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# What we heard: Consultation on the proposed reforms to the Security of Information Act, Criminal Code and Canada Evidence Act

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## Executive Summary

The Department of Justice Canada ([Justice Canada](#) (The Department of Justice Canada)) conducted broad-based consultations on potential reforms to the *Security of Information Act* ([SOIA](#) (Security of Information Act)), *Criminal Code* and *Canada Evidence Act* ([CEA](#) (Canada Evidence Act)) aimed at strengthening Canada's toolbox to respond to foreign interference ([FI](#) (foreign interference)). The consultation process consisted of an online consultation that solicited feedback from the general public, as well as a series of roundtable discussions with Provincial, Territorial and Indigenous partners, various stakeholders representing diverse communities across Canada, members of the legal profession, academia, civil society organizations, and industry.

There is overall support for the new proposed FI (foreign interference) offences under the SOIA (Security of Information Act) and a strengthened maximum penalty for preparatory acts in the SOIA (Security of Information Act) and its expanded application to other SOIA (Security of Information Act) offences; and a modernized sabotage offence under the *Criminal Code*. There was mixed feedback on proposed amendments relating to how national security information is protected and used in criminal proceedings, with some general commentary that processes need to be streamlined, including to avoid undue delays in judicial proceedings. Beyond legislative reforms, Justice Canada (The Department of Justice Canada) heard the call for the Government to better engage and communicate with the public on FI (foreign interference), notably with diverse communities across Canada.

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Annex 1: Addressing Foreign Interference - Consultation Paper

## Introduction

The Government of Canada is working to strengthen and enhance the measures in place and bolster defences against FI (foreign interference). “Foreign Interference” refers to when foreign states, or those acting on their behalf, undertake activities that threaten people in Canada, their families elsewhere, or activities that are covert and deceptive, and are harmful to Canada’s national interests. A number of Canada’s allies,

including Australia and the United Kingdom, have all recently taken steps to enhance their ability to identify, counter, and criminalize foreign interference.

As part of these efforts, Justice Canada (The Department of Justice Canada) launched public consultations on proposed amendments to the SOIA (Security of Information Act), *Criminal Code* and CEA (Canada Evidence Act), which would ensure that Canada's laws are responsive to new and evolving FI (foreign interference) threats. The proposed amendments would create new offences under the SOIA (Security of Information Act), make existing offences and penalties more responsive to foreign interference, and modernize the existing sabotage offence in the *Criminal Code*. The proposed changes to the CEA (Canada Evidence Act) would reform how national security information is both protected and used in judicial proceedings. For more information on the proposed reforms, please refer to **Annex I**.

Launched on November 24, 2023, the consultation process consisted of two streams: an online consultation that solicited feedback from everyone in Canada; and a series of virtual and in-person roundtable discussions (41 in total).

Justice Canada (The Department of Justice Canada) received 74 public online/email submissions and 23 written submissions. Of the 74 online public submissions, 37 online were anonymous, and 15 email submissions were from individuals. The written submissions received included 15 from organizations, 1 corporation and 7 individuals.

The Roundtable consultations, led by Public Safety Canada, the Canadian Security and Intelligence Service and Justice Canada (The Department of Justice Canada), included sessions held with the following groups of targeted stakeholders:

**Community Groups****Advocacy organizations****Indigenous groups/ Governments and Organizations****Industry and Business****Academics and Public Policy****Provincial and Territorial Officials****Legal Professionals and Associations**

The online consultation ended on February 2, 2024, while the roundtable discussions concluded on February 16, 2024.

In addition to the roundtable discussions held with Indigenous partners, Justice Canada (The Department of Justice Canada) also sent a notification of the proposed reforms to the SOIA (Security of Information Act), *Criminal Code* and CEA (Canada Evidence Act) to approximately 70 Modern Treaty and Self-Government partners and Indigenous organizations, and invited all partners to meet and/or make written submissions.

The in-person and virtual consultations involved a targeted presentation providing an overview of the proposed reforms, followed by open-ended discussion period. Justice Canada (The Department of Justice Canada) adopted a human-centered approach to consultation and engagement. The approach ensures that people from targeted communities are at the center of engagement that relates to them and their perspectives are considered in decision-making.

Below is an overview of feedback received through this consultation process, which will help to inform the Government's decision-making on the proposed reforms to the SOIA (Security of Information Act), *Criminal Code* and CEA (Canada Evidence Act).

# Results

## Issue 1: Whether to Create New Foreign Interference Offences.

Overall, Justice Canada (The Department of Justice Canada) received broad support for the creation of new offences under the SOIA (Security of Information Act) that specifically target FI (foreign interference) activities, with very few stakeholders suggesting that they did not support the proposals. Stakeholders emphasized the need to circumscribe the scope of the offences to ensure that they effectively target the prohibited activities and actors who undertake them. This would include, for example, clarifying definitions for certain concepts, such as “foreign interference”, “covert and deceptive” acts and “Canadian interests”.

Some stakeholders suggested that new offences were not needed, favouring instead that foreign interference be treated as an aggravating factor at the sentencing stage of criminal proceedings. Others cautioned against this approach, given abuse of process risks and other risks associated with introducing such a serious aggravating factor at sentencing. More generally, from a sentencing perspective, it was recommended that consideration be given to making the new offences hybrid offences.

Stakeholders also raised operational concerns related to the new offences. For example, even if new criminal offences were available to target foreign interference, some questioned whether they would actually be enforced because of challenges in gathering evidence. As a related point, some stakeholders stressed that any new offences need to be provable from a law enforcement and prosecutorial perspective.

Certain stakeholders shared concerns about the possible unintended consequences of these reforms, including the possibility that the new offences could capture legitimate activities. For example, concerns were raised about freedom of speech in academia and it was proposed that amendments to the SOIA (Security of Information Act) include an exception for academic activity.

There were also some concerns expressed about unintended consequences with respect to vulnerable communities, who already face systemic discrimination in the criminal justice system and public institutions. Beyond legislative reforms, there were calls on the Government to improve its engagement with the public on foreign interference, notably with diverse communities across Canada. The latter believe that stronger communication and engagement are needed to build trust with the Government and develop measures that are responsive to the challenges faced by the diverse communities when it comes to FI (foreign interference).

## **Issue 2: Whether to amend section 22 of the *Security of Information Act (SOIA (Security of Information Act))* to increase the maximum penalty and to have it apply to other offences.**

Justice Canada (The Department of Justice Canada) received notable support for increasing the penalty for the preparatory acts offence in section 22 and expanding its scope of application to other SOIA (Security of Information Act) offences, as well as to the new FI (foreign interference) offences being proposed under the Act. Some stakeholders noted the need for the penalty to be proportionate to the seriousness of the prohibited conduct, with some calling for a higher maximum sentence of seven years.

### **Issue 3: Whether to Modernize Canada’s Sabotage Offence.**

There was overall support for the proposed amendments to the sabotage offence, particularly from industry. Stakeholders provided feedback on what the definition of “essential infrastructure” should include, commonly citing communications, energy, food services, water and sewage infrastructure, for example. Stakeholders also emphasized the need for the definition of “essential infrastructure” to be sufficiently broad to include emerging technologies and infrastructure.

There was general support for the creation of a separate sabotage offence related to foreign interference, as well as for a new companion offence to criminalize making, possessing, selling and/or distributing a device to commit the offence of sabotage. Finally, there was general support for expanding the Charter protections for the modernized offence.

Importantly, a few Indigenous partners expressed concerns with the proposed reforms to the sabotage offence and potential impacts on Charter rights, including freedom of expression and peaceful assembly. The proposed expansion of protections from those currently available for labour and employment reasons, to other forms of protest, dissent and advocacy was well-received and seemed to address some of these concerns, in part.

### **Issue 4: Whether to Create a General Secure Administrative Review Proceedings Regime under the *Canada Evidence Act*.**

Justice Canada (The Department of Justice Canada) received feedback through the online consultation indicating overall support for the proposed SARP process. Commenters highlighted how this process could strike the right balance between addressing national security concerns and ensuring fair and informed legal proceedings. There was also support for

consolidating stand-alone administrative regimes into one universally available process, which would bring greater consistency and efficiency in how national security information is considered in judicial reviews and statutory appeals to the Federal Court and the Federal Court of Appeal and avoid delays in judicial proceedings. That said, some stakeholders expressed skepticism towards introducing a new regime and more administrative burdens.

### **Issue 5: Whether to introduce reforms to how national security information is protected and used in criminal proceedings.**

There was minimal and mixed feedback received on the proposed amendments relating to how national security information is protected and used in criminal proceedings. Regarding the proposed non-bifurcation of section 38 CEA (Canada Evidence Act) national security privilege proceedings, some respondents support creating a roster of national security law judges in each jurisdiction to build capacity in the use of national security information and expedite decision-making processes in such proceedings. There was overall support for providing a statutory basis for special counsel appointments, which was seen as bringing fairness to the process. Others raised operational considerations related to these reforms, suggesting that training and guidelines may be required to support judges and special counsel.

While there was some support to limit appeals, by the accused, of section 37 and section 38 CEA (Canada Evidence Act) disclosure orders until after trial in the event of a conviction, procedural fairness concerns were raised with respect to the defendant's right to a fair and timely trial.

In general, most input received on the reforms to how national security is protected and used in criminal proceedings called for ensuring the rights of the accused are respected, while also recognizing the need to avoid delay



in criminal proceedings.

## Conclusion

The information from the roundtables, online and written submissions covered a range of potential positive and negative impacts that could arise through the proposed legislative reforms. Overall, there was general support for the package of reforms proposed in the consultation paper. There was support for the new proposed FI (foreign interference) offences and modernization of the sabotage offence, as well as for increasing the penalty for the preparatory acts offence under the SOIA (Security of Information Act) and expanding its application to other SOIA (Security of Information Act) offences. While less feedback was received on measures related to the protection and use of national security information in judicial proceedings, there were general calls to streamline processes. There were varying viewpoints on the details of how to combat FI (foreign interference), but there was a general consensus on the need for increased efforts to combat FI (foreign interference) and modernize our toolkit to meet current and future threats while minimizing overreach and delays.

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