctions are part of the toolkit the Government of Canada uses to respond to malicious behaviour.
- *Export and Import Permits Act:*
 - Regulations enacted under the *Export and Import Permits Act* provide Canada with an additional mechanism for controlling trade of arms and dual-use goods. Under the Act, any export or transfer of goods or technology to countries named in the Area Control List is controlled, and must be authorized by an export permit issued by the Minister of Foreign Affairs.
- *Investment Canada Act (ICA) National Security Provisions:*
 - The ICA provides for the review of foreign investments of any size for national security concerns, including, for example, minority acquisitions.

Gaps/Key Areas for Improvement:

1. Structural and governance issues:

- **Structured governance and protocols during the writ period** could further address threats to the integrity of the democratic/electoral process, providing clear
- Info-sharing impediments are often cited as an obstacle to better risk-management. A well-coordinated, principle-based protocol for the **sharing of threat information** with private sector, P/T/Municipalities, and civil society could better provide for proportionate risk mitigation approaches.
- In order to reduce recourse to protected/classified information, governance and whole-of-society engagement should better leverage improved **open source and declassified information/assessments**.

2. Toolbox:

- s. 39 - Cabinet Confidence
- **CSIS Act: Improving the effectiveness of the CSIS Act through amendments to broaden CSIS's scope to collect information regarding the**

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economic and other harms of espionage and FI, strengthen data collection abilities, and permit CSIS to use intelligence when engaging civil society and other non-federal actors.

- *SOLA*: Current legislative house for foreign interference related offences (s.20), but more clearly defined language on foreign interference is required, notably the creation of a general foreign interference offence.
- *Criminal Code*: Modernizing the sabotage offence to reflect the current threat environment as well as reviewing antiquated treason language and looking at espionage is necessary.
- FITR: Providing administrative law instrument to govern relationships with state-based foreign principals in activities affecting public policy making in Canada. Consultations ongoing. Would require new legislation and the creation of a new regime.

3. Capacity:

- Capacity is needed to bring centralization and horizontal engagement on FI issues. This includes coordinating governance, internal and external communications and assessment/risk mitigation. While the announcement of a Counter-Foreign Interference Coordinator is a positive step in this direction, ensuring the Office is appropriately resourced to support this role will be necessary.
- Enforcement of espionage and foreign interference activities requires significant specialized resources, training and capacity. Recently announced additional resources to the RCMP will help move this yardstick, but more may be required.
- It also requires overcoming significant barriers in intelligence and evidence to generate criminal investigations and bring investigations to successful prosecution.