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MEMORANDUM OF UNDERSTANDING

Between

THE CANADIAN SECURITY INTELLIGENCE SERVICE
(HEREINAFTER REFERRED TO AS "CSIS" or "Service")

And

THE OFFICE OF THE COMMISSIONER OF CANADA ELECTIONS
(HEREINAFTER REFERRED TO AS "OCCE" or "Commissioner")

Collectively referred to as the "Participants"

For the exchange of information for the purposes of *Canada Elections Act* and the *Canadian Security Intelligence Service Act*.

PREAMBLE

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The Canadian Security Intelligence Service (CSIS) and the Office of the Commissioner of Canada Elections (OCCE) share a goal of preventing covert, clandestine or criminal activities interfering with or influencing electoral processes in Canada.

The need to ensure the integrity of Canada's electoral processes, while effectively managing national security threats in a dynamic and fluid threat environment, requires a clear framework for cooperation that allows for the collaborative threat assessment and consideration of the best means of response.

This MOU provides for a means of cooperation to determine the most effective and efficient way to address a threat in accordance with each party's respective legislative authorities. The Participants retain the prerogative to make independent operational decisions within their respective mandates and applicable laws.

BACKGROUND

WHEREAS pursuant to section 509.2 of the *Canada Elections Act*, the Commissioner has the duty to ensure that the provisions of that Act are complied with and enforced;

WHEREAS pursuant to section 509 of the Schedule to the Regulation Adapting the *Canada Elections Act* for the Purposes of a Referendum (SOR/2010-20), the Commissioner has the duty to ensure that the provisions of the Referendum Act are complied with and enforced;

WHEREAS pursuant to section 510.1(2) of the *Canada Elections Act*, the Commissioner has the authority to disclose (a) information that, in the Commissioner's opinion, is necessary to carry out an investigation and (g) information whose disclosure is, in the Commissioner's opinion, in the public interest;

WHEREAS the primary mandate of the OCCE is the fair and effective resolution of Complaints alleging violations of the Acts. This includes the assessment and the Investigation of suspected Offences under the Acts, and the potential referral of matters to the Director of Public Prosecutions for the laying of charges, if warranted. The manner in which these duties are carried out is governed by the Acts and the practices and policies of the OCCE;

WHEREAS the Commissioner, in support of the compliance and enforcement mandate, employs or engages Investigators who conduct Preliminary Assessments and Investigations under the Acts;

WHEREAS pursuant to section 12 of the *CSIS Act*, the Service is mandated to "... collect, by investigation or otherwise, to the extent that it is strictly necessary, and analyze and retain information and intelligence respecting activities that may on reasonable grounds be suspected of constituting threats to the security of Canada and, in relation thereto, shall report to and advise the Government of Canada";

WHEREAS pursuant to subsection 12.1 of the *CSIS Act*, CSIS may take measures to reduce the threats to the security of Canada in accordance with well-defined legal requirements and ministerial direction;

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WHEREAS pursuant to section 15 of the *CSIS Act*, the Service is authorized to conduct investigations as are required for the purpose of providing security assessments pursuant to section 13, or security advice and information pursuant to section 14 of the *CSIS Act*;

WHEREAS pursuant to section 16 of the *CSIS Act*, the Service may on the personal request in writing of the Minister of National Defence, in relation to the defence of Canada, and with the personal consent in writing of the Minister of Public Safety and Emergency Preparedness, assist the Minister of National Defence, within Canada, in the collection of information or intelligence relating to the capabilities, intentions or activities of any foreign state or group of foreign states; or any person other than a Canadian citizen, a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*, or a corporation incorporated by or under an Act of Parliament or of the legislature of a province.";

WHEREAS pursuant to subsection 17(1) of the *CSIS Act*, the Service may, with the approval of the Minister of Public Safety and Emergency Preparedness, enter into an arrangement or otherwise cooperate with any department of the Government of Canada;

WHEREAS pursuant to subsection 19(2) of the *CSIS Act*, CSIS may disclose information obtained in the performance of its duties for the purposes of performing its obligations under the Act, including the duty to advise the Government of Canada; and

WHEREAS it is the desire of both Participants to mutually provide for effective cooperation in securing compliance with the *CSIS act*, the *Canada Elections Act* and the *Referendum Act* within their respective spheres of responsibility.

The Participants have reached the following understanding:

1. PURPOSE AND SCOPE

1.1 The purpose of this MOU is to define, in general terms, key terms and outline principles and requirements governing information exchanges between the OCCE and CSIS in accordance with their respective mandates and applicable laws.

1.2 Specific parameters to assist CSIS and the OCCE to formalize the transition of intelligence into the investigative or enforcement process will be addressed in an Annex to this MOU, as required.

1.3 This MOU recognizes the importance of information sharing, as well as the requirement to maintain an appropriate degree of separation between investigative and operational activity undertaken independently by each Participant in accordance with their respective mandates and authorities.

1.4 The future Annex to this MOU will form an integral part of this MOU and may be amended from time to time.

1.5 This MOU and its future related Annex provide guidance to ensure that information sharing activities comply with the *Canadian Charter of Rights and Freedoms* and are carried out in accordance with the *Canada Elections Act*, the *CSIS Act*, and other applicable laws, such as the *Privacy Act*.

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2. DEFINITIONS

2.1 In this Memorandum of Understanding (MOU) the following terms, in singular or plural form according to the context, are defined as follows:

"Canada Elections Act" refers to the *Canada Elections Act* (S.C. , c.), as amended from time to time;

"CSIS" means the Director of CSIS and includes all persons who, by delegation or otherwise, may lawfully exercise the duties and functions of the Service.

"CSIS Act" refers to the Canadian Security Intelligence Service as established pursuant to the Canadian Security Intelligence Service Act (R.S. 1985, c. C-23)

"CSIS information" means any information or intelligence collected in the performance of the duties and functions of CSIS under the *CSIS act*;

"OCCE" means the Commissioner of the Office of the Commissioner of Canada Elections and includes all persons who, by delegation or otherwise, may lawfully exercise the duties and functions of the Service;

"Disclosure" refers to:

For CSIS, any information disclosed by CSIS either proactively or upon request that the Commissioner may use to initiate its own investigations, including those which support national security through pursuit of the Commissioner's mandate.

For the OCCE, disclosure refers to any information gathered by the OCCE in support of its legislation, or strictly incidental to such gathering, which is disclosed to CSIS under the *Canada Elections Act*.

"Information Sharing" refers to the exchange of information or intelligence in the possession of one Party related to operational requirements of the other Party;

"Investigator" means an Investigator employed or engaged by the Commissioner to conduct Preliminary Assessments and Investigations of matters relating to the Acts and an Investigator engaged under contract on a temporary basis by the Commissioner pursuant to s. 509.4 of the *Canada Elections Act*,

"Library and Archives of Canada Act" refers to the *Library and Archives of Canada Act* (S.C. 2004, c.11), as amended from time to time;

"The Office of the Commissioner of Canada Elections Information" means

"Personal information" refers to personal information as defined in s.3 of the *Privacy Act*;

"Privacy Act" refers to the *Privacy Act* (R.S.C. 1985, c. P-21), as amended from time to time;

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"Referendum Act" refers to the *Referendum Act* (S.C. , c.), as amended from time to time;

3. MOU GOUVERNANCE

Heads of Institution

3.1 The parties are represented by their Head of Institution, who act as signatories to this MOU. For the purposes of this MOU, the Heads of Institution are:

- a) For CSIS,
 - Director
 - Canadian Security Intelligence Service
- b) For the Commissioner,
 - Commissioner
 - The Office the Commissioner of Canada Elections

Designated Representatives and Points of Contact

3.2 The Designated Representatives are responsible for the overall management of this MOU.

For the purposes of this MOU, the Designated Representatives are:

- a) For CSIS,
 - Assistant Director
 - Canadian Security Intelligence Agency
- b) For the OCCE,
 - The Office the Commissioner of Canada Elections

3.3 It is recognized that within each organization, the respective Directors General responsible for a particular subject area will be the primary points of contact for the exchange of information relevant to that particular subject.

4. PROVISION OF INFORMATION

4.1 Subject to applicable law and available resources, the Participants will cooperate and share information in accordance with this MOU for the purpose of fulfilling their respective mandates and exercising their authorities.

4.2 Information shared by CSIS or the OCCE may only be used to the extent authorized by law and subject to the Participants' respective policies.

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- 4.3 Pursuant to relevant authorities, the OCCE may share information lawfully or incidentally collected in the performance of its mandated duties and functions with CSIS, either proactively or in response to a request, where relevant to CSIS's mandate.
- 4.4 In support of a lawful investigation or the administration of the program for which the OCCE is responsible, the OCCE may also share information with CSIS, in accordance with relevant authorities, as part of the process of requesting or obtaining other information from CSIS.
- 4.5 Pursuant to relevant authorities, CSIS may share information lawfully collected in the performance of its duties and functions with the OCCE for the purpose of performing CSIS' duties and function or for the purpose of requesting or obtaining information to fulfil its mandate, in accordance with relevant authorities.
- 4.6 Pursuant to relevant authorities, CSIS may share information lawfully collected in the performance of its mandated duties and functions with the OCCE for the OCCE's purpose of conducting lawful investigations.
- 4.7 Upon provision of information, each Participant is responsible for identifying any desired or required limitations upon the recipient in regard to the treatment of the information. Either Participant may seek assurances from the other on a case-by-case basis that certain information it provides will not be made public via judicial proceedings, or the administration or enforcement of the *Canada Elections Act and the Referendum Act* in general by the OCCE.

5. CONFIDENTIALITY AND SECURITY OF INFORMATION

5.1 Each Participant will:

- (a) safeguard the information received from the other Participant against inadvertent or deliberate unauthorized access, use or disclosure ;
- (b) respect existing classification levels or classify the information disclosed to one another (e.g. Secret, Top Secret) in a manner consistent with relevant Treasury Board of Canada (TB) and internal policy, and protect it in accordance with applicable security policies and practices;
- (c) apply appropriate classification levels (e.g. caveats to the information), and respect any markings attached to the information;
- (d) retain the information received under this MOU and/or related Annex for the minimum period that is required by law and the policies of the Government of Canada.

5.2 Each Participant will limit access to information received under this MOU and/or related Annex to employees whose duties require such access, who have a need-to-know, and who have the appropriate level of security clearance.

5.3 Each Participant will keep records of any disclosure and receipt of information with this MOU. At minimum, the following information will be recorded:

- (a) Date of disclosure;
- (b) A copy of the information shared and caveats attached to it;
- (c) Title and level of disclosing official, by the disclosing institution;
- (d) Title and level of receiving official, by receiving institution;

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(e) Identification of jurisdiction or responsibility to which the information is relevant. These include, but are not limited to, the *CSIS Act*, the *Canada Elections Act* and the *Referendum Act*.

5.4 Each Participant may also keep records of other factors, if any, considered as relevant to the applicable thresholds of any transmission and receipt of information with this MOU.

6. THIRD PARTY / ONWARD DISCLOSURE

6.1 The OCCE and CSIS will not disseminate information provided by the other Participant to any third party except in accordance with the law, the terms of this MOU and its future Annex. Both Participants will respect caveats placed upon the information regarding its use, classification or further dissemination.

7. FINANCIAL ARRANGEMENTS

7.1 The parties will be responsible for any costs incurred to meet their respective responsibilities contained within this MOU.

8. INFORMATION MANAGEMENT

8.1 Each Participant will:

- (a) administer, maintain, and dispose of information shared under this MOU in accordance with the applicable law and policies of the Government of Canada, more specifically with, but not limited to, the *Privacy Act* and the *Library and Archives of Canada Act*, and the Treasury Board Policy on Information Management and/or other laws/policy as applicable;
- (b) keep a record of requests for information and disclosures of information for tracking and auditing purposes;
- (c) promptly notify the other Participant's designated official responsible for administering this arrangement, if it becomes aware that any information it received under this MOU has become subject to a request for access to information under the *Privacy Act* or the *Access to Information Act*, or a court order to disclose the information, and consult with the other Participant to determine the appropriate course of action (e.g. redaction, applicable exemptions, etc.). As a guiding practice, information should not be disclosed until those consultations have taken place with the other Participant;
- (d) promptly advise, return or destroy any information that should not have been disclosed under this MOU by a Participant;
- (e) to the extent possible, take reasonable steps to ensure that information disclosed is complete and accurate, in accordance with existing internal procedures;
- (f) promptly notify the other Participant if it becomes aware that inaccurate information may have been disclosed and take all reasonable steps to remedy the situation;
- (g) correct any data it holds received from the other Participant upon being made aware of data inaccuracies by the providing Participants;
- (h) notify their respective designated officials for privacy breaches of the situation and seek the guidance of that designated official to further address the situation;
- (i) promptly notify the other of any unauthorized use or disclosure of information exchanged under this MOU and provide details of such unauthorized use or

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disclosure. In the event of such an occurrence, the Participant responsible for the safeguarding of the information will:

- i) take the necessary steps to remedy the incident;
- ii) notify the Participant whose information was compromised of the measures that were taken to remedy the breach, and
- iii) take all reasonably necessary steps to prevent a reoccurrence.

8.2 Each Participant will cooperate with the other and address any observations, recommendations or enhancements to the MOU designed to protect personal information or other information or mitigate privacy risks that may be recommended by the Office of the Privacy Commissioner of Canada (OPC) or national security review bodies.

9. INTER AGENCY COMMUNICATIONS

9.1 Each Participant will, with a view to promote the best cooperation possible in administering this MOU and, in a timely manner:

- (a) provide notice to the other Participant's designated officials listed in section 4, of any new activities, priorities or initiatives, or any change in legislation, regulations, operational policies, procedures, or practices, relating to its programs that may affect the administration of this MOU;
- (b) maintain close and ongoing communication pertaining to its respective activities, as these may relate to any matters identified in this MOU; and
- (c) ensure timely communication or consultation occurs with respect to any existing issues and new or proposed measures, which may affect any activity or responsibility of either Participant outlined in this MOU, as appropriate.

10. ADMINISTRATIVE DETAILS

Effective Date

10.1 This MOU will commence on the date on which it is signed by the last of the parties and will remain in effect until it is terminated in accordance with the procedure set out in this MOU.

Amendments

10.2 This MOU may be amended at any time upon mutual consent of the Participants. Amendments will be affected by an exchange of letters between the signatories to this MOU.

10.3 Changes being considered or proposed to legislation, policy or operations by either the Commissioner or CSIS, which may impede the function of this MOU, shall be the subject of early consultations between representatives of the Participants.

Annex

10.4 As required, the Participants will jointly enter into an arrangement governing the disclosure of information which may be used by the OCCE for the purpose of investigative or enforcement process. The arrangement will be appended to this MOU.

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Dispute resolution

10.5 Any dispute arising from the interpretation or operation of this MOU will be referred upwards through corresponding chains of management responsible for a particular subject or operational area who will reach out to their counterpart within the other Participant.

10.6 Either Participant may elect to include a program manager in the resolution process to ensure both operational realities and information sharing requirements are treated both distinctly.

Review

10.7 This MOU is subject to review five years from the date of its entry into force, and every five years thereafter. The provisions of this MOU and/or related Annex may, with the concurrence of both Participants, be reviewed at any time to address challenges or accommodate new requirements.

Termination

10.8 Either the Commissioner or the Director of CSIS may terminate this MOU at any time by providing, in writing, 60 days' notice of intention to terminate.

In Witness Whereof, the parties hereto have executed this MOU the day and year indicated below.

Office of the Commissioner Canada Elections

Canadian Security Intelligence Service

Yves Côté, Q.C., Commissioner

David Vigneault, Director

Date

Date