



True North in
Canadian public policy

Commentary

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Shining a Brighter Light on Foreign Influence in Canada

David Mulrone

We can and should shine a brighter light on the activities of those Canadians whose political or policy work for foreign entities is, for a variety of reasons, less transparent than it needs to be. I refer to such individuals as “foreign agents.”

For the purposes of this paper, a foreign agent is a Canadian who lobbies or communicates on behalf of a foreign principal¹ to influence Canadian government policy or public opinion in Canada. While acting as a foreign agent overlaps in many important ways with what we have traditionally defined as lobbying, it can include activities, such as public political advocacy on behalf of a foreign principal, that aren’t adequately covered under the definition of lobbying set out in the *Federal Accountability Act* of 2006.

Canadians are free to represent the interests of foreign principals here in Canada, but it is in the national interest that this be done openly and transparently. This is particularly important when the person doing this is a former minister (including the prime minister) or other holder of high office. These are people who have held positions of great trust, and who therefore have an ongoing responsibility to protect the national interest. In Canada, such people often continue to wield influence, to network freely and frequently with current senior officials, and to speak publicly on issues of national importance. This is all well and good, but it needs to be done transparently.

We need to guard against foreign threats to the integrity of our national institutions, Parliament and the Public Service among them. And we need to build this awareness into how we think about national security.

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Since the Second World War, a number of countries have been credibly accused of engaging in acts of covert political interference in Canada. Such interference has almost certainly been enabled by the tendency of various Canadian governments to dabble in diaspora politics, in effect, identifying particular communities as having continuing links to their home countries, and investing this with political importance. Highlighting diaspora groups in this way has made them obvious targets for foreign intelligence agencies seeking to identify or intimidate political opponents residing in Canada, or to enlist diaspora community support to influence political discourse or decision-making in Canada.

It is not being alarmist to suggest that foreign countries continue to seek influence in Canada, and that some are even willing to interfere covertly in Canadian affairs. If anything, the threat is growing.

The rise of China has added special urgency to the question of foreign influence and foreign interference.² And while diaspora politics plays a role in this, China's reach and influence now extends far beyond the Chinese diaspora community.

China's Communist Party has well-developed mechanisms for influencing political opinion in foreign countries. This frequently involves the use of agents of influence in target countries.

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In recent years, the problem has become far more serious for three inter-related reasons:

- The economic rise of China, which has propelled a tidal wave of money into western economies, and vastly increased China's exposure, engagement and influence;
- The rise of Chinese ambition, assertiveness and aggression internationally over the last decade;
- The difficulty in drawing a clear line between the Chinese state and Chinese corporations, including companies that are not designated as state-owned enterprises.

This third concern was given new credibility with President Xi Jinping's 2017 National Intelligence Law, which directs private citizens and companies to aid in the state's intelligence work. This means that any Chinese company can be required to act on behalf of the Party.

Australia is ahead of us in responding to this challenge, most notably through the recently launched *Foreign Influence Transparency Scheme*, which requires an Australian who acts on behalf of a foreign principal to register and identify the foreign principal. The Australian government's action is largely in response to an increasing number of incidents in Australia that point to clandestine efforts by Chinese state actors seeking to influence or interfere in Australian politics and governance.

Australia is at pains to explain that their new legislation is not about barring individuals from acting for foreign principals, but simply to ensure that they do so transparently.

It is important to note that the Scheme exempts private Australian citizens who are working as employees of foreign principals, Australians who are working as local employees of foreign embassies, law firms advising foreign clients, or people carrying out humanitarian or religious work. These roles are either public or, in the case of legal advice, clearly understood.

But the Scheme sets the bar far higher for former ministers, who must report *any* connections with foreign principals, a requirement that applies for life. Other senior office holders, such as former members of Parliament, and former senior civil servants, including retired ambassadors, must comply for 15 years. What’s important here is that the expectation of transparency goes beyond lobbying per se, and includes any instance in which the former minister or senior public servant is being paid to share experience gained as an office holder.

The Scheme also covers people who undertake politically-oriented “communications activities” for a foreign principal. If we were to apply it in Canada, for example, it would cover instances in which a former Canadian office holder delivers public messages on behalf of a foreign principal. It would also cover instances in which student associations or other Canadian-based organizations are used to disseminate political messages on behalf of foreign principals. Here, the key point is that, for the activity to be lawful, there must be some form of disclosure that identifies the source of the material and on whose behalf it is being shared.

The Australian policy has some teeth. Australia’s Attorney General can issue “Transparency Notices” that identify individuals or entities as being associated with a foreign government. The Attorney General’s office is backed up by Australia’s intelligence agencies working in an investigative role. Individuals and entities can contest any such finding, but, if unsuccessful, the designation becomes official.

These powers could also be used to order the production of evidence in cases where, for example, the government believes that a foreign company, even one that is described as being private, is actually acting at the direction of its government. Various forms of non-compliance can, in turn, trigger criminal prosecution.

Much of what Australia has done could be applied in Canada.³ I would, for example, apply the same transparency regulations, and exemptions, for the majority of Canadians involved in such work. But I would go a few steps farther than Australia when it comes to setting expectations for former high-level officials.

Under Canada’s *Accountability Act*, a broad community, ranging from ministers down to assistant deputy ministers and others at equivalent public service and military ranks, are referred to as Designated Public Office Holders, and are bound to refrain from lobbying for 5 years. But the *Accountability Act* is effectively silent about whether such lobbying is on behalf of domestic or foreign principals.

I believe that we need new legislation to add an important second layer of accountability for the same Designated Public Office Holders identified in the *Accountability Act*.

Legislation establishing a registry of foreign agents would allow us to do this by requiring former holders of high office to report virtually *any* activity for which they are paid by foreign principals.⁴ In this respect, I would copy Australia’s approach of requiring former ministers to register any such activity for life. Likewise, I would suggest that other Designated Public Office Holders be bound for 15 years. It is worth noting, again, that this isn’t about forbidding such activities, merely insisting that they be undertaken transparently.

I would, however, suggest that any appointee to a federal board, agency, foundation or council⁵ in Canada be prohibited from serving as a foreign agent for the duration of his/her appointment.

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Finally, I would also add the requirement that individuals who act as foreign agents are ineligible for membership in the Privy Council, which means forgoing what would otherwise be lifelong membership in a community of respected advisers to government. While the role is largely symbolic, it carries significant prestige (members retain the titles “Right Honourable” or “Honourable” for life) and, in some cases, offers access to privileged information.⁶ It’s a community that includes former prime ministers, ministers, governors general, chief justices and a range of other notable Canadians nominated by various prime ministers over time.

The aim here is two-fold:

We need to signal to foreign governments that any former Canadian official they hire has, by definition, stepped away from his or her role as a privileged adviser to governments in Canada.

The process would also convey a message to our most senior officials when they retire: while you are free to act as a foreign agent, you must put aside the privileges and the prestige that come with being part of a community of trusted “insiders,” and you must register to ensure that all Canadians fully understand the context that may be shaping your ongoing policy advice and public opinions.

You can’t be both a distinguished adviser to Her Majesty’s Canadian government and someone who is paid to influence that government on behalf of a foreign principal.

Finally, a new law covering the activities of foreign agents would equip us to deal with what might best be described as foreign interference by proxy. I am thinking here of the possibility that foreign governments might channel their political messages covertly through current and former Canadian politicians or via seemingly disinterested players such as local community leaders, media outlets, or student associations. Again, the key consideration is transparency about sources. The problem is that such messaging, if done covertly, misleads the public and can even serve to shield foreign officials who are attempting to harass and intimidate Canadians or visitors to Canada.

Australia has provided a highly useful template. It’s time for Canada to act.

About the Author



David Mulrone is a Distinguished Fellow at the University of Toronto's Munk School of Global Affairs and Public Policy. He served as Ambassador of Canada to the People's Republic of China from 2009 to 2012.

Prior to his appointment to Beijing, Mr. Mulrone was assigned to the Privy Council Office in Ottawa as the Deputy Minister responsible for the Afghanistan Task Force, overseeing inter-departmental coordination of all aspects of Canada's engagement in Afghanistan. He also served as Secretary to the Independent Panel on Canada's Future Role in Afghanistan ("the Manley Panel").

Mr. Mulrone's other assignments included serving as Associate Deputy Minister of Foreign Affairs and, concurrently, as the Prime Minister's Personal Representative to the G8 Summit. Immediately prior to that, he served as Foreign and Defence Policy Advisor to the Prime Minister of Canada.

A career Foreign Service officer, Mr. Mulrone had a series of senior appointments in the Foreign Affairs Department in Ottawa, including 4 years as Canada's Senior Official for Asia Pacific Economic Cooperation (APEC). He served on overseas assignments in Taipei, Kuala Lumpur, Shanghai and Seoul. From 1995 to 1998 he was Executive Director of the Canada-China Business Council.

Mr. Mulrone joined the Foreign Service in 1981 and participated in full-time Mandarin training at the Canadian Forces Language School.

From 2015-2018, he served as President and Vice Chancellor of the University of St. Michael's College. He currently represents the Archdiocese of Toronto on the board that governs the city's 3 Catholic hospitals.

Endnotes

- 1 A foreign principal is a foreign government entity or a foreign political entity, or a person or entity that is linked to either of these. I am drawing on the Australian definition, which is carefully elaborated in the background documents that accompanied their own transparency legislation. See <https://www.ag.gov.au/Integrity/foreign-influence-transparency-scheme/Pages/Resources.aspx>.
- 2 In focusing on China, I do not discount influence from other sources. But aside from being the country I know best, China is, in my estimation, far and away the greatest source of current risk.
- 3 I am agnostic as to whether we do this under the *Accountability Act* or under stand-alone legislation.
- 4 This would include lobbying, but would extend to any arrangement in which retired officials trade on their former status, including functions such as serving as a strategic adviser or board member of a foreign principal, public advocacy for a foreign principal, or acting to disseminate the political views of a foreign principal. Exemptions would be available for international assignments that accord with Canada's values and interests in areas such as rule of law, humanitarian assistance, human rights, global financial stability, and environmental protection.
- 5 Think, for example, of the sensitivities surrounding boards for the Canadian Security Intelligence Service and the National Research Council. Think, too of the Asia Pacific Foundation, which received core funding from taxpayers to provide expert, disinterested advice to help Canadians better understand the implications of a more Asia-centered future.
- 6 Membership suggests the highest level of trust. Opposition leaders are at times sworn into the Privy Council so that they can have access to sensitive information, as are appointees to the Security Intelligence Review Committee.



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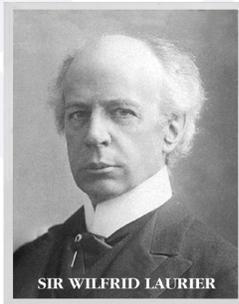
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