UNCLASSIFIED

Public Inquiry Into Foreign Interference in Federal Electoral Processes and Democratic Institutions | Enquête publique sur l'ingérence étrangère dans les processus électoraux et les institutions démocratiques fédéraux

Interview Summary: Department of Justice (Shalene Curtis-Micallef, Samantha Maislin Dickson, Heather Watts, Michael Sousa)

Lead officials from the Department of Justice ("**Justice**") were interviewed in a panel format by Commission Counsel on June 24, 2024. The interview was held in a secure environment and included references to classified information. This is the public version of the classified interview summary that was entered into evidence in the course of hearings held *in camera* in July and August 2024. It discloses the evidence that, in the opinion of the Commissioner, would not be injurious to the critical interests of Canada or its allies, national defence or national security.

Notes to Reader:

- Commission Counsel have provided explanatory notes in square brackets to assist the reader.

1. Interviewees

[1] Shalene Curtis-Micallef has been the Deputy Minister ("**DM**") since February of 2023. Before that, she served as Justice Associate DM, starting in September 2021. During her time as Associate DM, she was not intricately involved in the foreign interference files, as she and the then-DM divided the files for which each were the department lead.

[2] Samantha Maislin Dickson has been the Associate DM since May 6, 2024. She was previously Assistant DM ("**ADM**") at Justice in charge of the Public Safety, Defence and Immigration Portfolio, which included: (1) oversight of the Justice legal service units (LSUs); (2) through the LSUs, providing advice and other legal support to Public Safety Canada ("**PS**"), to the agencies reporting to the PS Minister, to CSE, to the Department

of National Defence and to Immigration, Refugees and Citizenship Canada. In that capacity, she coordinated all matters of national security on behalf of Justice.

[3] Heather Watts has been the Deputy ADM (Policy Sector) since June of 2022. She manages criminal law and national security files that involve the development of new policy.

[4] Michael Sousa has been the Senior ADM (Policy Sector) since February of 2022. He leads the Policy Sector which includes managing intergovernmental and external relations, family, children and youth policy, as well as criminal law policy and national security. The Policy Sector supports the Minister, DM and Associates, as well as the broader government community.

2. Intelligence Flow and Threat Assessment

[5] Ms. Curtis-Micallef noted that the importance of foreign interference ("**FI**") in Justice's provision of legal services to the government, including intelligence agencies and PS, had increased in the past years. This does not mean that there was no FI work before; however it has evolved. At the time of the interview, the government had mobilized a significant amount of resources. She noted that Justice is fully engaged on all aspects of the FI file, including the development of Bill C-70 [Bill C-70 received royal assent on June 20, 2024 and was enacted as *An Act Respecting Countering Foreign Interference*] and the work of the Public Inquiry into Foreign Interference. She also mentioned the advisory work with clients in the FI space.

[6] Asked if she has noted an evolution in the nature of the FI threat, Ms. Curtis-Micallef said that on a daily basis, she is not a consumer of intelligence. While Justice lawyers who support clients at an operational level may see more intelligence in order to provide legal advice, she does not consume intelligence on a regular basis, as she does not need access to intelligence to provide advice. She can get access to intelligence if needed. Justice might use intelligence to inform policy and legislative developments, but only if needed to support the provision of specific advice.

[7] Ms. Maislin Dickson said that the LSUs usually see intelligence addressed to Justice, but this does not usually reach the Executive level unless required for a key legal issue. Ms. Curtis-Micallef agreed; lawyers who support clients in their day-to-day work have access to any intelligence needed to provide legal advice, but the Justice senior management would not, unless necessary to carry out their functions. Senior executives need to be attuned to the general nature of an issue that is the object of proposed legislation, but this does not usually involve detailed intelligence briefings. Ms. Maislin Dickson explained that, similarly, when Justice is asked to draft legislation that involves complex scientific issues, it needs only a broad understanding of the underlying subject matter.

[8] In her capacity as Justice DM, Ms. Curtis-Micallef consumes intelligence as a sitting member of the Panel of Five.

3. Identifying Policy Gaps

[9] Ms. Curtis-Micallef said that Justice relies on multiple inputs to identify policy gaps. She identified partnerships within government, legal decisions, and academia as examples of input sources. Justice monitors these areas to inform its assessment of the adequacy of the current legislative framework. Ms. Watts said that analysts at the Criminal Law and Policy Sector also work with their counterparts including in client departments and consider Canada's allies to compare frameworks.

[10] Ms. Watts said that the prioritization of identified policy gaps is based primarily on commitments identified in ministerial mandate letters and directions from ministerial offices. Developing policies in files involving classified materials is not a challenge, since the staff assigned to these files have the appropriate security clearances.

4. Coordination Mechanisms

4.1 Within Government

[11] Ms. Curtis-Micallef was asked to talk about the Deputy Minister Foreign Interference Committee ("DM FI") and to explain its role. She stated that the main focus of the committee was to devise legislation to develop Canada's toolkit to address FI. Justice had a policy role with respect to the *Security of Information Act* ("***SOIA***")[1], the *Criminal Code*[2] and the *Canada Evidence Act* ("***CEA***")[3]. She stated that the committee was stood up as there was increasing scrutiny for FI.

[12] Ms. Curtis-Micallef was asked about the Deputy Minister Clerk Committee on Foreign Interference ("**DMC FI**"). She stated that the Clerk convened and chaired the DMC FI committee in April 2023. DMC FI overlapped with the DM FI, which was chaired by the National Security and Intelligence Advisor to the Prime Minister and reunited the same agencies and departments, but without the Clerk. Ms. Curtis-Micallef noted it is not unusual for two committees to overlap in such fashion. Justice was also invited to participate to other DM committees discussing other legal issues. Justice only sits on committees whose agendas have a legal dimension or impacts its mandates or responsibilities.

[13] Commission counsel asked the interviewees to comment on a proposal for a new structure of the committees that govern the national security community.[4] Ms. Curtis-Micallef had no strong views on the proposal. She was not aware of this proposal before preparing for her interview. Ms. Curtis-Micallef noted that governance restructuring does not necessarily mean that the previous structure was not working, but rather, that the government is being responsive to changing needs. Ms. Maislin Dickson stated that

[1] RSC 1985, ch. O-5.

[2] RSC 1985, ch. C-46.

[3] RSC 1985, ch. C-5.

[4] CAN037056.

Justice would continue to play the same role in the committees convened under this new structure.

[14] Ms. Curtis-Micallef also described her role on the Panel of Five. The Panel of Five is a consensus-based decision-making body, which brings together the experiences and backgrounds of its five DMs. Ms. Curtis-Micallef explained that, as the DM of Justice, she brings in the Justice lens but that as with other committees that she sits on, her input into decision-making is not limited to questions that raise legal issues. Like other Panel members, she contributes to discussions based on her extensive understanding of the inner workings of government.

[15] Ms. Curtis-Micallef described an introductory briefing that she had received as a member of the Panel of Five in October 2023. Senior officials from the Privy Council Office's Democratic Institutions Secretariat delivered the briefing to provide her with background knowledge about the role of the Panel of Five and the FI threat to democratic institutions in Canada. Ms. Curtis-Micallef was already generally aware of that information but felt that the introductory briefings were a good and important practice.

[16] Ms. Curtis-Micallef noted that Justice does not need to sit on the DM Committee for Intelligence Response ("**DMCIR**") during by-elections [during the June 2023 by-elections, the Panel of Five was not convened. DMCIR acted as the primary recipient of intelligence from the Security and Intelligence Threats to Elections Task Force]. The DMCIR differs from the Panel of Five, which derives its authority from the Critical Election Incident Public Protocol, a Cabinet Directive that applies only during the caretaker convention. During by-elections, Ministers maintain their accountabilities and responsibilities. Should legal issues arise outside of the caretaker period, Justice would be consulted.

4.2 With External Partners

[17] Commission counsel referred the interviewees to a conference document from a meeting of the Federal/Provincial/Territorial Deputy Ministers Responsible for Justice

and Public Safety.[5] Ms. Curtis-Micallef stated that Justice and PS have a common framework at the ministerial, DM and ADM levels to engage with their provincial counterparts, which is supported by a broader committee structure at lower levels. The central points of interest of these committees vary: some are more justice-oriented; others concentrate on public safety issues. Federal agencies need to be able to coordinate effectively with provinces for operational purposes. Doing so is challenging because provinces have varying levels of awareness of national security threats and varying capacities to receive and act on intelligence.

[18] Mr. Sousa noted that this specific meeting was part of ongoing efforts by PS to engage with provincial and territorial governments to provide an update on federal FI legislative developments. The focus of meetings with provincial and territorial governments was to update them on the new authorities to facilitate intelligence sharing and to build relationships to develop policies. Ms. Watts noted that Bill C-70 had just been tabled before this meeting, which she viewed as indicative of the mutual interest of federal (particularly the Canadian Security Intelligence Service ("**CSIS**")) and provincial and territorial governments to leverage Bill C-70 to engage with each other.

[19] Ms. Curtis-Micallef said that FI had already given rise to exchanges between Justice and provincial and territorial counterparts, but she could not identify the year in which these exchanges first occurred. Counsel for the Attorney General of Canada undertook to confirm whether Justice had engaged its provincial and territorial counterparts on broader policy discussions on the topic of FI before the fall of 2022. Counsel subsequently advised that FI was not raised prior to the fall of 2022.

[20] Mr. Sousa said that, on the international scene, the Attorneys General of the Five Eyes alliance countries engage through the Quintet Group, which has been convened since the late 2000s. The last meeting occurred December 2, 2021 (virtually). The Quintet Group discussed FI issues at that meeting.

[5] CAN037228.

[21] Ms. Watts stated that, despite the extraterritorial aspects of FI, Canadian law has tools to address the threat of FI. Threat actors do not always carry out their activities outside Canada. In addition, some of the new offences created by Bill C-70 give Canada jurisdiction to prosecute offences outside Canada. An issue for operational agencies to address is whether the evidence collected abroad can be admitted as evidence in Canadian proceedings and can be used as evidence to prosecute these offences. While Bill C-70 does not address the cooperation between agencies across the globe, she assumed that such mechanisms are in place, for example through mutual legal assistance agreements.

[22] Ms. Curtis-Micallef said that because every country has its own specific legal context, Justice does not blindly transplant legislative policies or definitions, including that of FI, of its international counterparts. Analysts within Justice look at the legal frameworks of other countries, but resituate them in the Canadian context. Bill C-70 is a significant improvement in Canada's capacity to detect and counter FI. Justice will continue to examine the initiatives that its allies implement in this area.

5. Legislative Responses to the FI Threat

[23] Ms. Curtis-Micallef said that Justice was actively involved in the development of a whole-of-government Strategy to Counter Hostile Activities by State Actors. Ms. Watts added that work started before she joined the Policy Sector, but she believed that Policy was consulted. The main role for Justice were consultations on amendments to the *Criminal Code, SOIA* and the *CSIS Act*[6]. Ms. Curtis-Micallef explained that adding new offences (and modifying existing ones) was a way for Justice to contribute to Canada's response to FI. The legislation needs to be drafted in a manner that can encompass the wide range of foreign interference activities. Asked whether the evolving landscape created difficulties in legislating, she indicated that hostile state actors will adapt their practices in response to any new legislation, any threat mitigation measures or other measures undertaken by Canada. She noted that establishing a single definition of FI

[6] RSC 1985, ch. C-23.

across government might not be possible given the differing uses of the term in the various statutes, programs, policies and operations. There are a host of activities being undertaken across government to address FI and the framework needs to be flexible. The Justice response is to create offences, which serves the purpose of advising the public and the Courts of the conduct that will attract sanctions, which is different from the mandate of the agencies.

[24] Ms. Curtis-Micallef noted that, while Justice was the lead department for Parts II and III of Bill C-70 [Part II modifies the *SOIA* and the *Criminal Code*; Part III modifies the *CEA*, Justice also provided legal advice and contributed to drafting Parts I and IV [Part I modifies the *CSIS Act*; Part IV enacts the *Foreign Influence Transparency and Accountability Act* ("***FITAA***")].

[25] Ms. Watts noted that training and communications products could help stakeholders create a common understanding of the new provisions. Justice is always available to assist with the implementation of new offences. This assistance can be extended to provincial and territorial governments. Ms. Curtis-Micallef added that Justice had already provided information to provinces about Bill C-70.

5.1 FITAA

[26] When asked to share her views regarding the FITAA, Ms. Curtis-Micallef said that she was not well-placed to comment because she had not provided policy advice on this aspect of Bill C-70 and she does not have a detailed understanding of how it will work in practice. The purpose of the *FITAA* is not to deter or counter nefarious actors. Those are covered by other tools, such as offences under the *Criminal Code* or *SOIA* or warrants or investigations under the *CSIS Act*. Rather, the *FITAA* is expected to provide transparency to citizens when individuals exercise their legitimate right to influence government on behalf of foreign entities. The fact that the *FITAA* is not focused on witting threat actors does not render it ineffective; it is only one of the tools in Canada's arsenal to detect, counter and deter hostile actors.

[27] Ms. Watts indicated that interviewees were not in a position to comment on differences between the *FITAA* and similar mechanisms from other jurisdictions. The DM noted that there are likely other Justice officials within LSUs who can comment on any difference.

5.2 *Criminal Code*

[28] Ms. Watts stated that the previous definition of "sabotage" under the *Criminal Code* did not specifically capture interference with essential infrastructure [Bill C-70 defines essential infrastructure as "a facility or system, whether public or private, completed or under construction, that provides or distributes – or is intended to provide or distribute – services that are essential to the health, safety, security or economic well-being of persons in Canada, including the following: (a) transportation infrastructure; (b) information and communication technology infrastructure; (c) water and wastewater management infrastructure; (d) energy and utilities infrastructure; (e) health services infrastructure; (f) food supply and food services infrastructure; (g) government operations infrastructure; (h) financial infrastructure; and (i) any other infrastructure prescribed by regulation"]. The new definition of sabotage gives the offence additional flexibility, as it captures both cyber and physical infrastructure.

5.3 Canada Evidence Act

[29] Ms. Curtis-Micallef stated that the process of using intelligence as evidence was, from Justice's perspective, best described as Intelligence and Evidence (as opposed to Intelligence "to" Evidence), because not all intelligence can be evidence; it is not a continuum. This is a multi-faceted issue: while some challenges to using intelligence as evidence are legal (such as its admissibility in Court or disclosure obligations), not all of them are. While Justice is actively examining possible legislative changes that would improve the use of intelligence as evidence, other initiatives (such as programs, policies and infrastructures) will need to be implemented to address this issue.

[30] Ms. Watts said that, with Bill C-70, administrative proceedings would be covered by a Secure Administrative Review Proceeding. This new regime provides more certainty to intelligence agencies that the Federal Court can examine and rely upon intelligence

during a judicial review proceeding. This new administrative regime is also compatible with the Royal Canadian Mounted Police's ("**RCMP**") approach to counter FI, which involves leveraging a whole range of tools, such as immigration proceedings, as opposed to focusing only on prosecutions. Ms. Curtis-Micallef and Ms. Watts added that Bill C-70 was also designed to address the particularities of the Canadian intelligence and evidence issue in criminal proceedings, which is a largely a function of the breadth of disclosure obligations in these cases.

5.4. SOIA

[31] Ms. Curtis-Micallef said that the overarching objectives of the changes made to the *SOIA* were to improve clarity and to reduce and deter FI.

[32] Ms. Watts said that one provision that creates new offences committed at the direction of, for the benefit of, or in association with a foreign entity, and which was modelled after terrorism and organized crime offences, removes the need to prove harm to Canadian interests. The new offence of political interference for a foreign entity [enacted by s. 20.4(1) of *SOIA*] would also capture interference in nomination races.

[33] Ms. Curtis-Micallef said that nomination races and other party processes are purely private to the parties and relate to their own choice of representatives. She did not see this as a space in which the public service was engaged. There is a distinction between the role of the State in managing conduct that is morally wrong and managing the conduct of private parties. Should any legislative initiatives be discussed in relation to nomination races or other party processes, they would primarily fall under the umbrella of the Privy Council Office's Democratic Institutions Secretariat ("**PCO DI**").

5.5. Changes to the *Canada Elections Act*

[34] Ms. Curtis-Micallef said that Justice had not been actively involved from a policy perspective in the drafting of Bill C-65 [Bill C-65 proposes several changes to the *Canada Elections Act*, some of which relate to undue influence by foreign entities]. PCO DI led this legislative reform, likely with the support of the Justice ADM responsible for PCO, who would have provided legal advice.

5.6 Other Responses

[35] Ms. Curtis-Micallef said that committees and other government coordination mechanisms were essential to take into account the extralegal dimensions of the FI threat (such as diplomatic dimensions and issues of enforceability). Justice actively consults with other government departments to have a broad perspective on FI.

[36] Ms. Maislin Dickson noted that the challenges associated with the collection of open-source materials (*i.e.*, materials that can be accessed through unclassified monitoring) were not being led by Justice from a policy perspective.

[37] Ms. Curtis-Micallef said that Justice would have provided legal advice relevant to the Governance Protocol to implement the Ministerial Direction to CSIS on Threats to Parliament and Parliamentarians, which came to DMC FI for discussion from a policy perspective. However, Justice was not involved in the operationalization of the Directive, which remained within the remit of DMCIR.

6. Outreach to Diasporas

[38] Ms. Curtis-Micallef said that the robust consultation process it followed before tabling Bill C-70 was an important engagement channel for Justice with diaspora communities. Ms. Watts added that Justice participated in multiple technical briefings with PS and CSIS after Bill C-70 was tabled, including with diasporas. Justice also informed all stakeholders that it was available to discuss any issues arising from of this new legislation. Ms. Watts noted that CSIS and the RCMP both put significant emphasis on outreach to diaspora communities in their own activities.

[39] Ms. Watts described the Cross-Cultural Roundtable on National Security ("**CCRT**"). The CCRT meet twice yearly and convene government representatives, as well as approximately ten community members appointed by the Minister of PS. They are a forum to discuss any issues experienced by community members, including, but not limited to, FI. This holistic approach is necessary to further enable the government to understand and address the broad spectrum of threats that community members

experience, including FI, racism, discrimination and hate. CCRTs' agenda is not based on FI, but rather on the needs identified by community members.

7. Conclusion

[40] Ms. Curtis-Micallef emphasized the importance of making a nuanced assessment of the government's response to FI, acknowledging the complexity of the issue. There is a need to have an informed conversation about this serious threat.

[41] In response to a question about remaining gaps in the response to FI, Ms. Curtis-Micallef said that Justice did not legislate in a complete vacuum. C-70 added clarity. Legislative responses to FI will need to adapt to a changing environment. Artificial intelligence will most likely pose significant challenges. Justice will continue to monitor on-the-ground and legislative developments in this area.

[42] Ms. Watts agreed that artificial intelligence, especially as it relates to mis- and dis-information, is difficult to solve from a policy perspective. Ms. Maislin Dickson said that, while FI has been around for a long time, the capabilities, tactics and tools have evolved, requiring changes to Canada's response. Ms. Curtis-Micallef added that this evolution requires a careful balancing of the fundamental rights and freedoms of Canadians, including freedom of speech. Government and other civil society actors can play a role in relation to mis- and dis-information.