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In Camera Examination Summary: Marco Mendicino

Commission Counsel examined Member of Parliament and former Cabinet Minister Marco Mendicino during *in camera* hearings held in July and August 2024. Counsel for the Attorney General of Canada appeared on behalf of the Government of Canada and had the opportunity to examine the witness. The hearing was held in the absence of the public and other Participants. This summary discloses the evidence that, in the opinion of the Commissioner, would not be injurious to 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. Examination by Commission Counsel

- [1] Mr. Mendicino confirmed the accuracy of the summary of his interview and adopted its content as part of his evidence before the Commission.
- [2] Marco Mendicino has served as the Member of Parliament for Eglinton—Lawrence since 2015. He served as the Minister of Immigration, Refugees and Citizenship from 2019 to 2021, and as the Minister of Public Safety from October 26, 2021 to July 26, 2023.

1.1 Hostile Activities by State Actors Strategy (“HASA Strategy”)

- [3] Commission Counsel referred to a 2022 memorandum to Cabinet entitled “Modernizing Canada’s Approach to Addressing Threats From Hostile Activities by State Actors” (the “**HASA MC**”).
- [4] Mr. Mendicino agreed that HASA is a broader term that encompasses foreign interference (“**FI**”) among other things. In addition to the creation of the FI Coordinator,

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the HASA MC explored possible legislative amendments to the Criminal Code, the Security of Information Act, and the creation of a Foreign Influence Transparency Registry.

- [5] Commission Counsel referred to the four key proposals contained in the HASA MC that being, the policy proposals made up of a whole of government HASA strategy proposal and a HASA strategic communications and engagement strategy proposal, the legislative proposals, some of which can be found in Bill C-70, and the resource proposals.
- [6] In respect of the Policy Proposals, Mr. Mendicino testified that by the time he assumed office as the Minister of Public Safety, the concept of HASA had already begun to be developed. His top priority at the time, in relation to FI, was to push the HASA strategy forward via a Memorandum to Cabinet. He added that he was aware of the need to develop a public-facing strategy as well.
- [7] Although FI was not new when Mr. Mendicino entered his office, it was rapidly evolving. It was becoming much more pervasive, and penetrating every facet of life. As a result of this evolution, Public Safety moved away from a target-based approach to combatting FI toward more of an activities-based approach. He stated this movement is reflected in the HASA strategy itself.
- [8] Commission Counsel then referred to a draft HASA strategy dated July 17, 2023. Mr. Mendicino explained that this document was created for internal purposes, and dated approximately one week before he left office as the Minister of Public Safety. He believed that he was not shown this document during his tenure as Minister. However, he noted that the concepts set out in the document are consistent with the deliberations that occurred within Public Safety. Some of the advice contained in the document was consistent with advice he had received relating to a rise in authoritarianism on the global stage, and increased activity by threat actors, including the People's Republic of China ("**PRC**") and Russia.
- [9] Mr. Mendicino testified that although the strategy is marked for 'internal discussion only' there was also contemplation of outward facing engagements on HASA. This included public consultations he implemented in relation to the Foreign Agent Registry. Mr.

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Mendicino confirmed he would have seen other variations of the HASA strategy. All of the HASA work was focused on setting out the threat landscape, and then exploring possible legislative amendments to the various relevant statutes.

- [10] In relation to the progress of the HASA Strategy, Mr. Mendicino stated that once the HASA MC was ratified, the Government of Canada had to pivot its focus to implementing the authorities and resources proposed therein. Mr. Mendicino was very eager to see the HASA MC materialize in a concrete way through legislative amendments. That said, Mr. Mendicino could not unilaterally move the operability forward. A whole-of-government response was needed to help facilitate public engagement and deal with concerns that emerged during public consultations on the FITR such as how the new possible authorities could be overreaching, run afoul of the *Charter*, or unintentionally stigmatize diaspora communities. He added that the HASA work was occurring against the backdrop of COVID-19, the Russian invasion of Ukraine, and the Freedom Convoy, and later, during the Public Order Emergency Commission. He highlighted the Government was facing competing demands at that time.
- [11] Mr. Mendicino stressed that his expectation for development of the HASA strategy was that the end point would move forward “as soon as possible.” This was especially so in light of events that had been occurring at that time, including leaks related to FI and Parliamentarians, such as Member of Parliament Michael Chong. Mr. Mendicino expressed profound concern about the media allegations on Mr. Chong’s physical safety. He was also concerned that tabling the legislation would be directly responsive to the need to equip the intelligence agencies with the authorities they required. Specifically, there were challenges regarding what kinds of information could be shared under the *Security of Information Act* and declassifying intelligence so that the Canadian Security and Intelligence Service (“**CSIS**”) could communicate with Parliamentarians.
- [12] Commission Counsel referred to a June 14, 2023 Memorandum for the Minister of Public Safety entitled “Canada’s Counter-Foreign Interference Strategy”. Mr. Mendicino explained that this was a re-naming of the HASA strategy to use plain language, to make clear to the public that the strategy was aimed at FI. It was also more consistent

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with the language being used by the media at the time. Ultimately, the public-facing HASA strategy was never made public during his tenure. Mr. Mendicino could not authoritatively say why, because the public-facing HASA strategy came at the tail end of his tenure as Minister of Public Safety. He stated that during his tenure, there was intense deliberation within government about how to communicate government efforts to combat FI. He also noted that work on the public-facing HASA strategy was challenged by the ongoing leaks, and reports about threats to Parliamentarians. The need to respond would have been a top priority for him. Although it was important to move forward with the public-facing strategy, it was also important to first address the evolving threats being reported.

[13] Mr. Mendicino underscored that there was a lot of thought being put into the public communications and engagement strategy. Consultations took place, and there was a lot of diverse feedback from the public, which Mr. Mendicino took very seriously. He stressed that FI was not an easy subject to navigate for the public, because FI permeates so many facets of Canadian society. Many of the critical elements of the public-facing strategy, however, are encompassed in Bill C-70 and also mentioned in the HASA MC. Bill C-70 reflects a large part of the Government's strategy and response to HASA and FI, it makes the changes consistent with advancing the pillars contained with the HASA MC.

[14] The HASA MC proposed that Public Safety implement a whole-of-government strategic communications approach and expand its coordination of Government of Canada counter-HASA activities. Mr. Mendicino agreed that at the time the HASA MC was presented to Cabinet, there was no coordinated government approach to communications with the public about HASA. He created the HASA Coordinator at Public Safety which purpose is to coordinate communications on FI as well as coordinate efforts against HASA across government.

[15] Commission Counsel referred to a discussion document that outlined a draft HASA engagement strategy for the Government of Canada. Mr. Mendicino was not certain that he ever saw this document however, he recognized elements of the draft, and stated it

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bore many hallmarks of internal discussions. He added that during his tenure, his goal was to move the HASA strategy forward as quickly as he could.

- [16] When Mr. Mendicino left his position as Minister of Public Safety, his expectation was that his work on the public communications and engagement strategy would continue to progress as quickly as possible.

1.2 Response to Leaks

- [17] Commission Counsel referred to a November 11, 2022 text message exchange between Mr. Mendicino and Brian Clow about a media article on overseas police stations.¹ In the exchange, Mr. Mendicino states that he needs Mr. Clow's help on pushing ahead with policy and investments.
- [18] Mr. Mendicino testified that he was asking for the Prime Minister's Office ("**PMO**") to help him form a consensus among government about how to move forward, and was asking Mr. Clow to help resolve ongoing debates about communications, and the public-facing strategy. Mr. Mendicino agreed that it was necessary to have a strong communications strategy to respond to the overseas police stations, but expressed that this would not be enough, more was needed. He underscored that it was important to move forward with the public-facing HASA strategy.
- [19] Mr. Mendicino testified that the reasons why the strategy was not adopted at that time were: (i) the internal process of arriving at a consensus on how to communicate the ongoing work on combatting FI to the public; and (ii) being responsive to issues being raised by diaspora communities around potential overreach in possible legislative responses. He added that the leaks also necessitated an open and proactive response to i) get the communications strategy right, ii) mitigate any potential threats and to respond to the reports around the leaks. At the same time, moving forward the substantive policy work was required and his job was to ensure that those objectives were not mutually exclusive.

¹ CAN018005.

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[20] Mr. Mendicino underscored that the Government of Canada is a large and complex institution. To move forward with something as comprehensive as the HASA strategy, cooperation is necessary and no Minister has the unilateral authority to do so. Mr. Mendicino recalled that Mr. Clow was sympathetic to his appeal to move the strategy forward as quickly as possible and he continued to push the HASA MC forward until his last day in office.

1.3 Intelligence Priorities and FI

[21] Commission Counsel referred to a series of documents that set out Canada's Intelligence Priorities for 2019 – 2021 and 2021 – 2023, as well as the 2023 – 2025 strategic guidance on the Priorities.

[22] Mr. Mendicino confirmed that FI was at or near the top of the list of Priorities during his tenure. He stated that this was consistent with the early briefings that he received when he became Minister of Public Safety.

[23] Mr. Mendicino testified that there were no easy days in Public Safety. He noted that dealing the Freedom Convoy, the invocation of the Emergencies Act, and other challenges took up much of his bandwidth as Minister. Shortly after the Freedom Convoy concluded, the Russian invasion of Ukraine took place, which also occupied much of his time at Public Safety. FI remained a top priority during his tenure. FI-related work was occurring simultaneously to his work on the HASA MC and the ongoing response to concerns around threats to Parliamentarians.

1.4 Flow of Information Related to FI

[24] Mr. Mendicino explained that as Minister, he made it clear he wanted to receive and did receive written and oral briefings on intelligence frequently, which included intelligence related to FI. He also received raw and assessed intelligence, specifically in relation to national security reviews under the *Canada Investment Act*, and proposed threat reduction measures (“**TRMs**”). He described these tools—namely, reviews, and TRMs—as solid blueprints on how to ensure accountability within government in relation to intelligence, the exercise of authorities, and decision-making.

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- [25] Mr. Mendicino explained that the system for circulating intelligence to and within Public Safety has evolved over time. He stated that he sought to improve this system through a Ministerial Direction that ensured the Minister of Public Safety was briefed directly by officials on any threats to Parliamentarians. He underscored that his access to intelligence was robust, but added that there was work to be done on improving the flow of assessed intelligence and coordinating decision-making to facilitate better accountability and transparency.
- [26] Mr. Mendicino said the greatest challenge to navigate is the volume of intelligence received by Public Safety, and the need to distill that intelligence into concrete recommendations and actions.

1.5 Overseas Police Stations

- [27] Commission Counsel referred to an undated Memorandum for the Minister of Public Safety on Overseas Police Stations (“**OPS**”). Mr. Mendicino recalled being briefed on OPS in late 2022, and seeing a report on OPS authored by the Safeguard Defenders, a civil society organization. The Memorandum highlights that at least one of the police stations had been operating for some time and the challenge in understanding how the OPS operated. He recalled that CSIS issued a public alert on OPS and that the Royal Canadian Mounted Police (“**RCMP**”) established a public presence near the OPS. The RCMP later reported that they shut down FI activities related to the OPS.
- [28] Mr. Mendicino highlighted that the OPS issue illustrates the way in which Bill C-70 has expanded the legislative tool kit for law enforcement agencies and does respond to the challenges presented by OPS by creating new offences, enabling law enforcement to address OPS under the new provisions.

1.6 Intelligence to Evidence

- [29] Mr. Mendicino testified that prosecutions in relation to FI offences, will be challenging in particular because of the intelligence and evidence issue. That said, it is possible to use intelligence as evidence. As an example, he cited the “Toronto 18 Terrorism Case” [the case involved the arrest of 14 adults and 4 youths accused of plotting a series of attacks

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in Southern Ontario in 2006. Eleven of the 18 suspects were ultimately convicted]. In that case, CSIS sent an advisory letter to the RCMP about intelligence that would assist the RCMP's ongoing investigation (now referred to as a "use letter") via a process that is now known as the One Vision approach. That letter was subject to legal disclosure requirements (*R v Stinchcombe*, [1991] 2 SCR 326). Mr. Mendicino ensured the letter was properly disclosed, thus introducing intelligence as evidence.

1.7 Ministerial Direction on Threats to Parliamentarians

[30] Commission Counsel referred to the Ministerial Direction on Threats to the Security of Canada Directed at Parliament and Parliamentarians, signed by Mr. Mendicino.

[31] Mr. Mendicino explained the purpose of the directive was to address concerns around the flow of intelligence within the Government in respect of the receipt of information concerning threats to Parliamentarians and aimed to ensure the safety of Parliamentarians. It came about, in part, in response to the media leaks detailing alleged threats to Member of Parliament Michael Chong's physical safety. It ensures that when CSIS gathers intelligence that suggests a threat to a Member of Parliament, that intelligence will be briefed to the Minister of Public Safety. Mr. Mendicino expressed that there is a need for broader coordination of intelligence across government.

1.8 Letter to Parliamentarians

[32] Commission Counsel referred to a Memorandum for the Minister of Public Safety on a letter to Members of Parliament on Foreign Interference that was never circulated.² The memorandum recommends that Mr. Mendicino approve and sign an enclosed letter offering Members of Parliament a briefing on FI.

[33] In terms of the reason why the letter was not sent to Parliamentarians, Mr. Mendicino testified that, consistent with what he previously explained on the HASA strategy generally, there were ongoing discussions about the public communications strategy.

² CAN026389.

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1.9 Nomination Contests

- [34] Mr. Mendicino agreed that nomination contests are a vector for FI. He cautioned that the Government of Canada should be careful about seeking to regulate nomination contests. Without caution, it may be difficult to disentangle where partisan lines end and government authority begins. He stressed the need for careful thought about the federal government approving or seeking warrants against political opponents.
- [35] Mr. Mendicino highlighted the divide between the political and official role occupied by the office of the Minister for Public Safety. He urged further thinking around the official use of significant statutory authorities in relation to political opponents. Mr. Mendicino highlighted the Shawcross doctrine [a constitutional convention that states that while the Attorney General is entitled to consult Cabinet colleagues about the policy implications of prosecutorial decisions, he or she is not to be directed or pressured on such decisions by the Cabinet and that the decision should be made by the Attorney General alone] as a relevant principle of application.

1.10 Work with Allies

- [36] Commission Counsel referred to a summary of the Five Country Ministerial meeting that took place on June 27–28, 2023.
- [37] Mr. Mendicino recalled advocating for a joint threat assessment during the meeting.
- [38] Mr. Mendicino underscored the need to engage in digital diplomacy with other countries and social media platforms. The prevalence of artificial intelligence and deepfakes, as well as dis- and misinformation, necessitates a proactive response.
- [39] Mr. Mendicino summed up that FI is a complex and serious threat to not only Canadian democracy but all democracies, perpetrated by hostile actors who are trying to tear at the fabric of democratic society. It also presents tangible threats to Parliamentarians and, as such, it requires a fulsome response.

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2. Examination by the Attorney General of Canada

[40] Mr. Mendicino clarified that during the examination, he used the terms HASA Coordinator and Counter FI Coordinator interchangeably. The present-day title of the role is Counter FI Coordinator.