



TALKING POINTS

ETHI COMMITTEE APPEARANCE 2021-05

ORDER OF REFERENCE

Pursuant to Standing Order 79(3), the Speaker read the following message from His Excellency the Administrator of the Government of Canada, presented by Mrs. Schulte (Minister of Seniors):

Message on Estimates - His Excellency the Administrator of the Government of Canada transmits to the House of Commons the Main Estimates of sums required to defray expenses of the federal public administration for the fiscal year ending on March 31, 2022, and, in accordance with section 54 of the Constitution Act, 1867, recommends these estimates to the House of Commons.

Mrs. Schulte (Minister of Seniors) laid upon the table, — Document entitled "Main Estimates for the year 2021-22". — Sessional Paper No. 8520-432-4.

Pursuant to Standing Order 81(4), the Main Estimates for the fiscal year ending March 31, 2022, were deemed referred to the several standing committees of the House as follows:

(1) To the Standing Committee on Access to Information, Privacy and Ethics

Office of the Commissioner of Lobbying, Vote 1

Office of the Conflict of Interest and Ethics Commissioner, Vote 1

Offices of the Information and Privacy Commissioners of Canada, Votes 1 and 5

Office of the Senate Ethics Officer, Vote 1



INVESTIGATIONS AND OTHER MATTERS OF INTEREST

PALANTIR CANADA'S – DAVID MACNAUGHTON

Summary

- On May 6, 2020, the OCL opened a preliminary assessment concerning the activities of Mr. MacNaughton following media reports about his communication with federal public office holders on behalf of Palantir Canada.
- On May 8, 2020, a member of Parliament wrote to the Commissioner and requested that the Commissioner look into Mr. MacNaughton's activities.
- In March 2021, the Commissioner tabled a report to Parliament following an investigation pursuant to section 10.4 of the *Lobbying Act* to determine whether Mr. David MacNaughton contravened the 5-year restriction on lobbying. The Commissioner concluded that Mr. MacNaughton did not contravene the restriction on lobbying set out in paragraph 10.11(1)(c) of the Act, to which he is subject as a former designated public office holder employed by a corporation.

Suggested responses

- As a former designated public office holder, Mr. MacNaughton is subject to a five-year post-employment prohibition on lobbying.
- Former designated public office holders are subject to a 5-year prohibition on lobbying once they leave office. This post-employment restriction excludes designated public office holders from being paid to:
 1. work as a consultant lobbyist;
 2. lobby on behalf of an organization; or
 3. lobby on behalf of a corporation, where lobbying activities would constitute a significant part of the work.
- In the case of former designated public office holders working for corporations, such as Palantir Canada, the *Lobbying Act* does allow these individuals to lobby as long as it is not a "significant part of their work," which is interpreted as being less than 20% of their duties.
- Consultant lobbyists must register their communications about the awarding of a contract on behalf of their clients.
- In-house lobbyists don't have the same obligations as consultant lobbyists, they are not required to register their communications with the federal government about the awarding of contracts.
- I am of the view that the post-employment prohibition on lobbying should apply equally to former designated public office holders, regardless of whether they are employed by a corporation or an organization. I have noted this in both my recent investigation report and in my preliminary recommendations to improve the *Lobbying Act*.
- There is no readily apparent explanation in the parliamentary record to justify why the five-year prohibition should apply differently.

ROBERT SILVER AND MCAP

Summary

- On August 10, 2020, members of Parliament wrote to the OCL requesting that the Commissioner look into Robert Silver and MCAP's activities.
- On August 10, 2020, the office opened a preliminary assessment
- Preliminary assessment was publicly confirmed by the OCL on August 31, 2020.

Suggested responses

- I take all allegations of breaches of the Lobbying Act and the Lobbyists' Code of Conduct seriously.
- I publicly confirmed that a preliminary assessment was opened.
- The *Lobbying Act* is clear that I must conduct investigation in private.
- I am unable to discuss or confirm investigation activities and can only report on completed investigations and compliance activities through reports to Parliament.
- Given the possibility that these matters may become criminal investigations and that I do not want to jeopardize such investigations, I am unable to provide details or comment on whether an investigation has been initiated or is ongoing.

WE CHARITY

Summary

- On June 29, 2020, the office opened a preliminary assessment
- On July 17, 2020, and on August 10, 2020, the Commissioner received letters from members of Parliament all of which requested that the Commissioner look into the matter
- On August 13, 2020, Dalal Al-Waheidi submitted a registration as WE Charity Executive Director.
- Preliminary assessment was publicly confirmed by the OCL on August 14, 2020.
- WE Charity submitted 65 monthly communication reports to the OCL from which 49 were related to employment and training.
- 11 MCRs were corrected and/or verified by the registration and client services team. Corrections ranged from typos, to removing individuals that were not present during meetings, to combining duplicate entries, to double checking that the meeting actually occurred (one DPOH didn't recall the meeting because it was so far back and simply wanted to double check that it had occurred).

Suggested responses

- The *Lobbying Act* is clear that I must conduct investigation in private.
- I publicly confirmed that a preliminary assessment was opened.

- Given the possibility that these matters may become criminal investigations and that I do not want to jeopardize such investigations, I am unable to provide details or comment on whether an investigation has been initiated or is ongoing.
- To ensure transparency, all reportable communications should be listed in the Registry of Lobbyists.
- We Charity registered late. When someone is late registering, my Office publishes the information as soon as possible, for the sake of transparency, so Canadians know what communications were about and with whom lobbyists met.
- It does not mean that any preliminary assessment or potential investigation cannot proceed.

INVESTIGATION PROCESS

- The Commissioner of Lobbying may initiate an investigation at any time there is cause to believe that an investigation is necessary to ensure compliance with the *Lobbying Act*.
- I am not required to wait until a third party submits an allegation of a breach of the Lobbying Act or the Lobbyists' Code of Conduct.
- The Office conducts its own compliance monitoring activities.
- When I become aware of a potential breach, the Office conducts a preliminary assessment to evaluate the nature of the alleged contravention, obtain initial information, and determine whether the subject matter falls within the Office's mandate.
- When necessary to ensure compliance, an investigation is initiated. Each allegation is given the time necessary, based on its complexity.
- The Office obtains and analyzes documentary evidence.
- Several witnesses may need to be interviewed.
- If, during the course of an investigation, I have reasonable grounds to believe that someone has committed an offence under the *Lobbying Act*, I must suspend my investigation and refer the matter to a peace officer (e.g. RCMP, provincial/municipal police). The police then conducts its own investigation to determine whether to lay charges.
- As such, the Office is unable to comment on whether any investigation has been initiated or is ongoing on any specific matter.

5-YEAR POST-EMPLOYMENT PROHIBITION

- Former designated public office holders are subject to a 5-year prohibition on lobbying once they leave office. This post-employment restriction excludes designated public office holders from being paid to:
 1. work as a consultant lobbyist;
 2. lobby on behalf of an organization; or
 3. lobby on behalf of a corporation, where lobbying activities would constitute a significant part of the work.

- This prohibition begins immediately following the last day individuals cease to occupy their position as a designated public office holder.
- The Commissioner of Lobbying can exempt an individual from the 5-year prohibition, as long as it would not be contrary to the purpose of the *Lobbying Act*. A list of exemptions granted, including the reason(s) for which they were granted is available in the Registry of Lobbyists.
- We proactively contact individuals when we become aware of their departure from a position as a designated public office holder to remind them of their post-employment restriction related to lobbying.

CONSULTATION ON THE LOBBYISTS' CODE OF CONDUCT

- The Lobbyists' Code of Conduct is a non-statutory tool that complements the Lobbying Act's registration requirements and serves to reinforce transparent and ethical lobbying practice.
- This code of ethics defines behaviour standards that lobbyists must respect when they engage in lobbying activities at the federal level.
- The Lobbyists' Code of Conduct has existed since 1997 and was updated in 2015.
- Recent investigation reports highlight that further improvements are warranted.
- Reports on investigations recommended changes to Rules 6, 9 and 10 (on conflict of interest).
- In late 2020, we invited stakeholders to share their views and perspectives on the standards of behaviour that lobbyists must follow in their lobbying of federal public office holders.
- We are currently drafting a new version of the Code. Once drafting is complete, a second phase of consultation with stakeholders will be held later in 2021.
- An updated Code will be referred to the House of Commons Standing Committee on Access to Information, Privacy and Ethics and then be published in the Canada Gazette and on our website.

LEGISLATIVE REVIEW

- The *Lobbying Act* works largely as intended and is often referred to as a model for other jurisdictions. However, there is always room for improvement.
- In response to a November 2020 request from this Committee, I have shared a report containing my preliminary recommendations to improve the *Lobbying Act* and the *Lobbyists Registration Regulations*.
- My preliminary recommendations, 11 in total, are based on four values aimed at enhancing transparency, fairness, efficiency and clarity.
- These values are essential to registration, compliance, and the effective administration of the federal lobbying regime.
- My recommendations are not set in stone. I continue to observe our evolving environment and remain committed to engaging in an open dialogue with various stakeholders.

- I look forward to discussing them with the Committee.

FOREIGN LOBBYISTS

- The *Lobbying Act* applies to those who lobby the federal government, regardless of whether they are located in Canada or outside Canada.