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Full submission to the House of Commons Standing Committee on Public Safety and National Security on key changes needed to Parts 2 and Part 4 of Bill C-70, *An Act respecting countering foreign interference* and related lobbying laws

Key changes needed to close loopholes in amendments to the "*Foreign Interference and Security of Information Act*" ("*FISIA*" – new title) and the proposed new *Foreign Influence Transparency and Accountability Act* (*FITAA*) and related lobbying laws that allow for secret foreign interference activities, and to ensure effective enforcement of all these laws

A. Summary

Click here to see the webpage for Bill C-70, *An Act respecting countering foreign interference*, on the LEGISinfo website, and click here to see the text of Bill C-70 at first reading stage, upon which this submission is based.

Part 4, s. 113 of Bill C-70 is the proposed new *Foreign Influence Transparency and Accountability Act* (*FITAA*). Part 2 of Bill C-70 adds related new provisions to the federal *Security of Information Act* (proposed in the Bill to be changed to the "*Foreign Interference and Security of Information Act*" (*FISIA*)) containing the offences for actually undertaking secret influence activities that relate to the offences set out in the *FITAA* for failing to register and disclose influence activities.

The points set out below in Part B detail the key gaps in the proposed *FITAA*, and some of the following points also detail related key gaps in the proposed new provisions to be added to the *FISIA*. Some of the points in Part B also detail related key gaps in the federal *Lobbying Act* and provincial, territorial and municipal lobbying disclosure laws.

These gaps mean significant unethical, undemocratic and secret foreign interference activities in Canadian politics will continue to be legal, and foreign agents will not be required to register or disclose these activities in the proposed new Foreign Influence Registry (FIR).

Even if these gaps are closed, the proposed enforcement system for the *FITAA*, and the enforcement system for *FISIA*, and the current enforcement system for the federal *Lobbying Act* and lobbying laws across Canada, and the general anti-corruption and anti-foreign interference system through the RCMP and FINTRAC, lacks independence, effectiveness, transparency and accountability.

The enforcement system changes set out below in Part C need to be made to Parts 2 and 4 of Bill C-70, and similar changes are needed to the enforcement system for the Lobbying Act and lobbying laws across Canada, to ensure independent, non-partisan, effective, transparent and accountable enforcement of the *FITAA*, *FISIA* and lobbying laws.

NOTE: Democracy Watch has also provided a summary submission to the Clerk of the Committee that simply listed the key changes needed to Bill C-70 and related federal, provincial, territorial, municipal and Indigenous government laws that are detailed below.

B. Loopholes that need to be closed in proposed *Foreign Influence Transparency and Accountability Act* (*FITAA*) and new provisions in *Foreign Interference and Security of Information Act* (*FISIA*), and related lobbying disclosure laws across Canada, because they allow for secret, unethical and undemocratic foreign interference and influence activities

Close loophole that allows for foreign interference arrangements with entities, and allows arrangements with entities to be kept secret

1. In s. 2 of the *FITAA*, the definition of “arrangement” only covers a “person” who has an arrangement with a “foreign principal” to register and disclose their activities in the proposed new "Foreign Influence Registry" (FIR). Related sections 5, 7, 17, 19, 20 and 23-25, and subsections 18(1) and 21(1), and clause 16(2)(a) of *FITAA* also only cover a “person” as does proposed new ss. 20.4 and 22 of the *FISIA*. This means businesses, organizations and other entities will be allowed to have such arrangements, and won’t be required to disclose their activities in the FIR. These provisions should all be amended to also cover any “entity” that has such an arrangement, and sections 23-25 of the *FITAA*, and s. 22 of *FISIA*, should be specifically amended to clarify that the penalty of a

prison term will be served by the persons in the entity who made the arrangement with the foreign principal. If this change is not made, it will be unclear whether entities are covered, which undermined enforcement of federal ethics rules by the federal Conflict of Interest and Ethics Commissioner ("Ethics Commissioner") for years.
(NOTE: The same changes should be made in proposed new subsection 20.4 and in the proposed changes to s. 22 of the *FISIA*, which are set out in s. 53 of Bill C-70).

Remove provisions in *FITAA* that allow Cabinet to exempt foreign interference arrangements and foreign agents from the law

2. Under clauses 6(1)(c) and 6(2)(b) and ss. 27(e) of the *FITAA*, the federal Cabinet is empowered to exempt classes of arrangements and persons from the requirements set out in the *FITAA*. This is a dangerous power that should be removed from the *FITAA* because the record of Cabinet ministers maintaining significant, well-known loopholes in the *Lobbying Act* and *Conflict of Interest Act* (and the code that preceded it) for the past more than 30 years, loopholes that allow for secret, unethical lobbying of Cabinet ministers and other federal public officials, and also allow for clearly unethical actions and secret investments by Cabinet ministers, shows clearly that Cabinet ministers are likely to abuse this power by enacting regulations (which do not have to be reviewed or approved by Parliament) to allow for secret, unethical and undemocratic foreign interference activities to continue to be legal.

Close loophole in *Lobbying Act* that allows for secret lobbying if lobbyist is not paid or lobbies as an employee less than 20% of work time, so foreign agents can't use lobbyists as "proxies" for secret influence

3. In s. 2 of the *FITAA*, the definition of "arrangement" requires foreign agents to register and disclose their activities in the proposed new FIR whether their activities are paid and unpaid by a "foreign principal". Proposed new subsection 20.4(4) of the *FISIA* also prohibits interference "at the direction of, or in association with" a foreign principal with no requirement that the foreign agent be paid. It should be noted that Kenny Chiu's and Senator Housakos' private member bills only covered paid lobbying activities and so, despite all the attention their bills garnered, their bills would not have required anything to be disclosed that was not already required to be disclosed under the federal *Lobbying Act*. This new definition of "arrangement" is very important because it covers all activities, paid or unpaid, no matter how much time is spent on the

activities. These definitions in *FITAA* and *FISIA* raise the question of why the *Lobbying Act* has a huge loophole in it that does not require unpaid lobbying activities to be disclosed in the Registry of Lobbyists, nor lobbying activities by employees of businesses (especially, and also organizations somewhat) that amount to less than 20 percent of their work time. This loophole in the *Lobbying Act* must be closed because, as long as it is left open, people and entities that have an arrangement with a foreign principal will be able to make an arrangement with another Canadian citizen or permanent resident to pay them for general advice and, on an unpaid basis, to act as their "proxy" to have them communicate in secret what they want communicated to public office holders.

Close loophole in *Lobbying Act* that allows for secret communications, so foreign agents can't use lobbyists as "proxies" for secret influence

4. In s. 2 of the *FITAA*, the definition of "arrangement" requires foreign agents to disclose all of their "communicating with a public office holder" in the FIR. This definition in *FITAA* raises the question of why the *Lobbying Act* has huge loopholes in it that do not require some types of communications to be disclosed in the Monthly Communication Reports in the Registry of Lobbyists? Only oral, pre-arranged communications that are initiated by the lobbyist, and such communications that are initiated by the public office holder if the communication is about a financial benefit, are required to be disclosed monthly under the *Lobbying Act* (which means emails, letters, texts are not covered, nor are communications initiated by the office holder that are not about financial benefits). This loophole in the *Lobbying Act* must be closed because, as long as it is left open, people and entities that have an arrangement with a foreign principal will be able to make an arrangement with another Canadian citizen or permanent resident to pay them as their proxy to lobby for them and communicate in secret what they want communicated to public office holders.

Close loopholes in *Lobbying Act* that allows for secret lobbying about contracts, enforcement and tax credits, so foreign agents can't use lobbyists as "proxies" for secret influence

5. In s. 2 of the *FITAA*, and proposed new ss. 20.4(4) of the *FISIA*, the definition of "political or governmental process" includes "any proceeding" of a federal (House and Senate) or provincial legislative committee and other legislative bodies and any "decision by a public office holder or government body, including the awarding of a contract" so all

communications (whether paid or unpaid) about all of these proceedings and decisions will be required to be disclosed in the FIR. This raises the question why lobbying through presentations and submissions to House and Senate committees, and lobbying about decisions re: contracts, enforcement of laws and regulations or tax credits, are not required under the *Lobbying Act* to be disclosed in the Registry of Lobbyists? This loophole in the *Lobbying Act* must be closed because, as long as it is left open, people and entities that have an arrangement with a foreign principal will be able to make an arrangement with another Canadian citizen or permanent resident to pay them as their proxy to lobby for them on contracts, enforcement and tax credits.

Close loophole in *FITAA* and *FISIA* so foreign interference in political party leadership contests and platforms is prohibited and required to be disclosed

6. In s. 2 of the *FITAA*, the definition of "political or governmental process" also includes elections, nomination contests and the "development of an electoral platform by a political party." This loophole must be closed to include party leadership contests and the development of a platform by a party leadership contestant in the definition of “political or governmental process” because all party leaders play a very significant role in our political system, and the platform of a winning party leadership contestant often forms the basis for the electoral platform of the winning contestant’s party.
   (NOTE: The same changes should be made to the definitions of "political or governmental process" in proposed new subsection 20.4(4) of the *FISIA*, which is set out in s. 53 of Bill C-70).

Close loophole in *FITAA* and *FISIA* so foreign influence communications with non-public office-holding nomination and party leadership contestants and election candidates are prohibited and required to be disclosed

7. Related to the "political or governmental process" definition discussed above in point #6 and the definition of “public office holder” discussed below in point #9 is that, under these two definitions, only communications with "public office holders" who hold public office at the time of the communication will be covered. This means communications with nomination contestants and party leadership contestants who are not already MPs, members of Cabinet, Senators or government employees or appointees will not be prohibited by FISIA nor will they be required to be

disclosed in the FIR, nor will communications with election candidates who are not members of Cabinet (because MPs cease to be MPs as soon as the writ for a general election is issued) or who are not Senators or government employees or appointees. This loophole must be closed so that these communications trigger a requirement to register in the FIR. (NOTE: This same change should be made in the definition of "public office holder" in proposed new subsection 20.4(4) of the *FISIA*, which is set out in s. 53 of Bill C-70).

Close loophole in *FITAA* and *FISIA* so foreign influence communications with prospective MPs and Senators are prohibited and required to be disclosed (and close same loophole in other laws)

8. As noted above in point #7, and below in point #9, in s. 2 of the *FITAA* the definition of "public office holder" covers MPs and Senators. However, it is unclear in Canadian law when exactly a successful election candidate becomes an MP and when a person who has been announced as a Senator becomes a Senator or, in the term used in the *Criminal Code* s. 118, when either become an "official" who holds an office. The *Parliament of Canada Act* specifies that a successful election candidate begins to be paid as an MP from election day on, and the *CEA* specifies that the election results are confirmed when the writ for each returned by the returning officer for each EDA to the Chief Electoral Officer (CEO), and the *House of Commons Procedure and Practice* book states that the CEO provides the final, certified list of MPs to the Clerk of the House, and that MPs have a right to take their seat and vote in the House after they take their oath. However, none state plainly exactly when a person who won election becomes an MP.[1] The *Parliament of Canada Act* is silent on the definition of an MP. Similarly, it is unclear, after the Prime Minister announces that a person has been appointed to the Senate, when that person legally becomes a Senator (i.e. a "public office holder").
This needs to be clarified in law because, if there is a time period during which someone knows they will be an MP or Senator but is not yet an office holder, that person can be offered, and can accept, bribes that are not covered by the anti-bribery, anti-corruption provisions in sections 119, 121 and 122 in the *Criminal Code*, nor by sections 16 and 41 to 41.5 of the *Parliament of Canada Act*, and foreign agents are also allowed to try to influence them in other ways in secret, including through secret lobbying not covered by the *Lobbying Act*.

[1] Andre Barnes, *When Does an Elected Candidate Become a Member of the House of Commons?* (Ottawa: Library of Parliament, February 2010), online: https://publications.gc.ca/collections/collection_2015/bdp-lop/eb/YM32-5-2010-07-eng.pdf.

(NOTE: This same change should be made in the definition of "public office holder" in proposed new subsection 20.4(4) of the *FISIA*, which is set out in s. 53 of Bill C-70).

Close loophole in *FITAA* and *FISIA* so foreign influence communications with all public office holders at every level of government are covered

9. In s. 2 of the *FITAA* the definition of "public office holder" covers MPs and Senators, their staff, Cabinet appointees (other than a few exceptions addressed below in point #12) and all government employees (including all directors, officers, members and employees of agencies, boards, commissions, tribunals and government corporations). However, the definition only covers politicians and their staff at the provincial and municipal level and in Indigenous governments. This should be changed so that the *FITAA* covers all politicians, their staff, Cabinet appointees and government employees (including all directors, officers, members and employees of agencies, boards, commissions, tribunals and government corporations) at the provincial and municipal level and in Indigenous governments (and, as addressed below in point #11, also to cover all these people at the territorial level of government).

Remove provision in ss. 27(b) of *FITAA* that allows Cabinet to exclude people from the definition of "public office holder"

10. Under ss. 27(b) of the *FITAA*, the Cabinet is given the power to exclude people from the definition of "public office holder" in s. 2 (and the s. 2 definition allows this as it says that everyone listed is an office holder "unless they are excluded by the regulations"). This is a dangerous power that should be removed from the *FITAA* because the record of Cabinet ministers maintaining significant, well-known loopholes in the *Lobbying Act* and *Conflict of Interest Act* (and the code that preceded it) for the past more than 30 years, loopholes that allow for secret, unethical lobbying of Cabinet ministers and other federal public officials, and also allow for clearly unethical actions and secret investments by Cabinet ministers, shows clearly that Cabinet ministers are likely to abuse this power by enacting regulations (which do not have to be reviewed or approved by Parliament) to allow for secret, unethical and undemocratic foreign interference activities to continue to be legal.

Close loophole in *FITAA* and *FISIA* so foreign influence communications with territorial politicians and public officials are prohibited and required to be disclosed

11. Under s. 2 of the *FITAA*, foreign interference and influence communications with politicians and public officials in the three territories will not be required to be disclosed because clause (b) of the s. 2 definition of “public office holder” incorporates the definitions of “public office holder” from clauses 4(1)(a) to (c) of the federal *Lobbying Act*, and those clauses only cover provincial and municipal politicians and public officials. The definition in s. 2 of the *FITAA* should be expanded to cover politicians and all public officials in all three territories as also addressed above in point #9.
    (NOTE: This same change should be made in clauses (b) and (c) of the definition of “public office holder” in proposed new subsection 20.4(4) of the *FISIA*, which is set out in s. 53 of Bill C-70).

Close loophole in *FITAA* and *FISIA* so foreign influence communications with judges and lieutenant governors are prohibited and required to be disclosed

12. Under s. 2 of the *FITAA*, foreign interference and influence communications with federally-appointed judges and lieutenant governors across Canada will also not be required to be registered and disclosed in the FIR because clause (a) of the s. 2 definition of “public office holder” incorporates the definition of “public office holder” from ss. 2(1) of the federal *Lobbying Act*, and that subsection exempts federally-appointed judges and lieutenant governors. It does not interfere with judicial independence to prohibit foreign agents from influencing judges nor to require disclosure of those influence activities, and it does not affect the office of lieutenant governors in a way that affects their constitutional powers to prohibit foreign agents from influencing them nor to require disclosure of those influence activities.
    (NOTE: This same change should be made in clause (a)(ii)) of the definition of “public office holder” in proposed new subsection 20.4(4) of the *FISIA*, which is set out in s. 53 of Bill C-70).

Close loophole in *FITAA* and *FISIA* so foreign influence communications with staff, volunteers, friends, family members and close associates of contestants, candidates and parties are covered, so foreign agents can't use lobbyists as "proxies" for secret influence activities

13. Related to the "political or governmental process" definition discussed above in point #6 and the definition of "public office holder" discussed above in point #9 is that, under these two definitions, communications by a foreign agent with the "staff" (whether paid or volunteer), friend, family member or close associate of a nomination contestant, party leadership contestant, election candidate or political party will not be covered, no will communications with a friend, family member or close associate of any politician or office holder covered by the definition of "public office holder". As a result, these communications will not trigger a requirement to register in the FIR. These communications should all be covered. If they are not, foreign governments and entities will, in order to undertake secret interference and influence activities that do not have to be registered in the FIR, communicate with these proxies for contestants, candidates, parties, politicians and/or office holders and have them pass on the communication to the contestant, candidate, party, politician and/or office holder.
    (NOTE: The same additions should be made in the definitions in proposed new subsection 20.4(4) of the *FISIA*, which is set out in s. 53 of Bill C-70).

Close loophole in *FITAA* and *FISIA* so foreign interference by all foreign-owned or controlled businesses will be prohibited and required to be disclosed

14. Under s. 2 of the *FITAA*, the definition of "foreign principal" includes a foreign business that "is controlled, in law or in fact, or is substantially owned" by a foreign government or governments. This means some foreign businesses (like China's state-owned businesses) will be required to disclose any foreign interference and influence activities in the FIR. However, proposed new subsection 20.4(4) of *FISIA* will not prohibit foreign interference activities on behalf of state-owned or controlled businesses because such a "foreign economic entity" is not covered by the existing definition of "foreign power" in ss. 2(1) of *FISIA*. This should be changed so that *FISIA* prohibits these activities by these businesses. In addition, a broader question is why all businesses in Canada that are controlled (in law or in fact) by a foreign business or are substantially owned by a foreign business are not required to disclose all of the above lobbying activities, given their activities are as much foreign interference

and influence in Canadian politics as the activities of foreign governments are.

Change *FITAA* to detail information required to be disclosed in FIR, and requirements for updates and information retention and disposal, instead of allowing Cabinet to develop regulations

15. Under ss. 5, 6 and 8, and ss. 27(c), (d), (f) and (g) of the *FITAA*, the Cabinet is empowered to develop regulations concerning the information that will be required to be disclosed in the FIR, requirements for updates, and retention and disposal of that information by the FIT Commissioner. This is a dangerous power that should be removed from the *FITAA*, and instead the details of these rules should be set out in ss. 5, 6 and 8 of the *FITAA*. the record of Cabinet ministers maintaining significant, well-known loopholes in the *Lobbying Act* and *Conflict of Interest Act* (and the code that preceded it) for the past more than 30 years, loopholes that allow for secret, unethical lobbying of Cabinet ministers and other federal public officials, and also allow for clearly unethical actions and secret investments by Cabinet ministers, shows clearly that Cabinet ministers are likely to abuse this power by enacting regulations (which do not have to be reviewed or approved by Parliament) to allow for secret, unethical and undemocratic foreign interference activities to continue to be legal. Sections 5, 6 and 8 of the *FITAA* should require details of every activity and any communication (not matter how the communication happens) to be disclosed, with updates required with 10 days of any activity or communication, and the Commissioner should be required to retain information for 10 years.

Federal government should not delay extending *FITAA* to provincial and municipal (and territorial) public office holders, as *Constitution* allows federal government to do

16. Under ss. 117(2) of the *FITAA*, the *FITAA* will not apply to communications with politicians and other office holders in a province or municipality (or, as mentioned above in point #11, in a territory) until clause (b) of the definition “public office holder” in s. 2 of the *FITAA* and clause 4(b) of the *FITAA* are proclaimed into force by the federal Cabinet. While a law such as the *FITAA* is unprecedented in Canada, and therefore it is unclear whether the federal Parliament has the power under the *Constitution* to require communications with politicians and other office holders in a province or municipality to be disclosed in the FIR, the federal government should not negotiate for very long with any provincial

government before proclaiming clause (b) of s. 2 and clause 4(b) into force. Given the federal government has the power under the *Constitution* in the areas of defence, national security and foreign relations, it should assert its power to apply the provisions of the *FITAA* and *FISIA* to provinces and municipalities (and, again, territories). It makes no sense to wait for provincial governments to enact their own laws prohibiting foreign interference and influence activities in their province and municipalities and establishing a foreign agent registry and commissioner, nor does it make any sense to have 11 different sets of rules, registries and commissioners.

Close loopholes in provincial, territorial, municipal and Indigenous lobbying laws that allow for secret lobbying and communications, so foreign agents can't use lobbyists as "proxies" for secret influence

17. As mentioned above in point #9, under s. 2 of the *FITAA*, the definition of "public office holder" includes politicians and their staff in municipal governments, band councils and Indigenous governments. Lobbying of all these people is not covered by the federal *Lobbying Act* or by provincial or territorial lobbying laws, and only a few municipalities across Canada have lobbying disclosure by-laws and public registries. The definitions of "office holder" and "political and government process" in section 2 of the *FITAA* also cover all communications (paid or unpaid) about "any proceeding" and any "decision" by provincial and territorial politicians and government institutions. Like the *Lobbying Act*, all the provincial and territorial lobbying laws also exempt unpaid lobbying and lobbying about enforcement of laws and regulations and some also exempt decisions about contracts. So these disclosure requirements in the *FITAA* for the FIR will also raise the same questions as above about why these kind of lobbying activities are not required to be disclosed under provincial and territorial lobbying laws and municipal and indigenous governmental institution lobbying by-laws across Canada.

C. Changes needed to proposed *Foreign Influence Transparency and Accountability Act* (*FITAA*) to ensure independent, non-partisan, effective, transparent and accountable enforcement

Make Foreign Influence Transparency Commissioner ("FIT Commissioner") an officer of Parliament funded by Parliament, not a government employee

18. Under s. 116 of Bill C-70, the proposed new Foreign Influence Transparency Commissioner ("FIT Commissioner") will be a federal government employee reporting to the Minister of Public Safety. This should be changed because the FIT Commissioner must be a fully independent office and commissioner without any appearance of reporting to in secret or legally, or being under the control of, the ruling party Cabinet. To ensure this, s. 116 should be amended to make the FIT Commissioner an Officer of Parliament reporting to Parliament, who should (like the Conflict of Interest and Ethics Commissioner under ss. 84(6) to (8) and 86(3) of the *Parliament of Canada Act*) submit proposed annual funding estimates to Parliament, be paid and have all staff and office expenses paid by Parliament, and report only to a committee of the House of Commons). There must be no reason for any member of the public to perceive the FIT Commissioner as being partisan in any way.

Change *FITAA* so FIT Commissioner is chosen by an all-party committee from a short-list of qualified candidates submitted by a fully independent appointments committee after a public, merit-based search

19. Under ss. 9(1) and (2) of the *FITAA*, the Foreign Influence Transparency Commissioner ("FIT Commissioner") cannot be chosen by the ruling party Cabinet. The Liberals have shown through their appointments of several democratic good government commissioners (e.g. the Conflict of Interest and Ethics Commissioner and Commissioner of Lobbying in November-December 2017) that their definition of "consultation" with the leaders of other parties was only to sending them the Cabinet's nominee and giving them a week to respond and then appointing the nominee no matter how the other leaders responded. To ensure that the FIT Commissioner will not be perceived by any members of the public to be partisan in any way, a fully independent committee, whose members have no ties to any political party, and whose members are approved by all federal parties with seats in the House of Commons, must be established to undertake a public, merit-based search for candidates for the position of FIT Commissioner, and then the committee must recommend a short-list of no more than three fully qualified candidates to a committee made up of MPs

from all federal parties with seats in the House, who should be required to choose the FIT Commissioner by consensus.

Change *FITAA* to prohibit Cabinet from reducing term of FIT Commissioner to less than 7 years

20. Under ss. 9(3) of the *FITAA*, the length of the term of the FIT Commissioner is “up to seven years”. The term must be fixed at seven years to prevent a government from decreasing the term so they could appoint someone for a short term to see if they cause any problems for the government, and then appoint another person for a short term to see if they cause any problems for the government etc. Again, there must be no reason for any member of the public to perceive the FIT Commissioner as being partisan in any way.

Change *FITAA* so FIT Commissioner serves only one term to prevent Commissioner from trying to please politicians to be re-appointed

21. Under ss. 9(4) of the *FITAA*, the FIT Commissioner must only serve one term and not be eligible for reappointment for a second term to prevent them from favouring the government during the last part of their term in office in order to win reappointment for another term. Again, there must be no reason for any member of the public to perceive the FIT Commissioner as being partisan or serving politicians in any way.

Change *FITAA* to prohibit Cabinet from appointing interim commissioner if FIT Commissioner leaves office during term; Deputy Commissioner should fill role while independent process chooses new commissioner

22. Under ss. 9(5) of the *FITAA*, if the FIT Commissioner leaves office during their term, the government Cabinet should not be allowed to appoint any interim person. Instead, the Deputy Commissioner should automatically become the interim Commissioner and a new commissioner should be required to be appointed within 4 months using the process set out above in point #17. Again, there must be no reason for any member of the public to perceive the FIT Commissioner as being partisan in any way.

Change *FITAA* to specify that FIT Commissioner appoints Deputy Commissioners, officers and employees of the Commissioner office

23. Under ss. 11(1) of the *FITAA*, it should be specified that the FIT Commissioner appoints Deputy Commissioners, officers and employees

(it currently doesn't say who will do these appointments). Again, there must be no reason for any member of the public to perceive the FIT Commissioner as being partisan or under the control of politicians or lacking independence in any way.

Change *FITAA* to require FIT Commissioner to investigate and issue a public ruling on every situation

24. Under ss. 16(1) of the *FITAA*, the FIT Commissioner should be required to conduct an investigation of every situation that the Commissioner becomes aware of that gives that Commissioner reason to believe that an investigation is needed to ensure compliance with the *FITAA*, and must be required to issue a public decision/ruling after every investigation. If this is not required, then the FIT Commissioner will likely fail to investigate or bury investigations of many situations, as the federal Ethics Commissioner, Commissioner of Lobbying and Commissioner of Canada Elections have all done many times over the past 20 years.

Change *FITAA* to require FIT Commissioner to impose a penalty for every violation, and change *Lobbying Act* to create and require penalties to be imposed, and increase penalties based on income of violator

25. Under ss. 18(1) and (2) of the *FITAA*, the Commissioner can penalize a violation with an Administrative Monetary Penalty ("AMP"). This raises the question why the Commissioner of Lobbying is not empowered to impose AMPs on violators of the *Lobbying Act* and the federal Ethics Commissioner is not empowered to impose AMPs on violators of the *Conflict of Interest Code for Members of the House of Commons* ("*MP Code*") nor for violations of almost all of the key provisions in the *Conflict of Interest Act*. In addition, the FIT Commissioner must be required to penalize every violation with an AMP to discourage violations. If this is not required, then the FIT Commissioner will likely fail to penalize most violators, as the federal Ethics Commissioner and RCMP and Commissioner of Lobbying both have over the past 20 years (they have let off about 85% of violators with no penalty over the past 20 years). Finally, AMPs and fines for offences should be on a sliding scale that increases proportionally as the annual income of the person or entity who violated the *FITAA* increases, to discourage violations by wealthy individuals and entities.

Change *FITAA* to require FIT Commissioner to include reasons for every decision

26. Under ss. 21(2) of the *FITAA*, the Commissioner must be required to include reasons in every decision issued. If this is not required, then the FIT Commissioner will likely issue rulings that do not provide adequate reasons to determine how and why the Commissioner made their decision, as the federal Ethics Commissioner and Commissioner of Lobbying both have done frequently over the past 20 years.

Change *FITAA* to allow any member of the public to challenge a FIT Commissioner decision in court, to ensure accountability

27. Under s. 26 of the *FITAA*, any member of the public must be allowed to challenge a Commissioner's decision in court to ensure that the Commissioner can be held accountable if they let someone off who has clearly violated the *FITAA*. If this right is not set out in *FITAA*, then the FIT Commissioner will likely be allowed to escape accountability before the courts for rulings that ignore facts or the law, as the federal Ethics Commissioner and Commissioner of Lobbying both have over the past 20 years.

Change the *FITAA* to require the FIT Commissioner to undertake regular, unannounced audits of political offices and communications

28. Enforcement of the *FITAA* should not be driven solely by complaints. The FIT Commissioner should be required to undertake regular, unannounced audits of the offices and communications of nomination contestants, election candidates, political party leadership contestants, political parties, MPs, Senators, and federal, provincial, territorial and Indigenous government institutions, appointees and employees.

Change the federal *Lobbying Act* so that the Commissioner of Lobbying is also independent, non-partisan, transparent and accountable and empowered and required to penalize all violations

29. The Commissioner of Lobbying is appointed by the ruling party Cabinet after only very limited consultation with the leaders of opposition parties, which makes it appear that the Commissioner is partisan and political. The Commissioner is allowed to and keeps many rulings secret, and if the Commissioner fails to investigate a situation and rule on it the Commissioner cannot be challenged in court. The Commissioner has no powers to penalize anyone who violates the *Lobbying Act*, and instead

refers violations to the RCMP, which usually does not prosecute violators. The Commissioner also has no power to penalize violators of the *Lobbyists' Code of Conduct*. The appointment process for the Commissioner must be made independent and non-partisan, and the Commissioner must be required to issue a public ruling on every situation the Commissioner reviews, with reasons, and any member of the public must be allowed to challenge any decision of the Commissioner in court. The Commissioner must also be empowered, and required, to penalize all violations.

Set deadline in *FITAA* for when *FITAA* will come into force

30. Under ss. 117(1), the *FITAA* won't come into force until Cabinet approves it. This should be changed to state that the *FITAA* comes into force as soon as Royal Assent occurs, and then deadlines should be set in the provisions concerning appointing the FIT Commissioner, establishing the FIR and requiring registration and disclosure of arrangements in the FIR.

Establish new, specialized, fully independent anti-corruption, anti-money laundering and anti-foreign interference police force because RCMP has been shown to be ineffective

31. To enforce the "offences" set out in ss. 23-25 of the *FITAA*, and in the *FISIA*, and in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, the *Criminal Code*, the *Lobbying Act* and related laws, a new, specialized, fully independent anti-corruption, anti-money laundering and anti-foreign interference police force must be created. The RCMP is not independent enough from the ruling party Cabinet to enforce laws in these three areas. Under subsections 5(1), 6(3) and 6.1(1) of the *RCMP Act* https://laws-lois.justice.gc.ca/eng/acts/R-10/
the RCMP Commissioner and Deputy Commissioner and the Commanding Officer of each Division of the RCMP, all of which head up the police force that currently enforces these type of provisions in these laws, along with the director of FINTRAC, are all appointed by the federal Cabinet alone (no consultation with the opposition parties is required, nor is an independent, merit-based search for qualified candidates required) and all of them also serve at the pleasure of Cabinet (i.e. can be fired at any time for any reason). In addition, the RCMP has shown clearly in both the SNC-Lavalin scandal and the Aga Khan scandal situations that it will roll over like a lapdog and try to bury investigations and let politicians off for unjustifiable reasons when there is clear evidence that they have violated anti-corruption laws, as has FINTRAC.

New, specialized, fully independent police force must be required to be independent, transparent and accountable like FIT Commissioner

32. As set out above in points #19-24 and 26-27, the heads and deputy heads of the new enforcing police force must be appointed through a fully independent process, serve one fixed term, and must be required to conduct an investigation of every situation that it that gives reason to believe that an investigation is needed to ensure compliance with the *FITAA*, and must be required to issue a public decision/ruling after every investigation with reasons for the decision/ruling, and anyone must be allowed to challenge any decision of the new force in court.