

Intelligence MEMOS



From: Lawrence Herman
To: Foreign Interference Observers
Date: October 11, 2023
Re: FOREIGN AGENTS REGISTRY – DON'T DITHER

We still do not know when the Inquiry into Foreign Interference in Canada's elections, presided over by Justice Marie-Josée Hogue, will start up, how much will be in public and the particular aspects it will examine first. From the terms of reference, however, its primary focus will be the meddling by China, Russia and others in the 2019 and 2021 elections.

Justice Hogue's mandate also includes assessing the capacity of federal departments and agencies to counter foreign interference in the future and to make recommendations on "any means for better protecting federal democratic processes from foreign interference that the Commissioner may consider appropriate." This is a fairly general point, not obliging the Commissioner to recommend action in any area, only those she "may" consider appropriate.

Whatever she says, her final report isn't due till the end of 2024, after which we can expect further delays as recommendations are digested by the government, which could bump us into the 2025 federal election period.

But nothing in the Hogue inquiry's mandate prevents the federal government acting now in one particularly critical area – the creation of a foreign agents registry. Action by the feds in this area would be separate and distinct from the points under examination in the inquiry.

There would be numerous ingredients in such a system, but the essential one would be to require anyone in Canada with contracts or linkages with foreign governments or their agencies that aim to influence Canadian activities to publicly disclose those relationships. This would correct the large and obvious gap in Canada's current national security apparatus that has sparked wide concern for years and over which Ottawa has been dithering for about as long. Public consultations about a registry were launched last March, producing comments for and against, but not much has happened since.

With a bit of moxie, the government could introduce legislation tomorrow, taking elements from measures in effect in the US, the UK, Australia and New Zealand, Canada being a Five Eyes outlier in this area (remember how long it took Canada to follow our allies and ban Huawei from 5G mobile networks?).

Look at the public records required by Canada's closest allies.

The Americans have had the *Foreign Agents Registration Act* since 1938 "to promote transparency with respect to foreign influence within the United States by ensuring that the United States government and the public know the source of certain information from foreign agents intended to influence American public opinion, policy, and laws, thereby facilitating informed evaluation of that information. FARA fosters transparency by requiring that persons who engage in specified activities within the United States on behalf of a foreign principal register with and disclose those activities . . ." Seems pretty laudable as a policy.

The Brits have had their Foreign Influence Registration Scheme (FIRS) since 2021, requiring registration of any arrangements with foreign powers to carry out political influence activities in the UK, "encouraging transparency, while simultaneously deterring foreign powers that wish to pursue their aims covertly," described as a measure that "strengthens the resilience of the UK political system against covert foreign influence and provides greater assurance around the activities of certain foreign powers or entities that are a national security risk." The scheme doesn't prevent activity taking place but, like the US system, is designed to ensure public awareness and transparency.

Australia's Foreign Influence Transparency Scheme, in place since 2018, likewise requires individuals or entities are required to register activities if they are taken on behalf of a foreign principal. New Zealand has a robust foreign interference reporting system, with plans underway to create a foreign ownership registry to enhance public knowledge.

While there are differences in detail – the American scope is most aggressive – each regime is grounded in a common national security objective – disclosure by domestically based operations, especially in military, defense, communications, medicine, high technology and other sectors, including research institutes, of ties to risky or unfriendly governments or entities under their control, direction or influence. There would be carefully crafted exclusions, needless to say, when it comes to relations among Canada's allies, such as NATO countries.

A registry system is all about public disclosure and transparency. Nothing makes those relationships illegal, with matters only entering the realm of illegality when persons or enterprises fail to register or, once when registered, when laws are broken or national security is compromised. China, Russia and Iran are the most egregious actors, but not alone.

If the government wants to regain public confidence on the national security file, this is one area where action could be taken now. It would provide an important step forward, with others to be considered once we have Justice Hogue's recommendations late next year.

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