

FW: Definition of NS

From: "Stewart, Rob" <rob.stewart@ps-sp.gc.ca>
To: "Rochon, Dominic" <dominic.rochon@ps-sp.gc.ca>
Date: Thu, 10 Feb 2022 14:09:14 +0000

Rob Stewart
Deputy Minister / Sous-ministre
Public Safety / Sécurité publique
269 Laurier Ave West
Ottawa, Ontario, Canada K1A 0P8
613-991-2895
rob.stewart@ps-sp.gc.ca
Note: this email account is monitored

-----Original Message-----

From: Thomas, Jody <Jody.Thomas@pco-bcp.gc.ca>
Sent: Thursday, February 10, 2022 8:08 AM
To: Stewart, Rob <Rob.Stewart@PS-SP.GC.CA>; bill.matthews@forces.gc.ca
Subject: Fwd: Definition of NS

Sent from my iPhone

Begin forwarded message:

From: "MacDonald, Mike" <Mike.MacDonald@pco-bcp.gc.ca>
Date: February 10, 2022 at 7:22:17 AM EST
To: "Thomas, Jody" <Jody.Thomas@pco-bcp.gc.ca>
Cc: "Bogden, Jacqueline" <Jacqueline.Bogden@pco-bcp.gc.ca>, "Neville, Inez" <Inez.Neville@pco-bcp.gc.ca>, "Lafortune, Philippe" <Philippe.Lafortune@pco-bcp.gc.ca>, "Di Giacomo, Daniela" <Daniela.DiGiacomo@pco-bcp.gc.ca>, "Glazer, Julie" <Julie.Glazer@pco-bcp.gc.ca>
Subject: FW: Definition of NS

Hi,

Philippe did some research which is handy to keep in our 'back pocket'. FYI at this stage. Mike

From: Lafortune, Philippe <Philippe.Lafortune@pco-bcp.gc.ca>
Sent: Wednesday, February 9, 2022 12:53 PM
To: MacDonald, Mike <Mike.MacDonald@pco-bcp.gc.ca>
Cc: Glazer, Julie <Julie.Glazer@pco-bcp.gc.ca>
Subject: RE: Definition of NS

Mike,

As requested, we did some digging on the Canadian definition of National Security. As you know, one of the challenges on this issue is that the GoC never ended-up yep formally defining it. However, we looked at transition materials and various acts to provide you with the best answer and its potential applicability to the current situation. Below, you will find a policy definition of National Security, but also NSICO take on it and what the CSIS Act, SCIDA, and the Emergency Act stipulate on the issue.

Solicitor-Client Priv. Here are the various pieces:

Policy definition

National Security pertains to the safety and security of Canada's territory, government, economy and people, as well as the promotion and protection of Canadian national interests. The national interest refers to Canada's sovereignty, democratic processes and institutions, security, territorial integrity, economic prosperity, social cohesion, environmental protection, and healthy and resilient communities.

NSICOP Perspective (2018 Annual report)

Protecting safety and security of Canada's territory, government, economy and people, and promotion and protection of Canadian interests.

Legislative Perspective:

There is no true legislative definition of "national security". The CSIS act and SCIDA provide examples of threats to security and activities that undermine security, however do not exclusively define what is included in the term "security" as their lists are non-exhaustive, and do not specifically reference 'national security'

- CSIS ACT

- o threats to the security of Canada means

- § (a) espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage,

- § (b) foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,

- § (c) activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state, and

- § (d) activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada,

- o but does not include lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in paragraphs (a) to (d). (menaces envers la sécurité du Canada)

- SCIDA

- o activity that undermines the security of Canada means any activity that undermines the sovereignty, security or territorial integrity of Canada or threatens the lives or the security of people in Canada or of any individual who has a connection to Canada and who is outside Canada. For greater certainty, it includes

- § (a) interference with the capability of the Government of Canada in relation to intelligence, defence, border operations or public safety;

- § (b) changing or unduly influencing a government in Canada by force or unlawful means;

- § (c) espionage, sabotage or covert foreign-influenced activities;

- § (d) terrorism;

- § (e) proliferation of nuclear, chemical, radiological or biological weapons;

- § (f) significant or widespread interference with critical infrastructure;

§ (g) significant or widespread interference with the global information infrastructure, as defined in section 2 of the Communications Security Establishment Act; and

§ (h) conduct that takes place in Canada and that undermines the security of another state. (activité portant atteinte à la sécurité du Canada)

Supreme Court Ruling (Sunresh) 2002

Solicitor-Client Priv. the Supreme Court also ruled on the issue in 2002, stating:

Subject to these qualifications, we accept that a fair, large and liberal interpretation in accordance with international norms must be accorded to “danger to the security of Canada” in deportation legislation. We recognize that “danger to the security of Canada” is difficult to define. We also accept that the determination of what constitutes a “danger to the security of Canada” is highly fact-based and political in a general sense. All this suggests a broad and flexible approach to national security and, as discussed above, a deferential standard of judicial review. Provided the Minister is able to show evidence that reasonably supports a finding of danger to the security of Canada, courts should not interfere with the Minister’s decision.

Emergency Act:

Finally, while not specific to national Security, the Emergency Act do defines National Emergencies as following:

3 For the purposes of this Act, a national emergency is an urgent and critical situation of a temporary nature that

§ (a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it, or

§ (b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada and that cannot be effectively dealt with under any other law of Canada.

Looking at all of this, and ongoing events, I am of the opinion downtown Ottawa may not constitute a National Security issue, but border integrity could be.

Hope this helps. Let me know if you need (want) more.

PL