



Office of the Commissioner
of Lobbying of Canada

Commissariat au lobbying
du Canada

INVESTIGATION REPORT

DAVID MACNAUGHTON,
PRESIDENT OF PALANTIR CANADA

MARCH 2021

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Preface

This report is submitted to the Parliament of Canada pursuant to section 10.5 of the *Lobbying Act* (Act) R.S.C., 1985, c. 44 (4th Supp.).

After conducting an investigation, the Commissioner of Lobbying prepares a report that includes findings, conclusions and reasons for the conclusions.

The Commissioner is required to submit the report to the Speaker of the Senate and the Speaker of the House of Commons. Each Speaker tables the report in the House over which they preside.

The *Lobbying Act* ensures the transparency of federal lobbying. It requires paid lobbyists to publicly register their lobbying activities and to report their communications with designated public office holders. The *Lobbyists' Code of Conduct* establishes the principles and rules of ethical behaviour expected from lobbyists required to register their activities under the *Lobbying Act*.

THIS REPORT WAS TABLED BY:

Nancy Bélanger
Commissioner of Lobbying of Canada

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Executive summary

This report follows an investigation conducted by the Office of the Commissioner of Lobbying (OCL) pursuant to section 10.4 of the *Lobbying Act* (Act) to determine whether Mr. David MacNaughton, former Canadian Ambassador to the United States and current President of Palantir Canada, contravened the five-year restriction on lobbying set out in paragraph 10.11(1)(c) of the Act. This provision prohibits former designated public office holders employed by corporations from engaging in in-house lobbying activities if such activities would constitute a significant part of their work on behalf of their employer.

Based on all of the information gathered during this investigation, I determined that Mr. MacNaughton did not contravene the five-year restriction on lobbying to which he was subject as a former designated public office holder employed by a corporation.

In making this determination, the OCL had to determine whether Mr. MacNaughton communicated with federal public office holders on behalf of Palantir in respect of any of the subject matters referred to in paragraph 7(1)(a) of the Act and, if so, whether any such in-house lobbying activities would constitute a significant part of his work on behalf of Palantir.

Subject matter of Mr. MacNaughton's communications

Based on all of the information gathered, the OCL determined that, between January 1 and May 1, 2020, Mr. MacNaughton engaged in a total of forty-nine (49) communications with federal public office holders.

More particularly, thirty-one (31) of these forty-nine (49) communications consisted of pro bono offers of assistance to the federal government to provide access to Palantir products and services in connection with the government's response to the COVID-19 pandemic. Any such access would have been obtained through a federal government procurement contract. Although these thirty-one (31) communications can be understood to have been made on behalf of Palantir, they do not relate to any of the subject matters referred to in paragraph 7(1)(a) of the Act, which does not include communications in respect of the awarding of federal contracts to procure products and services. Consequently, none of these thirty-one communications were subject to the restriction on lobbying set out in paragraph 10.11(1)(c) of the Act.

The other eighteen (18) communications that Mr. MacNaughton had with federal public office holders between January 1 and May 1, 2020 consisted of offers of advice and perspective, only a small minority of which could be understood both to relate to a subject matter referred to in paragraph 7(1)(a) and to have been on behalf of Palantir and therefore to count toward the "significant part of work" exception set out in paragraph 10.11(1)(c) of the Act.

Significant part of work

In practice, former designated public office holders will contravene paragraph 10.11(1)(c) if communicating with federal public office holders on behalf of their employer-corporation in respect of the subject matters referred to in paragraph 7(1)(a) of the Act would constitute a significant part of their work. The OCL interprets a “significant part” as amounting to 20 percent or more of the time spent engaged in such communicative activities. Based on a 40-hour work week, this would amount to 32 hours spent communicating with federal public office holders in a given four-week period.

The OCL determined that between March 22 and April 22, 2020, which was the highest-volume four-week period of activity, Mr. MacNaughton spent a confirmed total of two hours and thirty-five minutes (2 hr. 35 min.) communicating with federal public office holders. In particular, Mr. MacNaughton had four (4) telephone calls that lasted a confirmed total of one hour and fifty minutes (1 hr. 50 min.) and one (1) forty-five minute (45 min.) virtual meeting on April 3. During this same four-week period, Mr. MacNaughton had three (3) telephone communications of unconfirmed duration with federal public office holders and sent federal public office holders eighteen (18) emails, almost all of which were logistical in nature and brief and, so, would not have taken much time to prepare and send.

Seen in this light, the low volume and short duration of the communications Mr. MacNaughton had with federal public office holders – either during this four-week period or in combination with all other such communications that Mr. MacNaughton had during the four-month period under investigation – falls well short of the significant part of work threshold and, therefore, well within the scope of the exception set out in paragraph 10.11(1)(c) of the Act.

Observations

This investigation underscored the challenges of tracking, monitoring and accounting for the time spent engaging in what amounts to in-house lobbying activities as well as an inconsistency in the manner in which the five-year prohibition on lobbying applies to former designated public office holders employed by corporations as compared to organizations.

Specifically, whereas former designated public office holders employed by corporations may engage in in-house lobbying activities as long as such activities would not constitute a significant part of their work on behalf of their employer, former designated public office holders employed by organizations are subject to an unqualified prohibition against engaging in any amount of in-house lobbying activities.

As I noted in the [Preliminary Recommendations](#) I recently made to improve the Act at the request of the Standing Committee on Access to Information, Privacy and Ethics, there is no readily apparent explanation in the parliamentary record to justify why the five-year prohibition ought to be applied differently depending on whether a former designated public office holder engages in in-house lobbying activities on behalf of a corporation rather than an organization.

In my view, 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. Eliminating this inconsistency would increase the fairness of the Act by ensuring that former designated public office holders employed by both corporations and organizations are subject to the same post-employment prohibitions.

Introduction

This Report follows an investigation conducted by the Office of the Commissioner of Lobbying (OCL) pursuant to section 10.4 of the *Lobbying Act* (Act) to determine whether Mr. David MacNaughton, former Canadian Ambassador to the United States and current President of Palantir Canada, contravened any of the post-employment restrictions set out in subsection 10.11(1) of the Act, which prohibits former designated public office holders from engaging in consultant and in-house lobbying activities for a period of five (5) years from the date on which they cease to hold office.

This Report sets out my findings, conclusions and reasons for my conclusions with respect to this investigation. It also provides observations regarding an inconsistency in the application of the five-year prohibition against lobbying to former designated public office holders employed by corporations as compared to organizations.

Background

Mr. MacNaughton served as Canada's Ambassador to the United States from March 3, 2016 to August 31, 2019.

On September 1, 2019, Mr. MacNaughton began his employment as President of Palantir Canada.

Palantir Technologies Inc. (Palantir) is a software company based in Palo Alto, California that specializes in creating data integration and analytics software. In the press release announcing Mr. MacNaughton's appointment as President of Palantir Canada, Palantir described itself as "a software company that builds enterprise data platforms for organizations with highly complex and sensitive data environments".¹

On May 27, 2019, before completing his term as Ambassador and beginning his employment with Palantir, Mr. MacNaughton met with the OCL's then-Director of Registration Services to discuss the five-year prohibition on lobbying to which former designated public office holders are subject.

On September 24, 2019, after joining Palantir Canada, Mr. MacNaughton wrote to the then-Director of Registration Services to confirm his understanding of the post-employment restrictions to which he is subject as a former designated public office holder.² In particular, Mr. MacNaughton asked the then-Director of Registration Services to confirm his understanding not only that "[a]s the President of Palantir Canada and a full time employee" he is "able to be part of a team selling Palantir services to the Government of Canada", but also that "selling products or services did not constitute lobbying".

By email dated September 26, 2019, the then-Director of Registration Services informed Mr. MacNaughton that he would not contravene the five-year prohibition on lobbying to which he was subject as an employee of Palantir Canada by communicating with federal public office holders about procuring Palantir's products and/or services, as such communications do not otherwise constitute registrable in-house lobbying activities under the Act.

On April 30, 2020, *The Logic* reported that, during a teleconference call CIBC Capital Markets organized for its clients on April 22, 2020, Mr. MacNaughton told participants that Palantir was working on a pro bono basis with the federal government and three provinces with regard to their responses to the COVID-19 pandemic.³

That same day, during a meeting of the Standing Committee on Industry, Science and Technology, the Honourable Navdeep Bains, then-Minister of Innovation, Science and Industry, was asked whether Mr. MacNaughton was advising the federal government on its response to the COVID-19 pandemic. Mr. Bains responded that he was not aware of any formal commitment, but that he would inquire and provide any specifics. Mr. Bains indicated that he knew that Mr. MacNaughton was engaged with many, including himself, in providing ideas and solutions on how to help Canadians and that he speaks to Mr. MacNaughton on a regular basis, including with respect to matters of a personal nature involving his children and family.⁴

On May 1, 2020, *The Logic* reported that Mr. Bains told the Standing Committee on Industry, Science and Technology that "he is in frequent contact with Palantir Canada president David MacNaughton" but did not say "whether MacNaughton or his company had worked with the federal government on the COVID-19 pandemic". This article further reported that "spokespeople for Health Minister Patty Hajdu and her department said they were unaware of any work or discussions with Palantir, and that the federal government had not entered into any contracts with the company as part of its antiviral efforts".⁵

On May 6, 2020, counsel to Palantir and Mr. MacNaughton wrote to the OCL. Counsel indicated that, as a result of recent media reports (described above), Palantir anticipated that a complaint may be filed with the OCL in respect of communications that Mr. MacNaughton had with federal public office holders. Counsel also indicated that Palantir takes its obligation to comply with the Act seriously and that it believes that Mr. MacNaughton carefully complied with the guidance that the OCL provided regarding his post-employment obligations in May and September 2019 (also described above). Counsel further indicated that, in the event the OCL were to receive a complaint, Mr. MacNaughton would be prepared to provide any information that the OCL may require in assessing the merits of any such complaint and that he and his clients were optimistic that the OCL would conclude that Mr. MacNaughton had complied with both the letter and spirit of the Act.

On May 7, 2020, *Politico* published an article based on an interview with Mr. MacNaughton. In this article, Mr. MacNaughton stated that he had sought advice from both the OCL and the Office of the Conflict of Interest and Ethics Commissioner prior to resigning as Canada's Ambassador to the United States and that he had complied with the letter and spirit of this advice since joining Palantir. Mr. MacNaughton also stated that he had not lobbied anybody as

defined in the *Lobbying Act* and noted that Palantir's engagement had focused on the Public Health Agency of Canada and the Canadian Institute for Health Information. Mr. MacNaughton further stated that he still "absolutely" talks to people in the Prime Minister's Office (PMO) about broader public policy issues and politics, but that he has not attempted to sell Palantir products and services to the PMO, noting that, in the context of the pandemic, such decisions would ultimately be taken by the Public Health Agency of Canada. He also stated that he talks to now-former Ministers Bain (Innovation, Science and Industry) and Morneau (Finance) about Canada-U.S. relations. The article went on to quote Mr. MacNaughton as stating: "I'm not going to stop talking to people about public policy issues. I've been doing that all my life. I'm not going to stop now". The article also noted that Palantir had been offering its assistance to governments in other countries since the outbreak of COVID-19 and that Palantir Technologies U.K. is one of the British government's partners with respect to its response to the pandemic.⁶

Process

On May 7, 2020, I opened a preliminary assessment to determine if an investigation was necessary to ensure that Mr. MacNaughton had been complying with the post-employment restrictions to which he is subject as a former designated public office holder employed by a corporation.

On May 8, 2020, Mr. Charlie Angus, Member of Parliament for Timmins-James Bay, wrote to the OCL to express concerns about communications that Mr. MacNaughton reportedly had on behalf of Palantir with federal public office holders regarding the Government of Canada's response to the COVID-19 pandemic. Mr. Angus requested that the OCL conduct a review to ensure that Mr. MacNaughton had complied with the five-year prohibition on lobbying to which he is subject as a former designated public office holder.

By letter dated May 19, 2020, the OCL requested that then-Minister Bains provide detailed information about any communications that he and/or any federal public office holders within his ministerial office and department had with Mr. MacNaughton since September 1, 2019, the day on which he first joined Palantir Canada. The OCL also requested that Mr. Bains provide detailed information about any communications of which he was aware that any other public office holders had with Mr. MacNaughton during that same period.

In his response, dated June 3, 2020, Mr. Bains indicated that, in addition to his own communications with Mr. MacNaughton, which he described, he was aware of four public office holders in his department and one outside of his department who had communicated with Mr. MacNaughton:

- Ryan Dunn, then-Chief of Staff to the Minister of Innovation, Science and Industry;
- Simon Kennedy, Deputy Minister, Innovation, Science and Economic Development Canada;
- Sarah Hussaini, then-Director of Policy, Innovation, Science and Economic Development Canada;
- Theresa McManus, Advisor, Innovation, Science and Economic Development Canada; and
- Leslie Church, then-Chief of Staff to the Minister of Public Services and Procurement Canada.

Mr. Bains noted that he did not have any communications with Mr. MacNaughton between September 1, 2019 and January 18, 2020. He also indicated that Mr. MacNaughton had one (1) communication with Mr. Dunn on March 27, 2020 (described below), that one of Mr. MacNaughton's colleagues emailed Mr. Kennedy on April 3, 2020 (also described below) and that all but one of the five (5) communications that Mr. MacNaughton had with Ms. Hussaini and all three of the communications that he had with Ms. McManus were related to scheduling

or logistics. Mr. Bains was not aware of the details of any communications between Mr. MacNaughton and Ms. Church.

On June 23, 2020, counsel to Mr. MacNaughton wrote to the OCL to disclose communications that Mr. MacNaughton had with federal public office holders relating to the Government of Canada's response to the COVID-19 pandemic. Counsel noted that Mr. MacNaughton had first disclosed these same communications to the Conflict of Interest and Ethics Commissioner in the context of a similar complaint made pursuant to the Conflict of Interest Act and that he was providing them to the OCL in the interests of transparency and disclosure.

More particularly, counsel identified communications that Mr. MacNaughton had between February 18 and April 30, 2020 with seventeen (17) different federal public office holders, including (in the order in which he communicated with them):

- Katie Telford, Chief of Staff, Prime Minister's Office;
- Peter Wallace, Deputy Minister, Treasury Board Secretariat;
- Bill Morneau, then-Minister of Finance;
- Rick Theis, Director of Policy and Cabinet Affairs, Prime Minister's Office;
- Ian Shugart, Clerk of the Privy Council;
- Chrystia Freeland, Deputy Prime Minister and Minister of Intergovernmental Affairs;
- Navdeep Bains, then-Minister of Innovation, Science and Industry;
- General Jonathan Vance, then-Chief of Defence Staff, Canadian Armed Forces;
- Tim Duncanson, Senior Advisor to the Deputy Minister of Finance;
- Ryan Dunn, Chief of Staff to the Minister of Innovation, Science and Industry;
- Leslie Church, Chief of Staff to the Minister of Public Services and Procurement Canada;
- Jody Thomas, Deputy Minister, Department of National Defence;
- Simon Kennedy, Deputy Minister, Innovation, Science and Economic Development Canada;
- Bill Matthews, Deputy Minister, Public Services and Procurement Canada;
- Nathalie Nye, Chief of Staff to the Deputy Minister of Public Services and Procurement Canada;
- André Fillion, Assistant Deputy Minister Public Services and Procurement Canada, and
- Jim McArdle, Senior Vice-President and Chief Corporate Advisor at Export Development Canada.

Counsel divided these communications into three different categories, namely personal communications, contracting communications and exempt communications.

Counsel characterized the category of personal communications as including communications that Mr. MacNaughton had on his own behalf with federal public office holders who, from time to time, seek Mr. MacNaughton's input and perspective on matters of policy with which he has expertise and familiarity. As set out in counsel's letter of June 23, fifteen (15) of the twenty-eight (28) communications that Mr. MacNaughton reported having with federal public office holders between February 18 and April 30, 2020 were identified as falling into this category of personal communications. Counsel emphasized that these communications were made by Mr. MacNaughton in his personal capacity and not on behalf of his employer, Palantir, or any other person and, therefore, that they do not constitute lobbying under the Act.

Counsel characterized the category of contracting communications as including communications that Mr. MacNaughton had with federal public office holders in respect of Palantir's pro bono offer to assist the Government of Canada with its response to the COVID-19 pandemic. As set out in the June 23 letter, twelve (12) of the twenty-eight (28) communications that Mr. MacNaughton reported having with federal public office holders between February 18 and April 30, 2020 were identified as falling into this category of contracting communications. Counsel emphasized that none of these communications were in respect of any of the subject matters referred to in paragraph 7(1)(a) of the Act, contending that these communications represented an attempt, in the early days of the COVID-19 pandemic, to do anything that would be useful in assisting the federal government to save Canadian lives during an unprecedented national and global crisis. Counsel further contended that, to the extent any of these communications can be construed as an effort to sell Palantir's products and services, they would amount to communications about the awarding of federal contracts, which is not included among the subject matters referred to in paragraph 7(1)(a) of the Act. In this connection, counsel noted that, before joining Palantir, the OCL expressly advised Mr. MacNaughton that he was not precluded from engaging in such communications. This guidance is described in greater detail in the Background section, above.

As set out in counsel's letter of June 23, one (1) of the twenty-eight (28) communications that Mr. MacNaughton reported having with federal public office holders between February 18 and April 30, 2020 was identified as falling into the category of exempt communications. Counsel indicated that this communication related to a technical procurement process issue and contended that, as a communication regarding the enforcement, interpretation or application of an existing law, it is exempt from the scope of application of the Act pursuant to paragraph 4(2)(b).

Although these categories are not binding on the OCL, they are helpful in setting out the context in which Mr. MacNaughton understood himself to be communicating with these public office holders.

Based on the information gathered during the preliminary assessment, including Mr. MacNaughton's disclosure, I initiated an investigation on June 24, 2020 to determine whether Mr. MacNaughton, as a former designated public office holder employed by a corporation, had complied with the five-year prohibition on lobbying set out in paragraph 10.11(1)(c) of the Act.

On June 30, 2020 and July 10, 2020, the OCL sent requests for information to all nineteen (19) of the individuals identified in both Mr. MacNaughton's disclosure and Mr. Bains' letter of June 3, 2020.

Between July 12, 2020, and August 7, 2020, the OCL received responses from each of the public office holders from whom I had requested information.

On July 24, 2020, as part of the response provided by Ms. Telford, the OCL received a letter from Mr. Brian Clow, Executive Director, Issues Management, Parliamentary Affairs, and Canada-U.S. Relations in the Prime Minister's Office, which described communications he had with Mr. MacNaughton and provided associated documents.

On September 16, 2020, the Conflict of Interest and Ethics Commissioner issued an order pursuant to the *Conflict of Interest Act* prohibiting nine (9) public office holders with whom Mr. MacNaughton had communicated from having any official dealings with Mr. MacNaughton for a period of one year.⁷

On December 23, 2020, the OCL wrote to the Honourable Jean-Yves Duclos, President of the Treasury Board, to request that he provide the OCL with the information the Treasury Board Secretariat had been asked to provide to Parliament in response to a written question posed by Mr. Angus on December 9, 2020. Mr. Angus' question focused on the procurement, study and use of surveillance technologies by federal government institutions. Among other items, Mr. Angus asked for detailed information about any direct communications between Palantir and federal public office holders with respect to the procurement, study and use of such surveillance technologies as well as any contracts, contribution agreements or other formal or informal agreements that the federal government had concluded with Palantir in respect of such technologies.

The OCL's letter also requested that Mr. Duclos provide detailed information, including any associated documents, about a communication that he had with Mr. MacNaughton on May 1, 2020 as well as any other communications that Mr. MacNaughton may have had with any members of Mr. Duclos' ministerial staff or any public servants at the Treasury Board Secretariat since September 1, 2019.

On January 8, 2021, Mr. Duclos provided the OCL with the Treasury Board Secretariat's response to Mr. Angus' written question. Mr. Duclos confirmed that he had spoken with Mr. MacNaughton for thirty (30) minutes by telephone on May 1, 2020 and that his Director of Policy participated in the call. Mr. Duclos indicated that they had discussed the COVID-19 pandemic and the steps that would need to be taken to restart and strengthen the Canadian economy. Mr. Duclos noted that this communication was initiated by his office as part of ongoing mobilization efforts with stakeholders as well as that it drew upon Mr. MacNaughton's

personal public policy expertise and was not connected to his role with Palantir. Mr. Duclos also confirmed that Mr. Wallace, the Secretary of the Treasury Board, had dinner with Mr. MacNaughton on February 20, 2020 and noted that Mr. Wallace had already provided this information to the OCL in response to an earlier request for information.

On January 29, 2021, the OCL wrote to the Public Health Agency of Canada (PHAC) to request that it describe the nature and scope of any dealings it had with Palantir in respect of the federal government's response to the COVID-19 pandemic and, in particular, to provide any information about any communications that Mr. MacNaughton may have had with any PHAC officials in that regard.

On February 25, 2021, the President of the Public Health Agency of Canada responded to the OCL's request for information. In this response, PHAC identified sixteen (16) records involving interactions with representatives of Palantir and indicated that Mr. MacNaughton had been copied on two (2) such interactions.

In particular, Mr. MacNaughton was copied on an email, dated March 4, 2020, sent by one of his colleagues at Palantir to Dr. Pascal Michel, Canada's Chief Scientific Officer, and Dr. Tillman Gerngross, Co-Founder and Chief Executive Officer of Adimab LLC, an antibody discovery platform based in the United States. The purpose of this email was to put Dr. Michel and Dr. Gerngross in contact with one another in order to facilitate a research request related to Adimab's efforts to develop a monoclonal antibody therapy against COVID-19.

Mr. MacNaughton was also copied on an email, dated April 22, 2020, sent by another of his colleagues at Palantir to Dr. Theresa Tam, Canada's Chief Public Health Officer, and Ms. Tina Namiesniowski, then-President of PHAC, offering to assist the Government of Canada, on a pro bono basis, with its response to the COVID-19 pandemic. This email emphasized the work Palantir had done in assisting the Centers for Disease Control and Prevention in the United States and the National Health Service in the United Kingdom to "ramp up their data-driven COVID-19 crisis management capabilities" and offered to provide the Government of Canada with similar assistance on a comparable timeline.

After receiving undertakings of confidentiality from Mr. MacNaughton and his counsel on February 26, 2021, the OCL provided Mr. MacNaughton with a draft copy of this investigation report (without the observation section) in order to provide him with an opportunity to make representations.

On March 4, 2021, counsel to Mr. MacNaughton responded and made limited representations consisting of "three minor comments", two of which are reflected in this report.

Findings and analysis

This investigation focused on whether Mr. MacNaughton, as a former designated public office holder employed by a corporation, contravened the five-year restriction on lobbying set out in paragraph 10.11(1)(c) of the *Lobbying Act* (Act). Failure to comply with the requirements of subsection 10.11(1) is an offence punishable on summary conviction pursuant to subsection 14(2) of the Act.

In particular, the OCL had to determine whether Mr. MacNaughton communicated with federal public office holders on behalf of Palantir in respect of any of the subject matters referred to in paragraph 7(1)(a) of the Act and, if so, whether any such in-house lobbying activities would constitute a significant part of his work on behalf of Palantir.

Overview of relevant factual information

During the course of this investigation, the OCL received responses to all twenty-one (21) of its requests for information, which described communications that federal public office holders had with Mr. MacNaughton during the period under investigation and included associated documents. The OCL also conducted interviews with Mr. Matthews, Mr. Shugart, Ms. Telford, Ms. Thomas, and Mr. Wallace.

Based on all of the information gathered, the OCL determined that, between January 1 and May 1, 2020, Mr. MacNaughton communicated with twenty-two (22) federal public office holders, some on multiple occasions, including four (4) ministers (Bains, Duclos, Freeland, and Morneau), five (5) deputy ministers (Kennedy, Mathews, Shugart, Thomas and Wallace), seven (7) senior ministerial staff (Church, Clow, Dunn, Hussaini, McManus, Telford and Theis) and four (4) senior public servants (Duncanson, Fillion, Nye and Vandergrift) as well as the then-Chief of the Defence Staff (Vance) and a Senior Vice-President at Export Development Canada (McArdle).

During this four-month period of time, Mr. MacNaughton had a total of forty-nine (49) communications with federal public office holders, including fifteen (15) telephone calls, four (4) meetings, two (2) dinners, twenty-three (23) emails and five (5) text messages.

During this period, Mr. MacNaughton spent a confirmed total of nine hours and fifteen minutes (9 hr. 15 min.) communicating with federal public office holders:

- of the fifteen (15) telephone calls Mr. MacNaughton had with federal public office holders, eight (8) calls lasted a confirmed total of three hours and thirty-five minutes (3 hr. 35 min.) and seven (7) were of unconfirmed duration;
- of the four (4) meetings that Mr. MacNaughton had with federal public office holders, three (3) meetings lasted a confirmed total of one hour and twenty-five minutes (1 hr. 25 min.) and one (1) was of unconfirmed duration; and
- the two (2) dinners that Mr. MacNaughton had with federal public office holders lasted a combined confirmed total of four hours and fifteen minutes (4 hr. 15 min.).

The first of the three (3) meetings of confirmed duration consisted of a ten (10) minute meeting on March 2, 2020, described in greater detail below, with Mr. Theis, Director of Policy and Cabinet Affairs in the Prime Minister's Office (PMO). The second meeting of confirmed duration consisted of a forty-five (45) minute virtual meeting on April 3, 2020, described in greater detail below, during which Mr. MacNaughton and one of his colleagues at Palantir gave a demonstration of a supply chain management solution to Mr. Kennedy, Deputy Minister of the Department of Innovation, Science and Economic Development, as well as Mr. Matthews, Deputy Minister, Public Service and Procurement Canada (PSPC), Ms. Nye, Chief of Staff to the Deputy Minister, PSPC, Mr. Michael Vandergrift, Associate Deputy Minister, PSPC and Mr. Fillion, Assistant Deputy Minister, PSPC. The third meeting of confirmed duration consisted of a thirty (30) minute telephone call that Mr. MacNaughton had with Mr. Duclos on May 1, 2020, described above.

The one (1) meeting of unconfirmed duration, described below, also took place on March 2, 2020 with Mr. Clow, Executive Director, Issues Management, Parliamentary Affairs & Canada-U.S. Relations, PMO.

With respect to the two (2) dinners that Mr. MacNaughton had with federal public office holders during this period, one was a two-hour dinner with Mr. Vance, then-Chief of Defence Staff and Ms. Thomas, Deputy Minister of Defence on January 30, 2020 and the other was a two-hour-and-fifteen minute dinner with Mr. Wallace, Secretary of the Treasury Board on February 20, 2020, referred to above.

During this same four-month period, Mr. MacNaughton sent federal public office holders twenty-three (23) emails, almost all of which were logistical in nature and brief and, so, would not have taken much time to prepare and send, as well as five (5) text messages, which, by their very nature, are limited in size.

Between March 22 and April 22, 2020, which was the highest-volume four-week period of activity, Mr. MacNaughton spent a confirmed total of two hours and thirty-five minutes (2 hr. 35 min.) communicating with federal public office holders. In particular, Mr. MacNaughton had four (4) telephone calls that lasted a confirmed total of one hour and fifty minutes (1 hr. 50 min.) and one (1) forty-five minute (45 min.) virtual meeting on April 3, alluded to immediately above and described in greater detail below. During this same four-week period, Mr. MacNaughton had three (3) telephone communications of unconfirmed duration with federal public office holders and sent federal public office holders eighteen (18) emails, which as noted immediately above, were brief and would not have taken much time to prepare and send. Mr. MacNaughton did not send any text messages to or have any dinners with any federal public office holders during this four-week period.

Subsection 10.11(1) of the Lobbying Act

Subsection 10.11(1) of the Act restricts the extent to which individuals are entitled to engage in lobbying activities for a period of five years from the day on which they cease to be designated public office holders.

Specifically, during the five-year period after they cease to hold office, former designated public office holders are prohibited from engaging in any of the consultant lobbying activities set out in paragraphs 5(1)(a) and (b) of the Act. Moreover, when former designated public office holders are employed by an organization, they are also prohibited from engaging in any of the in-house lobbying activities set out in paragraph 7(1)(a). However, when former designated public office holders are employed by a corporation, they may engage in any of the lobbying activities set out in paragraph 7(1)(a) of the Act provided that such activities do not constitute a significant part of their work on behalf of their employer-corporation.⁸

For ease of reference, subsection 10.11(1) provides as follows:

10.11(1) No individual shall, during a period of five years after the day on which the individual ceases to be a designated public office holder,

- a) carry on any of the activities referred to in paragraph 5(1)(a) or (b) in the circumstances referred to in subsection 5(1);
- b) if the individual is employed by an organization, carry on any of the activities referred to in paragraph 7(1)(a) on behalf of that organization; and
- c) if the individual is employed by a corporation, carry on any of the activities referred to in paragraph 7(1)(a) on behalf of that corporation if carrying on those activities would constitute a significant part of the individual's work on its behalf.

It is important to note that the in-house lobbying activities referred to in paragraph 7(1)(a) include communicating with federal public office holders in respect of the following subject matters:

- the development of any legislative proposal (subparagraph 7(1)(a)(i));
- the introduction, passage, defeat or amendment of any bill or resolution (subparagraph 7(1)(a)(ii));
- the making or amendment of any regulation (subparagraph 7(1)(a)(iii));
- the development or amendment of any federal government policy or program (subparagraph 7(1)(a)(iv)); and
- the awarding of any grant, contribution or financial benefit by or on behalf of the federal Crown (subparagraph 7(1)(a)(v)).

It is also worth noting that, in contrast to paragraph 5(1)(a) of the Act, which lists the subject matters in relation to which consultant lobbyists are required to register undertakings, paragraph 7(1)(a) does not apply to any communications in-house lobbyists may have with federal public office holders in respect of the awarding of any contract by or on behalf of the federal Crown (cf. subparagraph 5(1)(a)(vi)).

As reflected in Hansard debates, Parliament intended to include the awarding of government contracts as a reportable subject matter for consultant but not in-house lobbyists. In particular, Parliament considered it necessary to include this reporting requirement for consultant lobbyists in order to ensure that it was known on whose behalf consultants were acting in communicating with federal public office holders about the awarding of government contracts as this information would not otherwise be publicly available. By contrast, Parliament intended for this subject matter not to be reportable by in-house lobbyists so as not to capture a significant volume of communications about government procurement contracts for products and services that were already publicly disclosed through other mechanisms.⁹

As such, once they cease to hold office, former designated public office holders employed by both organizations and corporations are entitled to communicate with federal public office holders regarding the awarding of federal government contracts without restriction, notwithstanding their status as former designated public office holders subject to the post-employment restrictions on lobbying set out in paragraphs 10.11(1)(b) and (c), respectively.

As a former designated public office holder employed by a corporation, Mr. MacNaughton is subject to the restriction on lobbying set out in paragraph 10.11(1)(c) of the Act for the five-year period that began on September 1, 2019, the day on which he ceased to be a designated public office holder, and that will end on August 31, 2024.

In practice, this means that Mr. MacNaughton may communicate with federal public office holders on behalf of his employer, Palantir Canada, in respect of any of the subject matters referred to in paragraph 7(1)(a) of the Act – including the development of any policy or program of the federal government – as long as such communicative activities, inclusive of preparation time, do not constitute a significant part of his work for Palantir.¹⁰

It also means that Mr. MacNaughton is not subject to any restrictions on his ability to communicate with federal public office holders on behalf of his employer about the awarding of any federal government contracts, including for the purpose of procuring Palantir's products and services. From this perspective, any efforts by Mr. MacNaughton to communicate with federal public office holders about accessing or procuring Palantir's products or services would not be within the scope of the restrictions on lobbying to which he is subject as a former designated public office holder.

This understanding of the restrictions imposed by subsection 10.11(1) is reflected in the post-employment advice that the OCL provided to Mr. MacNaughton on September 26, 2019, described in the Background section above.

Subject matter of Mr. MacNaughton's communications

In order to determine whether Mr. MacNaughton contravened paragraph 10.11(1)(c) of the Act, the OCL had to first evaluate the nature of his communications with federal public office holders during the time period under investigation and assess whether any of these communications were in respect of any of the subject matters referred to in paragraph 7(1)(a) of the Act.

Based on all of the information gathered, the OCL determined that approximately two-thirds of Mr. MacNaughton's communications with federal public office holders during the time period under investigation (i.e., 31 of 49 total communications in the four months between January 1 and May 1, 2020) consisted of pro bono offers of assistance to the federal government to provide access to Palantir products and services in connection with the government's response to the COVID-19 pandemic.

As described in greater detail below, although these 31 communications can be understood to have been made on behalf of Palantir, they do not relate to any of the subject matters referred to in paragraph 7(1)(a) of the Act. Consequently, none of these communications is subject to the restriction on lobbying set out in paragraph 10.11(1)(c) of the Act.

The OCL also determined that the other approximately one-third of Mr. MacNaughton's communications with federal public office holders during the time period under investigation (i.e., 18 of 49 total communications between January 1 and May 1, 2020) consisted of offers of advice and perspective.

Of these 18 communications, whereas some were neither related to any of the subject matters referred to in paragraph 7(1)(a) of the Act nor made on behalf of Palantir, some could be understood to relate to a subject matter referred to in paragraph 7(1)(a) but not to have been made on behalf of Palantir and some could be understood both to relate to a subject matter referred to in paragraph 7(1)(a) and to have been made on behalf of Palantir.

It is only the small number of communications that could be understood both to relate to a subject matter referred to in paragraph 7(1)(a) and to have been on behalf of Palantir that are relevant in assessing whether Mr. MacNaughton exceeded the "significant part of work" exception set out in paragraph 10.11(1)(c) of the Act.

Each of these various categories of communications is described in greater detail in the sections that follow.

Communications consisting of offers of pro bono assistance

As noted above, approximately two-thirds of Mr. MacNaughton's communications with federal public office holders during the time period under investigation (i.e., 31 of 49 total communications in the four months between January 1 and May 1, 2020) consisted of pro bono offers of assistance to the federal government to provide access to Palantir products and services in connection with its response to the COVID-19 pandemic.

In late March and early April, for example, Mr. MacNaughton offered to assist Mr. Matthews, Deputy Minister of Public Services and Procurement Canada (PSPC), to track the acquisition and distribution of internationally-sourced personal protective equipment (PPE) by providing pro bono access to a supply chain monitoring solution that Palantir had developed.

In his interview, Mr. Matthews indicated that, from the earliest days of the government's response to the pandemic and prior to his communications with Mr. MacNaughton, PSPC had identified the need to enhance the government's ability to track such inventory. He further indicated that it was in this context that he arranged a forty-five (45) minute virtual meeting that took place on April 3,¹¹ during which Mr. MacNaughton and one his colleagues from Palantir gave a demonstration of this supply chain solution to Mr. Matthews along with Mr. Kennedy, Deputy Minister of the Department of Innovation, Science and Economic Development, Mr. Vandergrift, Associate Deputy Minister, PSPC, Mr. Fillion, Assistant Deputy Minister, PSPC and Ms. Nye, Chief of Staff to the Deputy Minister, PSPC. Mr. Matthews indicated that, although he was impressed with the sophistication of this solution, it outstripped the government's needs and, as such, no efforts were made to acquire access to it.

Similarly, in her interview with the OCL, Ms. Thomas, Deputy Minister of Defence indicated that, further to an offer that Mr. MacNaughton made to the Chief of Defence Staff on behalf of Palantir to assist the Canadian Armed Forces in responding to the COVID-19 pandemic on a pro bono basis, she had a twenty (20) minute telephone conversation with Mr. MacNaughton on May 1, 2020, during which she discussed, among other things, potential ways that Palantir's information management products could be used to assist the Department of Defence and the Canadian Armed Forces' mission of responding to and minimizing the impact of the COVID-19 pandemic. Ms. Thomas further indicated that, although various procurement options were considered, including the possibility of establishing a small pilot project, no decisions were ultimately taken to enter into a contract to obtain access to Palantir's information management products.

Mr. MacNaughton indicated that, on March 6, 2020, he sent a text message to Ms. Freeland in which he noted that Palantir had been dealing with the Public Health Agency of Canada (PHAC) and that Palantir was prepared to assist the Government of Canada with its response to the COVID-19 pandemic on a pro bono basis. Mr. MacNaughton further indicated that he had a brief discussion with Ms. Freeland on March 12, 2020 in which he described the assistance that Palantir was providing to governments in other jurisdictions in responding to the COVID-19 pandemic.

On March 22, 2020, Mr. MacNaughton communicated with former Minister Bains. During this conversation, Mr. MacNaughton and Mr. Bains briefly discussed setting up a meeting between representatives of Palantir and officials from Public Services and Procurement Canada (PSPC). As noted above, Mr. MacNaughton was subsequently put in touch with the Deputy Minister of PSPC and ultimately made a presentation along with one of his colleagues from Palantir to the Deputy Minister of ISED and the Deputy Minister, Associate Deputy Minister, Assistant Deputy Minister and Chief of Staff to the Deputy Minister of PSPC. During his communication with Mr. Bains on March 22, Mr. MacNaughton further indicated that Palantir was willing to do anything it could to assist the federal government with its response to the COVID-19 pandemic on a pro bono basis.

These examples are in keeping with the information gathered by the OCL during this investigation, which demonstrates that, to the extent Mr. MacNaughton's communications with federal public office holders explicitly referred to Palantir, they consisted of offers of assistance to the government to access Palantir products and services on a pro bono basis in order to assist with its response to the pandemic. As such, these communications should be understood to have been in respect of the awarding of a contract, which is not referred to in paragraph 7(1)(a) of the Act. Consequently, these communications are not within the scope of the post-employment lobbying restrictions to which Mr. MacNaughton is subject pursuant to paragraph 10.11(1)(c).

Communications offering advice or perspective

During the time period under investigation, Mr. MacNaughton had 18 communications with federal public office holders in which he offered advice and perspective on a variety of subject matters. As noted above, the majority of these communications were not in respect of any of the subject matters referred to in paragraph 7(1)(a) and not made on behalf of Palantir or were in respect of a subject matter referred to in paragraph 7(1)(a) but not made on behalf of Palantir.

Communications unrelated to s. 7(1)(a) and not made on behalf of Palantir

As reflected in the information gathered during this investigation, Mr. MacNaughton engaged in communications with federal public office holders in which he provided his personal advice or perspective on various issues.

These communications included, for example, a discussion Mr. MacNaughton had with Ms. Telford following the last federal general election in which he provided insight on differences in the dynamics of minority as compared to majority Parliaments.

They also included an email Mr. MacNaughton sent to Ms. Telford on February 18, 2020 commenting, from a communications perspective, on responses given during Question Period regarding the rail blockades, then on-going across the country, protesting Canadian pipeline projects.

Similarly, on March 20, 2020, Mr. MacNaughton sent Ms. Telford a text message in which he offered general, communications-oriented advice about how to communicate with members of the Canadian public about the COVID-19 pandemic.

In addition, in his interview with the OCL, Mr. Shugart indicated that, to the best of his recollection, his communications with Mr. MacNaughton would have included, among other things, general discussions about the state of Canada-U.S. relations.

Similarly, Mr. Wallace indicated that he discussed the political situation in the United States during a dinner he had with Mr. MacNaughton on February 20, 2020.

In this connection, it is worth noting that discussions regarding U.S.-Canada relations and the political situation in the United States were an aspect of Mr. MacNaughton's communications including those with Mr. Bains, Mr. Clow, Ms. Freeland and Mr. Morneau.

To the extent that Mr. MacNaughton's communications with public office holders focused on providing advice and perspective on such issues, they cannot be understood to have been either in respect of any of the subject matters referred to in paragraph 7(1)(a) of the Act or on behalf of Mr. MacNaughton's employer, Palantir, as required by paragraphs 7(1)(a) and 10.11(1)(c).

As such, none of these communications would be included in determining whether Mr. MacNaughton exceeded the significant part of work threshold set out in paragraph 10.11(1)(c) of the Act.

In any event, as described in greater detail below, the total volume of communications that Mr. MacNaughton had with federal public office holders between January 1 and May 1, 2020 falls well below the significant part of work threshold.

Communications related to s. 7(1)(a) but not on behalf of Palantir

During the time period under investigation, Mr. MacNaughton also engaged in communications with federal public office holders on matters of general policy or current events.

In his interview with the OCL, Mr. Shugart indicated that he had general public policy discussions with Mr. MacNaughton about the COVID-19 pandemic, including, for example, with respect to how businesses were reacting to the response of the federal government.

In this regard, Mr. Shugart provided an email, dated March 18, 2020, in which Mr. MacNaughton recommended that, beyond the need to address the public health danger, support those most harmed by the pandemic and mitigate systemic risk to the Canadian economy, thought should be given to the types of measures and investments that the government would need to make to facilitate a strong economic recovery once the spread of COVID-19 was brought under control. Mr. MacNaughton suggested establishing a working group with representatives of the federal and provincial governments as well as from the private sector to focus on developing a recovery plan, which, in his view, should include measures to support Canadian companies increase their global competitiveness.

In his interview, Mr. Shugart characterized this email as consisting of general public policy advice, even if it included specific suggestions, such as forming a working group. Mr. Shugart contrasted such general public policy advice with advice or information that relates to a particular product or interest of a company. Mr. Shugart indicated that he could be categorical

in stating that he did not interpret Mr. MacNaughton's March 18, 2020 email to him as relating to Palantir, either at the time the email was sent or at the time of his interview with the OCL.

That same day, Mr. MacNaughton had a communication of a similar nature with former Finance Minister, Bill Morneau. In particular, Mr. MacNaughton and Mr. Morneau had a general policy discussion about the economic impacts of COVID-19, including a discussion of how Canada could emerge from the pandemic in a stronger competitive position.

Similarly, on April 2, 2020, Mr. MacNaughton emailed Ms. Freeland to convey his thoughts about the post-COVID-19 economic recovery.

As noted above, Mr. MacNaughton also had a thirty (30) minute telephone conversation with Mr. Duclos on May 1, 2020 during which they discussed the COVID-19 pandemic and the steps that would need to be taken to restart and strengthen the Canadian economy.

Although these communications were general in nature and did not address or identify any specific federal government policies or programs, they could, on a broad, purposive interpretation, be understood to have been "in respect of" the development of a policy or program of the Government of Canada within the meaning of subparagraph 7(1)(a)(iv) of the Act.

That said, however, even if such discussions could be understood to have been in respect of one of the subject matters referred to in paragraph 7(1)(a), they cannot reasonably be seen to have been "on behalf of" Mr. MacNaughton's employer, Palantir Canada, as also required by this same provision.

In any event, even if Palantir could be seen to benefit indirectly, the volume of Mr. MacNaughton's communications on matters of general policy or current events – either on their own or in combination with all of the other communications that Mr. MacNaughton had with federal public office holders during the period under investigation – falls well below the significant part of work threshold and, therefore, well within the scope of the exception set out in paragraph 10.11(1)(c) of the Act.

Communications related to s. 7(1)(a) and made on behalf of Palantir

As reflected in the information gathered during this investigation, Mr. MacNaughton had communications with federal public office holders in which he offered advice or perspective that could be understood to have been both related to a subject matter referred to in paragraph 7(1)(a) of the Act and on behalf of Palantir.

For example, in communicating with Mr. Theis, Director of Policy and Cabinet Affairs in the Prime Minister's Office, on March 2, 2020, Mr. MacNaughton described the severity of the COVID-19 pandemic and the need for better data collection and analysis about the spread of the virus to help governments around the world respond effectively. Mr. Theis indicated that, on this same occasion, he and Mr. MacNaughton also discussed responses to the pandemic in Canada and what other countries were doing to track and control the spread of COVID-19.

Mr. Theis confirmed that Mr. MacNaughton did not make any specific requests or proposals and that he has not had any contact with Mr. MacNaughton since that brief meeting.

On this same date, Mr. MacNaughton had a separate, but near-identical conversation with Mr. Clow, Executive Director, Issues Management, Parliamentary Affairs & Canada-U.S. Relations in the Prime Minister's Office.

On March 22, 2020, Mr. MacNaughton communicated with Mr. Duncanson, Senior Advisor to the Deputy Minister of Finance, about Palantir's efforts to assist other G7 countries to respond to the pandemic. During this conversation, Mr. MacNaughton and Mr. Duncanson discussed how Palantir might be able to assist the Government of Canada with its COVID-19 Economic Response Plan on a pro bono basis. In addition, they discussed pandemic-related supports for Canadian businesses and how the Government would monitor the effectiveness of such supports. This latter aspect, although related to Palantir's offer of pro bono assistance, can be understood to have been a communication in respect of the development of the Government of Canada's COVID-19 Economic Response Plan.

Later that month, on March 27, 2020, Mr. MacNaughton had a similar communication with Mr. Dunn, Chief of Staff to then-Minister Bains, about data collection and analysis tools that could help public health authorities and governments track the spread of COVID-19. Mr. Dunn indicated that Mr. MacNaughton followed up with him by email that same day in order to provide a "backgrounder" presentation that described the work Palantir was "doing in several countries to track COVID-19 and help decision makers with real time data". Mr. MacNaughton noted that Palantir was also working to assist various countries track the implementation and measure the efficacy of their pandemic-related support programs.

In light of Mr. MacNaughton's emphasis on the need for the federal government to develop improved data collection and analysis capabilities related to the spread of COVID-19 and on pandemic-related supports for Canadian businesses, these communications, although related in some cases to Palantir's pro bono offer of assistance, can be understood to have been in respect of the development of a policy or program of the Government of Canada within the meaning of sub-paragraph 7(1)(a)(iv) of the Act. Given Mr. MacNaughton's emphasis on Palantir's expertise in creating data modelling solutions and its work in assisting other countries respond to the pandemic, these communications can also be understood to have been made on behalf of Palantir.

Although the communications in this category are relevant in assessing whether Mr. MacNaughton exceeded the "significant part of work" exception, the low volume and short duration of these communications – either on their own or in combination with all of the other communications that Mr. MacNaughton had with federal public office holders during the period under investigation – falls well below the significant part of work threshold and, therefore, well within the scope of the exception set out in paragraph 10.11(1)(c) of the Act.

Significant part of work

As noted above, paragraph 10.11(1)(c) sets out an exception according to which former designated public office holders employed by a corporation, such as Mr. MacNaughton, may communicate with federal public office holders in respect of any of the subject matters referred to in paragraph 7(1)(a) as long as such communicative activities do not constitute a “significant part” of their work on behalf of their employer.

The OCL has interpreted what constitutes a “significant part of duties” in relation to the in-house lobbying registration threshold set out in paragraph 7(1)(b) of the Act.¹² In particular, the OCL has interpreted a significant part of duties as the equivalent of 20 percent or more of the duties of any one employee, inclusive of preparation time. Based on a 40-hour work week, the significant part of duties registration threshold would be met to the extent that one or more employees, individually or collectively, spend 32 hours in any given four-week period engaged in communicating with federal public office holders on behalf of their employer in respect of any of the subject matters referred to in paragraph 7(1)(a) of the Act.

The post-employment restriction set out in paragraph 10.11(1)(c) differs from paragraph 7(1)(b) of the Act in two main respects.

First, the threshold for determining whether or not the exception in paragraph 10.11(1)(c) applies to a given former designated public office holder is framed as a significant part of “work” rather than of “duties”. Notwithstanding this difference in terminology, I am of the view that it is appropriate to use the same methodology to determine whether a given volume of in-house lobbying activity exceeds the threshold governing the availability of the exception set out in paragraph 10.11(1)(c). In particular, to the extent that former designated public office holders spend 20 percent or more of their time, inclusive of preparation, communicating with federal public office holders on behalf of their employer-corporation, then they can be understood to have spent a significant part of their time engaged in such activities.

Second, whereas the in-house lobbying activities carried out by all employees on behalf of an organization or corporation are counted in determining whether these activities collectively exceed a significant part of the duties of any one employee for the purposes of paragraph 7(1)(b), only the in-house lobbying activities of the former designated public office holder subject to the post-employment lobbying restriction in paragraph 10.11(1)(c) count in determining whether or not the exception set out in this provision has been exceeded.

In practice, this means that, based on a 40-hour work week, former designated public office holders will contravene paragraph 10.11(1)(c) if they engage in communicating with federal public office holders on behalf of their employer-corporation in respect of the subject matters referred to in paragraph 7(1)(a) of the Act for more than 32 hours in any given four-week period.

As noted above, between March 22 and April 22, 2020, which was the highest-volume four-week period of activity, Mr. MacNaughton spent a confirmed total of two hours and thirty-five minutes (2 hr. 35 min.) communicating with federal public office holders, including one (1) forty-five (45) minute virtual meeting on April 3 in support of a demonstration of a supply chain

monitoring solution developed by Palantir, described above. During this same four-week period, Mr. MacNaughton had three (3) telephone communications of unconfirmed duration with federal public office holders and sent federal public office holders eighteen (18) emails, which as noted above, were brief and would not have taken much time to prepare and send. Mr. MacNaughton did not send any text messages or have any dinners during this four-week period.

In addition to the fact that a significant majority of Mr. MacNaughton's communications with federal public office holders during the time period under investigation were not in respect of any of the subject matters referred to in paragraph 7(1)(a) or not made on behalf of Palantir or both, the amount of time Mr. MacNaughton spent engaged in such communicative activities falls well short of the significant part of work threshold and, therefore, well within the scope of the exception set out in paragraph 10.11(1)(c) of the Act.

Conclusion

For all of these reasons, I conclude 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.

Observations

The information collected during the course of this investigation demonstrates that Mr. MacNaughton followed both the requirements of the *Lobbying Act* (Act) and the advice he received from the OCL in complying with the five-year prohibition to which he is subject as a former designated public office holder employed by a corporation.

However, this investigation also demonstrates the challenges of tracking, monitoring and accounting for the time spent engaging in what amounts to in-house lobbying activities as well as an inconsistency in the manner in which the five-year prohibition on lobbying applies to former designated public office holders employed by corporations as compared to organizations.

As set out in paragraph 10.11(1)(c) of the Act, former designated public office holders employed by corporations may communicate with federal public office holders on behalf of their employers in respect of any subject matter referred to in paragraph 7(1)(a) as long as such in-house lobbying activities do not constitute a significant part of their work.

For any former designated public office holder employed by an organization, by contrast, any one such communication would constitute a contravention of paragraph 10.11(1)(b) of the Act, which sets out an unqualified prohibition that precludes former designated public office holders employed by organizations from engaging in any amount of in-house lobbying activities.

As I recently noted in Recommendation 7 of the Preliminary Recommendations I made to improve the Act at the request of the Standing Committee on Access to Information, Privacy and Ethics, there is no readily apparent explanation in the parliamentary record to justify why the five-year prohibition ought to be applied differently depending on whether a former designated public office holder engages in in-house lobbying activities on behalf of a corporation rather than an organization.

In my view, 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.

To remove the existing inconsistency, Parliament could prohibit all former designated public office holders from engaging in any in-house lobbying activities for a period of five years from the date on which they cease to hold office by eliminating the “significant part of work” exception for former designated public office holders employed by corporations set out in paragraph 10.11(1)(c) of the Act.

Alternatively, if Parliament wishes to retain an exception for former designated office holders employed by corporations, then this exception should also be extended to former designated public office holders employed by organizations. In that case, the reference to “significant part of work” should be removed and replaced with clear objective criteria.

Eliminating this inconsistency would increase the fairness of the Act by ensuring that former designated public office holders employed by both corporations and organizations are subject to the same post-employment prohibitions.

For a more comprehensive description of these and other suggested improvements to the Act, please refer to the report entitled "[Improving the Lobbying Act: Preliminary Recommendations](#)" on the OCL website.

Endnotes

- 1 Press Release, “Palantir Technologies Appoints Former Canadian Ambassador to the United States, David MacNaughton as President of Palantir Canada”, *Business Wire* (August 9, 2019), online: <https://www.businesswire.com/news/home/20190809005046/en/Palantir-Technologies-Appoints-Canadian-Ambassador-United-States>
- 2 Subsection 2(1) of the Act defines “designated public office holder” as including, among other categories of individuals, any public office holder who is an associate deputy minister or an assistant deputy minister or who “occupies a position of comparable rank” in a “department” within the meaning of paragraph (a), (a.1) or (d) of the Financial Administration Act (FAA). Paragraph (a) of the definition of “department” in section 2 of the FAA includes all departments of the federal government, including the Department of Foreign Affairs and Trade Development, where Mr. MacNaughton served as Canada’s Ambassador to the United States from March 3, 2016 to August 31, 2019.

As set out in an interpretation bulletin issued pursuant to subsection 10(1) of the Act (“Interpretation of ‘Comparable Rank’ for Designated Public Offices” (May 2010)), the OCL has identified the criteria that must be met for a position to be of comparable rank to that of an associate or assistant deputy minister. Specifically, the position must be classified at the EX-04 level or higher and must report directly to a designated public office holder.

Mr. MacNaughton met each of these criteria in his capacity as Canada’s Ambassador to the United States.

As reflected in the Order of the Governor in Council appointing him to this position, Mr. MacNaughton was remunerated at a level well beyond the EX-04 classification level and comparable to the level at which Deputy Ministers are remunerated.

In addition to meeting the relevant classification level, Mr. MacNaughton also reported to the Deputy Minister of Foreign Affairs as Ambassador.

In this connection, it is worth noting that, as set out on a public website maintained by the Department of Foreign Affairs and Trade Development (“Lobbying Act: Designated Public Office Holders (DPOH)” (January 1, 2018)), Mr. MacNaughton was listed as a “designated public office holder” subject to post-employment lobbying restrictions under the *Lobbying Act* for a period of five years after ceasing to hold office.

Moreover, it was in his capacity as a former designated public office holder that Mr. MacNaughton received post-employment advice from the OCL in May and September 2019 as described in the Background section.

- 3 Murad Hemmadi, “Palantir’s MacNaughton says data-mining firm is working with Ottawa, three provinces on COVID-19”, *The Logic* (April 30, 2020), online: <https://thelogic.co/news/exclusive/palantirs-macnaughton-says-data-mining-firm-is-working-with-ottawa-three-provinces-on-covid-19/>
- 4 Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology, Minutes of Proceedings and Evidence, 43rd Parl, 1st Sess, No. 011 (30 April 2020) at 7.
- 5 Murad Hemmadi, “Palantir’s MacNaughton has ‘engaged with many’ in federal government: Bains”, *The Logic* (May 1, 2020), online: <https://thelogic.co/news/palantirs-macnaughton-has-engaged-with-many-in-federal-government-bains/>
- 6 Andy Blatchford, “Former Canadian envoy to Washington defends work pitching for Palantir”, *Politico* (May 7, 2020), online: <https://www.politico.com/news/2020/05/07/canada-ambassador-palantir-243721>

- 7 Issuance of Order: Official Dealings (September 16, 2020), online: Office of the Conflict of Interest and Ethics Commissioner <https://ciec-ccie.parl.gc.ca/en/news-nouvelles/Pages/IssuanceOrderOfficialDealings-OrdonnanceRapportsOfficiels.aspx>
- 8 Although the term “corporation” is not defined in the Act, subsection 2(1) defines the term “organization” as including each of the following entities: a) a business, trade, industry, professional or voluntary organization; b) a trade union or labour organization; c) a chamber of commerce or board of trade; d) a partnership, trust, association, charitable society, coalition or interest group; e) a government, other than the Government of Canada; and f) a corporation without share capital incorporated to pursue, without financial gain to its members, objects of a national, provincial, patriotic, religious, philanthropic, charitable, scientific, artistic, social, professional or sporting character or other similar objects.
- 9 Canada, Parliament, *House of Commons Debates*, 33rd Parl, 2nd Sess, Vol 1, No 1-4 (12 April 1988).
- 10 As described in greater detail in the Significant Part of Work section below, the OCL has interpreted a “significant part” as amounting to 20 percent of an employee’s duties in any four-week period of time. Based on a 40-hour work week, this would amount to 32 hours spent communicating with federal public office holders, inclusive of preparation time, in a given four-week period (i.e., 20 percent of 160 hours equals 32 hours).
- 11 As reflected in documentation provided to the OCL by Mr. Kennedy, Deputy Minister of Innovation, Science and Economic Development Canada (ISED), one of Mr. MacNaughton’s colleagues at Palantir, but not Mr. MacNaughton himself, participated in a virtual meeting on April 1 with the Director General, Marketplace Framework Policy Branch and the Director, Digital Technologies Directorate at ISED.
- 12 A Significant Part of Duties (“The 20% Rule”), Office of the Commissioner of Lobbying, online: <https://lobbycanada.gc.ca/en/rules/the-lobbying-act/advice-and-interpretation-lobbying-act/a-significant-part-of-duties-the-20-rule/>

