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MEMORANDUM TO: All Chiefs of Police and
Commissioner Thomas Carrique
Chairs, Police Services Boards

FROM: Stephen Waldie
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Public Safety Division and Public Safety Training Division

SUBJECT: **Bill C-59, *An Act respecting national security measures***

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On June 21, 2019 Bill C-59, *An Act respecting national security measures* received Royal Assent. The various parts of the Act will come into force on dates to be fixed by order of the Governor in Council.

The Act provides the Government of Canada with new authorities to address emerging national security threats while ensuring that these new authorities are compliant with the *Canadian Charter of Rights and Freedoms*.

The Act creates the following four new Acts:

- The *National Security and Intelligence Review Agency Act*;
- The *Avoiding Complicity in Mistreatment by Foreign Entities Act*;
- The *Intelligence Commissioner Act*;
- The *Canadian Security Establishment Act*.

The Act also amends other existing Acts, including:

- The *Criminal Code*;
- The *Canadian Security Intelligence Services Act*;
- The *Security of Canada Information Sharing Act*;
- The *Secure Air Travel Act*;
- The *Youth Criminal Justice Act*.

Overview of the Act

Part 1 enacts the *National Security and Intelligence Review Agency Act*, which establishes the National Security and Intelligence Review Agency (NSIRA) and sets out its composition, mandate and powers. The NSIRA will review and report on the lawfulness of all national security and intelligence activities across government, thereby enhancing accountability, transparency and the safeguarding of human rights in Canada in relation to national security measures. The NSIRA will also investigate complaints in relation to actions by the Canadian Security Intelligence Service, the Communications Security Establishment, and the Royal Canadian Mounted Police.

Part 1.1 enacts the *Avoiding Complicity in Mistreatment by Foreign Entities Act* to authorize the issuance of directions respecting:

- the disclosure of and request for information that would result in a substantial risk of mistreatment of an individual by a foreign entity, and
- the use of information that is likely to have been obtained as the result of mistreatment of an individual by a foreign entity.

Part 2 enacts the *Intelligence Commissioner Act*, which provides the duties and functions of the Intelligence Commissioner (IC). The IC has a mandate to review the justification for the authorization of certain activities and for certain determinations under the *Communications Security Establishment Act* and the *Canadian Security Intelligence Service Act*. The IC is fully independent of government.

Part 3 enacts the *Communications Security Establishment Act*, which establishes the Communications Security Establishment (CSE) and sets out its mandate and the regime for authorizing its activities. The CSE is the national signals intelligence agency for foreign intelligence and the technical authority for cybersecurity and information assurance. Its mandate has five aspects: foreign intelligence, cybersecurity and information assurance, defensive cyber operations, active cyber operations and technical and operational assistance. The Act

- (a) modernizes CSE's legal regime, and maintains a general restriction against CSE directing its activities at Canadians and persons in Canada, except with respect to technical and operational assistance;
- (b) authorizes the CSE to use certain online techniques to collect foreign intelligence, to identify foreign threats to Canada and to take action online to proactively address threats;
- (c) authorizes the CSE to extend its cyber protection activities to include private networks of importance to the Government of Canada, with the consent of the owner or operator of the network;
- (d) enables the CSE to provide technical and operational assistance to the Department of National Defence and the Canadian Forces, in addition to federal law enforcement and security agencies; and
- (e) adds new privacy and accountability measures, including a role for the new Intelligence Commissioner to review and approve foreign intelligence and cybersecurity authorizations.

Part 4 amends the *Canadian Security Intelligence Service Act* to

- (a) add a preamble to that Act and provide a mechanism to enhance the accountability of the Canadian Security Intelligence Service;
- (b) add new limits on the exercise of the Service's power to reduce threats to the security of Canada including, in particular, by setting out a list of measures that may be authorized by the Federal Court;
- (c) provide a justification, subject to certain limitations, for the commission of acts or omissions that would otherwise constitute offences;
- (d) exempt employees of the Service and persons acting under their direction from liability for offences related to acts committed for the sole purpose of establishing or maintaining a covert identity;
- (e) create a regime for the Service to collect, retain, query and exploit datasets in the course of performing its duties and functions;
- (f) make amendments to the warrant regime that are related to datasets; and
- (g) implement measures for the management of datasets.

Part 5 amends the *Security of Canada Information Sharing Act* to, among other things,

- (a) emphasize that the Act addresses only the disclosure of information and not its collection or use;
- (b) clarify the definition of "activity that undermines the security of Canada";
- (c) clarify that advocacy, protest, dissent and artistic expression are not activities that undermine the security of Canada unless they are carried on in conjunction with an activity that undermines the security of Canada;
- (d) provide that a disclosure of information is authorized only if the disclosure will contribute to the carrying out by the recipient institution of its national security responsibilities and will not affect any person's privacy interest more than reasonably necessary;
- (e) require that information disclosed be accompanied by information about the accuracy of the disclosed information and the reliability of the manner in which it was obtained; and
- (f) require that records be prepared and kept in respect of every disclosure of information and that every year a copy of every record prepared in the preceding year be provided to the National Security and Intelligence Review Agency.

Part 6 amends the *Secure Air Travel Act* to authorize the Minister of Public Safety and Emergency Preparedness to collect from air carriers and operators of aviation reservation systems, for the purpose of identifying listed persons, information about any individuals who are on board or expected to be on board an aircraft for any flight prescribed by regulation, and to exempt an air carrier from providing that information, or from the application of any provision of the regulations, in certain circumstances. It amends the Act to authorize that Minister to collect personal information from individuals for the purpose of issuing a unique identifier to them to assist with pre-flight verification of their identity. Finally, it amends the Act to provide for certain other measures related to the collection, disclosure and destruction of information.

Part 7 amends the Criminal Code to, among other things,

- (a) change the offence of advocating or promoting terrorism offences to counselling the commission of a terrorism offence;
- (b) make corresponding changes to the definition of terrorist propaganda;
- (c) increase the threshold for a peace officer to lay an information in relation to anticipated terrorist activity;
- (d) require annual reporting by the Attorney General of Canada on the number of terrorism recognizances entered into; and
- (e) appeal provisions relating to ex parte applications for orders for gathering of information for the purpose of investigating a terrorism offence

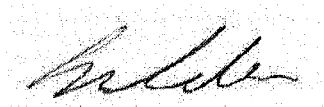
Part 8 amends the *Youth Criminal Justice Act* to ensure that the protections that are afforded to young persons apply in respect of proceedings in relation to recognizance orders, including those related to terrorism, and give employees of a department or agency of the Government of Canada access to youth records, for the purpose of administering the *Canadian Passport Order*.

Part 9 requires a comprehensive review of the provisions in the Act as a whole and its operation.

The Act itself can be found at: <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-59/royal-assent>.

I trust this information will be of assistance.

Sincerely,



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Public Safety Division and Public Safety Training Division