



## CANADA'S FOREIGN COLLECTION OF HUMAN INTELLIGENCE: A NEED TO RE-EVALUATE

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### JCSP 50

#### Service Paper

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A NEED TO RE-EVALUATE**

**Major Nicole Fleming**

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# CANADA'S FOREIGN COLLECTION OF HUMINT: A NEED TO RE-EVALUATE

## AIM

1. The Government of Canada (GoC) must examine how it collects foreign intelligence from human sources in order to determine whether the system in place is sufficiently effective and efficient in an increasingly unstable and competitive global environment.

## INTRODUCTION

2. The question of which agency in Canada is responsible for collecting foreign intelligence from human beings outside of the country does not have an easy answer. This is because “unlike most of its partners and allies, *Canada does not have a foreign intelligence agency* [emphasis added] dedicated to the collection of human intelligence (HUMINT). Moreover ... [its] ability to gather foreign intelligence is strictly limited by law”.<sup>1</sup> As such, the answer to the question posed is this: many entities play a role in Canada's collection of HUMINT for foreign intelligence purposes. This paper will explain the complicated foreign intelligence landscape in Canada from a HUMINT perspective, and will also compare it with those from two other Western democracies. Once these steps are completed, it will demonstrate that a review of the extant system is needed in order to establish whether it remains capable and meaningful in today's context.

3. In further explaining the answer to the question posed in paragraph 2, it is first important to understand what the phrase *foreign intelligence*<sup>2</sup> means in the Canadian context. An unambiguous definition can be found in section 2 of the *Communications Security Establishment (CSE) Act*: “**foreign intelligence** means information or intelligence about the capabilities, intentions or activities of a foreign individual, state, organization or terrorist group, as they relate to international affairs, defence or security.”<sup>3</sup>

4. Another critical part of mapping out the complex topography of Canada's foreign intelligence structure is to identify 1) who can collect what, and 2) from where the information can be collected.<sup>4</sup> A deeper dive into the subject reveals that CSE has a large role when it comes to collecting foreign intelligence. Indeed, the first item in a list of the five aspects of CSE's mandate is that it will:

[A]cquire, covertly or otherwise, information from or through the global information infrastructure, including by engaging or interacting with *foreign entities located outside Canada* [emphasis added] ... and to use, analyse and disseminate the information for the purpose of providing foreign intelligence, in accordance with the Government of Canada's intelligence priorities.<sup>5</sup>

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<sup>1</sup> Stephanie Carvin, Thomas Juneau and Craig Forcese, eds., *Top Secret Canada* (Toronto: University of Toronto Press, 2020), 3-4.

<sup>2</sup> *Foreign intelligence* is distinct from *security intelligence*. *Canadian Defence Administrative Order 8002-3* defines security intelligence as “intelligence on the identity, capabilities and intentions of hostile intelligence services, organizations or individuals, who are or may be engaged in espionage, sabotage, subversion, terrorist activities, organized crime or other criminal activities”. As taken from Director General Intelligence, *DAOD 8002-3, Security Intelligence Liaison Program* (Canada: National Defence, 2003), 2.

<sup>3</sup> *CSE Act*, (2019), 2.

<sup>4</sup> A full discussion of Canada's intelligence collection and analysis structure is beyond the scope of this paper.

<sup>5</sup> *CSE Act*, 15, section 16.

As noted in this part of CSE's mandate there are limits, however, to what it may collect. It can only collect via the global information infrastructure<sup>6</sup> (i.e. not via human sources) and must do this outside Canada. Furthermore, in the legislation's *Activities* section, it states CSE's foreign intelligence collection must "not be directed at a Canadian or at any person in Canada".<sup>7</sup>

5. In reviewing the legislation for the Canadian Security Intelligence Service (CSIS), reference to foreign intelligence collection can be found in section 16 (1) of the *CSIS Act*.<sup>8</sup> This section can be summarized as giving CSIS the legal authorization "to collect, at the request of the Minister of Foreign Affairs or the Minister of National Defence, information relating to foreign states and persons (i.e., foreign intelligence)" but only within Canada.<sup>9</sup> CSIS is regarded primarily as a HUMINT agency, and also has the ability to undertake technical collection within Canada.<sup>10</sup> Furthermore, there is no territorial limit to where CSIS can collect information relating to threats to the security of Canada (e.g. espionage, foreign interference and serious acts of politically, religiously or ideologically motivated violence).<sup>11</sup> As such, if there is an intersection between a matter that threatens the security of Canada and which also relates to the capabilities or intents of a foreign individual, state, organization or terrorist group, CSIS is able to perform HUMINT collection anywhere in the world.

6. The Canadian Forces Intelligence Command (CFINTCOM) is the intelligence entity in Canada which appears to have the broadest mandate,<sup>12</sup> and this includes a capacity to collect foreign intelligence via HUMINT. Canadian Armed Forces (CAF) doctrine explains the "authority to conduct defence intelligence activities is implicit when the CAF is legally mandated ... to conduct military operations and other defence activities."<sup>13</sup> Unlike CSE and CSIS, the CAF does not have an explicit statutory framework by which it undertakes intelligence activities; instead it largely relies on the exercise of Crown Prerogative<sup>14</sup> which allows for quickness and flexibility in its operations.<sup>15</sup> As such, the CAF's activities are limited only by the broad categories of *military operations* and *other defence activities*. This means its intelligence collection is not restricted by Canada's borders. CFINTCOM's ability to collect HUMINT is not

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<sup>6</sup> Section 2 of the *CSE Act* (page 2-3) defines the *global information infrastructure* as including the "electromagnetic emissions, any equipment producing such emissions, communications systems, information technology systems and networks, and any data or technical information carried on, contained in or relating to those emissions, that equipment, those systems or those networks."

<sup>7</sup> *CSE Act*, 9, section 22.

<sup>8</sup> *CSIS Act*, (2019), 26.

<sup>9</sup> Public Safety Canada, *Enhancing Measures to Counter Foreign Interference: Whether to Amend the Canadian Security Intelligence Service Act*, 2023, Issue #3, page 7.

<sup>10</sup> The Service's ability to undertake technical collection is governed by section 21 of the *CSIS Act*.

<sup>11</sup> *CSIS Act*, sections 12 (1) and 12 (2), 23. Section 2, a-d (page 3) of the *CSIS Act* contain the definitions of threats to national security investigated by CSIS, further to section 12 (1).

<sup>12</sup> Thomas Juneau, "The Department of National Defence and the Canadian Armed Forces (DND/CAF)," in *Top Secret Canada* (Toronto: University of Toronto Press, 2020), 207.

<sup>13</sup> *Canadian Forces Joint Publication CFJP 2-0, Intelligence 2nd Edition* (Canada: Department of National Defence, 2023), 0203-0204 and 0206, 2-1.

<sup>14</sup> *National Security and Intelligence Committee of Parliamentarians (NSICOP) (Canada) Annual Report 2018*, 68 & 73. A definition of Crown Prerogative on page 73 of the NSICOP report states: "The Crown prerogative is a source of executive power and privilege accorded by common law to the Crown .... Put simply, the Crown prerogative is the authority exercised by the government to make decisions in areas where the prerogative has not been displaced, or otherwise limited, by Parliament through the enactment of statute, or by the courts."

<sup>15</sup> NSICOP Annual Report 2018, paragraph 190, 75.

unregulated however, because the activities are conducted by specific units,<sup>16</sup> the “actual conduct of HUMINT activities must be *authorized by the Minister of National Defence* [emphasis added] in each case and is limited by specific sources of domestic and international law”.<sup>17</sup>

7. While it does not formally collect HUMINT, Global Affairs Canada (GAC) has a network of diplomats around the world and can be considered to use human beings as sources of information via this activity. GAC also has the Global Security Reporting Program (GSRP), which was created after the events of September 11, 2001.<sup>18</sup> The National Security Intelligence Review Agency (NSIRA) prepared a report on this program in 2020. It noted that GSRP “reports on (GoC) intelligence priorities and obtains information from human contacts, [and GSRP] officers believe they are distinct from intelligence practitioners given that they operate overtly as accredited members of a diplomatic mission, and do not pay or task their contacts”.<sup>19</sup> Furthermore, GAC conducts diplomatic relations under the authority of Crown Prerogative<sup>20</sup> and assesses:

[GAC is the] lead agency for the strategic management of the Government of Canada’s foreign engagement, including on intelligence matters. This long-standing principle recognizes the primacy of ... [the Foreign Affairs Minister’s] mandate and accountabilities, as the lead Minister responsible for the conduct of foreign relations supported by foreign intelligence, and the primary risk owner for foreign intelligence collection activities.<sup>21</sup>

8. From this context it is apparent the collection of foreign intelligence as a whole by Canada is a shared responsibility, similar to that of some larger allies.<sup>22</sup> It is also clear, however, that if senior Canadian officials require foreign intelligence collected from human beings outside of Canada, statutory restrictions make the process somewhat clunky. This is because they must contact at least three separate Canadian government agencies to do so.<sup>23</sup> Agility and efficiency are required in a time where Canada currently recognizes that in the Indo-Pacific “great power

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<sup>16</sup> On its website, CFINTCOM notes a unit specializing in HUMINT collection is Joint Task Force X (JTFX).

<sup>17</sup> NSICOP Annual Report 2018, paragraph 181, 72.

<sup>18</sup> National Security Intelligence Review Agency, *Review of Global Affairs Canada Global Security Reporting Program (NSIRA Review 2020-01)* (Canada: NSIRA, 2023), paragraph 16, 6. As well, this paragraph states “GSRP officers report to the Intelligence Assessments and Reporting Division (INA) under the Intelligence Bureau which falls under the ADM of International Security and Political Affairs.”

<sup>19</sup> *Review of Global Affairs Canada Global Security Reporting Program (NSIRA Review 2020-01)*, paragraph 32, 10. GAC has also noted in the NSIRA report (footnote 26, page 9) that “Diplomatic reporting is a time-honoured activity carried out by Canadian Foreign Service Officers be they part of the GSRP, the Trade Commissioner Service or the political economic stream.”

<sup>20</sup> *Review of Global Affairs Canada Global Security Reporting Program (NSIRA Review 2020-01)*, paragraph 29, 9.

<sup>21</sup> Letter from the Deputy Minister of Foreign Affairs (M. Morgan) at GAC (INA-PA 0018-21) to the Chair of NSIRA (M. Deschamps), 2.

<sup>22</sup> In the United Kingdom, foreign intelligence is collected by MI6 (HUMINT) and the Government Communications Headquarters (GCHQ) (SIGINT). In the United States, the Central Intelligence Agency (CIA) collects HUMINT outside of the country and the National Security Agency (NSA) does the same for SIGINT.

<sup>23</sup> The Privy Council Office (PCO) plays a central coordinating role in Canada’s unique security and intelligence community. More details available in Chapter 1 of *Top Secret Canada*, pages 15-28.

competition deepens...[and] inter-state tensions are on the rise”<sup>24</sup> and where it “strongly condemns Russia’s war of aggression in Ukraine”.<sup>25</sup>

9. Intelligence collection is an activity that encompasses a variety of methods, or components. There is collection from the global information infrastructure, also known as SIGINT.<sup>26</sup> There is also open-source, imagery and geo-spatial intelligence.<sup>27</sup> All components work together to give the GoC a joint picture of the information it needs to navigate in today’s world. When the other components are unable to acquire that which Canada’s adversaries truly wish to keep secret, however, HUMINT is viewed by some as the “method that allows us to truly move forward”.<sup>28</sup>

## DISCUSSION

10. Another question one could ask is “Why is Canada different from so many of its similarly sized allies, which do have agencies dedicated to collecting HUMINT for foreign intelligence purposes?”<sup>29</sup> Some speculate it is because Canada’s intelligence responsibilities bloomed somewhat late, with the United Kingdom remaining in charge until the Second World War and also perhaps because it is not part of the collective Canadian psyche to spy on others.<sup>30</sup> Others have said the benefits of having a foreign intelligence service do not outweigh the costs and no real evidence exists to show that having such an entity actually aids a government in making strategic decisions.<sup>31</sup> Many countries have nonetheless made the decision to dedicate distinct resources and entities towards human-focused foreign intelligence collection. The following paragraphs will describe how two countries that are somewhat similar to Canada, Australia and France, undertake such HUMINT activities.

### Australia

11. Australia is a member of the *Five Eyes*<sup>32</sup> partnership and its population total is somewhat smaller but similar to Canada’s.<sup>33</sup> It established the Australian Secret Intelligence Service (ASIS) in 1952.<sup>34</sup> On its website, ASIS states:

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<sup>24</sup> *Canada's Indo-Pacific Strategy* (Canada: His Majesty the King in Right of Canada, as represented by the Minister of Foreign Affairs, 2022), 3.

<sup>25</sup> Global Affairs Canada, *Canada-Russia Relations*, 2023, 1.

<sup>26</sup> SIGINT is further defined as the “interception, decoding and analysis of communications and other electronic signals” at the CSE website.

<sup>27</sup> Juneau, “The Department of National Defence and the Canadian Armed Forces (DND/CAF)”, 208

<sup>28</sup> CSIS, *Remarks by CSIS Director David Vigneault at the Canadian Museum for Human Rights, Dec. 11, 2023 - Canada.ca*, 2024).

<sup>29</sup> A full discussion of the reasons why Canada does not have a foreign intelligence service is beyond the scope of this paper.

<sup>30</sup> *Top Secret Canada*, 4.

<sup>31</sup> Paul Robinson, “The Viability of a Canadian Foreign Intelligence Service,” *International Journal (Toronto)* 64, no. 3 (September, 2009), 706.

<sup>32</sup> *Top Secret Canada*, 3-4. The *Five Eyes* refers to the intelligence-sharing arrangement between the United States of America, the United Kingdom, Australia, New Zealand and Canada.

<sup>33</sup> The Australian Bureau of Statistics estimated the country’s population was 26,638,554 people on June 30, 2023. (<https://www.abs.gov.au/statistics/people/population/national-state-and-territory-population/latest-release> ).

Statistics Canada estimated Canada’s population at 40,528,396 on October 1, 2023.

(<https://www150.statcan.gc.ca/n1/daily-quotidien/231219/dq231219c-eng.htm?HPA=1&indid=4098-1&indgeo=0> ).

<sup>34</sup> The history section of the ASIS website notes it was not acknowledged publicly by government until 1977.

“We collect and distribute secret foreign intelligence, *information which would be otherwise unavailable* [emphasis added] to Australia, to protect Australia and its interests. We obtain this intelligence from ... outside Australia's borders. To do this, we rely on what we call ‘human intelligence’ – information that comes directly from people.”<sup>35</sup>

In stating that ASIS collects HUMINT which would otherwise be unavailable to the government via other components of its intelligence community<sup>36</sup>, it is clear Australia sees benefit in having available these collectors of last resort, who can be directed by government to gather critical information required by senior leaders in their decision-making processes.<sup>37</sup>

12. The Minister of Foreign Affairs is responsible for ASIS and the agency’s functions are laid out in the *Intelligence Services Act 2001* (ISA). In addition to collecting and communicating intelligence in accordance with the government’s requirements, it also assists the Australian Defence Force in support of military operations and intelligence; conducts counter-intelligence operations; liaises with foreign intelligence agencies; and conducts other activities “as the responsible Minister directs”.<sup>38</sup> The other agency responsible for collecting foreign intelligence is the Australian Signals Directorate (ASD), also governed by the ISA and reporting to the Ministry of Defence. Via this model, Australia has a single entity to collect HUMINT outside its borders, making for a more efficient method for its leadership to fill intelligence gaps and fulfill both strategic and tactical requirements.

## France

13. France, with a population larger<sup>39</sup> than that of either Canada or Australia, has chosen a different path. It has a single entity taking on all foreign intelligence collection. Both HUMINT and SIGINT are the responsibility of its external intelligence agency, the Direction Générale de la Sécurité Extérieure (DGSE), which has existed in one form or another since the 1940s. Its legislation falls under the responsibility of the Armed Forces Ministry, and is very broad in nature. DGSE’s mandate is: to find and exploit information of interest to the security of France in collaboration with other relevant French agencies; and to detect and obstruct espionage activities outside of France, where the consequences of such espionage would be against French interests. Notably, its legislation states DGSE can carry out *toute action* (any activity) the French government asks it to within this mandate.<sup>40</sup>

14. DGSE acquires intelligence from its “large-scale technical means” (aka SIGINT), from real-world operations (not further defined), from HUMINT and via cooperation with other services. It emphasizes that the complementary and intersecting nature of these four areas

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<sup>35</sup> *ASIS Overview* at the ASIS website.

<sup>36</sup> ASIS’ website indicates the Australian Security Intelligence Organisation (ASIO) also collects HUMINT, where its “function primarily involves security intelligence from *within Australia* [emphasis added] ... human intelligence collection is only one part of its mandate – as it is also an integrated collection, assessment and advisory agency”.

<sup>37</sup> A full discussion of Australia’s intelligence structures and its place within the Five-Eyes group is beyond the scope of this paper.

<sup>38</sup> *Intelligence Services Act 2001*, 9, section 6.

<sup>39</sup> L’Institut national de la statistique et des études économiques (INSEE) states France’s population as of January 1, 2024 was 68.4 million persons. (<https://www.insee.fr/fr/statistiques/7750004?sommaire=7746197> accessed February 18, 2024)

<sup>40</sup> Légifrance, *Code De La Défense - Article D3126-1 - D3126-4*.

provides DGSE “with high responsiveness and gives us the possibility to lead combined actions.”<sup>41</sup>

## CONCLUSION

15. In a 2022 report from the Graduate School of Public and International Affairs at the University of Ottawa, the authors state “Canadians and their governments rarely take national security seriously. This has led to reactive policies and widespread complacency.”<sup>42</sup> This paper takes aim at that complacency, with the goal of determining whether Canada’s human-focused foreign intelligence collection is fit for purpose.

16. The Canadian foreign intelligence system worked capably enough through the Cold War and its aftermath. In this current era of “intense global instability”,<sup>43</sup> however, it is vital the GoC makes certain it is equipped with the most effective and efficient tools to forewarn and forearm itself. The methods Canada has relied upon up to now have rested on the assumption of having a fire-proof house<sup>44</sup> due to its close relationship with the United States of America. Via the North American Aerospace Defence Command (NORAD) agreement, the North Atlantic Treaty Organization (NATO) and the Five Eyes intelligence sharing partnership, Canada has remained safe. It has had the luxury of resting comfortably with the belief that because this collective approach has previously managed to do the job<sup>45</sup> it will continue to be effective going forward. In regarding the state of world affairs in 2024 however, it is replete with potentially shaky alliances,<sup>46</sup> visible tension in the Indo-Pacific, plus wars in Europe and the Middle East. Therefore, it is apparent Canada must take its own steps to avert fires.

17. The first step in prevention is to thoroughly evaluate the extant capabilities of Canada’s foreign intelligence HUMINT system. This paper is a precursor to such an evaluation and outlines the somewhat labyrinthine arrangement Canada has in place. It then contrasts it with more straightforward frameworks operating in Australia and France. This is with the goal of demonstrating that other options are available, in the event it becomes evident there is need to move beyond the *if it ain’t broke, don’t fix it*-attitude towards Canadian foreign intelligence collection.

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<sup>41</sup> DGSE website - *Who are we?*

<sup>42</sup> Vincent Rigby et al., *A National Security Strategy for the 2020s - Report of the Task Force on National Security*, Graduate School of Public and International Affairs, (University of Ottawa, 2022), 1.

<sup>43</sup> Ibid.

<sup>44</sup> This phrase refers to Canadian Senator Raoul Dandurand’s address to the League of Nations on October 2, 1924 where he said: “The heavy sacrifices to which we agreed for the re-establishment of peace in Europe led us to reflect on what the future might hold in store. May I be permitted to add that in this association of mutual insurance against fire the risks assumed by the different states are not equal? We live in a fire-proof house, far from inflammable materials. A vast ocean separates us from Europe.”

<sup>45</sup> A complete discussion of Canada’s national security policy is beyond the scope of this paper.

<sup>46</sup> Former US President and 2024 Republican Presidential candidate Donald J. Trump’s remarks to a political rally in South Carolina on February 10, 2024 are illustrative of the potential for previously robust alliances to crumble. In “appearing to recount a meeting with NATO leaders” Trump said that if a country did not pay the required amount to NATO, his response to a request for military support would be: “No, I would not protect you. In fact, I would encourage them [the attacker, probably Russia] to do whatever the hell they want. You gotta pay.”



18. It could be argued that either the NSIRA or the National Security and Intelligence Committee of Parliamentarians (NSICOP)<sup>47</sup> could undertake such a review. NSIRA concentrates on the lawfulness of intelligence activities by departments and agencies. NSICOP reviews their legislative, regulatory, policy, administrative and financial frameworks. Their mandates relate to the entirety of government intelligence activities, however, and are not focused on either foreign intelligence collection or HUMINT. A group of inter-departmental and inter-agency professionals currently employed in these areas would be better placed to undertake a precise examination of what is working and what is not.

19. The makeup of such a working group should include both foreign intelligence HUMINT collectors and consumers. In order to move quickly, the working group must be solely dedicated to the review, with no other distractions. It should also leverage the experiences and skills of individuals working at the operational level. These employees can bridge the gap between more senior officials looking at the strategic and political aspects and those who are at the tactical level, actually collecting the material Canada needs.<sup>48</sup> In light of the fact that CSIS, GAC and CFINTCOM are currently involved in collecting foreign intelligence from human sources or contacts, there should also be a neutral senior advisor or *champion* for the working group. This champion could provide the group guidance in establishing timelines (e.g. a period of one year or 18 months), terms of reference and supplement the group's work with any necessary advice along the way.

20. With such an evaluation in hand, the senior leaders of Canada's intelligence collection apparatus will have the capacity for an educated decision about the future of foreign intelligence collection through HUMINT. They will have what they need in order to determine whether there are legislative, regulatory or procedural ways to improve the efficiency or effectiveness of the current system, without radically altering the departments or agencies involved. They will be able to understand whether expanding the remit of existing HUMINT collectors is required (i.e. GAC, CFINTCOM or CSIS). If these first options are not viable, they could then contemplate the rewards and risks of whether a new agency should be established. Subsequently, these senior intelligence leaders will be positioned to make recommendations to the federal Cabinet, at the political level, about what must come next.

## RECOMMENDATION

21. The leadership of Canada's intelligence collection community should establish an interdepartmental working group to examine and evaluate how it collects foreign intelligence from human sources in order to determine whether the system currently in place is sufficiently efficient and effective in an increasingly unstable and competitive global environment.

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<sup>47</sup> Both entities are mandated to review Canada's intelligence activities and the departments carrying them out. A full discussion of their activities is beyond the scope of this paper. For more on NSIRA, see <https://nsira-ossnr.gc.ca/en/about-nsira/what-we-do/>. For more on NSICOP, see <https://www.nsicop-cpsnr.ca/about-a-propos-de-nous-en.html>.

<sup>48</sup> For example, EX minus 1 or EX minus 2 level or equivalent.

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