

Unclassified
28 June 2024

Department of Justice Outline Institutional Report - PIFI Stage 2

The Department of Justice (JUS or Justice) submits the following information for the Justice Institutional Report for Stage 2 of the Public Inquiry on Foreign Interference in Federal Electoral Processes and Democratic Institutions (PIFI). The report is divided in three parts:

- A. An overview of the roles and responsibilities of JUS.
- B. An overview of JUS's roles and responsibilities relating to foreign interference.
- C. JUS's answers to the questions of the PIFI where applicable to its work.

A. GENERAL OVERVIEW OF THE DEPARTMENT OF JUSTICE

1. JUS supports the Minister of Justice (Minister) and Attorney General of Canada (AGC) in:
 - a. overseeing all matters relating to the administration of justice that fall within the federal domain - in this capacity, JUS strives to promote access to justice for all Canadians;
 - b. providing a broad range of advisory, litigation, and legislative services to government departments and agencies; and
 - c. advising Cabinet on all legal matters.

The Dual Role of the Minister of Justice and Attorney General of Canada

2. The *Department of Justice Act* created the Department of Justice, over which the Minister of Justice presides, and sets out the powers, duties, and functions of the Minister of Justice and Attorney General of Canada (AGC). It provides that the Minister is also His Majesty's Attorney General of Canada. The Minister of Justice is responsible for justice policy development, including the development of new programs and services for Canadians. The Attorney General of Canada provides legal services to the Government. The Attorney General also oversees federal prosecutions within the framework of the *Director of Public Prosecutions Act (PPSC) Act*. He is supported by the Director of the Public Prosecution Service of Canada (PPSC) who is the Deputy Attorney General for the purpose of carrying the responsibilities described in the *PPSC Act*. The Director of PPSC has the rank and the status of a deputy head of a department and in that capacity is responsible for the management of the PPSC. The PPSC is a national, independent and accountable prosecuting authority whose main objective is to prosecute federal offences and provides legal advice and assistance to law enforcement as a distinct governmental organization independent from JUS.
3. The Minister of Justice has both a policy role and a legal role. In his policy role, the Minister of Justice is responsible for justice policy development, including the development of new programs and services for Canadians. As a member of Cabinet, the Minister of Justice exercises their political judgment except when providing legal advice,

Unclassified

28 June 2024

which must be independent and non-partisan, to inform the deliberative process and decision-making for which ministers are collectively responsible.

4. The AGC is the chief law officer of the Crown. In carrying out this role, the AGC represents the Crown and seeks to advance the interests of the whole of government. The AGC acts in the public interest, including upholding the Constitution of Canada, the rule of law and respect for the independence of the courts. The AGC conducts litigation on behalf of the Government and provides legal advice and legislative services to government departments and agencies, including assistance with drafting and reviewing legislation.

The Structure of Departmental Support to the Minister of Justice and the Attorney General of Canada

5. JUS supports the dual roles of the Minister of Justice and the Attorney General of Canada, reporting to the Minister of Justice and the Attorney General of Canada.
6. JUS is headed by the Deputy Minister, Ms. Shalene Curtis Micallef, and two Associate Deputy Ministers, Ms. Isabelle Jacques and Ms. Samantha Maislin Dickson, who provide advice and support to the Minister and act as the main interface between the political and administrative functions of government. The Deputy Minister and Associate Deputy Ministers support the Minister to achieve the Government's objectives through four broad roles: Manager of the Department, Chief Policy Advisor, Accounting Officer, and Litigation and Legal Advisory Services. They act as principal policy advisor to the Minister of Justice on matters within the Minister's responsibility and authority. They coordinate policy development and ensure the departmental implementation of the Minister's initiatives and priorities. They also advise on coherent policy development for and management of the Minister's portfolio and deliver on the role of the Attorney General.
7. The Ministerial Secretariat is part of the Deputy Minister and Associate Deputy Ministers' Office. It supports the Minister of Justice and Attorney General of Canada, Deputy Minister, Associate Deputy Ministers, and senior departmental officials on, among other things, Cabinet and parliamentary business, legislation and regulation. The Secretariat is comprised of three units: the Cabinet and Parliamentary Affairs Unit, the Ministerial Liaison Unit and the Ministerial Correspondence Unit.
8. The Department delivers services through a mix of co-located departmental legal services units, specialized branches located within the Department, as well as a network of six regional offices across the country. These units, branches, and regional offices report to the Deputy Ministers via Assistant Deputy Ministers (ADM) or their equivalents, who are responsible for specific subject areas, known as "portfolios" or "sectors". Within Justice, these portfolios and sectors are:

Unclassified
28 June 2024

- Indigenous Rights and Relations Portfolio;
- Public Safety, Defence and Immigration Portfolio;
- Tax Law Services Portfolio;
- Business and Regulatory Law Portfolio;
- Central Agencies Portfolio;
- Policy Sector;
- National Litigation Sector;
- Public Law and Legislative Services Sector;
- Management Sector; and
- Privy Council Office Legal Services Sector.

POLICY SECTOR OVERVIEW

9. The Policy Sector is headed by the Senior Assistant Deputy Minister (SADM), Mr. Michael Sousa and by the Deputy Assistant Deputy Minister (DADM), Ms. Heather Watts. The Policy Sector supports the Minister of Justice and Attorney General of Canada in working towards a fair, relevant and accessible justice system. The Policy Sector does this through research, external relations, policy development, legal advice, law reform and delivery of programs. The Policy Sector plays a strategic role in contributing to the policy function across JUS, including through Gender-Based Analysis Plus, managing priorities and planning, and undertaking research and analysis to support evidence -based decisions. Their teams work mainly in the areas of criminal law including victims, family and children’s law, youth criminal justice, Indigenous justice, international development, and access to justice. The Policy Sector is responsible for grants and contributions, which are used to help achieve the Department’s policy goals. The Policy Sector also supports the Minister of Justice and Deputy Minister (DM) of Justice in collaborating with external partners and stakeholders, such as the G7, the Commonwealth, the Cross -Border Crime Forum, and various Federal -Provincial-Territorial.
10. The Criminal Law Policy Section (CLPS) is part of the Policy Sector at the Department of Justice. As its name indicates, CLPS is the federal government’s centre of expertise for criminal law and criminal justice policy. CLPS supports the Minister of Justice and Attorney General of Canada throughout Cabinet and Parliamentary processes, instructs on the drafting of criminal legislation reforms, monitors the progress of legislation and appears as departmental witnesses before Parliamentary committee. CLPS provides leadership at the national and international levels in the development and implementation of criminal law and criminal justice policy. Further, CLPS provides advisory services to other departments with respect to criminal law and policy issues, for example, on the enactment of criminal or regulatory offences, schemes and penalties, and litigation support for criminal law issues. CLPS also advises on the

Unclassified
28 June 2024

development of international criminal instruments, standards and norms and provides technical assistance and expertise on a variety of international criminal justice project.

JUS LEGAL ADVISORY SERVICES OVERVIEW

11. JUS has six portfolios¹ established to deliver the range of advisory, litigation, and legislative services that its legal counsel offer in support of other government departments and agencies. To provide these services, legal counsel may also engage centres of expertise, such as the CLPS, the Constitutional and Administrative Law Section or the Human Rights Law Section, as required.
12. These portfolios deliver legal support and services to client departments and agencies through their departmental legal services units (DLSUs), with the support of JUS centres of expertise. Advisory work provided by the DLSUs may relate to the ongoing management and administration of programs or activities under the authority of the department or agency, internal operations, or the design and implementation of new departmental or agency policies, programs, or legislative initiatives.

B. JUS and Foreign Interference

Policy Sector, CLPS and Foreign Interference

13. The Policy Sector is engaged with issues relating to foreign interference in its role as a policy centre. The Policy Sector is not involved in operations related to the detection, prevention, or prohibition of foreign interference. CLPS develops policy in relation to criminal law, evidence law, criminal procedure and national security law and policy such as the *Security of information Act*. CLPS officials may provide legal advice, in collaboration with relevant DLSUs, to the Royal Canadian Mounted Police (RCMP) and other federal partners to understand the policy intent or interpret provisions of the *Criminal Code* or other federal statutes such as the *Security of Information Act*. However, CLPS is not otherwise involved in day -to-day operational issues relating to foreign interference.

Department of Justice Portfolios and Foreign Interference

14. As it relates to foreign interference, the involvement of the JUS portfolios would be largely limited to providing legal advice to other federal government departments and agencies. DLSUs would support client departments and agencies in their response to foreign interference as part of their legal advisory services. In providing this advice, DLSU counsel may also engage centres of expertise, such as the Criminal Law Policy

¹ These six portfolios are the Privy Council Office Legal Services Sector, Indigenous Rights and Relations Portfolio, the Public Safety, Defence and Immigration Portfolio, the Tax Law Services Portfolio, the Business and Regulatory Law Portfolio, and the Central Agencies Portfolio.

Unclassified
28 June 2024

Section, the Constitutional and Administrative Law Section or the Human Rights Law Section, as required. Owing to its role in overseeing DLSUs delivering legal advisory services to the Communications Security Establishment (CSE), the Canadian Security Intelligence Service (CSIS), the Royal Canadian Mounted Police (RCMP), and the Department of National Defence and the Canadian Armed Forces (DND/CAF), the Public Safety Defence and Immigration Portfolio (PSDI) is responsible for coordinating legal advisory services in matters of foreign interference. The legal advice provided to client departments and agencies, including advice relating to foreign interference, would be subject to solicitor -client privilege and would not generally be subject to production or disclosure to third parties to preserve the privilege in the advice.

C. JUS RESPONSES TO PIFI QUESTIONS

15. JUS provides the following responses to the items set out in the Commission's letter dated 21 May 2024.
16. JUS notes that much of its work would not be relevant to the mandate of the Commission. Accordingly, JUS has no information to provide in connection with items (1), (2), (4), (5), and 10 of the Commission's letter dated 21 May 2024.

(3) A listing and description of all policy proposals, legislative plans and resource requests related to foreign interference, including but not limited to memos to the Deputy Minister (or equivalent) or Assistant Deputy Minister (or equivalent). At a minimum, this should include the date of the request, date of decision (where applicable), a summary of the proposed changes and the outcome of the request.

17. CLPS' work products are often subject to Cabinet Confidence —and are identified as such—when these are prepared to support the Minister of Justice for Cabinet -related processes. These work products can be for a Cabinet Sub -Committee or for participation in full Cabinet. For example, CLPS officials may be involved in:
 - Drafting a Memorandum to Cabinet that seeks Cabinet approval and authority to create new offences in the *Criminal Code*,
 - Drafting a Cabinet Briefing Note for the Minister of Justice to state the Justice Canada position and perspectives on another Minister's Cabinet discussion item or on a Memorandum to Cabinet for which the Minister of Justice is not a signatory.
18. Cabinet Confidence work performed by CLPS is subject to Cabinet Confidence and therefore cannot be disclosed.

Unclassified
28 June 2024

19. On the foreign interference front, CLPS was involved, and partly responsible for the work on Bill C-70 (an *Act respecting countering foreign interference*). This bill was introduced on 06 May 2024 by the Minister of Public Safety and the Minister of Justice in the House of Commons. The Bill received Royal Assent on 20 June 2024.
20. Bill C-70 had four parts, and CLPS drafted Part 2 and Part 3 of the Bill, which are the responsibility of the Minister of Justice.
21. When it comes into force on 19 August 2024, 60 days after Royal Assent, Part 2 will amend the:
 - Security of Information Act* (SOIA) to, among other things, rename the Act to *Foreign Interference and Security of Information Act* (FISI Act).
 - SOIA to create new foreign interference offences, such as committing an indictable offence at the direction of, for the benefit of, or in association with a foreign entity, as well as engaging in surreptitious or deceptive conduct, at the direction of, for the benefit of or in association with a foreign entity for a purpose prejudicial to the safety or interests of the State or being reckless as to whether the conduct is likely to harm Canadian interests, or with the intent to influence, among other things, the exercise of a democratic right in Canada.
 - Criminal Code* to, among other things, broaden the scope of the sabotage offence to include certain acts done in relation to essential infrastructures and ensure that certain provisions respecting the interception of “private communications” as defined in that Act apply to certain offences in the SOIA.
22. When it comes into force on 19 August 2024, 60 days after Royal Assent, Part 3 will amend the:
 - Canada Evidence Act* (CEA) to, among other things, create a general scheme to deal with sensitive information in the course of administrative proceedings that are in the Federal Court or the Federal Court of Appeal.
 - CEA to restrict, in the criminal context, interlocutory appeals of a s. 37 CEA or s. 38 CEA disclosure order by an accused until after the person has been convicted of the offence, unless there are exceptional circumstances justifying an earlier appeal. The purpose of this amendment is to address concerns about trial delay and interruption and to help with court efficiency and resources, by ensuring that interlocutory appeals are not launched by defendants unless there is a criminal conviction.
 - Criminal Code* to add references to international relations, national defence and national security in the sealing of orders provision.

Unclassified
28 June 2024

- *Immigration and Refugee Protection Act* to add references to international relations and national defence in certain provisions that relate to the protection of information.

23. Part 1 and Part 4 of Bill C-70 are the responsibility of the Minister of Public Safety. Part 1, which came into force immediately upon Royal Assent, amended the *Canadian Security and Intelligence Service Act*. Part 4 will enact the *Foreign Influence Transparency and Accountability Act* (FITA Act) and will come into force at a date that will be set by the Governor-in-Council.
24. Other JUS portfolios would support client departments and agencies in their response to foreign interference as part of their legal advisory services. This advice would be subject to solicitor-client privilege and would generally not be subject to production or disclosure to third parties to preserve the privilege in the advice.

(6) A listing and description of the date, venue, participants and summary of discussion for all engagements by senior executives (ADM and above, including Ministers) with representatives of foreign governments (especially China, Russia and India) where the subject of foreign interference was raised.

25. Senior executives within JUS have participated in the following engagements with representatives of foreign governments where the subject of foreign interference was raised:
- On 02 December 2021, the former minister of Justice, the Honourable David Lametti, participated in the virtual meeting of the Quintet of Attorneys -General (FVEY). Amongst other topics, the Quintet discussed cooperation to address foreign influence and foreign interference, including lessons learned on foreign influence transparency mechanisms, and emerging trends and challenges posed in cooperation for the investigation and prosecutions of foreign interference and espionage offences.
 - On 03 October 2022, the Deputy Assistant Deputy Minister (DADM) for the Policy Sector, along with counsel from the Policy Sector met with Australia's Deputy Secretary, Department of Home Affairs, Mr. Andrew Kefford. The purpose of this meeting was to discuss policy issues relating to foreign interference, including Australia's *National Security Amendment (Espionage and Foreign Interference) Act 2018*, and its experience with its Foreign Interference Transparency Scheme.
 - Between 08-10 May 2023, the DADM for the Policy Sector, accompanied by legal counsel representing the Royal Canadian Mounted Police (RCMP), the Canadian Security and Intelligence Service (CSIS), the National Security Group, and the Criminal Law Policy Section of JUS met with senior officials from the United

Unclassified
28 June 2024

States Department of Justice and the Federal Bureau of Investigation in Washington, D.C. to exchange information on the legal and operational frameworks related to intelligence and evidence and to a lesser extent foreign interference.

- The Deputy Minister has engaged in discussions with foreign representatives where foreign interference was raised. This includes:
 - at the Cross-Border Crime Forum on 28 April 2023 in Ottawa, which the Deputy Minister attended with Canada’s Minister of Public Safety Marco Mendicino and Minister of Justice and Attorney General David Lametti, and Attorney General of the United States Merrick Garland and U.S. Secretary of Homeland Security Alejandro Mayorkas; and
 - bilateral discussions with at 2024 G7 Justice Ministers’ meeting in Venice, Italy on 09-10 May 2024, including a meeting with between Canada’s Justice Minister and the Vice -President of the European Union, Vera Jourova.

(7) A listing and description of all education campaigns aimed at Parliamentarians and their staff, political parties, government employees at federal, provincial or municipal levels, diaspora groups, or the general public related to foreign interference.

26. While this does not strictly qualify as an “education campaign,” officials from the CLPS at JUS participated, along with officials from Public Safety Canada (PS) and the Canadian Security and Intelligence Service (CSIS), in briefing the media as well as Parliamentarians and their staff on the day of the introduction of Bill C -70, An Act regarding countering foreign interference, on 06 May 2024. In the days and weeks that followed the introduction of Bill C -70, these same officials briefed other partners and stakeholders, as follows:

Date	Partner/Stakeholder/Organization/Group
06 May 24	Media
06 May 24	Parliamentarians and their staff
07 May 24	Community Organizations
07 May 24	Academics and legal professionals
09 May 24	The NDP Critic for Public Safety and Deputy Critic for Justice
10 May 24	National Indigenous Organizations (NIOs)
13 May 24	The Justice Parliamentary Secretary
14 May 24	Provinces and Territories
21 May 24	British Columbia
22 May 24	Special Representative on Combatting Islamophobia, Ms. Amira Elghawaby
23 May 24	Special Representative on Combatting Islamophobia, Ms. Amira Elghawaby
27 May 24	Bloc MP (Mr. Villemure)

Unclassified
28 June 2024

Date	Partner/Stakeholder/Organization/Group
29 May 24	CPC MP (Mr. Caputo)
05 Jun 25	National Council of Canadian Muslims (NCCM)
05 Jun 24	SECD Chair (Senator Dean)
06 Jun 24	Green Party MP (Ms. May)
07 Jun 24	Privacy Commissioner
10 Jun 24	Lobbying Commissioner
14 Jun 24	CSE WG (internal to Fed Govt)
17 Jun 24	Commissioner of Canada Elections
17 Jun 24	SECD Chair (Senator Dean)
17 Jun 24	All Senators
20 Jun 24	Inuit Tapiriit Kanatami
21 Jun 24	National Council of Canadian Muslims (NCCM)
25 Jun 24	(Scheduled) Conflict of Interest and Ethics Commissioner

27. The purpose of these briefings was to explain the various components of Bill C -70. For CLPS, this included a briefing on Part 2 and Part 3 of Bill-70, which contain, among other things, the proposed new criminal offences to address foreign interference.

28. Furthermore, while this does not strictly qualify as an “education campaign,” foreign interference was also discussed in 2023 and 2024 at the “FPT” forum. FPT meetings gather federal, provincial and territorial Ministers of Justice/Attorney General and of Public Safety, along with DMs and other senior officials of those ministries, to discuss important issues of common interest. During conversations on foreign interference, the public consultations on foreign interference, potential areas for legislative reforms, as well as Bill C -70 were discussed.

(8) (PCO and/or Public Safety) For each interdepartmental committee related to foreign interference, listing of meeting frequency (or meeting dates if *ad hoc*) and agendas, list of participants, annotated agendas for the Chair, meeting summaries, minutes).

29. Please see the PCO Institutional Report.

(G) A listing of all engagements at divisional Director level (or equivalent) or above with representatives of diaspora groups where the subject of foreign interference was discussed. Listing should include dates, names of departmental and diaspora representatives and summary of discussion.

30. From 24 November 2023 to 02 February 2024, JUS conducted broad -based consultations on potential reforms to the *Security of Information Act* (SOIA), the *Criminal Code* and the *Canada Evidence Act* (CEA) aimed at strengthening Canada’s toolbox to respond to foreign interference. The consultation process consisted of an online consultation that solicited feedback from the general public, as well as a series

Unclassified
28 June 2024

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.

31. Senior officials (Director level and above) of CLPS and the DADM for the Policy Sector at JUS, along with senior officials from Public Safety and CSIS, met with several partners and stakeholders as part of these consultations.
32. CLPS officials and the DADM for the Policy Sector also organized briefings with other partners and stakeholders (without PS and CSIS). These are not diaspora groups strictly speaking, but this list is provided for thoroughness:

Date	Partner/Stakeholder/Organization/Group
15 Jan 24	Legal Professionals and Associations (FR)
15 Jan 24	Legal Professionals and Associations (EN)
17 Jan 24	Academics and Public Policy
18 Jan 24	Academics and Public Policy
19 Jan 24	Legal Professionals and Associations (EN)
23 Jan 24	Academics and Public Policy
05 Feb 24	Anil Kapoor

33. Furthermore, on 02 February 2024, the Policy Sector DADM and other senior officials from CLPS met with designated judges of the Federal Court of Canada to discuss the JUS consultation paper.
34. At this time, the Policy Sector and CLPS wish to protect the names of specific individuals and organizations who met with us during the roundtables. It was not announced at the outset of the roundtables that the meetings were to be conducted in accordance with the Chatham House rule, nor was it announced that their names would be made public. In order to respect some individuals and organizations that may be vulnerable to foreign interference, JUS wishes to protect their identities at this time.
35. From these consultations, JUS prepared and published the What we Heard Report (<https://www.justice.gc.ca/eng/cons/fi-ie/wh-qne.html>). JUS heard that there is overall support for the new proposed foreign interference offences under the SOIA and a strengthened maximum penalty for preparatory acts in the SOIA and its expanded application to other SOIA offences, as well as overall support for 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, JUS heard the call for the Government to better engage and communicate with the public on FI, notably with diverse communities across Canada.