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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. Of note, these authorities do not relate exclusively to democratic institutions, but to the national security and national interest of Canada more generally.

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's 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 Min PS and Federal Court oversight and authority.
- *National Security Act, 2017*:
 - The Act established the National Security and Intelligence Review Agency, and the Office of the Intelligence Commissioner. 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.
 - One amendment to the *CSIS Act* more clearly defined the Threat Reduction Measures (TRM) by clarifying the requirement to seek judicial authorization before proceeding with a warrant application for any threat reduction activity that would limit a right or freedom guaranteed by the *Charter*. Min PS and the Federal Court authorize their use. NSIRA, in their annual statutory review of the program, has observed that any non-warranted TRM should consider adverse secondary impacts.
- *NSICOP Act*:
 - The Act established a security-cleared Committee of Parliamentarians to review and report to the PM annually on the activities of the NS community, including on FI in 2020.

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- *Communications Security Establishment Act* – Minister of National Defence:
 - Details the mandate of CSE across the following five aspects: foreign intelligence, cybersecurity and information assurance, defensive cyber operations, active cyber operations and technical and operational assistance. To note, CSE activities cannot be directed at Canadians or any one in Canada, and must not infringe the Canadian Charter of Rights and Freedoms.
 - 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.
- *Criminal Code of Canada* - Minister of Justice and Attorney General of Canada, Minister of Public Safety, and Minister of Agriculture and Agri-Food:
 - Includes provisions that criminalize various acts related to foreign interference, such as treason, espionage, and sabotage. They can apply to both Canadian citizens and non-citizens who engage in activities that threaten Canada's interests on behalf of a foreign state or entity.
- *Security of Information Act* - Minister of Justice and Attorney General of Canada and Minister of Public Safety:
 - Governs the protection of classified information in Canada. It includes provisions related to foreign interference, such as espionage and unauthorized communication of classified information to foreign entities. Section 20 of the Act is centered on "Foreign-influenced or Terrorist-influenced Threats or Violence".
- *Immigration and Refugee Protection Act* - Minister of Immigration, Refugees, and Citizenship, Minister of Public Safety, and Minister of Justice and Attorney General of Canada:
 - The Act includes provisions related to foreign interference, such as inadmissibility criteria for individuals seeking entry into Canada. Foreign

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nationals who are found to have engaged in activities that pose a threat to Canada's security or interests, including foreign interference, may be deemed inadmissible and denied entry or deported from Canada.

2. Democratic Processes

- *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.

3. Social and Democratic Resilience

- *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.
 - G7 Rapid Response Mechanism (RRM) 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.
- *Heritage Canada (TBD)*
 - **Digital Citizenship Contribution Program**

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- Digital Democracy Project

4. Diplomatic Measures

- Actions of foreign country representatives in Canada are guided by the *Vienna Convention on Diplomatic Relations* and the *Vienna Convention on Consular Relations*. In advance of the 2019 and 2021 elections, all diplomatic missions in Canada were reminded of these conventions.

Gaps/Key Areas for Improvement:

1. Structural and governance issues:

- Multiple leads across the GoC on mandate-specific responses calls for consistent **horizontal governance** that can address cross-cutting risks across economic, social, diplomatic and national security interests.
- While info-sharing impediments are oft-cited as the impediment to better risk-management, principle-based protocols for the **sharing of threat information** so that private sector, P/T actors and civil society can assess risk would need to be well-coordinated and provide for proportionate risk mitigation approaches.
- Governance and whole-of-society engagement will need to leverage improved **open source and declassified information**/assessments to be effective, in order to reduce recourse to protected/classified information.

2. Toolbox:

- The s. 39 - proposed several key legislative approaches: updates to the CSIS Act, SOIA, Criminal Code and FITR
 - Improving the effectiveness of the CSIS Act in warrantry, data collection in support of the threat mandate and broadening scope of threat mandate to reflect broader economic and social harms of espionage and FI.

3. Capacity:

- Capacity needed to bring centralization and horizontal engagement on FI issues. This includes coordinating governance, internal and external communications and assessment/risk mitigation.
- Enforcement of espionage and FI activities requires significant specialized resources, training and capacity; requires overcoming significant barriers in intelligence and evidence to generate criminal investigations and bring investigations to successful prosecution.

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