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How Allies Do It: Five Eyes Foreign Influence Transparency Registries

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Key Points

- The deployment of a Canadian foreign influence transparency registry should be aligned with our Five Eyes partners (Australia, the United Kingdom and the United States).
- Problems of scope and overbreadth undermine some existing allied schemes and could present problems for a Canadian instrument. The UK model offers a solution through a "two-tier" system and regulation.
- The effectiveness of foreign influence transparency registries lies primarily in deterrence, public education and enhanced resilience.
- Foreign influence transparency registries are but one tool in an array of policy and legislative instruments to combat persistent foreign interference.
- Informing the public by producing regular reports on the performance of a foreign influence transparency scheme is essential.

Introduction: An Allied Model for Canada?

A political and public debate calling for Canada to create a foreign influence registry as one instrument to combat foreign interference has reverberated for the past several years. Throughout this time, those urging the establishment of a foreign influence registry have consistently pointed to allied practices, especially on the part of our Five Eyes partners, and argued that Canada needs to follow suit. For example, in April 2023, a former clerk of the Privy Council Office, Michael Wernick, told a House of Commons committee that Canada should act quickly by copying UK legislation (Maher 2023).

The Government of Canada has recently introduced legislation in Parliament (Bill C-70) that creates a Foreign Influence Transparency and Accountability Act, and amends many other aspects of national security law — some designed to be complementary measures. The legislation will not come into effect until it is studied by Parliament and passed, regulations to support the bill are announced and new machinery of government is created. In the interim, the proposed act will be held up for scrutiny against the existing models provided by allied practices. Canadian officials engaged in significant discussions with allied counterparts as the Canadian legislation was being considered and drafted and believe they have come up with a suitable "made in Canada" model.

About the Author

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He is the co-editor (with Christopher Andrew and Richard J. Aldrich) of *Secret Intelligence: A Reader*, second edition (Routledge, 2019) and co-author (with Aaron Shull, CIGI's managing director and general counsel) of the CIGI capstone project report on "Reimagining a Canadian National Security Strategy." He is a former editor of the journal *Intelligence and National Security* and now serves on the journal's advisory board.

A Brief History of the Canadian Debate over a Foreign Influence Registry

Calls for a foreign influence registry have been especially strong in Conservative Party circles while the party has been in opposition. In April 2021, Conservative member of Parliament (MP) Kenny Chiu, who represented a riding in the greater Vancouver area with a sizeable Chinese-Canadian population, introduced a private member's bill (C-282) in Parliament to establish a "foreign influence registry." His bill was modelled on Australian legislation and focused on creating a public registry of individuals, other than accredited diplomats, who engage with public officials on issues of legislation, regulation or policy making on behalf of a foreign state actor. The proposed act gave order-making powers to a designated cabinet minister to create a schedule of foreign countries of concern.[1]

The private member's bill, like most of their ilk, did not pass the House of Commons, but the Conservative Party included a promise to create a foreign influence registry in its August 2021 election campaign platform, along with other proposed measures responding to perceived threats from China.

On the campaign trail, the Conservative Party leader at the time, Erin O'Toole, and some Conservative candidates running for office in ridings in Toronto and Vancouver, faced a backlash among some Chinese-Canadian voters regarding their platform and the proposal for a foreign influence registry. Chiu, who had proposed the foreign influence registry, lost his seat in the 2021 election. O'Toole, whose party won the popular vote but lost seats they had expected to win and failed to unseat the Liberal government, claimed that somewhere between six and nine riding contests were lost due to misinformation and disinformation operations targeting his campaign and candidates because of their stance on China.

Following the election, the Conservative Party submitted a memo to the Privy Council Office in late September 2021 that stated, "There is a strong case to be made that there was a degree of influence exerted

1 Bill C-282, *An Act to Establish the Foreign Influence Registry*, 2nd Sess, 43rd Parl, 2021, online: *Parliament of Canada* <www.parl.ca/DocumentViewer/en/43-2/bill/C-282/first-reading>.

by an outside actor in the Chinese community during the 44th General Election....[We] believe this influence negatively impacted our standing in [13] seats" (Privy Council Office 2023, 7). An intelligence group established as an election watchdog, called the SITE (Security and Intelligence Threats to Elections) Task Force, investigated the Conservative Party claim. It found that Chinese state-controlled media did conduct an overt influence campaign "to convince Canadians not to vote for the CPC [Conservative Party of Canada]," but could not "decisively conclude that the PRC [People's Republic of China] sought to clandestinely and deceptively influence outcomes in all of the thirteen ridings identified by the Conservatives" (SITE Task Force 2021). The SITE Task Force further noted manipulation of a "grey zone" between overt activities and illegitimate and clandestine activity and made the point that the lack of a foreign agent registry made it impossible to legally designate proxy actors as "agents" of a foreign government from a foreign influence perspective.

There the matter appeared to stand until Canadian media began, in the fall of 2022, a year after the election, to issue reports based on leaks of classified intelligence about Chinese state election interference. In response to these stories and renewed opposition pressure, the public safety minister announced in December 2022 that there would be public consultations with Canadians on a foreign influence registry (Bronskill 2022).

The Consultation Process and Outcome

In March 2023, the minister's promise was fulfilled with the issuance of a consultation paper and the creation of mechanisms for public feedback. The consultation period ran from March 10 to May 9, 2023, and involved both open submissions and a variety of by-invitation, stakeholder round tables. Two of these stakeholder engagements were organized by the Centre for International Governance Innovation (CIGI).

The consultation paper made an argument for the need for Canada to align its efforts with close allies. Public commentary had already noted the fact that both Australia and the United States possessed foreign agent registries and suggested Canada should follow suit. The consultation paper stated that "some of Canada's closest allies and like-minded partners have brought forward additional measures, including legislative regimes, to specifically enhance foreign influence transparency in their respective countries. Any new measures brought forward to bolster Canada's approach should be in alignment, to the extent possible, in order to bolster overall collective resilience" (Public Safety Canada 2023a).

An annex to the paper included brief descriptions of measures taken or contemplated in the United States, Australia and the United Kingdom. But allied approaches were not raised in any of the six open-ended questions it offered to respondents.

A "What We Heard" summary report of the responses to the consultation paper was issued by Public Safety Canada in November 2023. Perhaps not surprisingly, it did not contain any reference to the value of working with allies, or suggestions for allied best practices that might be drawn upon (Public Safety Canada 2023b).

In a rare public talk on December 8, 2023, by the then-national security and intelligence advisor, Jody Thomas (2023), in conversation with CIGI's Aaron Shull, Thomas discussed the need for more detailed independent analysis of the workings of allied foreign influence registries to inform the possible creation of a Canadian scheme.

Some six months elapsed between the issuance of the consultation summary report and the introduction of legislation in the House of Commons. The establishment of a Public Inquiry into Foreign Interference in September 2023, public hearings in early 2024 and the issuance of the inquiry's first report on May 3, 2024, helped keep issues of foreign interference alive in political and public discourse.

Allied Practices: An Overview

One stand-out feature of existing allied practices among Canada's Five Eyes partners is the degree to which models of foreign influence registries are closely intertwined. The Australian Foreign Influence Transparency Scheme (FITS), first proposed in 2017 and passed into law in December 2018, was initially based on the US model, the Foreign Agents Registration Act (FARA). Recent UK legislation builds on the Australian framework. The Public Safety Canada consultation paper provided clear

indications in its concepts and language that the government's approach in the spring of 2023 was also based on the Australian model. Newly proposed Canadian legislation continues to have an imprint of the Australian model. Only New Zealand stands apart for not working to create a foreign influence registry. As noted later in this policy brief, it rests its efforts on other mechanisms.

Significant reforms of foreign influence registry schemes are now contemplated in both Australia and the United States. In the United Kingdom, there is an impending coming into force of new legislation. With its own proposed legislation, Canada joins the effort to create a modern registration scheme. Inevitably, it will be judged, in part, in light of allied practices.

The Practices of Canada's Five Eyes Partners

The US FARA

The US FARA is the grandfather of all Five Eyes partner measures involving a political influence registry. It has been in existence for more than 80 years. But despite its long standing, FARA is currently subject to several congressional bills seeking amendments and a soon-to-be-released set of Department of Justice (DOJ) changes.

FARA dates back to 1938 and was signed into law by then-president Franklin Delano Roosevelt. It was a measure originally designed to combat Nazi and communist propaganda aimed at the United States. In essence, it required "agents" of a "foreign principal" who are engaged in "political activities" to register with the US government within a period of 30 days and disclose certain information. Penalties were attached to any failure to register.[2]

Here, we can see the fundamentals of all subsequent allied regimes, particularly the definitional terms: "foreign principal," "agent of a foreign principal," "political activities" and "registration statement." All were defined broadly. For example, a "foreign principal" could be a government of a foreign country; a foreign political party; a person outside the United States; or "a partnership, association, corporation, organization, or any other combination of persons organized under the laws or having its principal place of business in a foreign country."[3]

Various amendments were made to FARA over the years, in 1942, 1966 and 1995 (Congressional Research Service 2020). The effect of these amendments was ultimately to shift FARA away from a concern about propaganda and toward a focus on foreign advocacy and lobbying. Few FARA cases were prosecuted prior to the 1960s. In introducing amended legislation in 1966, Senator James Fulbright noted: "The place of the old foreign agent has been taken by the professional lobbyists and public opinion manipulators whose object is not [to] subvert the Government but to influence its politics" (ibid.).

One other major change to FARA practices was made in 2007 when the government was required to develop an electronic filing system for FARA registrations and to make a database of these available to the public.

Various exemptions are applied to registration requirements, including persons involved in religious, academic, artistic or scientific pursuits and any agent operating for a foreign government principal, "the defense of which the President deems vital to the defense of the United States."[4] In other words, the FARA scheme was never designed to be country-agnostic.

There are two notable trends in the status of FARA in recent years. One is a heightened pace of enforcement action, especially in the wake of disclosures in 2016 about Russian state efforts to influence the 2015 presidential election.[5] The other is a spate of proposed congressional amendments to FARA. These have been summarized in a 2020 Congressional Research Service study and include ideas to have social media posts included in registrable activities; to give the DOJ, which operates FARA, the power to issue what are called in US law "civil investigative demand authority," similar to Australian information notice powers; and to extend the ban on former officials acting as foreign agents (ibid.).

2 *Foreign Relations and Intercourse*, 22 USC § 611 et seq (1938), online: FARA <www.fara.us/assets/htmldocuments/uploads/24375_foreign_agents_registration_act_of_1938_-_secured.pdf>.

3 *Ibid*, § 611(b)(3).

4 *Ibid*, § 613(f).

5 The DOJ has published a summary of "Recent FARA Cases," from 2007 to 2021; see www.justice.gov/nsd-fara/recent-cases.

The most extensive analysis to date of FARA was published in July 2021 by a task force established by the International Law Section of the American Bar Association. The task force found that, in the face of a surge in FARA enforcement and more aggressive administrative actions, what it called the "regulated community," faced "an antiquated statutory regime which is expansive in its jurisdictional scope, stigmatizing in its terminology [a reference to the use of the word 'agent' in the legislation], and laden with key definitions that are unduly broad or vague" (Task Force on the Foreign Agents Registration Act 2021, 1). Two of its key recommendations involved removing the term "agent of a foreign principal" from the legislation and narrowing the scope of the definition of a foreign principal to focus primarily on foreign governments and foreign political parties and their proxies (ibid.).

The task force report was followed by a public consultation process on changes to FARA instituted by the DOJ in December 2021.[6] Questions in the consultation addressed many of the issues raised in the task force report. Exemption provisions in FARA, treatment of non-state-owned commercial enterprises, and the question of how to address social media were also a focus of the consultations.

Recent public remarks by senior US officials responsible for FARA indicate that "sweeping" changes will be made to FARA in 2024 (Covington 2023). One official stressed that the DOJ would be continuing with a high level of compliance inspections, especially for agents of foreign corporations (Covington 2023; Capeloto 2024).

Enforcement of FARA is made possible by an extensive organizational structure, including FARA administration centred in the DOJ's National Security Division; the work of the Federal Bureau of Investigation's Foreign Influence Task Force, established in 2017; and the intelligence community's Foreign Malign Influence Center (FMIC), created in 2022.

The mission statement of FMIC indicates that it "serves as the primary U.S. Government organization for integrating intelligence pertaining to foreign malign influence (FMI), including on election security....FMIC is committed to protecting our democratic processes and institutions from foreign influence and interference."[7]

In summary, four things distinguish the US model. One is its status as the original foreign influence registry scheme, inevitably studied in more recent Five Eyes country registry creations. A second is its heightened prominence in the wake of allegations of Russian election interference in 2015. A third concerns a recent drive to overhaul the legislation, which is still under way. The fourth and final feature is the extensive organizational system, including intelligence support, much of it created in recent years, to allow for monitoring and enforcement actions under FARA.

The Australian Model: FITS

The Australian FITS was the first of the contemporary allied efforts. It was established in law in December 2018, has had a major impact on the thinking of Five Eyes partners and serves as a distinctive model for some.

The essence of the Australian scheme lies in its creation of a public registry of a class of actors called "foreign principals" who are engaged in political influence campaigns, broadly understood.

Two claims are made for the importance of FITS. One is that it ensures foreign influence activities are democratically acceptable by making them visible; the other is that the FITS registry "has the potential to be a valuable tool for understanding emerging trends in foreign influence" (Parliament of Australia 2024, chapter 2). In Australian thinking, the sphere of operations of FITS is quite distinct from foreign interference involving covert attempts by a foreign government to conduct political influence campaigns or espionage activities.

FITS sets out the requirements for registration — focused on political influence acts — and defines the types of key actors (foreign principals). Four broad types of foreign principals are listed, ranging from foreign governments to organizations, entities or persons acting under foreign government control.[8]

6 *Clarification and Modernization of Foreign Agents Registration Act (FARA) Implementing Regulations*, 86 Fed Reg 70787 (2021), online: *Federal Register* <www.federalregister.gov/documents/2021/12/13/2021-26936/clarification-and-modernization-of-foreign-agents-registration-act-fara-implementing-regulations>.

7 See www.dni.gov/index.php/fmic-home.

8 *Foreign Influence Transparency Scheme Act 2018* (Austl), 2023/63, online: *Federal Register of Legislation* <www.legislation.gov.au/C2018A00063/latest/text>; see www.ag.gov.au/integrity/foreign-influence-transparency-scheme.

The federal Attorney General's office administers FITS and can be proactive in issuing "transparency notices" to alert the public about a foreign principal. Only one such notice has ever been issued under FITS — it was a provisional notice directed at an Australian university for its connection to a Confucius Institute, which was later withdrawn. The Attorney General can also issue "information notices" requiring the production of relevant records. Statistics for information-gathering notices suggest that they have been little used.

The extent of the public registry is also relatively small. The latest statistics available indicate that between the coming into force of FITS in December 2018 and the end of 2021, 95 individuals and entities had registered (Attorney-General's Department 2021, 10). Interestingly, the greatest number of registrable activities (as of November 12, 2021) came from South Korea (30 percent), followed closely by China (27 percent) (ibid., 11). Further down the list was the United States in third place (13 percent) and Japan in fourth (nine percent) (ibid.). Registrable activities by countries considered allies by Australia thus amounted to more than 50 percent of the total (ibid.).

Criminal sanctions attend a failure to register under FITS or operate according to its rules.

In assessing how well FITS works, the best evidence is provided in submissions to the Parliamentary Joint Committee on Intelligence and Security (PJCIS), which is currently conducting a statutory review of the foreign influence scheme.

In the Attorney General's submission, the challenges of using an evidentiary standard to determine the reality of the influence actions of foreign principals were emphasized. Open-source intelligence could not always establish the underlying relationship of organizations, entities (usually business enterprises) or individuals to a foreign government. It argued, somewhat counterintuitively, that the "opacity" problem could be solved by widening the definition of "foreign principals" to capture all foreign businesses, foreign public enterprises and foreign individuals along the lines of FARA. The Attorney General was also concerned about the extent of the exemptions provided under FITS, fearing loopholes (ibid., 20).

A very different submission was provided to the parliamentary committee by the Australian Institute of Public Affairs, a long-established human rights advocacy organization. In its submission, it described FITS as enabling "bureaucrats to conspire with politicians to operate a system of political pressure and censorship against Australians on the basis of their political beliefs" (Parliament of Australia 2024, chapter 3). It called attention specifically to action taken under FITS that it believed targeted domestic "conservative activists" with connections to US groups (Begg 2021).

The Australian Strategic Policy Institute (ASPI) provided perhaps the most hard-hitting critique of the operations and effectiveness of the scheme. It argued that FITS had been applied in a manner that was "at odds" with its original purpose. The ASPI brief called attention, in particular, to the fact that the activities of the United Front Work Department of the Chinese Communist Party, a key international activist and propaganda arm of the Chinese government, were entirely missing from the FITS registry. It was also concerned about the lack of attention paid under FITS to the role played by Confucius Institutes at Australian universities. ASPI called for an end to the "country-agnostic" approach taken by FITS, calling it the "original sin" of the scheme.

ASPI wanted greater alignment between FITS and Australia's strategy for countering foreign interference, with a focus on "the influence activities that pose the greatest national security risk to Australia's democracy" (ASPI 2021). It proposed a "tiered" approach, giving priority attention to activities linked to states such as China.

If critics such as ASPI have found gaps in coverage that have undermined the effectiveness of FITS, are there other measures that can be applied to determine how useful the scheme has been? Enforcement through criminal charges might be one measure. But in the Australian case, charges and prosecutions have been rare. One individual, a Chinese-Australian businessperson named Sunny Duong, was found guilty in December 2023 of attempting to influence a former federal minister through a hospital donation. Evidence at trial indicated that Duong was in regular contact with Chinese intelligence operatives. He could face a maximum sentence of 10 years in jail (Silva 2023).

Another individual, John Zhang, who worked as a political staffer to a Labour Party MP and has been under investigation for foreign interference, challenged the search warrants used against him and lost that bid in the Australian High Court. His case is ongoing (Australian Associated Press 2021).

Does this small number of enforcement efforts suggest a lack of effectiveness in the Australian system? Not necessarily, according to a submission made to the PJCIS by Katherine Mansted, a senior fellow at Australian National University's National Security College. She argued that low numbers of prosecutions do not count; rather, the deterrent work of FITS and the outreach activities associated with the scheme are the important outcomes, although hard to quantify (Mansted 2023).

The Australian experience offers valuable lessons for Canada as a similarly sized and resourced power. The current review by the Australian parliamentary committee, when published, should offer guidelines for the implementation of a Canadian approach. Of particular importance will be its recommendations on the breadth of the Australian scheme, on gaps in the Australian coverage of foreign influence and on the question of a revamping of Australia's "country-agnostic" approach.

The UK Model: Foreign Influence Registration Scheme

The United Kingdom brought forward its own foreign influence registry five years after the Australian scheme, borrowing from it, but substantially modifying it as well.

The United Kingdom legislation to create a Foreign Influence Registration Scheme (FIRS) was part of a broader package of amendments to national security legislation — the National Security Act (Gov.UK 2023a).[9] The act itself was described by one government minister as "the most significant reform of espionage law in a century" (Gov.UK 2023b).

FIRS itself will come into force in 2024. While it cannot yet be examined in action, its construction offers some interesting options to compare with the proposed Canadian model.

The UK scheme was clearly inspired by the existing Australian and US models, and also by a 2020 report from the Intelligence and Security Committee on Russian threats. It went through a considerable evolution following a public consultation process in the spring/summer of 2021.

In the 2021 consultation paper, the registration scheme was described as a national security tool that would target espionage acts, foreign interference and sensitive research theft. The scheme was broadly designed to sanction those who failed to register, so as to continue to operate covertly on behalf of a foreign state. It was seen as a potential deterrent for both hostile states and their agents, and it was argued it would have public benefits in building up resilience through greater knowledge and an enforced due-diligence practice on the part of individuals who might consider entering into a relationship with a foreign state. The registration scheme was positioned as an alternative form of sanction for hostile state activities that would be more pre-emptive in nature and would avoid some of the evidentiary barriers of prosecuting espionage acts (UK Home Office 2021).

The UK consultation paper raised the question of how best to define in law the threat posed by proxies acting on behalf of a foreign state, but also wrestled with the question of what types of activities to identify or leave clear of the scheme and whether, as with the Australian practice, there should be some notification process to alert persons that they would be required to register.

A government paper responding to the consultations found that while there was majority support for the scheme, there was also concern about "disproportionate compliance and reputational costs" (UK Home Office 2022, 20). There were also concerns noted about the potential overbreadth of the scheme and the attendant possibility of a "chilling" effect on such sectors as the research community, media and academia. Some respondents wanted to move away from a country-agnostic approach.

The government response paper promised to work to get the scheme right, but noted that the Russian invasion of Ukraine had brought "the need for such a scheme into sharp focus" (ibid., 22).

The outcome of the process of consultations and further refinement of the UK scheme was incorporated into the National Security Act in July 2023 as part 4.[10] The most significant feature of the legislated version was the creation of a two-tier system with a "political influence tier" (with sanctions for political influence offences), and an "enhanced tier" involving a "foreign activity offense" with powers given to the secretary of

9 *National Security Act 2023* (UK), c 32, part 4, online: <www.legislation.gov.uk/ukpga/2023/32/contents>.

10 *Ibid*.

state to designate through regulation of foreign powers or foreign-controlled entities of concern. In the legislation, these are referred to as "specified persons" (person in the legal sense, not an individual). These modifications seem clearly designed to respond to concerns about overbreadth, to depart from a country-agnostic approach and to clarify the policy objectives being sought.

The amended version also narrowed the requirement for registration to focus on an arrangement with a foreign power (as opposed to an earlier concept that would have included arrangements with foreign businesses).

The UK Home Office took one final step in public consultations, with a focused consultation on issues of registration and the publication of information, that ran from September to December 2023 (UK Home Office 2023).

UK legislation calls for an annual report on both foreign activity and foreign influence registrations and on charges under FIRS.

The UK scheme clearly benefited from a study of existing Five Eyes practices. Its two-tier approach is unique, as is the argument that a foreign influence registry scheme can be more pre-emptive than other tools available to counter foreign interference. The UK practice will place the FIRS directly within the ambit of countering foreign interference, rather than identifying foreign interference and foreign influence as separate spheres. The public consultation process that was undertaken was extensive and purposeful.

Monitoring the coming into force of this legislation will be important for Canadian officials as Canadian legislation passes into law.

New Zealand, the Five Eyes Outlier

New Zealand, the smallest of the Five Eyes partners, acknowledges the growing problem of foreign interference, but does not have a foreign interference registry scheme. Instead, it relies on a variety of other instruments to counter the threat. This includes guidance from the New Zealand Security Intelligence Service to the research community and to elected officials. New Zealand also uses a number of sectoral legislative and policy tools to address the threat, including its Overseas Investment Act 2005, electoral financing laws, safeguards governing space and high-altitude activities, export controls, and partnerships between New Zealand's cybersecurity agency (the Government Communications Security Bureau) and the private sector to enhance cyber protections and resilience.[11]

New Zealand has also conducted a recent independent electoral review, which includes proposals for dealing with foreign interference.[12] Concerns raised in the review include foreign interference, especially regarding disinformation campaigns.

New Zealand publishes its national security and intelligence priorities. In the most recent version (2023), foreign interference and espionage is listed as one of the 14 priorities.

The description provided of foreign interference threats is broad and comprehensive:

- Coercive statecraft of foreign actors against New Zealand;
- Economic espionage and coercion;
- Bribery and corruption threats from foreign actors;
- Foreign interference targeting communities;
- Harm and the impact of foreign interference and espionage;
- Interference with our democracy;
- Espionage against New Zealand government entities;
- Manipulation of our information environment, including disinformation;
- Education sector interference;
- Critical infrastructure; and
- Covert direct actions against New Zealand-based organisations or individuals.[13]

While New Zealand does not have a foreign influence registry, it does demonstrate that there are alternative ways to counter foreign influence. The practice of

11 See www.dpmc.govt.nz/our-programmes/national-security/countering-foreign-interference.

12 The author is grateful to an anonymous reviewer for bringing this to his attention; see https://electoralreview.govt.nz.

13 See www.dpmc.govt.nz/our-programmes/national-security/national-security-intelligence-priorities.

publishing intelligence priorities on a regular basis is something that Canadian officials should contemplate.

The Proposed Canadian Foreign Influence Transparency and Accountability Act

Canadian legislation proposed in May 2024, as senior officials confirm, draws extensively from consultations with allies, but is also "made in Canada." Its greatest debt would appear to be to the existing Australian model. It does not embrace the United Kingdom's two-tier system, with its ability to designate foreign state actors of concern.

The Canadian system, should the proposed legislation be adopted by Parliament, would involve a tripartite set of determinations that, in combination, would trigger a requirement on the part of a "person" to register. The determination is based, first, on a relationship ("arrangement") with a foreign actor in which a person does that actor's bidding (in effect serves as a proxy). Second, the relationship must then take effect through the conduct of a specified activity, to include communicating with a public office holder; with the public, including through social media; or providing money, items of value, services or use of a facility. The third determination is crucial to trying to ensure a focused effort and frames the kinds of activities that would be subject to a registration requirement. These activities must be designed to influence a political or governmental process.

Failure to register can have both monetary and criminal sanctions.

The proposed Canadian scheme combines elements of far-reaching breadth (notably in the definition of activities, especially with regard to "public communications"), with a narrower focus on influence operations in the political space. How this trade-off between wide and narrow apertures will work remains to be seen.

The effectiveness of the Canadian scheme could be enhanced by regulations, yet to be defined, involving exemptions. But Canadian senior officials are adamant for now that the legislation will be country agonistic, meaning that it will not be targeted at known state adversaries, such as China, that practise foreign interference on a significant scale, despite problems with that approach experienced by Australia, and despite an alternative and more recent model offered by the United Kingdom.

One innovation in the Canadian proposal, which makes it distinct from its allied counterparts, is the decision to remove the administration of the foreign influence registry from direct ministerial control, placing the work instead in the hands of an independent "foreign influence transparency commissioner." The commissioner would be appointed to a seven-year term after consultation with all political parties. The rationale provided for this approach by senior officials was that it would remove the registry from any taint of political control and enhance public confidence in its operation. At the same time, the commissioner and their staff will operate from within an established department (presumably Public Safety), to ensure full access to government-wide intelligence holdings and relevant threat assessments.

The current proposal faces the hurdle of passage in a very divided Parliament, where opposition parties will be on the hunt for weaknesses in the bill.

Beyond the challenge of gaining royal assent, the process of building up an independent structure for a commissioner will clearly take time and stretch the implementation of the legislation.

The Canadian government will also be obliged to come up with a detailed statement to show that the measures in the new legislation will comply with the protections afforded by the Canadian Charter of Rights and Freedoms. This process will be closely watched by rights advocacy groups.

Conclusion

There is no universal practice, no "one-size-fits-all" model adopted by Canada's Five Eyes partners. But there has been a great deal of shared inspiration and borrowing as first Australia and now the United Kingdom have followed a long-established US lead.

Foreign influence registry systems are currently in flux among the Five Eyes, with new legislation soon to come into force in the United Kingdom, a

parliamentary committee review in Australia and impending changes from the DOJ in the United States. A Canadian registry will be added to this flux.

Foreign influence registries are complex instruments whose efficacy is difficult to measure. Their complexity must be acknowledged, as well as the fact that they are only one instrument in a system of governmental and societal responses.

Examination of Five Eyes models suggests that the following key issues be addressed:

- the breadth of capture through a registration system (how wide or narrow-scoped a transparency registry should be);
- the challenge of a country-agnostic approach and possible alternative models (as in the UK two-tier system);
- ensuring that registration requirements are not overly onerous and do not infringe on civil liberties or introduce a "chilling" effect on any segment of society;
- gaps in enforcement (this is a particular focus of the Australian review);
- ensuring that exemptions, particularly in the context of a foreign influence transparency scheme, do not intrude on legitimate rights and privacy protections, and do not unduly hamper commercial enterprise, research, media expression and other civic goods;
- the treatment of commercial enterprises;
- the role of a foreign influence transparency system in the broader context of efforts to combat foreign interference; and
- integration of administration, enforcement and intelligence support for a foreign influence transparency registry.

Recommendations

The goal of aligning any Canadian foreign influence transparency registry with allied best practices is an important one. Five Eyes models are currently in significant flux and new thinking should be taken advantage of. Creation of a Canadian foreign influence transparency registry cannot be a static process. It should not be a matter of legislate once and done.

Canadian practice should be sufficiently flexible to draw lessons from the outcome of the current Australian parliamentary study of their registry, from impending DOJ reforms of FARA and from observing the coming into force of UK legislation. Some of these lessons can be applied during parliamentary debate on Bill C-70, later in the application of proposed regulations under the act and further down the road in the statutory five-year review of the legislation.

One key lesson to be drawn from allied practice is that a Canadian foreign influence transparency registry must avoid overbreadth and lack of focus. It must have the capacity to identify and devote resources against top-tier foreign actors engaged in political influence campaigns. As we have seen with the review of the Australian legislation and with the construction of new UK legislation, a purely country-agnostic approach, whereby the scheme does not give the government powers to identify key foreign state threat actors and instead applies a universal approach, is increasingly seen as problematic. The new UK scheme's two-tier approach offers a model for Canada that would focus the registry on political influence efforts and be more country specific. While proposed Canadian legislation continues to emphasize a country-agnostic approach, this should be a matter for continued study and may well become a focus of parliamentary debate. Public expectation in Canada will be that any foreign influence transparency registry will focus on identified state threat actors such as China, India and Russia. This expectation may be enhanced by the final report of the Public Inquiry into Foreign Interference, due to be published in December 2024.

A scheme for a foreign influence transparency registry should have a proactive element involving notification to affected parties of a registration requirement. The concept involved in Australian "information notices" could be adapted to Canadian practice. Potential US reforms to FARA may also

involve similar powers. The current Canadian legislation does not contain any such power.

Classes of exemptions must be clearly spelled out in legislation and regulation. Close study should be made of impending US changes to FARA in this regard. Key issues are the extent to which a Canadian foreign influence registry will cover business enterprises, academic research and social media. The UK model is tightly focused on foreign state actor political influence campaigns targeting political actors.

The legislation enacting a foreign influence transparency registry must be reviewed on a regular and ongoing basis. The proposed Canadian legislation involves a statutory requirement for review of the act by Parliament after five years.

Regular public reporting on the performance of a foreign influence transparency registry will be vital to public confidence and should complement a searchable public database of registrants. The UK and US practices in this regard offer models. The newly introduced Canadian legislation calls for an annual report to be delivered by the commissioner.

Measures to make foreign influence operations democratically acceptable through an influence registry must be clearly distinguished from efforts to combat malign, covert and deceptive foreign interference in law, policy, regulation and public communications. The UK National Security Act 2023 establishes this distinction. In a Canadian context, it will be important to ensure that concerns about Charter rights protections and the avoidance of a "chilling" impact on any societal group are addressed. The proposed Foreign Influence Transparency and Accountability Act must be accompanied by a robust Charter compliance statement from the Attorney General, written for a public audience.

A foreign influence transparency registry on its own is an empty tool, unless it is supported by a strong administrative capacity, by a highly capable intelligence fusion effort and by law enforcement action when appropriate. The ability to apply intelligence resources efficiently and effectively to provide situational awareness of foreign influence attempts and trends will be a key element of the design. The US model, while exceeding the scale of any future Canadian system, illustrates the essential elements of centralized administration, dedicated intelligence resources and strong law enforcement.

Public expectations around the efficacy of a foreign influence registry in countering foreign interference will have to be understood and responded to.

Acronyms and Abbreviations

ASPI	Australian Strategic Policy Institute
CIGI	Centre for International Governance Innovation
DOJ	Department of Justice
FARA	Foreign Agents Registration Act
FIRS	Foreign Influence Registration Scheme
FITS	Foreign Influence Transparency Scheme
FMIC	Foreign Malign Influence Center
MP	member of Parliament
PJCIS	Parliamentary Joint Committee on Intelligence and Security
SITE	Security and Intelligence Threats to Elections

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