The Committee for Justice in Canada
B'NAI BRITH CANADA
Le comité pour la justice au Canada

Submission to the Standing Committee on Public Safety and National Security for its Study on Bill C-70, *An Act respecting countering foreign interference*
June 6, 2024

INTRODUCTION

B'nai Brith Canada ("B'nai Brith") is the country's oldest human rights organization and the voice of Canada's grassroots Jewish community. Our organization, which was established in 1875, is dedicated to eradicating racism, antisemitism, and hatred in all its forms, and championing the rights of the marginalized.

B'nai Brith's submission to the Standing Committee on Public Safety and National Security ("the Committee") comes at a pivotal time for our country.

Legislation against foreign interference must walk a fine line. There are regrettably several foreign governments and terrorist entities who label as foreign interference any expression of views contrary to their own, even when those views come from locals. Yet, those same foreign governments and terrorist entities engage in repression abroad in order to coerce those abroad to conform to their government or terrorist views.

New federal legislation needs here, as well as in other areas, to maintain a balance between freedom of expression and demonstrably justified limitations on that freedom. Our own legislation should both counter effectively foreign repression reaching into Canada and do nothing to support the attempts of foreign repressive governments and terrorist entities to silence their critics by falsely claiming foreign interference.

The Jewish community is sensitive to the problems on both sides of the divide. On the one hand, foreign repressive anti-Zionists governments (such as the Islamic Republic of Iran) and terrorist entities reach into Canada attempting to interfere in Canadian democratic support for Israel. On the other hand, Canadians who show support for Israel are accused of being vehicles for Israeli foreign interference in Canada.

So, when we look at Bill C-70, *An Act respecting countering foreign interference*, (hereinafter "the Bill"), we have to look at it through two lenses. We have to assess how well it prevents and remedies foreign interference. We also have to assess the safeguards in place to prevent the legislation from being abused by those who would shut down discourse with which they disagree on the pretext that the discourse they oppose is foreign interference.

In our view, the Bill could benefit from changes in both directions. We have some suggestions how it could be more effective in combatting foreign interference. We also have a suggestion to prevent it from being abused to inhibit legitimate discourse.

The Bill is a welcome development. In general, B'nai Brith Canada supports the Bill. We realize that this Bill is an interim measure pending the report of the Commission of Inquiry on Foreign Interference and the implementation of its recommendations that the Government of Canada chooses to accept. This Bill nonetheless should be as good as possible within the framework set for itself.

Financial Inducements

The encampments and demonstrations at Canadian colleges and universities protesting against the Israeli response to the Hamas attack on Israel of October 7 have been receiving private financial support. The funding itself is public knowledge. But the source of funding is not. There should be a requirement that the source of funding for these protests be publicly disclosed.

On Craigslist[1], a November 2023 ad read:

> "We are looking for 5-7 actors or activists to hold panels and distribute flyers in front of a venue as a peaceful, legal protest. Needed for November 24th, evening, 2-3 hours, paying $30/hour."

As the Craigslist ad indicated, those paying protestors do not care if the protestors actually believe their protests. "Actors" will do.

Beryl Wajsman, editor of Montreal's newspaper *The Suburban*, stated in December 2023 about protests in Montreal:

> "pro-Hamas fanatics, ... know they're not going to be taken in by the police. They know they can trespass, and block traffic, and more."[2]

Wajsman stated that they're paid to do so, that pro-Hamas protesters can get up to $50 for each protest they attend, and they've divided the city up into grids, with leaders responsible for each grid and that most of the protesters are non-residents and students from Arab countries.

Warren Kinsella of the *Toronto Sun* reported in January 2024 about Victoria protesters:

> "They've got professionally-rendered signs and banners. They've got transportation, and food and drink. And they've got organizers who wear uniforms and control the crowds."[3]

The funds in Victoria come from the Plenty Collective. The Plenty Collective states this on its website:

> "Palestinian Solidarity Fund
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> This fund is available to folks or groups based in Lekwungen Territory (aka "Victoria, BC") who are incurring costs related to supporting or organizing actions in solidarity with Palestine and Palestinian people. This fund is to help cover costs incurred when organizing or participating in local actions. This can include, but is not limited to, the costs of lost wages, supplies, items for fundraising, paying speakers, etc.[4]

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[1] X/Twitter. Aliza Licht, November 25, 2023, tweet available online at https://x.com/AlizaLicht/status/1728453100883570955?lang=en.
[2] Warren Kinsella, "Weak Political will allowing anti-Semitism to rise in Montreal," *Toronto Sun*, December 2023, available at https://torontosun.com/opinion/columnists/kinsella-weak-political-will-allowing-anti-semitism-to-rise-in-montreal.
[3] Warren Kinsella, "Protesters paid to take part in pro-Palestinian demonstrations," *Toronto Sun*, January 10, 2024, available at https://torontosun.com/opinion/columnists/kinsella-protesters-paid-to-take-part-in-pro-palestinian-demonstrations.
[4] Plenty Collective. Palestinian Solidarity Fund, available online at https://plentycollective.ca/Finances.

> Applications will be processed on a first come first serve basis, however applications from Palestinian and BIPOC people will be higher priority. This is our first time running something like this, so we are just learning! Applications are overseen by an anonymous board of volunteers.
>
> This fund is entirely supported by community donations. It is tracked and maintained separately from all our organizational finances. If you would like to donate to or run a fundraiser to contribute to this fund, please contact us."

For other categories of funding, the Plenty Collective posts on its website the monthly opening balance, the closing balance, income and expenses. It also provides, in at least some cases, specific dollar information about sources of funds and expenditures. For the Palestinian Solidarity Fund there is no such information.

According to Warren Kinsella, the Fund has been spending close to $20,000 on these protests every month. That amount is far more than all their other monthly expenditures combined.[5]

Ian Ward, a municipal councilor for Colwood on Vancouver Island, described the pay-a-protestor payment scheme:

> "They are highly organized. I've watched them. A van pulls up, and they've got flags, signs, and they've got organizers from the Plenty Collective wearing orange vests controlling the crowds. ... And they have control because they are holding the cash for the protestors ... We don't see them being this organized, and this well-funded, without offshore money."[6]

Protestors are not just reimbursed expenses. They are paid to protest. As the Plenty Collective states, protesters are paid for "lost wages."

We do not see these sorts of protests at colleges and universities on any other issue. Many of the protestors are not students.[7]

There are some denials,[8] people claiming that the allegation of outside funding is a fabrication to discredit legitimate protest. The answer is transparency.

The presence of organizational support for the protests and encampments is incontestable. Any organization engaged in supporting the protests and encampments should be required to disclose details of both sources of funding and expenditures. The public has a right to know.

The Government of Iran every year sponsors globally, including in Canada, Al Quds day rallies, on the last Friday of Ramadan, the Muslim month of fasting. In 2024, Al Quds day was April 5. Al Quds is an Arabic name for Jerusalem. The general message of Al Quds day is that Israel should not exist. The rallies celebrate terrorist attacks against Israel. They are permeated with antisemitic chants, slogans, banners and posters.

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[5] Warren Kinsella, "Protesters paid to take part in pro-Palestinian demonstrations," *Toronto Sun*, January 10, 2024, available at https://torontosun.com/opinion/columnists/kinsella-protesters-paid-to-take-part-in-pro-palestinian-demonstrations.
[6] Ibid.
[7] Mary Chastain, "Only 6 of the 33 Arrested at George Washington U. Were Students: Outside agitators. What a shock," *Legal Insurrection*," May 10, 2024, available at https://legalinsurrection.com/2024/05/only-6-of-the-33-arrested-at-george-washington-u-were-students/.
[8] Aloysius Wong, Ben Makuch and Roxanna Woloshyn. "Some blame outsiders for spread of pro-Palestinian encampments. The idea isn't new, say students and experts," CBC News, May 10, 2024, available at https://www.cbc.ca/news/canada/campus-protests-outside-influence-theories-1.7200820.

These rallies should not be happening even under current law, because they are incitements to hatred and glorification of terrorism. In any case, direct or indirect undisclosed funding of these events by the Government of Iran should make these rallies criminal offences.

The Bill provides I section 53 enacting section 20(1) of the Foreign Interference and Security of Information Act that "Every person commits an offence who, at the direction of, for the benefit of or in association with, a foreign entity or a terrorist group, induces or attempts to induce, by intimidation, threat or violence, any person to do anything or to cause anything to be done."

That provision should be expanded to include, in addition to intimidation, threat or violence, undisclosed financial support.

RECOMMENDATION 1

There should be a prohibition against inducing action by means of undisclosed financial support from a foreign entity or terrorist group.

The Bill provides I section 53 enacting section 20(1) of the Foreign Interference and Security of Information Act that "Every person commits an offence who, at the direction of, for the benefit of or in association with, a foreign entity or a terrorist group, induces or attempts to induce, by intimidation, threat or violence, any person to do anything or to cause anything to be done."

That provision and the similar provision in section 20.1(1) should be expanded to include, in addition to intimidation, threat or violence, undisclosed financial support.

The Immigration and Refugee Protection Act

The Bill leaves the *Immigration and Refugee Protection Act* untouched. Yet, foreign interference, it would seem obvious to say, can come from foreigners in Canada. That threat needs, in particular, to be addressed.

The silence of the Bill on this matter is puzzling in light of the fact that the Government of Canada has been litigating this issue now for several years, unsuccessfully. The Courts have given a narrow interpretation of impermissible foreign interference by foreigners in Canada which leads to adverse immigration consequences for the persons who interfered, an interpretation the Government contests. The problem could easily be resolved by putting into this legislation the interpretation the Government asserts.

The cases in the Federal Court are these: *Weldemariam v. Canada (Public Safety and Emergency Preparedness)*, 2020 FC 631, [2020] 4 FCR 354, decided May 20, 2020, over four years ago and *Yihdego v. Canada (Public Safety and Emergency Preparedness)*, 2020 FC 833, decided August 18, 2020, almost four year ago. The Government appealed these decisions to the Federal Court of Appeal unsuccessfully. The cases were decided on April 12, 2024. The citations are these: *Canada (Public Safety and Emergency Preparedness) v. Canadian Association of Refugee Lawyers* 2024 FCA 69 and *Canada (Public Safety and Emergency Preparedness) v. Yihdego* 2024 FCA 70.

In the two cases, two individuals, Medhanie Weldemariam and Abel Yihdego, were employees of an Ethiopian security and intelligence agency. The agency gathered information using offensive cyber capabilities and surveillance malware, targeting journalists and political dissidents. The agency targeted Ethiopian Satellite Television, an independent satellite, radio, television and online news outlet run by members of the Ethiopian diaspora in a number of countries, including Canada. The allegation in both cases was that the espionage of the agency was contrary to Canadian interests.

The Immigration Division in the *Weldemariam* case found that the Ethiopian Government agency had covertly gathered information about the Ethiopian diaspora outlet from employees of the outlet in the United States and Belgium. In the *Yihdego* case, the finding was similar, but relating only to the United States. The two Division members had before them no evidence to show that the Government agency had targeted Ethiopian diaspora outlet journalists who were working in Canada. Both Division members nonetheless found the two individuals inadmissible as engaging in espionage contrary to the interests of Canada.

The two individuals each challenged their inadmissibility findings in the Federal Court, successfully. The Minister in both cases appealed to the Federal Court of Appeal, unsuccessfully.

The cases decide that a foreign government agent who spies on individuals present in a Canadian ally is eligible to make a refugee protection claim at the Refugee Protection Division of the Immigration and Refugee Board where only the risk to the spy is considered. Such a person is not limited to pre-removal risk assessment where the risk to Canada's interests can be balanced against the risk to the refugee protection applicant. The reasoning of the panel for both Court decisions is that such spying on individuals in an allied country is not contrary to Canada's interests.

The Federal Court of Appeal in the *Weldemariam* case wrote that espionage activities took place outside Canada and that they did not involve Canada in any way. The Federal Court of Appeal in the *Yihdego* case adopted the reasoning in the *Weldemariam* case.

This conclusion, that foreign spying on individuals in the territory of a Canadian ally is not espionage contrary to Canada's interests because it does not involve Canada in any way, is, as a matter of common sense, wrong, even bizarre. Though the evidence before the Immigration Division was limited to the United States and Belgium, the mandate of the Ethiopian Government spying agency was not limited to the United States and Belgium. Its mandate encompassed Canada, where the Ethiopian diaspora news outlet, targeted in the US and Belgium, was also located.

The broad mandate of the Ethiopian Government agency and the fact that the targeted diaspora outlet was located in Canada were evidence that the agency was targeting Canada, even without specific instances of targeting in evidence. This evidence provided reasonable grounds to believe that the Ethiopian spying agency has engaged and is engaging in espionage contrary to the interests of Canada. It was wrong for the Federal Court and Court of Appeal to decide that two Immigration Division rulings to the contrary were unreasonable.

As well, the ground of inadmissibility addressed speaks to the future, as well as the past and present. As long as there are reasonable grounds to believe that, in the future, the Ethiopian government agency would do against a diaspora outlet in Canada what they were already doing against that same diaspora outlet in Belgium and the U.S., a member of the agency is a member of an organization engaged in espionage contrary to the interests of Canada. Here too it was unreasonable, even perverse, for the Federal Court and Court of Appeal to find otherwise.

That a risk of foreign spying of persons in Canada is contrary to Canada’s interests should be obvious. Foreign spying against individuals in allied countries is also contrary to Canada's interests because the actuality of such spying demonstrates a risk of similar spying of persons in Canada.

RECOMMENDATION 2

The Bill needs to provide that, in the *Immigration and Refugee Protection Act*, the phrase “contrary to Canada's interests,” includes a risk to persons in Canada and also includes action against foreigners in allied countries.

The Foreign Interference and Security of Information Act

The Bill does not propose the legislation of an offence of foreign interference. Indeed, other than in the title of the Bill, which is repeated many times throughout the Bill, and a section of the Bill, the phrase "foreign interference" is not to be found. It is odd to see a Bill supposedly about foreign interference where the phrase "foreign interference" is not used in the provisions of the bill, not even once.

One can deduce from the title to Part 2 "Measures to combat foreign interference" that the activities prohibited by that part are considered to be foreign interference. However, it would be preferable if there was a general prohibition against foreign interference with exceptions.

RECOMMENDATION 3

The Bill should prohibit foreign interference.

The Bill, in its proposed amendments to the *Security of Information Act*, which is to become the *Foreign Interference and Security of Information Act*, uses the phrase "harm Canadian interests" in three provisions, at section 53, enacting sections 20.1 (1) (a) and (b) and section 20.3 (1). Given the limited interpretation of the phrase "Canadian interests" in the immigration litigation, that the phrase is limited to harm to Canadian governments or Canadians already harmed, there needs to be specific wording in this Bill to encompass risk of harm to persons in Canada and harm to foreigners in allied countries.

RECOMMENDATION 4

The Bill should provide that harm to Canadian interests includes risk of harm to persons in Canada and harm to foreigners in allied countries.

A relevant example of legislation of a prohibition with exceptions is the *Canada Elections Act* which, in section 282.4, prohibits undue influence by foreigners during elections, but has, in subsection (3) specific exceptions about:

> (a) an expression of opinion about the outcome of the election;
> (b) a statement that encourages the elector to vote or refrain from voting for any candidate or registered party in the election; or
> (c) the transmission to the public that does not violate the specific prohibitions.

Comparable exceptions would not be relevant to Bill C-70 section 53 enacting sections 20 and 20.1 since those sections address intimidation, threats, and violence, for which we suggest no exceptions. Similarly, section 20.2 does not pose a problem in its present form because it addresses the manner in which otherwise indictable offences are committed. However, section 20.3 does potentially create a problem since it creates a new offence of knowing deception for the benefit of a foreign entity.

In political debates, one side often accuses the other of knowing deception for failure to mention this fact or that. Those omissions should not be the subject of prosecution.

The current Act does require, in section 24, the consent of the Attorney General for all prosecutions under the Act. That requirement would prevent private prosecutions for what private individuals would consider to be deception for the benefit of a foreign entity. However, the requirement of consent does not prevent altogether potential misuse of the prohibition.

There needs to be some indication when consent would be granted or denied. The indication need not be so specific that the function of discretion by the Minister of Justice and Attorney General is effectively removed. However, the discretionary function should not just be left in the air, something that is bound to generate requests for consent which should not be made. A mere public expression of opinion in favour of a foreign entity, even if the opinion is arguably deceptive or misleading, should not be prosecutable. The legislation should say so.

RECOMMENDATION 5

The Bill should provide that the consent of the Minister of Justice and Attorney General for prosecution would not be given for the public expression of opinion on the basis that it is deception for the benefit of a foreign entity.

Another oddity of the Bill is the unsystematic way in which it addresses terrorism. Some provisions of the Bill include prohibitions directed against terrorist groups. Others do not, limiting their prohibitions to foreign entities.

A foreign entity is defined in existing legislation to be either a foreign power, a group or association of foreign powers or a foreign power or powers and a terrorist group or groups. Under the existing legislation, a terrorist group would be included in the definition of foreign entity if the group is associated with a foreign power, but not otherwise. Hamas, for instance, might be considered a terrorist group but not a foreign entity. The prohibition directed to foreign entities should be directed to terrorist groups systematically. That is to say, the prohibition in section 53 of the Bill enacting sections 20.2 (1), 20.3 (1) and 20.4 (1) refer only to foreign entities and not to terrorist entities for no obvious reason.

RECOMMENSDATION 6

In the Bill, wherever there is a prohibition against foreign entities, the prohibition should also refer to and include terrorist groups.

Foreign interference often occurs through online abuse. The abuse can take the form of online harassment, circulating fake or doctored videos or photos, or explicit videos or photos without consent, posting private information including contact and location information, and smearing reputations online through false allegations. These, of course, are general problems and not specific to targets of interference. Yet, they assume an aggravated dimension when perpetrated by a foreign entity or terrorist group in pursuit of a foreign dimension.

The *Criminal Code*, section 162.1, has a provision addressing the publication of intimate images without consent. And there is Bill C-63, the *Online Harms Bill*, now before Parliament, but which deals only with hate speech and online sexual exploitation of children. Whether the other forms of online abuse are separately criminalized or not, they should be criminalized when they are vehicles for foreign interference. Foreign interference which occurs through the various forms of online abuse set out above should be prohibited.

RECOMMENDATION 7

Section 53 of the Bill enacting sections 20(1) and 20.1(1) of the *Foreign Interference and Security of Information Act* should be expanded to include internet abuse, in addition to intimidation, threat or violence, and undisclosed financial support.

Internet abuse should be defined to include online harassment, circulating fake or doctored videos or photos or, without consent, explicit videos, or photos, posting private information including contact and location information, and smearing reputations through false allegations.