

For Public Release

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GOVERNMENT OF YUKON CONSOLIDATED SUBMISSION

Foreign Interference Consultations

February 2024

KEY CONSIDERATIONS

Concerns about foreign interference and how information is shared with the Government of Yukon on these issues came to the forefront in 2023, begging increased federal/provincial/territorial discussion. Two specific examples of foreign interference from 2023 directly impacted the territory, and influenced the nature of our submission: the downing of an unknown aerial object by NORAD aircraft in February, and the Yukon Premier's presence with other government officials in India when assassination allegations were made public by the Government of Canada in September. In both cases, advance knowledge-sharing by the Government of Canada could have informed actions taken and allowed for further communications coordination between governments.

The Government of Canada's efforts to improve the ways that information is shared, the means by which it can be collected, and the penalties for interfering with governance and business in Canada are welcome. Our government appreciates the opportunity to comment on our interests and perspectives on the questions below. Our government's feedback to the two federal engagements is guided by the following overall interests:

- Promoting the safety and security of Canadians and Canadian institutions;
- Access to timely and relevant information in order to make decisions within our government's jurisdiction; and
- Ensuring appropriate protection for individuals' rights.

It is also important to underscore the distinct context in the territory. Yukon First Nations are an important partner in the territory's governance. Of the 14 First Nations in Yukon, 11 have signed modern treaties and self-government agreements and have broad law-making power with respect to their lands and citizens. The Government of Yukon works with all Yukon First Nations as partners to deliver programs and services to Yukoners and manage the territory's land and resources. While this submission speaks to the Government of Yukon's views, we encourage the federal government to engage in direct dialogue with Yukon First Nations governments with respect to their interests and concerns in this area.

WHETHER TO AMEND THE CANADIAN SECURITY INTELLIGENCE SERVICE ACT

ISSUE #1: Whether to enable CSIS to disclose information to those outside the Government of Canada for the purpose of increasing awareness and resiliency against foreign interference

The Government of Yukon's position is that CSIS should be authorized to disclose relevant information to entities outside the federal government, including provincial and territorial governments, in a timely fashion. There should not be legislative, policy, or organizational culture barriers to sharing relevant information with other orders of government. This may include non-classified information or secret information where the appropriate security clearances are in place. The Government of Yukon is prepared to work with the federal

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government to ensure elected and senior public service officials have the necessary clearances and credentials in place to access secure information.

The context of such disclosures should be considered and proactively volunteered by an agency when a known situation is imminent or emerging – not after the fact. Access to timely and relevant information provides provincial and territorial governments more opportunity to make decisions within their jurisdiction that are based on salient information. Steps taken to establish new channels for information-sharing and develop trust with provincial and territorial governments, particularly on pressing security matters, are welcome.

Information-sharing between federal RCMP and jurisdiction-specific RCMP divisions, such as the Yukon RCMP "M" Division, is an essential component of effective information- and intelligence-sharing. The connections between this review and the federal transformation of policing should be considered, with respect to how intelligence-sharing is addressed in these changes.

ISSUE #2: Whether to implement new judicial authorization authorities tailored to the level of intrusiveness of the techniques

No substantive commentary from the Government of Yukon on this issue. Refer to our overall interests identified in the introductory section.

ISSUE #3: Whether to close the gap, created by technological evolution, and regain the ability for CSIS to collect, from within Canada, foreign intelligence about foreign states and foreign individuals in Canada

No substantive commentary from the Government of Yukon on this issue. Refer to our overall interests identified in the introductory section.

ISSUE #4: Whether to amend the CSIS Act to enhance CSIS' capacity to capitalize on data analytics to investigate threats in a modern era

The Government of Yukon strongly supports the ability for CSIS to share Canadian or foreign datasets with domestic partners who have the lawful authority to collect the type of information contained in the dataset. The scope of sharing should not be limited to law enforcement. Timely data-sharing with provincial and territorial governments is a particular interest.

Regarding the sharing of datasets with foreign partners, this should be considered in relation to shared best practices with those partners, and on principles of reciprocity.

The suggestion of changes to time limits on CSIS keeping information in order to perform complete data separation and analysis is reasonable.

ISSUE #5: Whether to introduce a requirement to review the CSIS Act on a regular basis so that CSIS may keep pace with evolving threats

Legislative reviews should follow convention on similar Acts. A five-year review is reasonable. The scope of the review should be established to require that the review consider whether CSIS has adequate powers to fulfill its mandate, and whether the use of its powers within the previous review period have led to unreasonable intrusions on the privacy of law abiding Canadians.

For Public Release

Last Updated: April 4, 2024

WHETHER TO AMEND THE SECURITY OF INFORMATION ACT AND MODERNIZE CERTAIN CRIMINAL CODE OFFENCES, AND TO INTRODUCE A REVIEW MECHANISM IN THE CANADA EVIDENCE ACT TO MANAGE SENSITIVE INFORMATION

The Government of Yukon does not find the amendments proposed in this section objectionable. The proposed changes are measured and meet evolving needs. As noted above, any amendments should reflect and consider our overall interests in promoting the safety and security of Canadians and Canadian institutions, providing access to timely and relevant information, and ensuring appropriate protection for individuals' rights.

We wish to provide the following notes that discuss the points raised in the consultation questions; however, they are discussed thematically, rather than as a dedicated response to each issue highlighted by the consultation document. The Government of Yukon would appreciate ongoing dialogue and engagement as formal amendments are considered.

Review of risks, gaps and priorities

While protecting Canada's security is a Canadian responsibility, some consultation issues refer to changes that allied jurisdictions have recently made. The Government of Yukon supports surgical proposals for amending these various Acts and changing protocols to better protect intelligence in court proceedings. We see the updates and changes as a starting point from which to continue a deeper, homegrown review of what legislative, regulatory, policy and operational changes are needed to best support Canadian security interests.

Widely acknowledged in the consultations, and the impetus for discussing changes, is the fact that the nature of threats has changed and continually changes. New tools need to be able to keep pace with change. At the same time, they must be carefully crafted to be future-proof while protecting Canadians' rights in a changing information landscape.

Setting up enforceable laws and prosecutable charges that respect the Charter

The legislative amendments proposed should balance two things. There are certain prerequisites to the effective functioning of a free and democratic society, such as information, respectful inter-group relations, and collective interest articulation through elections. The changes proposed should only set such reasonable limits on individual liberties that are required to uphold the security system that makes living in a free and democratic society possible.

There needs to be clear distinction on where to draw the line of reasonable limits and who has the authority to determine what those reasonable limits are, and to have clear accountability mechanisms for review of these decisions. Having these powers established clearly in law and reviewable by the courts is strongly preferable to allowing powers to be added in regulation.

Distinguish principals from agents

The consultation paper includes updated laws, offences and punishments that seem to target agents, rather than states or principals. The Government of Yukon would be interested in understanding what measures are contemplated to deter and penalize states that are conscripting agents. We are interested in stronger measures to penalize and deter interfering states.

Judicial capacity

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Page 3 of 4

For Public Release

Last Updated: April 4, 2024

One idea explored in the consultation paper relates to jurisdiction to conduct national security privilege proceedings. It states that "the Attorney General of Canada could have the discretion to transfer the authority to make decisions about national security information, from the Federal Court (where these matters are currently evaluated), to a designated judge of the provincial or territorial superior court." Changing the jurisdiction responsible for conducting privileged proceedings would entail large scale changes in various capacities and we believe it prudent to order the security function at one scale of government before layering on thirteen jurisdictions. While this idea is good in theory, the Yukon already faces staffing issues and difficulty in supporting dedicated judiciary resources for existing needs. Judicial capacity should be a consideration for any amendments under review.

Modernizing Canada's sabotage offence

As infrastructure changes, the Government of Yukon supports updating the law of sabotage to ensure it covers modern forms of critical infrastructure such as water, sewage, energy, fuel, communication, and food services. We are an isolated energy grid, and infrastructure linkages are few and far between. The territory has limited redundancies in terms of transportation corridors, energy transmission, and internet and telecommunications infrastructure. As a result, the sabotage offence should be updated to include a broader range of negative impacts on infrastructure. The Government of Yukon would also recommend clear and strong penalties be prescribed, which may recognize disproportionate impacts in remote communities where one road or one runway may be the source of food, fuel, and other essential items.

Create a General Secure Administrative Review Proceedings Process under the Canada Evidence Act

The application of federal administrative law in the territory is expansive, considering the constitutional status of the Yukon. The Yukon government is of the view that this issue deserves more analysis and consideration with respect to implications for legislation such as the Yukon Environmental and Socio-economic Assessment Act, which establish decision-making processes implicating both federal and territorial authorities.

The creation of new secure administrative processes must attend to protection of individuals' rights and maximizing transparency where it can be reasonably supported without harming national interest.