

Canadians United Against Modern Exclusion (CUAME)

CUAME's Submission on Draft Regulations for the Foreign Influence Transparency Registry

Executive summary

The cost-benefit calculations are not realistic, as I will explain in a subsequent comment.

Objective

The objective of "distinguishing between legitimate and transparent foreign influence and covert and non-transparent foreign influence" would be helpful if the regulations were in fact clear about activities that are registerable and those that are not. If there is a lack of clarity on registration requirements, we can expect that persons who are involved in incidental and benign "foreign influence" activities but who do not -- in good faith -- register, will be suspected of being involved in "activities that pose a greater threat to Canada's interests", and draw unwanted attention from security partners. I will elaborate on the clarity problem in a subsequent comment.

Description

1. Would the Commission reject the attempted registration of a person or entity that has self-identified as having an "arrangement" but which the Commission feels does not qualify? If that effort to register is rejected, would the person or entity be liable to face unwanted attention from security services or, in the worst case, be subject to prosecution under Section 20.4 of the Foreign Interference and Security of Information Act? Conversely, if the registration of a marginal case of an "arrangement" is accepted, does that set the standard for mandatory registration? In other words, can someone "insist" on registering as a precaution against prosecution under the FISIA?

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2. With respect to the need for details to be provided on "each arrangement, including its purpose and types of influence activities involved", what is considered a discrete arrangement? Is there a general class of arrangement that one could register under (e.g. trade promotion, as opposed to promoting trade for a specific product or sector, or "warmer relations with another country", as opposed to a specific bilateral issue)? Is it possible to have an arrangement that is non-specific in terms of the foreign principal, but clearly relates to a foreign country (e.g. promoting the cultural heritage of Ukraine in Canada)? Would that person or entity have to re-register or provide an update for a specific cultural activity that is promoted (e.g. an application to Canadian Heritage for funding Ukrainian dancing workshops). Are arrangements with different but related foreign principals considered one arrangement or multiple arrangements?

3. Are Canadians living abroad subject to registration? By definition, they are "in association" with (many) foreign principals. If they speak or tweet about a Canadian "governmental or political process" (e.g. how difficult it is to get consular services from Canadian posts abroad or the treatment of overseas earnings by Revenue Canada), do they have to register?

4. Are parliamentarians exempt? Many parliamentarians are members of bilateral or regional parliamentary associations that have the explicit objective of influencing public policy on issues in the bilateral or regional relationship. What about staffers working with parliamentarians who are involved in inter-parliamentary work?

5. Universities have a multitude of connections with foreign principals (notably foreign universities) and they invariably touch on governmental or political processes. These arrangements are spread across multiple departments and professors. How should they package their registration? Are students working for a professor required to register as well?

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6. Bilateral business associations would presumably have to register. But these are membership organizations. Do all members of a registrable association have to register as individuals? I can think of dozens of examples of rank and file members of business associations who are more outspoken on bilateral relations than the leadership of their organizations.

Regulatory development

1. This section downplays the risk of stigmatization of diaspora communities and the ensuing social and reputation harm that could ensue. The best way to reduce this risk is to have a very high threshold for the definition of "at the direction of" and a very narrow definition of "in association with".

2. It would be unfortunate if "foreign funded institutions or media outlets" were exempted from registration, given the influence that they have on public opinion (especially the media). To leave them out would go against the intent of the legislation and create a gaping hole in capturing the most material sources of foreign influence. It would also be unfair to everyone else who has to register, considering the much more limited influence that they have, compared to foreign funded institutions and media organizations.

3. Many indigenous groups are developing international contacts and partnerships, as part of their self-determination efforts. Are they subject to registration? Were they consulted on this question?

Regulatory analysis

1. The Cost-Benefit Analysis severely underestimates the costs:

a) The baseline scenario assuming a FITCO will still be created is analytically

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incorrect. The Act specifically calls for the creation of a registry, which is why a FITCO has to be created. The Act does not envisage the creation of a FITCO without a registry. In the same way, the distinction between staffing under a baseline and regulatory scenario is flawed, because there can be no baseline without a registry.

b) Likewise, the development of a website to support the Commissioner's mandate is intrinsic to the registry, rather than ancillary to it. It also cannot be considered a sunk cost because it hasn't been "sunk".

c) The estimated 1 hour needed for registrants to "review guidance materials, understand compliance requirements, create an account, and submit the necessary information for each arrangement" is a gross underestimate. I have spent countless hours trying to understand the draft regulations, and I consider myself to be very knowledgeable about the issue. The average registrant is likely to spend 5-10 times as long as the estimate (including consulting with officials, colleagues and experts). Likewise, it is not realistic that officials in the 268 federal institutions authorized to disclose information to the Commissioner would spend only two hours a year doing so. Thinking about Global Affairs Canada, for example, the number of persons or entities with foreign principal arrangements must run into the thousands.

d) The estimate of benefits are all qualitative and the monetization of those benefits is dubious. For one thing, the Statistical Capacity Indicator (SCI) has been replaced by the Statistical Performance Indicator, which focuses on performance rather than just capacity. It is unclear that the registry will contribute to Canadian GDP in any meaningful way.

e) The number of estimated registrants is too low. While the estimate of "paid" influencers is relatively easy to come up with (since they already have to sign up for the Lobbyist Registry), the universe of unpaid influencers is likely to be much larger because of the very broad definition of "arrangements".

f) If the registry is indeed country neutral (as the Act envisages), one would

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expect that the number of registrants involving foreign principals from countries with which Canada has had long and deep political and economic ties to most heavily represented in the registry.

g) Strictly speaking, the “mandatory review” by Parliament is not every five years, but is to be undertaken in the year after a general election.

Implementation, compliance and enforcement, and service standards

1. The document states that non-compliance includes “failure to provide information within 14 days of entering into an agreement with a foreign principal”. The term “agreement” is not defined. I understand it to be different from “arrangement”. If there is no agreement as such, does that mean there is no “arrangement”?

2. The document is silent on the implications of non-compliance under the Foreign Interference and Security of Information Act, Section 20.4: “Every person commits an indictable offence who, at the direction of, or in association with, a foreign entity, engages in surreptitious or deceptive conduct with the intent to influence a political or governmental process, educational governance, the performance of a duty in relation to such a process or such governance or the exercise of a democratic right in Canada”. The maximum penalty for conviction under this offence is life imprisonment. Could failure to register be used as evidence of “surreptitious or deceptive conduct”?

Provision of Information

Under Provision of Information 2 (1) (b) (viii), would every member of an organization dedicated to promoting trade or cultural or other activities between Canada and a foreign country have to register?

Re. (d) (i), what about ongoing relationships, e.g. a diaspora organization that has

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regular and frequent contact with the foreign representatives of the country of origin.

Re. (d) (vii): If there is no stated objective on the part of the foreign principal, does that mean there is no “arrangement”?

Communication and Dissemination of Information

(3) What about private communications in a social media group or mailing list?
Public speeches? Lectures to students?

Provision of Benefit

Is the hosting or sponsorship of an event featuring a foreign principal attended by public officials, and provision of meeting space and refreshments, registrable?
Would staff and volunteers involved in the event have to register or just the host/sponsoring organization?

Registry

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4 (e) states that the registry will contain information . . . "if the arrangement involves influence activities. . .".

But if there are no influence activities, surely there is no "arrangement" -- in the sense of the definition of "arrangements" under FITAA. Could there be a situation where someone has to register because they are presumed to be "in association with" a foreign principal but is not involved in any influence activities? That does not seem possible under the definition of "arrangements", but the regulations suggest that it is possible.