June 4, 2024

Standing Committee on Public Safety and National Security
Sixth Floor, 131 Queen Street
House of Commons
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Delivered by email

Dear Members of the Standing Committee on Public Safety and National Security

RE: CCLA to the Standing Committee on Public Safety and National Security: Civil Society Should Be Granted Adequate Time to Meaningfully Engage in the Public Consultations Around Bill C-70

The Canadian Civil Liberties Association ("CCLA") is an independent, national, nongovernmental organization that was founded in 1964 with a mandate to defend and foster the civil liberties, human rights, and democratic freedoms of all people across Canada. Our work encompasses advocacy, research, and litigation related to the criminal justice system, equality rights, privacy rights, and fundamental constitutional freedoms.

The CCLA wishes to highlight to the Members of the Standing Committee on Public Safety and National Security ("Committee") its deep concerns about the way the current consultation on Bill C-70, An Act respecting countering foreign interference, is taking place. This bill, which is almost 100 pages long, went through its second reading in the span of one day, on May 29, 2024. The very next day, the Committee began studying it and convoking witnesses, with a deadline for hearing witnesses set to 5 business days later: June 6, 2024.

While the CCLA acknowledges the importance of addressing any threat to Canada's democracy, our review of this complex bill identifies several questions left unanswered. For instance, Part 4 of the bill, which purports to create a foreign influence registry ("Registry"), includes vague and broad language that raises democratic accountability issues. This language also raises concerns about the potential use of the Registry as a tool that could allow the government to monitor not only foreign influence specifically, but also, more generally, the international engagement of various actors, including foreign state-owned or funded broadcasters, academic institutions and charities, as well as international organizations such as the United Nations.

These considerations potentially involve freedom of the press and privacy issues, as well as questions as to the place reserved for international organizations in Canada's ecosystem. The CCLA hopes that some of its key concerns with respect to Part 4 of Bill C-70, shared below, will help convince the Committee of the importance of conducting meaningful public consultations

on this bill. The CCLA reserves its right to submit to the Committee proper written submissions with respect to Bill C-70.

As Bill C-70 stands, any person who enters into an “arrangement” with a “foreign principal” under which they undertake to carry out activities listed in relation to a “political or governmental process” in Canada must, within 14 days, provide the Foreign Influence Transparency Commissioner with a list of information to be specified ulteriorly in the regulation.

The term “foreign principal” means a foreign entity, a foreign power, a foreign state or a foreign economic entity as those terms are defined in subsection 2(1) of the *Security of Information Act.*[1] This last term (foreign economic entity) is particularly broad, as it includes a foreign state, a group of foreign states, and any entity that is controlled (in law or in fact) or substantially owned by a foreign state or group of foreign states.[2]

As the bill stands, this broad definition may capture an international organization made up of member states, such as the United Nations. One cannot rule out that this definition may as well capture foreign state-owned or funded broadcasters, charities, organizations, and academic institutions.

There is more. Bill C-70’s definition of “arrangement”[3] is also broad and notably includes an arrangement under which a person undertakes, “in association with” a foreign principal, to communicate by any means information related to a political or governmental process. The term “in association with” is not defined. This vague language could possibly capture individuals engaging with the public while being or after having been in contact with foreign state-owned or funded broadcasters, charities, organizations, or academic institutions, in addition to international organizations such as the United Nations.

This language raises two issues. First, in many cases, it may currently be difficult or even impossible for an individual to know that the entity they are dealing with meets the definition of “foreign principal”, and whether or not they could be perceived as acting “in association with” such entity. Clarity is particularly needed here in view of the serious penalties provided for under the bill in case of non-compliance, including fines of up to $5 million dollars and up to five years in prison.[4] This cannot be left to future regulations.[5]

Second, since Bill C-70 also relies on future regulations to delineate the scope of the Registry, including as regards the information that would have to be registered in it,[6] it is currently impossible to assess how this Registry would be used by the State and what impact it could have on democracy, freedom of the press and privacy rights. The heavy reliance on future regulations is thus not only problematic from a democratic accountability standpoint. In view of the broad definitions discussed above, there is also a concern that the Registry could be used to surveil international engagement instead of fulfilling its declared purpose, which is to act as a tool to lessen foreign interference in the affairs of Canada.

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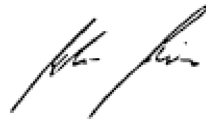
[1] Bill C-70, Part 4, s. 2.
[2] Security of Information Act, SC 1985, c. O-5, s. 2(1).
[3] Bill C-70, Part 4, s. 2.
[4] Bill C-70, Part 4, s. 25.
[5] Bill C-70, Part 4, ss. 6(1)(c) and 27. The non-applicability of the duty to provide and update information in the Registry currently only covers a foreign national who owns a diplomatic passport or “an employee of a foreign principal who is acting openly in the employee’s official capacity” (Bill C-70, Part 4, s. 6(1)(b)).
[6] Bill C-70, Part 4, s. 5(1), 6(1)(c), 6(2)(b) and 27.

Bill C-70 is a multifaceted bill which, through its Parts 1 to 3, also touches on complex legislation related to national security, as well as intelligence and criminal justice systems. These issues, which raise concerns relating to privacy rights, fundamental freedoms and due process, deserve careful consideration and meaningful engagement with Canadians. To ask civil society to provide feedback within the timelines discussed above is not respectful of the time and efforts that civil society organizations expend on these kinds of consultations. It will also diminish the breadth and depth of submissions the Committee receives.

For these reasons, the CCLA urges the Committee to request from the House of Commons to be granted more time so that truly inclusive and substantive public consultations can take place with respect to Bill C-70.

Sincerely,



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cc Members of the Standing Committee on Public Safety and National Security