Summary Report

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Panel Theme: Electoral Integrity: Political Financing

Key Issues: Canadian law prohibits donations from foreign entities, but it can prove difficult to 'follow the money.' Are existing rules adequate in ensuring transparency (in political financing)? Are there barriers to identifying donors? What additional measures, if any, might help detect and counter foreign interference?

Assessment:

While funding is not essential to foreign interference, finance is an enabler. Money can entice, incentivize and distort allegiances. It can facilitate masked state-based interventions into the democratic fabric. Little of serious significance can be achieved without adequate resources. This report centers on funding, transparency, and foreign interference. Foreign interference is deceptive and clandestine influence by a foreign entity. Tightened financial transparency, investments in the enforcement of existing finance-centric laws, and in Canada's financial intelligence machinery, could enhance resistance to any attempts to meddle in Canadian democratic processes.

1. Financial Transparency

Covert operations have long been financed through opaque conduits – typically through a combination of corrupt financial intermediaries and a secrecy jurisdiction, a state with solid financial privacy protections (such as states in which a breach of privacy is a crime). Money derived from drugs trafficking, corruption, and organized crime has long been laundered – concealed – through clandestine financial transactions. Bad actors usually seek anonymity to evade taxation, to protect the proceeds of crime, to fund criminal activity or to secretly interfere in the domestic affairs of a state.

Concerted efforts over the last three decades – largely shepherded by international law – have sought to increase global financial visibility so to deter and capture resources derived from, or destined for, wrongdoing. Principally, this is achieved under auspices of anti-money laundering regulation, an apparatus that governs all manner of financial exchange from the opening of bank accounts to the sale of luxury goods to monetary instruments crossing national boundaries and purchases of real estate. Anti-money laundering law imposes reporting requirements (suspicious

transaction reporting and financial reporting), know your client rules (the requirement to thoroughly investigate the identity of customers including taking reasonable steps to verify that identity), on actors engaged, in one form of another, in some transactional activity connected to financial matters. As a modern apparatus, this transparency device morphs and expands as knowledge of potential channels of money laundering accretes. Recent adjustments to Canada's framework include enhanced regulation of money services businesses and a sanctioned property regime (in relation to sanctions imposed against states and state actors, notably Russia).[1] Moreover, a central feature of this effort to shred financial darkness and detect malign financial activity is the creation of financial intelligence units – Canada's FINTRAC.

This evolving mechanism aims to deter and detect tainted financial activity, axiomatically deterring and detecting species of wrongdoing associated therewith. Since the inception of this assault on money laundering and financial invisibility in the 1990s, Canada has been a constituent and vocal member of the global project. Building a strong transparency edifice is repeatedly cited as a Canadian commitment. Although Canada's structure largely complies with global edicts, a comprehensive 2022 assessment rebuked Canada's regime as ineffective and overly complex.[2] Part of that assessment turned on a lack of attention paid to money laundering investigations, to financial intelligence failings and to deficits in capacity and expertise.

2. Tightening Transparency and Foreign Interference

Any deficiencies in Canada's transparency framework obviously facilitate foreign interference. Foreign interference could assume a variety of forms: it could involve quietly securing voting preferences, surreptitiously funding policy influencers or providing secrect financial rewards for discrete political decisions. In the specific context of electoral processes, the *Canada Elections Act* directly attends to foreign funding – for instance, the prohibition of third parties (s.349) from the use of funds sourced from a foreign entity (s.349.02) and prohibitions on spending by foreign third parties (s. 349.4 & s.351.1). Efforts to deter foreign interference, at least when funding is relevant to its realization, are predicated on financial transparency. In the case of specific injunctions against foreign sourced funds, on the capacity to know that funds are of foreign origin: in the generic case of the initiating force, on the ability to identify the presence of a foreign actor.

A common instrument used by states and non-state actors to camouflage involvement in nefarious affairs is the corporate form. Sometime called 'front companies' or 'shells', corporations function as intermediaries, shielding the identity of those who control them, often through the layering of

[1] https://gazette.gc.ca/rp-pr/p1/2024/2024-07-06/html/reg3-eng.html

[2] https://cullencommission.ca/files/reports/CullenCommission-FinalReport-ExecutiveSummary.pdf

multiple corporate entities.[3] Layering, the use of nominee directors and the channeling of finance through multiple jurisdictions obscures the fact that a state furtively acts through a proxy. Corporations can be created in the space of minutes with the filing of a few documents. 'Shelf' companies– entities long in existence but with no active life – can readily be bought and re-purposed.

A partial antidote to this tool of deceptive statecraft is enhanced corporate transparency through beneficial ownership registries. Beneficial ownership mechanisms pierce the corporate veil by collecting information about the identity of those who exercise 'significant' control. Typically, this means 'sentient' individuals (not corporate share-holders) who substantively own or control 25% or more shares or voting rights. Canada's less than pristine reputation regarding financial transparency rests, in part, on its failure to implement beneficial ownership devices.[4] Progress on the implementation of such devices has been slow, complicated by bifurcation of corporate governance between Parliament and the provinces.

Of course, piercing corporate anonymity through registries can trigger privacy concerns. Transparency regularly collides with privacy in the financial context, most notably in the context of bankers (duty of confidentiality) and lawyers (solicitor-client privilege). While such concerns are not negligible, matters related to business and corporate sphere attract weaker privacy protections than matters directly relevant to the personal realm – personal papers are more secure than corporate documents.[5] Equally, access to information gathered in a registry of benevolent ownership can be restricted to enforcement agencies or otherwise kept from the public purview.

Beyond corporate cloaks, two recurrent themes in the anti-money laundering domain are lack of effective enforcement and financial intelligence. The Cullen Commission found enforcement action and resources wanting. Canada's 2023-2026 anti-money laundering, terrorist finance strategy acknowledges the need to invest in investigations, and intelligence capacity.[6] Ferreting out financial connections, finding and following the money, detecting foreign-sourced funds and the hand of a foreign state is extremely difficult. New deception tactics constantly emerge.[7]

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[3] See, for instance, the use of front companies by state actors to acquire and finance weapons of mass destruction: https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2018_171.pdf at 59-79.

[4] https://fsi.taxjustice.net/country-detail/#country=CA&period=22

[5] *Thomson Newspapers Ltd. v Canada (Director of Investigation and Research, Restrictive Practices Commission*, 1990 CanLII 135 SCC: https://www.canlii.org/en/ca/scc/doc/1990/1990canlii135/1990canlii135.html

[6] https://www.canada.ca/en/department-finance/programs/financial-sector-policy/canadas-anti-money-laundering-and-anti-terrorist-financing-regime-strategy-2023-2026.html#_Toc87276431

[7] https://star.worldbank.org/publications/signatures-sale-how-nominee-services-shell-companies-are-abused-conceal-beneficial

Financial crime, financial shenanigans, money laundering, bad actors and bad actions orchestrated through, or involving, matters of finance are notoriously expensive to investigate, extremely time-consuming and dependent upon highly skilled officers. To the extent that any foreign interference is enabled by funding, vigorous enforcement of existing laws and serious and sustained investment in state-of-the-art financial intelligence would strengthen Canada's resistance to foreign meddling.

3. The Foreign Influence Transparency and Accountability Act

Newly minted Bill c70 (June 2024) establishes a registry of persons who act at the behest of foreign actors. Designed to increase transparency, the system requires that persons who enter arrangements to act on behalf of foreign principals (chiefly in some political capacity) register. A failure to provide information and to register prompts administrative or criminal sanctions.

Foreign registry mechanisms do inject visibility. There are, however, disturbing correlations between foreign-related mandates and negative impacts on civil society organizations. Emergent evidence tells of foreign influence registries, disclosure rules connected to 'foreign funding' and other administrative burdens centered on 'foreign' affecting non-governmental entities and straining their access to much needed resources.[8] In some places the organizations targeted by such measures are associations that promote human rights and democratic reform.[9]

Any differential treatment derivative of the foreign factor ought to be approached with caution and monitored for possible misuse.

4. Charities

Canadian charities can operate in international spaces. Charities function principally from government grants, donations and earned income (investments). Research institutes, think tanks and contributors to public policy building can be charities (ie universities). There is no prohibition on charities harvesting donations from foreign shores. And they cannot engage directly in partisan politics, their ambit for advocacy and for shaping policy development is wide.[10]

With respect to transparency, charities must disclose information about donors and donations to the regulator - the Charities Directorate of the Revenue Canada Agency. This is both to confirm tax creditable receipts (credits and deductions) and to ensure compliance with tax law (federal tax

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[8] Bromley, P, E Schofer and W Longhofer, (2020) Contentions over World Culture: The Rise of Legal Restrictions on Foreign Funding to NGOS, 1994-2015, 99 Social Forces, 281.

[9] https://documents.un.org/doc/undoc/gen/g22/337/82/pdf/g2233782.pdf

[10] *Income Tax Act*, RSC 1985, s 149.1: https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-1-5th-supp/latest/#sec149.1

law confers charitable status). Outside of the scope of information held by the regulator, total donations received from sources outside Canada is publicly disclosed (T3010 form).

Any direct role of charities in sourcing foreign money, or in constituting a proxy for state interference, could be addressed by prohibiting solicitation and receipt of foreign donations. That, of course, could have devastating impacts on the Canadian charitable sector and, at this point in time, unlikely to be a prudent choice.

5. New Offences and Finance

Bill c-70 establishes new offences related to foreign interference, none of which specifically contemplates financial dimensions.[11] Given the general lack of enforcement of the existing anti-money laundering mechanism, additional new offences related to financing are likely unwarranted. If the provision of funding, or property, by a foreign actor were in relation to some species of terrorism, that support could violate the existing terrorism-related financial offences.[12]

Within the specific context of elections, provisions introduced in 2018 prohibit spending by foreign third parties and third parties from relying on foreign funds. Directly related to finance and funding, the latter – reliance on foreign funds - extends precisely (s.349.03) to attempts to circumvent the prohibition. To collude with another to give foreign funds the appearance of domestic origin, for instance, would attract liability. The capturing of 'circumvention' solidifies this prohibition.

Recommendations:

Tightened transparency could assist in the detection and deterrence of foreign interference. This could include nudging the swift development of pan-Canadian beneficial ownership laws.

Better enforcement of existing laws – particularly money laundering prosecutions – would send a strong message that shady finance will not be tolerated.

Serious investments in financial intelligence capacity need underpin the entire domain of the financial part of wrongdoing.

[11] https://www.parl.ca/legisinfo/en/bill/44-1/c-70

[12] https://laws-lois.justice.gc.ca/eng/acts/C-46/page-9.html#h-116382 (the financing of terrorism).