



HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
CANADA

# QUESTIONS OF CONFLICT OF INTEREST AND LOBBYING IN RELATION TO PANDEMIC SPENDING

**Report of the Standing Committee on Access to  
Information, Privacy and Ethics**

**Chris Warkentin, Chair**

**JUNE 2021  
43<sup>rd</sup> PARLIAMENT, 2<sup>nd</sup> SESSION**

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**Chris Warkentin  
Chair**

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**43<sup>rd</sup> PARLIAMENT, 2<sup>nd</sup> SESSION**

## **NOTICE TO READER**

### **Reports from committee presented to the House of Commons**

Presenting a report to the House is the way a committee makes public its findings and recommendations on a particular topic. Substantive reports on a subject-matter study usually contain a synopsis of the testimony heard, the recommendations made by the committee, as well as the reasons for those recommendations.

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# **THE STANDING COMMITTEE ON ACCESS TO INFORMATION, PRIVACY AND ETHICS**

has the honour to present its

## **SECOND REPORT**

Pursuant to its mandate under Standing Order 108(3)(h), the committee has studied Questions of Conflict of Interest and Lobbying in Relation to Pandemic Spending and has agreed to report the following:



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## SUMMARY

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In the summer of 2020, the House of Commons Standing Committee on Access to Information, Privacy and Ethics (the Committee) commenced a study regarding the safeguards in place to prevent conflicts of interest in federal government expenditure policies. The study lapsed once Parliament was prorogued. In November 2020, the Committee began a study on questions of conflict of interest and lobbying in relation to pandemic spending. It was agreed that the new study would be a continuation of the 2020 summer's study.

This report details the events surrounding the awarding of the contribution agreement for the administration of the Canada Student Service Grant. It also addresses issues concerning communications by a former reporting public office holder with government officials as well as the federal government's award of a ventilator contract during the pandemic. In doing so, it touches on the strengths and shortcomings of the federal conflict of interest and lobbying regimes. It also highlights ways in which transparency and oversight of federal spending can be enhanced in the future.

The Committee makes several recommendations, including that the Government of Canada establish oversight and accountability mechanisms that are specifically designed to ensure rapid and transparent allocation of federal funds during emergency situations.



## LIST OF RECOMMENDATIONS

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*As a result of their deliberations committees may make recommendations which they include in their reports for the consideration of the House of Commons or the Government. Recommendations related to this study are listed below.*

### **Recommendation 1 on Cabinet decisions**

**That the Government of Canada consider making mandatory, prior to all Cabinet decisions on awarding a contract or contribution agreement, an evaluation and determination as to whether a conflict of interest screen, agreed upon pursuant to section 29 of the *Conflict of Interest Act* by a public office holder and the Conflict of Interest and Ethics Commissioner, should be put in place for any member of Cabinet, as a preventative measure to avoid conflict of interest. .... 74**

### **Recommendation 2 on decisions made in the Finance Minister's Office**

**That the Government of Canada make mandatory, prior to decisions made in the Finance Minister's Office, an evaluation and determination as to whether a conflict of interest screen, agreed upon pursuant to section 29 of the *Conflict of Interest Act* by a public office holder and the Conflict of Interest and Ethics Commissioner, should be put in place for the minister or any public office holder involved in that decision and that it conduct a review to examine how groups not registered to lobby were able to have direct access to the Finance Minister. .... 75**

### **Recommendation 3 on ministerial accountability**

**That, given the failure of Minister Bardish Chagger to reveal her 17 April 2020 meeting with Mr. Craig Kielburger, a review of ministerial accountability to committees must be undertaken. .... 75**

### **Recommendation 4 on record-keeping in the context of a meeting with lobbyists**

**That the Government of Canada implement a mandatory rule requiring, except in exceptional circumstances, that senior public office holders be accompanied by at least one staff during any meeting with lobbyists for the purpose of taking notes. .... 75**

### **Recommendation 5 regarding the outsourcing of projects**

**That the Government of Canada establish a mandatory competitive process to select recipients for contribution agreements valued above a predetermined threshold. .... 76**

### **Recommendation 6 regarding due diligence reports**

**That the Government of Canada make it mandatory to produce a due diligence report for any contract or contribution agreement between the government and a third party. .... 76**

### **Recommendation 7 on contracting with shell companies**

**That the Government of Canada ensure that no future contracts or contribution agreements be signed with shell companies that lack assets in order to avoid liability. .... 76**

### **Recommendation 8 on contracting with WE Charity, its affiliates, or subsidiaries**

**That the Government of Canada refrain from further contracts or contribution agreements with the WE group until an independent audit or a Canada Revenue Agency forensic audit can be undertaken to determine exactly how the finances flow between their charitable operations and their multitude of side companies and real estate holdings. .... 77**

### **Recommendation 9 on Quebec and Francophone communities outside of Quebec's access to federal programs**

**That the Government of Canada insist that projects that involve hiring people across Canada are properly vetted regarding their obligation to ensure full participation of Quebec and Francophone communities outside of Quebec. .... 77**

### **Recommendation 10 regarding the significant part of duties threshold for in-house lobbyists**

**That the Government of Canada remove the significant part of duties threshold from the *Lobbying Act* for in-house lobbyists and clarify lobbying rules applicable to founders of organizations that may lobby government. .... 77**

**Recommendation 11 regarding the powers of the Commissioner of Lobbying of Canada**

**That the Government of Canada introduce legislative changes to the *Lobbying Act* to give the Commissioner of Lobbying real powers to investigate, issue fines and impose lobbying bans to those who disregard the Act. .... 77**

**Recommendation 12 regarding volunteer programs**

**That the Government of Canada review future volunteer programs to ensure they are not used to undercut minimum wage laws..... 78**

**Recommendation 13 regarding compliance with Orders from the House of Commons**

**That the Government of Canada comply with orders of the House of Commons and not block testimony of key witnesses in studies relating to conflict of interest and lobbying. .... 78**

**Recommendation 14 regarding the powers of the Conflict of Interest and Ethics Commissioner**

**That the Conflict of Interest and Ethics Commissioner be provided with more tools to sanction public office holders who contravene the *Conflict of Interest Act*. .... 78**

**Recommendation 15 regarding the use of new technology**

**That the Government of Canada refrain from using any new technology that has the potential of violating the privacy rights of Canadians until it has been examined by the Office of the Privacy Commissioner of Canada and given the parameters of use. .... 78**

**Recommendation 16 regarding the Cabinet decision-making process**

**That, as part of the Cabinet decision-making process, members must immediately recuse themselves from discussions on a subject that places them in a conflict of interest or the appearance of a conflict of interest, in order to maintain public trust. If the member or members in a real or apparent conflict of interest do not recuse themselves, the other members of Cabinet must suspend them from Cabinet as soon as they are aware of the issue, or Cabinet will be unable to legitimately meet..... 79**

**Recommendation 17 on the appearance of a conflict of interest**

That the Government of Canada amend the *Conflict of Interest Act* to explicitly provide that the failure to recuse by a public office holder where there is an appearance of conflict of interest constitutes a contravention of the Act. .... 79

**Recommendation 18 regarding the review of the *Conflict of Interest Act***

That the Government of Canada conduct a comprehensive review of the *Conflict of Interest Act*, especially section 7, respecting the reasons a public office holder may be led to give preferential treatment to a third party and the appropriateness of broadening the scope of this section in order to restore and foster public trust in the various offices that make up the government and its departments. This review should also assess whether it is appropriate to define or amend certain terms employed in the Act, such as “friend” and “preferential treatment,” in order to broaden the concept of conflict of interest and encompass all the circumstances that may result in a violation of the Act. Further, the review should assess the appropriateness of implementing a hierarchy of penalties based on the number of repeat violations or the gravity of the violation. That this review be duly submitted to Parliament for study and approval..... 79

**Recommendation 19 on access to programs in both official languages**

That the Government of Canada, in any contracting process or call for proposals to engage a person or third-party organization to provide services to the public or administer government programs, ensure that the services and programs will be provided in accordance with its official languages obligations so that Francophones in Quebec and Francophone communities outside of Quebec can receive the same programs and services in their language as Anglophone Canadians..... 79

**Recommendation 20 on oversight and accountability during emergencies**

That the Government of Canada establish oversight and accountability mechanisms specifically designed to ensure rapid and transparent allocation of federal funds during emergency situations. .... 80

**Recommendation 21 on the review of contribution agreement processes**

That the Government of Canada explore measures to increase the fairness, openness and transparency of its contribution agreement award processes. .... 80

**Recommendation 22 on post-employment obligations**

**That the Government of Canada review the *Conflict of Interest Act* and the *Lobbying Act* and make amendments where required to ensure better compliance with the post-employment obligations of a public office holder, whether through greater sanctions or other means. .... 81**

**Recommendation 23 on the review of contracts and contracting processes**

**That the Government of Canada provide an independent organization, such as the Office of the Procurement Ombudsman, the powers necessary to proactively review departmental contracting processes, including their use of sole-sourced contracts..... 81**





# QUESTIONS OF CONFLICT OF INTEREST AND LOBBYING IN RELATION TO PANDEMIC SPENDING

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## INTRODUCTION

On 30 July 2020, the House of Commons Standing Committee on Access to Information, Privacy and Ethics (the Committee) began a study to review the safeguards to prevent conflicts of interest in federal government expenditure policies.<sup>1</sup> Two public meetings were held on 10 and 11 August 2020, during which the Committee heard 11 witnesses. On August 14, 2020, Parliament was prorogued, and the study lapsed.

On 20 November 2020, the Committee began a study on questions of conflict of interest and lobbying in relation to pandemic spending, with a focus on three specific cases: the administration of the Canada Student Service Grant (CSSG) and WE Charity<sup>2</sup>; the communications of former reporting public office holder David MacNaughton with government officials; and the federal government's award of a ventilator contract to FTI Professional Grade, an organization affiliated with Baylis Medical Inc.<sup>3</sup> The motion for the study is as follows:

That, pursuant to Standing Order 108(3)(h), this committee undertake a study into issues of conflict of interest and the Lobbying Act in relation to pandemic spending;

that this study continue our work relating to the Canada Student Service Grant, including this committee's work to review the safeguards to prevent conflicts of interest in federal government expenditures; government spending, WE Charity and the Canada Student Service Grant; and the

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1 House of Commons Standing Committee on Access to Information, Privacy and Ethics (ETHI), [Minutes of Proceedings](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 22 July 2020.

2 Except in specific cases to distinguish between WE-affiliated organizations, this report uses WE Charity in accordance with the motion establishing the study. WE Charity is meant to refer to the main organization and all its affiliates and subsidiaries. As is explained in the report, the signatory to the contribution agreement for the administration of the CSSG was the WE Charity Foundation, a distinct organization among the WE Charity affiliates and subsidiaries.

3 ETHI, [Minutes of Proceedings](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 16 November 2020; ETHI, [Minutes of Proceedings](#), 20 November 2020.



administration of the Canada Student Service Grant and WE Charity; and that this study include:

- a) the consideration of all aspects of the government's involvement with Baylis Medical Company Inc., as well as former Liberal Member of Parliament Frank Baylis, including the awarding of a procurement contract for medical devices;
- b) an examination into Palantir Canada's relationship with the government including the breach of the Conflict of Interest Act by its president and former Canadian ambassador to the U.S. David MacNaughton;
- c) the committee study mainly, contracts with regards to speeches of Justin Trudeau and Sophie Grégoire Trudeau within the framework of activities organized by Speakers' Spotlight since October 14, 2008;
- d) that the committee invite Speakers' Spotlight representatives to testify about all files related to speeches organized since October 14, 2008, for Justin Trudeau and Sophie Grégoire-Trudeau;
- e) that an order be issued to Speakers' Spotlight to obtain a copy of all records related to speeches organized since October 14, 2008, for Justin Trudeau and Sophie Grégoire Trudeau—including, for each speech, the amounts paid, any expenses reimbursed and the name of the company, organization, person or entity that organized it;
- f) that the documents listed in section (e) be delivered to the clerk of the committee within seven days of the adoption of this motion and that their consideration be in camera;
- g) that for the consideration of documents studied during in camera meetings:
  - i. only committee members be allowed to participate;
  - ii. no mobile or electronic device be allowed in the room during these meetings;
  - iii. numbered hard copies of documents be given to committee members by the clerk at the beginning of each meeting scheduled for that purpose and that these copies be given to the clerk at the end of each meeting;

- iv. copies of documents be kept in the clerk's office and that outside of meetings committee members can only view them by going to the clerk's office, and no mobile or electronic device be in the room during the consultation of documents; and

that the committee report its findings to the House with recommendations to better permit the government to conduct the business of government with public confidence in its integrity.

As indicated in the motion, Committee members agreed that this study would represent a continuation of the August 2020 study. As such, testimony heard in early August 2020 is included in this report. Where necessary for context, this report also includes references to public testimony or documents from other committees of the House of Commons that have conducted studies relating to the CSSG.<sup>4</sup>

In all, including the August 2020 public meetings, the Committee devoted 17 meetings to this study, during which it heard from 32 witnesses. It also received 6 briefs. This report summarizes witness testimony and highlights recommendations made by the Committee.

## WE CHARITY AND THE CANADA STUDENT SERVICE GRANT

### Background

On 22 April 2020, the Prime Minister announced the creation of CSSG to support post-secondary students and recent graduates during the pandemic.<sup>5</sup> Ultimately, the CSSG was cancelled amid concerns about the program, many of which related to the selection of WE Charity to administer it. Due to the COVID-19 pandemic, the federal government developed the CSSG in an exceptionally short timeframe, and many details were developed after the program was announced.

Under the CSSG, volunteers could receive a one-time grant of \$1,000 for each 100 hours of service completed between June and October 2020, up to \$5,000.<sup>6</sup> Grants would be disbursed to volunteers through a third-party program administrator, which the

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4 As indicated above, the contribution agreement awarded by the federal government was signed by the WE Charity Foundation. Discussions and negotiations prior to the signing of the contribution agreement were conducted by representatives of WE Charity.

5 Prime Minister of Canada Justin Trudeau, *Support for students and new grads affected by COVID-19*, News release, 22 April 2020.

6 Prime Minister of Canada Justin Trudeau, *Canada Student Service Grant*, backgrounder, 25 June 2020.



government would fund through a contribution agreement. The federal government earmarked up to \$912 million for the program, and its administrator would be reimbursed for eligible costs.<sup>7</sup>

Employment and Social Development Canada (ESDC) led the CSSG's development under Bardish Chagger, Minister of Diversity and Inclusion and Youth. Ian Shugart, the Clerk of the Privy Council and Secretary to Cabinet at the Privy Council Office (PCO), explained that ESDC and the Department of Finance outlined the program and developed the details, and that PCO officials "prepare[d] elements of the proposal for consideration by the [Cabinet Committee on the Federal Response to the Coronavirus Disease (Cabinet COVID-19 Committee)] and, ultimately, by Cabinet."<sup>8</sup> Bill Morneau, then-Minister of Finance, was responsible for final funding approval because the CSSG fell under the *Public Health Events of National Concern Payments Act* (now repealed).<sup>9</sup>

On 25 June 2020, the Prime Minister announced the selection of WE Charity as the CSSG's administrator.<sup>10</sup> Following that announcement, critics raised allegations of improper lobbying on the part of WE Charity and conflict-of-interest concerns related mainly to the organization's links to Prime Minister Justin Trudeau and Minister of Finance Bill Morneau.

On 3 July 2020, WE Charity announced that it had passed operational responsibilities for the CSSG to the federal government due to controversy and questions "about the program's origin, about the concept of outsourcing the program's operations, about the choice of WE Charity as the government's partner, and the underlying merit of paid

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7 Treasury Board of Canada Secretariat, *Supplementary Estimates (A), 2020–2021*, pp. 2-23; and *An Act for granting to Her Majesty certain sums of money for the federal public administration for the fiscal year ending March 31, 2021*, S.C. 2020, c. 10.; House of Commons Standing Committee on Finance (FINA), *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 16 July 2020, 1500 (Hon. Bardish Chagger, Minister of Diversity and Inclusion and Youth).

8 ETHI, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 11 August 2020, 1255 (Ian Shugart, Clerk of the Privy Council and Secretary to Cabinet, Privy Council Office).

9 FINA, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 22 July 2020, 1420 (Hon. Bill Morneau, Minister of Finance); and *Public Health Events of National Concern Payments Act, S.C. 2020, c. 5, s. 9*.

10 Prime Minister of Canada Justin Trudeau, *Canada Student Service Grant*, backgrounder, 25 June 2020.

service.”<sup>11</sup> WE Charity announced on 9 September 2020 that it would wind down operations in Canada.<sup>12</sup> That process was still underway as of 15 March 2021.<sup>13</sup>

In response to Committee members’ questions, Mr. Craig Kielburger, Founder of WE Charity, indicated a willingness to cooperate with officers of parliament whose examinations or investigations had been requested by members of Parliament or other government authorities. Mr. Kielburger confirmed that as of 15 March 2021, WE Charity had not been contacted by the Royal Canadian Mounted Police (RCMP), nor by the Canada Revenue Agency (CRA) or the United States (U.S) Internal Revenue Service.<sup>14</sup> However, he told the Committee that the police had come to his home multiple times in response to intimidation and death threats against him and his family, and that WE Charity staff had also received death threats, which he linked to WE Charity’s involvement in the CSSG.<sup>15</sup>

When the Committee began its study, it was already aware of key events concerning WE Charity and the CSSG from the House of Commons Standing Committee on Finance (Finance Committee) and WE Charity communications. Table 1 presents a chronological overview of key events related to the CSSG’s development and award prior to the start of the Committee’s August 2020 study.

**Table 1—Key Events in the Development and Award  
of the Canada Student Service Grant Prior to the Committee’s Study**

Date	Event
October 2007 to September 2017	Justin Trudeau participates in eight WE Day events. He is not paid for these appearances.
February 2012 to May 2020	Sophie Grégoire-Trudeau participates in eight WE Charity events, receiving a one-time speaking fee of \$1,500 in 2012. She has \$24,000 in expenses covered and receives \$240 in gifts. Ms. Grégoire-Trudeau volunteers with WE Charity as an “ambassador and ally” from 2018 onward; this work is cleared by the Conflict of Interest and Ethics Commissioner.

11 WE Charity, [Media Statement – WE Charity](#), 3 July 2020.

12 WE Charity, [WE Charity Canada to wind down operations and set up endowment fund to support education and humanitarian programs](#), News release, 9 September 2020.

13 ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 15 March 2021, 1510 (Craig Kielburger, Founder, WE Charity).

14 Ibid., 1455.

15 Ibid., 1555 and 1725.



Date	Event
June, December 2017	Then-Minister of Finance Bill Morneau, his wife and his daughter travel to Kenya in June 2017 to learn about WE Charity school projects and, in December 2017, to Ecuador to help build WE Charity schools. Minister Morneau states that WE Charity did not issue receipts for the incurred expenses related to the organization's programming, which the minister intended to pay for personally. WE Charity later claims it conveyed those expenses orally to Minister Morneau's staff.
April 2018 and June 2020	Minister Morneau's wife makes two donations to WE, each in the amount of \$50,000.
March 2020	WE Charity begins to lay off employees, anticipating financial difficulties during the pandemic; 197 of its 390 employees are laid off.
Early April 2020	WE Charity replaces all but one Canadian board member and two United States board members.
5 April 2020	The Prime Minister and Minister Morneau discuss student support measures, identifying the Canada Service Corps and Canada Summer Jobs program as potential vehicles.
6 April 2020	The Prime Minister announces upcoming student supports.
7 April 2020	Mary Ng, Minister of Small Business, Export Promotion and International Trade, calls Mr. Craig Kielburger of WE Charity expressing a desire to help young people start small businesses.
9 April 2020	Mr. Craig Kielburger sends Minister Ng an existing proposal for a youth entrepreneurship program. This document is circulated to at least 17 ministers, ministerial staff and senior officials.
10 April 2020	In an email from Mr. Craig Kielburger to Minister Morneau, Mr. Kielburger states that Minister Ng suggested submitting a proposal to scale WE Charity's youth entrepreneurship program to mitigate the economic struggles related to the pandemic.
16 April 2020	In an email discussion that included officials from the Department of Finance Canada (Department of Finance) and ESDC, Rachel Wernick, Senior Assistant Deputy Minister, Skills and Employment Branch at ESDC and Michelle Kovacevic, Assistant Deputy Minister for the Federal-Provincial Relations and Social Policy Branch at the Department of Finance Canada, discuss potential federal and third-party organizations to deliver a student support program. Ms. Wernick raises the idea of volunteer matching for a tuition credit through an organization such as WE Charity.
17 April 2020	Mr. Craig Kielburger and Sofia Marquez, then responsible for government and stakeholder relations at WE Charity, call Bardish Chagger, Minister of Diversity and Inclusion and Youth, to discuss WE Charity's social entrepreneurship proposal.
18 April 2020	During a briefing, officials raise to Minister Morneau that the CSSG might require a third-party administrator, and raised WE Charity, among other organizations, as examples of groups doing similar work. WE Charity's entrepreneurship proposal is appended to his briefing materials.
19 April 2020	Ms. Wernick calls Mr. Craig Kielburger and outlines the broad parameters of a youth service program being developed. Mr. Craig Kielburger also describes the initial youth entrepreneurship proposal that he sent earlier to Minister Ng.

QUESTIONS OF CONFLICT OF INTEREST AND  
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Date	Event
19 April 2020	ESDC sends WE Charity's entrepreneurship proposal to Ms. Kovacevic, who forwards it to Amitpal Singh, Senior Policy Advisor at the Office of the Minister of Finance. This proposal is included as an annex in that evening's briefing package to Minister Morneau, without recommendations or analysis.
20 April 2020	Mr. Singh contacts WE Charity to discuss its ability to deliver volunteer opportunities. He states in an email to government colleagues that WE Charity is willing to rework its 10-week summer proposal to meet the government's policy objective of national service. Mr. Singh makes no promises to WE Charity but, that same day, suggests that colleagues should "bring [WE Charity] into the fold" following policy approvals.
20 April 2020	Ms. Marquez emails an ESDC official with a summary of her and Mr. Craig Kielburger's 17 April 2020 call with Minister Chagger. The summary states that Minister Chagger expressed interest in adapting the entrepreneurship proposal submitted to Minister Ng and that she suggested opening a service-stream for youth. Ms. Marquez expresses willingness to amend WE Charity's proposal if given the right policy objectives.
20 April 2020	An email from Ms. Kovacevic to an undisclosed recipient indicates that the Prime Minister's Office (PMO) has been weighing in on the version of WE Charity's proposal sent to the Minister of Finance on 18 April 2020. The Prime Minister later stated that his staff had worked with the PCO and other departments and that they knew WE Charity was under consideration. However, he never spoke with his staff about WE Charity's involvement until 8 May 2020.
21 April 2020	Minister Morneau verbally approves the broad parameters of the CSSG and the potential involvement of a third party. He later stated that no third party was chosen at that time. Without ministerial approval, Mr. Singh directs Ms. Kovacevic to include \$12 million for WE Charity's social entrepreneurship proposal in a decision document for Minister Morneau.
22 April 2020	The Prime Minister announces that a \$912 million CSSG would be launched.
22 April 2020	After the Prime Minister's announcement, Mr. Craig Kielburger shares a second proposal for a student service program with various ministers, ministerial staff and senior officials. Ms. Marquez later recalled that the proposal was based on broad parameters and guidelines Ms. Wernick shared with Mr. Kielburger on 19 April 2020.
23 April 2020	The Department of Finance and ESDC discuss the possibility of WE Charity offering virtual volunteer placements and potentially administering the CSSG.
24 April 2020	Ms. Kovacevic and Ms. Wernick call Mr. Kielburger and Ms. Marquez to discuss WE Charity and its capacity. The only commitment ESDC makes is to follow up with WE Charity.
24 April 2020 to 1 May 2020	ESDC, Department of Finance and Minister of Finance staff discuss WE Charity's proposal, including with WE Charity staff, to develop a CSSG framework proposal.
5 May 2020	Minister Chagger presents the CSSG proposal to the Cabinet Committee on the Federal Response to the Coronavirus Disease, including the public service's recommendation that WE Charity administer the CSSG.
8 May 2020	The Prime Minister learns that the public service recommended WE Charity. He removes the CSSG from that day's Cabinet discussions and requests further due diligence from the public service to ensure WE Charity is the best or only organization to administer the CSSG.



Date	Event
22 May 2020	Cabinet ratifies the CSSG, contingent on final funding approval, including the participation of WE Charity. Neither the Prime Minister nor Minister of Finance recuse themselves from this decision.
3 June 2020	Minister Morneau gives final approval on the revised CSSG funding decision.
23 June 2020	The WE Charity Foundation signs the CSSG contribution agreement with ESDC, backdated to 5 May 2020.
25 June 2020	The Prime Minister announces the selection of WE Charity to administer the CSSG.
3 July 2020	WE Charity announces its withdrawal from the CSSG and passes operational responsibilities to the federal government.
3 July 2020	Mario Dion, Conflict of Interest and Ethics Commissioner, commences an examination into the Prime Minister's possible contraventions of sections 6(1), 7 and 21 of the <i>Conflict of Interest Act</i> (the Act).
13 July 2020	The Prime Minister and former Minister of Finance each apologize for not recusing themselves from Cabinet discussions about awarding WE Charity the CSSG contribution agreement.
16 July 2020	Mr. Dion commences an examination into Minister Morneau's possible contraventions of sections 6(1) and 21 of the Act.
22 July 2020	Minister Morneau pays \$41,366 to WE Charity to reimburse WE for the cost of his and his family's travel and accommodation. He stated he was surprised to discover that he had not already paid for these expenses.
29 July 2020	Mr. Dion expands his examination of Minister Morneau to include sections 11(1) and 12 of the Act.

Sources: Table prepared by the Library of Parliament using information obtained from House of Commons Standing Committee on Finance (FINA), [Evidence](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 16 July 2020; FINA, [Evidence](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 22 July 2020; FINA, [Evidence](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 28 July 2020; FINA, [Evidence](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 30 July 2020; Department of Finance Canada, [Written Response Submitted to the House of Commons Standing Committee on Finance Pertaining to WE Charity](#); and WE Charity, [Media Statement – WE Charity](#), 3 July 2020.

The following sections summarize what the Committee heard about questions of conflict of interest and lobbying related to the CSSG.

## Award of the Contribution Agreement to WE Charity

### The Decision by Government that WE Charity was the Best or Only Available Option

As described in this section, several federal officials told the Committee that the government awarded the contribution agreement to WE Charity, having considered it

the only option or the best available option to administer the CSSG. Others cast doubt on this claim.

Marc Tassé, a Chartered Professional Accountant, a recognized Chartered Accountant in the provinces of Quebec and Ontario, and a part-time professor at the University of Ottawa, appeared as an individual. He stated that if WE Charity had helped develop the program before it was awarded the agreement, that could be grounds for a conflict of interest.<sup>16</sup> There may also have been a conflict of interest if civil servants felt pressure to select WE Charity to run the program, contingent on certain considerations such as:

“Is [WE Charity’s] participation limited to providing some clarification or does it involve drafting the whole contract? The first question is whether that person needed to be there when the contract was being drafted. Then, if [public servants] say they felt pressure [to choose WE Charity], it’s necessary to determine how much. Were they asked to provide quick responses or were they not allowed to ask certain questions?”<sup>17</sup>

Mr. Shugart specified that although government officials were aware at the time of the CSSG announcement that WE Charity had submitted ideas about a potential service program, no offer had been made at that time to WE Charity to administer the CSSG.<sup>18</sup> In addition, he explained that other non-governmental organizations, such as Universities Canada and the Assembly of First Nations, were involved in identifying potential solutions for students “as early as April.”<sup>19</sup>

Mr. Shugart and Benoît Robidoux, Associate Deputy Minister at ESDC, each described CSSG’s development as “organic.”<sup>20</sup> According to Mr. Shugart, it

was formed [by] first determining what features were needed... Ideas came from many quarters, and ultimately the program took shape... [As] the features of the program became clear, it also became clear that a third party would be needed to develop the program, but at no point was WE developing a program for the government.<sup>21</sup>

Mr. Shugart also explained that the Canada Service Corps was “the closest vehicle within the public service” to administer the CSSG, but it could not deliver a program of that

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16 ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 30 November 2020, 1235 (Marc Tassé, Chartered Professional Accountant - Chartered Accountant [Ontario – Quebec], University of Ottawa, as an Individual).

17 Ibid., 1235.

18 ETHI, [Evidence](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 11 August 2020, 1330 (Ian Shugart).

19 Ibid., 1415 and 1425.

20 Ibid., 1335 (Ian Shugart) and 1625 (Benoît Robidoux, Associate Deputy Minister, Department of Employment and Social Development).

21 Ibid., 1335 (Ian Shugart).



scale and proactively perform outreach to Canadians in that time frame.<sup>22</sup> In response to a member's question, he stated that due to these contingencies, "it was either WE or nothing."<sup>23</sup>

On 21 May 2020, Christiane Fox, then Deputy Minister of Intergovernmental Affairs, briefed the Prime Minister about considerations for developing the CSSG based on her insights as former Deputy Minister of Intergovernmental Affairs and Youth at PCO. Ms. Fox advised that it could be difficult to ramp up the Canada Service Corps to provide the proposed 20,000 opportunities within four months; that a third-party, national organization with a strong digital platform and youth engagement experience would be preferable; that bilingual capacity would be important; that the program should remove barriers to participation by underrepresented youth; and that the partner organization should work with other youth-serving agencies.<sup>24</sup>

Similarly, Carla Qualtrough, Minister of Employment, Workforce Development and Disability Inclusion, indicated that ESDC does not normally conduct the type of work involved in the CSSG's administration.<sup>25</sup> She also noted that the Canada Summer Jobs Program was not "built for [the] hands-on" work needed for the CSSG.<sup>26</sup> Moreover, she reiterated that the public service's workload would have prevented it from successfully delivering the CSSG.<sup>27</sup>

Michelle Kovacevic, Assistant Deputy Minister, Federal-Provincial Relations and Social Policy Branch, Department of Finance, denied that the government had only considered WE Charity following the 17 April 2020 meeting between Minister Chagger and WE representatives, stating that her email records – submitted to the House of Commons Standing Committee on Finance – showed consideration of "many potential organizations."<sup>28</sup> Ms. Kovacevic further stated that she was never instructed to choose any organization at any time; the decision was made "carefully and thoughtfully" and

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22 Ibid., 1325.

23 Ibid., 1350.

24 ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 4 December 2020, 1415 (Christiane Fox, Deputy Minister, Department of Indigenous Services).

25 ETHI, [Evidence](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 11 August 2020, 1550 (Hon. Carla Qualtrough, Minister of Employment, Workforce Development and Disability Inclusion).

26 Ibid., 1550 and 1615.

27 Ibid., 1605.

28 ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 4 December 2020, 1445 (Michelle Kovacevic, Assistant Deputy Minister, Federal-Provincial Relations and Social Policy Branch, Department of Finance).

reflected that “WE Charity was the best-placed organization to deliver—in COVID times, in the very, very tight time frame—what the ambitious scope of desire was.”<sup>29</sup>

Mr. Robidoux stated that he first heard of WE Charity’s potential involvement in relation to student support in a 16 April 2020 email, which proposed the organization could do social media work for a student support program.<sup>30</sup> However, he clarified that “it was only one of the organizations that was being discussed,” and for a different proposal than the CSSG.<sup>31</sup>

Mr. Marc Kielburger, Founder, WE Charity, told the Committee that WE Charity was informed that other groups were being considered to administer the CSSG, so his organization assumed “at the initial stages” that the selection was “following regular processes.”<sup>32</sup>

Mr. Craig Kielburger added that he wished this process had gone to an open-bid tender process because he felt WE Charity would have been a good contender under that structure. He confirmed that they were told that multiple organizations were being considered explicitly.<sup>33</sup> He also described how WE Charity had a history of engagement with the federal government, including an October 2017 visit from Rachel Wernick, Senior Assistant Deputy Minister, Skills and Employment Branch at ESDC, to assess WE Charity’s service capacity; a June 2018 award of \$800,000 for a youth service initiative; and collaboration with ESDC between May 2019 and March 2020 about how the civil service could implement a national service program.<sup>34</sup>

Mark Blumberg, Partner at the law firm Blumberg Segal LLP, identified the choice of WE Charity to administer the program as a key concern.<sup>35</sup> In response to public servants’ conclusion that WE Charity was the only organization that could have administered the grant, Mr. Blumberg stated that notion was “ridiculous” and “demeaning to the charity

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29 Ibid., 1455.

30 ETHI, [Evidence](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 11 August 2020, 1625 (Benoît Robidoux).

31 Ibid., 1625.

32 ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 15 March 2021, 1700 (Marc Kielburger, Founder, WE Charity).

33 ETHI, [Evidence](#), 15 March 2021, 1700 (Craig Kielburger).

34 Ibid., 1715.

35 ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 11 December 2020, 1410 (Mark Blumberg, Partner, Blumberg Segal LLP).



sector” due to that sector’s capacity and expertise.<sup>36</sup> As such, he questioned whether ESDC’s due diligence procedures were adequate.<sup>37</sup>

## Federal Due Diligence in the Award Process

Some witnesses told the Committee about the due diligence processes involved in awarding the CSSG agreement to WE Charity. This section summarizes evidence about the initial selection and the period between 8 May 2020 and 21 May 2020 when, at the Prime Minister’s request, the public service performed additional due diligence to confirm whether WE Charity was the best or only organization able to administer the CSSG.<sup>38</sup>

Notably, on 25 March 2021, the House of Commons adopted a motion ordering PCO to issue to the Committee any due diligence reports concerning the CSSG under its care.<sup>39</sup> While PCO did not send a particular “due diligence report,” it provided to the Committee the same package of notes and communications that it had sent to the Finance Committee as well as supporting documentation, suggesting that this information represented public servants’ due diligence in relation to the CSSG.

In Mr. Blumberg’s view, the award merited more due diligence due to the many compliance issues that had been raised about WE, which he described as

including—but not limited to—using multiple corporations, some of which are Canadian registered charities, and a lack of clarity among the different corporations; treatment of employees during employment and post-employment; reporting and transparency; lobbying of government officials without registering; partisan activities; social enterprise and business activities; government grant-making processes and fairness; owning large amounts of real estate; corporate sponsorship and access to children; compensation of founders; governance; and having founders involved in the charity for a long period of time.<sup>40</sup>

Mr. Blumberg suggested that, if the Department of Finance were found to have influenced ESDC’s decision to select WE Charity, Minister Morneau’s resignation in August 2020 would perhaps have put an end to any undue influence.<sup>41</sup> However, if ESDC

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36 Ibid., 1430.

37 Ibid.

38 FINA, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 30 July 2020 (Right Hon. Justin Trudeau, Prime Minister).

39 House of Commons, *Journals*, 25 March 2021.

40 ETHI, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 11 December 2020, 1410 (Mark Blumberg).

41 Ibid.

were found not to have been unduly influenced by the Minister of Finance or the Department of Finance and had recommended WE Charity on its own, such a decision would “call into question the capacity of ESDC to undertake due diligence on charities and its decision-making.”<sup>42</sup>

Mr. Shugart reminded the Committee that Katie Telford, Chief of Staff to the Prime Minister, raised due diligence concerns “to be absolutely certain that this was done in an appropriate way and everything was above board, given the relationship, the history, that the Prime Minister had” with WE Charity.<sup>43</sup> According to Pablo Rodriguez, Leader of the Government in the House of Commons, questions were raised about why WE Charity was recommended, why other organizations were not involved and why federal organizations could not do that work.<sup>44</sup>

Mr. Shugart indicated that the due diligence performed for the CSSG was normal, given it is public servants’ duty to “consider options and to respond to ministers’ requests in light of established program development preferences.”<sup>45</sup> He added that the public service’s due diligence for the CSSG focused on WE Charity’s ability to deliver the program, including its ability to deliver the CSSG in both official languages, to all regions, and with the inclusion of disadvantaged groups.<sup>46</sup> Documents from PCO explain that public servants considered WE Charity’s completion of past and ongoing projects; its results achieved; and its good financial standing on previous projects.<sup>47</sup> In addition to these elements, Minister Chagger added that she ensured that through the CSSG, students who most needed the assistance would receive it, and that disaggregated data on disadvantaged communities would be collected.<sup>48</sup>

Mr. Shugart also explained that, at the time of the public service’s briefing to the Prime Minister on 8 May 2020, in anticipation of Cabinet meeting, the Prime Minister “entrusted public servants to do their due diligence with respect to the proposed

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42 Ibid.

43 ETHI, [Evidence](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 11 August 2020, 1345 (Ian Shugart).

44 ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 29 March 2021, 1500 (Hon. Pablo Rodriguez, Leader of the Government in the House of Commons).

45 ETHI, [Evidence](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 11 August 2020, 1300 (Ian Shugart).

46 Ibid., 1255.

47 ETHI, *Response to FINA re: Request of Financial Due Diligence*, Written Response Submitted to ETHI Pertaining to Questions of Conflict of Interest and Lobbying in Relation to Pandemic Spending, 6 April 2021 (Privy Council Office).

48 ETHI, [Evidence](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 11 August 2020, 1525 (Hon. Bardish Chagger).



contribution agreement” and the CSSG.<sup>49</sup> Thus, the Prime Minister did not ask for documentary evidence proving that the public service could not deliver the CSSG, nor did he ask whether WE Charity had a functioning board or whether its finances and bank covenants were in order.<sup>50</sup>

Mr. Shugart further stated that the public service did not focus its due diligence on “other issues related to the organization, such as those related to the board of directors.”<sup>51</sup> Similarly, he indicated that WE Charity’s creditworthiness was not verified because the government had worked with WE Charity before and the contribution agreement provided for the proper management of finances.<sup>52</sup> While the public service had determined that WE Charity was able to deliver the program in both languages, Mr. Shugart was not aware until his 11 August 2020 Committee appearance that WE Charity had contracted National PR to conduct outreach in Francophone communities.<sup>53</sup>

Mr. Shugart indicated that his advice was not sought about the level of due diligence applied to the CSSG contribution agreement during the 8 May 2020 to 22 May 2020 period but that he did not see anything at the time, nor in retrospect, that would have warranted follow-up above what the public service was already doing.<sup>54</sup> He and Minister Chagger both believed the level of due diligence was sufficient.<sup>55</sup> Although Minister Qualtrough was informed that no issues had been raised with respect to due diligence procedures relating to the CSSG prior to the 5 May 2020 Cabinet COVID-19 Committee discussion, she did not receive any reports or briefings about that process.<sup>56</sup>

Mr. Shugart stated on 11 August 2020 that he had learned “recently” that the federal contribution agreement was signed with the WE Charity Foundation, rather than WE Charity. According to Victor Li, Chief Financial Officer at WE Charity and Mr. Marc Kielburger, the WE Charity Foundation is a registered charity under the governance structure of WE Charity and its board of directors that had been set up to

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49 Ibid., 1320; and ETHI, [Evidence](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 11 August 2020, 1255 & 1400 (Ian Shugart).

50 ETHI, [Evidence](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 11 August 2020 (Ian Shugart).

51 Ibid., 1305.

52 Ibid., 1405.

53 Ibid., 1255.

54 Ibid., 1310.

55 Ibid., 1310 (Ian Shugart) and 1505 (Hon. Bardish Chagger).

56 ETHI, [Evidence](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 11 August 2020, 1550 (Hon. Carla Qualtrough).

limit WE Charity's liability.<sup>57</sup> Mr. Li specified that WE Charity Foundation does not hold, and has never held, WE Charity real estate assets despite this being its proposed purpose in WE Charity's Canada Revenue Agency application.<sup>58</sup>

Regarding WE's structure, Mr. Li added that "there are two groups of organizations – the charitable group of organizations [i.e., WE Charity] and the social enterprise group of organizations [i.e., ME to WE Social Enterprises]."<sup>59</sup> In a written response, WE Charity and ME to We Social Enterprises explained that WE entities and affiliates operate in multiple countries and maximize social good by adhering to the regulations of each country.<sup>60</sup> They listed such operations in Canada, China, Ecuador, Haiti, Kenya, Tanzania, the United Kingdom and the U.S.

Mr. Blumberg noted that the WE Charity Foundation had applied for charity status before the pandemic.<sup>61</sup> He stated that some charities may have liability reasons for creating real-estate holding companies, but he was surprised that the government would agree to transfer funds to what he described as a holding company.<sup>62</sup>

Mr. Marc Kielburger said that CSSG was signed with the WE Charity Foundation because, "at the last minute of the contract negotiations," ESDC requested that WE Charity assume full liability for the first 40,000 volunteers.<sup>63</sup> WE Charity's board of directors and counsel then suggested that the WE Charity Foundation sign the contribution agreement, and ESDC agreed.<sup>64</sup> Minister Qualtrough indicated that as of the 5 May 2020

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57 ETHI, *Written Response Submitted to ETHI Pertaining to Questions of Conflict of Interest and Lobbying in Relation to Pandemic Spending*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 15 March 2021 (Victor Li, Chief Financial Officer, WE Charity), p. 7 [NO HYPERLINK AVAILABLE]; and FINA, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 28 July 2020, 1525 (Marc Kielburger,).

58 ETHI, *Written Response Submitted to ETHI Pertaining to Questions of Conflict of Interest and Lobbying in Relation to Pandemic Spending*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 15 March 2021 (Victor Li), p. 7 [NO HYPERLINK AVAILABLE].

59 ETHI, *Written Response Submitted to ETHI Pertaining to Questions of Conflict of Interest and Lobbying in Relation to Pandemic Spending*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 9 April 2021 (Victor Li), p. 9 [NO HYPERLINK AVAILABLE].

60 Ibid., p. 10.

61 ETHI, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 11 December 2020,, 1500 (Mark Blumberg).

62 Ibid.

63 ETHI, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 15 March 2021, 1510 (Marc Kielburger).

64 Ibid.



Cabinet COVID-19 Committee, the shorthand name “WE” was used, and she was not aware which subsidiary of WE would sign the agreement.<sup>65</sup>

The Committee also raised questions about the use of a sole-source contribution agreement rather than an open tendering process. Mr. Shugart stated that the federal government opted to use a contribution agreement because it is a standard tool for delivering a program through a third party.<sup>66</sup> He stated that contribution agreements use standard clauses designed to “ensure financial probity and results for Canadians,” that they “are guided by principles of audit and of due diligence with respect to the interest of the Crown,” and that they are subject to Treasury Board scrutiny.<sup>67</sup>

Minister Qualtrough and officials from ESDC and the Department of Canadian Heritage all added that contribution agreements are common tools to support individuals because they have risk mitigation clauses such as financial controls and audit, monitoring and reporting requirements.<sup>68</sup> Similarly, Ms. Kovacevic explained that the Treasury Board of Canada Secretariat (TBS) has established clear guidelines and policies for contribution agreements that must be followed, and she trusted that ESDC had abided by those policies.<sup>69</sup> She added that in the context of the pandemic, the Department of Finance followed all of its usual processes but it did so quickly.<sup>70</sup> In addition, Mr. Li described WE Charity’s internal financial controls and the contribution agreement’s additional requirements to ensure that CSSG funds were kept separate from WE Charity funds.<sup>71</sup>

Although the contribution agreement was signed on 23 June 2020, Mr. Li recalled that on 4 June 2020, WE Charity received permission to claim eligible expenses for CSSG work back to 5 May 2020, at its own risk.<sup>72</sup> When asked by a Committee member whether Minister Chagger told WE Charity that they could begin incurring expenses as of that date, she stated that she did not personally have those conversations with WE

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65 ETHI, [Evidence](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 11 August 2020, 1600 (Hon. Carla Qualtrough).

66 Ibid., 1300 (Ian Shugart).

67 Ibid., 1300 and 1305.

68 Ibid., 1625 (Benoît Robidoux); Ibid., 1505 (Gina Wilson, Deputy Minister, Diversity and Inclusion and Youth, Department of Canadian Heritage), and Ibid., 1555 (Hon. Carla Qualtrough).

69 ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 4 December 2020, 1435 and 1505 (Michelle Kovacevic).

70 Ibid., 1500.

71 ETHI, *Written Response Submitted to ETHI Pertaining to Questions of Conflict of Interest and Lobbying in Relation to Pandemic Spending*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 15 March 2021, (Victor Li), p. 3 [NO HYPERLINK AVAILABLE].

72 Ibid., p. 2.

Charity.<sup>73</sup> However, Minister Rodriguez later explained that the retroactive incurring of expenses beginning 5 May 2020 “was authorized by Minister Chagger.”<sup>74</sup>

Gina Wilson, Deputy Minister, Diversity and Inclusion and Youth, Department of Canadian Heritage explained that a contribution agreement’s

start date may be identified prior to the date of the agreement’s signature. This is routinely done when organizations may incur eligible expenses prior to that signature. If the earlier start date is not approved, the organization is reimbursed for expenditures incurred, and does this completely at its own risk. Similarly, if the agreement is not signed, the organization would not be reimbursed for any expenses incurred. It may often take weeks for a contribution agreement to be negotiated, and that is what occurred in this particular instance.<sup>75</sup>

Minister Chagger stated that, after the Prime Minister asked the CSSG to be put on hold on 8 May 2020 to provide extra due diligence, she was not aware whether anyone in the government directed WE Charity to stop working on the program.<sup>76</sup>

Mr. Craig Kielburger confirmed that multiple individuals at ESDC questioned WE Charity during the vetting process, and WE Charity gave the government “the financial documents including our audits and the various documents you would imagine WE Charity would offer to provide.”<sup>77</sup> He also stated that WE Charity had had contracts with the federal government prior to the CSSG and that they were “done in appropriate manners.”<sup>78</sup>

Following the award of the CSSG, WE Charity confirmed that it had obtained the proper insurance and leveraged a working partnership with about 80 non-profits.<sup>79</sup> When asked by a member why WE Charity’s itemized budget included “project related rent,” Mr. Craig Kielburger responded that that was a “potential line item” and “wasn’t necessarily for our organization.... no one knew whether we needed special filtration systems, plexiglass to separate people.”<sup>80</sup> Mr. Li explained that this line item reflects “eligible

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73       ETHI, [Evidence](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 11 August 2020, 1450 (Hon. Bardish Chagger).

74       ETHI, *Written Response Submitted to ETHI Pertaining to Questions of Conflict of Interest and Lobbying in Relation to Pandemic Spending*, 31 March 2021 (Hon. Pablo Rodriguez) [NO HYPERLINK AVAILABLE].

75       ETHI, [Evidence](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 11 August 2020, 1520 (Gina Wilson).

76       Ibid., 1525 (Hon. Bardish Chagger).

77       ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 15 March 2021, 1540 (Craig Kielburger).

78       Ibid., 1505.

79       Ibid., 1510.

80       Ibid., 1545.



expenses of associated occupancy costs for program related expenses including program development, training, filming, editing, technology backend systems.”<sup>81</sup>

Mr. Craig Kielburger stated that there were administration fees, but only as necessary to deliver the CSSG.<sup>82</sup> Minister Chagger’s CSSG funding proposal to Minister Morneau outlining the costing of the CSSG earmarked roughly \$43.5 million in total for WE Charity to cover both programming and administration costs. In that bundle, administration costs represented 15% of programming costs.<sup>83</sup> In addition, Mr. Craig Kielburger pointed to a report from a former deputy solicitor general of Ontario that found WE Charity’s dealings with government to be appropriate.<sup>84</sup> He also noted that an independent review by a forensic accountant “did not identify any concerns in relation to the interactions between WE Charity and [inaudible] social enterprises” and “found no evidence of improper transactions which benefited the Kielburgers personally.”<sup>85</sup>

Mr. Craig Kielburger stated that he had trusted the federal government’s due diligence procedures to work properly to avoid conflict of interest concerns.<sup>86</sup> In response to a Committee member’s question about a 2017–2018 bank covenant breach, Mr. Marc Kielburger and Mr. Li stated that the WE Charity had shifted its fiscal year from January–December to September–August, but that the bank had recognized the situation and waived related requirements.<sup>87</sup>

Mr. Tassé opined that in times of crisis and particularly when awarding a large, sole-sourced contract, the government should conduct “enhanced due diligence” practices. This may include asking difficult questions about such topics as an organization’s capacity, why it is the only organization that can complete the contract and how that organization might benefit.<sup>88</sup> He also said that proper due diligence procedures for the

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81 ETHI, *Written Response Submitted to ETHI Pertaining to Questions of Conflict of Interest and Lobbying in Relation to Pandemic Spending*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 15 March 2021 (Victor Li), p. 4 [NO HYPERLINK AVAILABLE].

82 ETHI, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 15 March 2021, 1545 (Craig Kielburger).

83 Employment and Social Development Canada, *Written Response Submitted to the House of Commons Standing Committee on Finance Pertaining to WE Charity – Part 11*, p. 003901.

84 ETHI, *Evidence*, 15 March 2021, 1650 (Craig Kielburger).

85 Ibid.

86 Ibid., 1620.

87 ETHI, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 15 March 2021, 1715 (Marc Kielburger); and ETHI, *Written Response Submitted to ETHI Pertaining to Questions of Conflict of Interest and Lobbying in Relation to Pandemic Spending*, 15 March 2021 (Victor Li), pp. 5–6 [NO HYPERLINK AVAILABLE].

88 ETHI, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 30 November 2020, 1245 (Marc Tassé).

CSSG contribution agreement could have involved asking WE Charity's partner organizations to confirm its ability to deliver results, assessing WE Charity's level of acceptable risk in a project, and determining why WE Charity needed various corporate structures to operate.<sup>89</sup>

Mr. Tassé also stated that, if government officials had not raised questions about WE Charity's financial capacity, such a gap would be "questionable."<sup>90</sup> Nevertheless, he explained that the appropriateness of the government's due diligence depended on what information was accessible at the time of the decision.<sup>91</sup> Mr. Tassé added that he would be surprised if the government was not following best practices for due diligence by documenting any irregularities. He reiterated the importance of having all the proper documentation necessary to answer outstanding questions, which may include asking whether such documentation exists in the first place.<sup>92</sup>

Mr. Blumberg indicated that most government grants to charities are subject to more bureaucratic due diligence, and that it was "atypical" to have awarded "such a quick amount, such a large amount, and then it's basically going to a shell corporation [the WE Charity Foundation]."<sup>93</sup> WE Charity denied that the WE Charity Foundation is a shell corporation.

Mr. Blumberg also explained that some charities do business, but that the ownership of ME to WE Social Enterprises Inc. was an anomaly:

normally the charity owns the business. The business isn't owned by one or two other people, with the charity providing certain recruitment or volunteers or other things to the business owned by someone else.<sup>94</sup>

Mr. Li later confirmed that no resources from ME to WE Social Enterprises Inc. were used or intended to be used for the CSSG.<sup>95</sup>

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89 Ibid.

90 Ibid., 1230.

91 Ibid., 1230.

92 Ibid., 1235.

93 ETHI, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 11 December 2020, 1445 (Mark Blumberg).

94 Ibid., 1450.

95 ETHI, *Written Response Submitted to ETHI Pertaining to Questions of Conflict of Interest and Lobbying in Relation to Pandemic Spending*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 15 March 2021 (Victor Li), p 5 [NO HYPERLINK AVAILABLE].



In addition to the corporate structure of WE Charity and its affiliate organizations, the Committee heard allegations about donor accountability issues. For example, briefs sent to the Committee by Richard Trus, as an individual, raise questions about WE Charity's donor accountability practices.<sup>96</sup> Another witness told the Committee that funding for WE Charity's operations in Kenya had not been used for the purposes envisioned by, and promised to, fundraisers. Reed Cowan, Donor and Fundraiser, Wesley Smiles Coalition, Free the Children, who appeared as an individual, explained that he had raised money in the U.S. with WE Charity and Free the Children to build schools in Kenya in memory of his deceased son Wesley. He received assurances from WE executives that those schools would be named after Wesley, including a plaque with Wesley's name and motto on each school.<sup>97</sup>

However, Mr. Cowan discovered in December 2020 that the school once dedicated to Wesley had been rededicated to another donor, on behalf of the Stillman Foundation, with a virtually identical "opening" ceremony.<sup>98</sup> He also could not verify whether all the schools for which he had helped fundraise were built.<sup>99</sup>

According to Mr. Cowan, Mr. Craig Kielburger subsequently told him that the Stillman Foundation had sought permission from other donors on Wesley's school's campus to adopt the whole campus, but that WE Charity had failed to ask Mr. Reed's permission to rededicate Wesley's school.<sup>100</sup> Nevertheless, Mr. Cowan alluded to another news report on WE Charity that discussed a similar rededication of a water treatment facility.<sup>101</sup> Mr. Craig Kielburger apologized for the event relating to Mr. Cowan, and confirmed that he was aware of two instances in which schools were rededicated.<sup>102</sup> He also stated that WE Charity had begun examining this issue in both Canada and Kenya.<sup>103</sup>

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96 Richard Trus, [ME to WEopoly: A Guide for the WE Charity Scandal – Preliminary Report for Parliament](#), Brief submitted to ETHI, 18 March 2021; Richard Trus, [ME to WEopoly: Ethics Committee Brief #2](#), 20 April 2021; Ibid., [ME to WEopoly: Ethics Committee Brief #3](#), 20 April 2021; Richard Trus, [ME to WEopoly: Ethics Committee Brief #4](#), 20 April 2021; Richard Trus., [ME to WEopoly: Ethics Committee Brief #5](#), 20 April 2021; Richard Trus, [ME to WEopoly: Ethics Committee Brief #6](#), 20 April 2021.

97 ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 26 February 2021, 1400 (Reed Cowan, Donor and Fundraiser, Wesley Smiles Coalition, Free The Children, As an Individual).

98 Ibid., 1410.

99 Ibid., 1450.

100 Ibid., 1410.

101 Ibid., 1420.

102 ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 15 March 2021, 1615 and 1735 (Craig Kielburger).

103 Ibid., 1735.

## WE Charity's Relationships with Prime Minister Justin Trudeau and the Prime Minister's Office and with Sophie Grégoire-Trudeau

Among the potential conflict of interest concerns related to the award of the CSSG agreement to WE Charity was the relationship between WE Charity, the Prime Minister, and other members of the Trudeau family. Appendix A discusses the non-appearance of selected members of the Prime Minister's staff and the Minister of Finance's staff before the Committee. Before and during his time as Prime Minister, Mr. Trudeau spoke at WE Day events, but he was never paid expenses or honoraria for those appearances.<sup>104</sup> Mr. Trudeau also appeared in a WE Charity video for Canada's 150th anniversary in his capacity as Prime Minister.<sup>105</sup> Mr. Craig Kielburger stated WE Charity had invited every Prime Minister to appear at its events regardless of political stripe, and that Mr. Trudeau had appeared in the 150 video in his capacity as Prime Minister.<sup>106</sup>

Speakers' Spotlight is a speakers' bureau that has retained Justin Trudeau and his wife, Sophie Grégoire-Trudeau, as speakers in the past. The Prime Minister's mother, Margaret Trudeau, and his brother, Alexandre ("Sacha") Trudeau, have also been retained by Speakers' Spotlight but were not named in the motion establishing this study. Pursuant to that motion, Speakers' Spotlight provided to the Committee confidential records dating to 2008 that indicated whether Justin Trudeau or Sophie Grégoire-Trudeau had been paid for engagements with WE Charity or its predecessor, Free the Children. This report does not discuss the content of those documents because they are confidential.

Nevertheless, Mr. Craig Kielburger told the Committee on 15 March 2021 that the total amount WE Charity paid in honoraria to all four individuals over the past decade, through the speakers bureau, amounted to roughly \$217,500. WE Charity paid an additional \$210,250.92 for these individuals' total expenses, such as flights and hotels, although those expenses were paid directly to service providers.<sup>107</sup> None of these expenses or honoraria were paid to the Prime Minister.

Mr. Perelmuter, President, Speakers' Spotlight, explained that the speakers his company engages are not paid speaking fees, but that they might be paid for ancillary events such as receptions and meet-and-greets. He added that these obligations are included in the

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104 Ibid., 1635.

105 Ibid., 1610.

106 Ibid., 1610 and 1635.

107 Ibid., 1530 and 1645.



speaker's contract.<sup>108</sup> When dealing with WE Charity to book speaking engagements for Margaret and Alexandre Trudeau, he initially dealt with Mr. Marc Kielburger; "the logistics were then coordinated by someone on our team and someone on their team. I don't know who."<sup>109</sup>

In addition, Mr. Perelmuter stated that he had "no knowledge pertaining to the operations of WE Charity, the Liberal government or the [CSSG]," nor is Speakers' Spotlight politically affiliated.<sup>110</sup> Nevertheless, he explained that he had difficulty navigating logistical and legal issues in retrieving the documents specified by the Committee. At the time of their appearance, Mr. Perelmuter told the Committee that Speakers' Spotlight had for three months been "the target of a campaign designed to discredit us personally and cause reputational damage to our company," including harassment and personal threats to the Perelmutes and their staff.<sup>111</sup>

The Committee also heard about WE Charity's interactions with the Prime Minister and his staff. The Prime Minister told the Finance Committee that his staff had discussed WE Charity's involvement in the CSSG with PCO and other departments, but that he did not know this organization was being considered until 8 May 2020.<sup>112</sup> Sofia Marquez, a former staff member in charge of government and stakeholder relations at WE Charity, who appeared as an individual, confirmed that she participated in a 30-minute phone call on 5 May 2020 with Rick Theis, policy director at the Prime Minister's Office (PMO), and another PMO staff member.<sup>113</sup>

According to Minister Rodriguez, the call addressed WE Charity's "ongoing work with diversity, inclusion and youth on the Canada student summer grant, as well as a proposal for social entrepreneurship."<sup>114</sup> Mr. Theis did not discuss expenses, made no commitments, and gave no advice to WE Charity other than to contact officials at Diversity and Inclusion and Youth.<sup>115</sup> Minister Rodriguez also stated that this was Mr. Theis' only interaction with WE Charity except for a courtesy email following the call,

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108 ETHI, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 7 December 2020, 1140 (Martin Perelmuter, President, Speakers' Spotlight).

109 Ibid.

110 Ibid., 1110.

111 Ibid.

112 FINA, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 30 July 2020, 1505 (Right Hon. Justin Trudeau).

113 ETHI, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 26 February 2021, 1320 (Sofia Marquez, Former Staff Member, Government and Stakeholder Relations, WE Charity, as an Individual).

114 ETHI, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 29 March 2021, 1440 (Hon. Pablo Rodriguez).

115 Ibid.

and that Mr. Theis was not aware of the connections between WE Charity and the Trudeau family.<sup>116</sup> He explained that Mr. Theis had no role in negotiating the CSSG and that this role was the public service’s responsibility.<sup>117</sup> However, he indicated that Mr. Theis briefed the Prime Minister on the CSSG, which included the public service’s recommendation that WE Charity deliver the program.<sup>118</sup>

In addition, Mr. Marc Kielburger emailed Ms. Telford on 13 April 2020 to congratulate the government “on the fact that there was a lot of work going on for the pandemic,” but he received no reply.<sup>119</sup>

Mr. Craig Kielburger acknowledged that on 27 June 2020, a LinkedIn invitation was sent on his behalf to Ben Chin, senior advisor at the PMO, thanking him for his “kindness in helping shape our latest program with the [government].”<sup>120</sup> Mr. Craig Kielburger stated that his executive assistant had sent that message as part of 100 LinkedIn invitations that included personalized messages, including messages for the “federal government generally.”<sup>121</sup> However, he was unaware what role, if any, Mr. Chin played in the CSSG’s development, and that invitation was Mr. Craig Kielburger’s only communication with Mr. Chin in the previous two years.<sup>122</sup>

Mr. Shugart indicated that, to his knowledge, the Prime Minister was not aware in April 2020 that WE Charity was being considered to administer the CSSG since the program details were determined later.<sup>123</sup> He added that he did not advise the Prime Minister that he should recuse himself from the decision because the Prime Minister’s history with WE Charity was public knowledge. Mr. Shugart suggested that it never occurred to him that there might be a conflict of interest because the issue was not a private interest that required disclosure.<sup>124</sup> Minister Qualtrough stated that the Prime

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116 Ibid., 1440, 1515 and 1650.

117 Ibid., 1525.

118 Ibid., 1535.

119 ETHI, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 15 March 2021, 1500 (Marc Kielburger).

120 Ibid., 1640 (Craig Kielburger).

121 Ibid., 1650.

122 Ibid., 1640 and 1645.

123 ETHI, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 11 August 2020, 1320 (Ian Shugart).

124 Ibid., 1405.



Minister and former Minister of Finance should have recused themselves, but that “they have apologized for not doing so, and [she] accept[s] that apology.”<sup>125</sup>

Mario Dion, the Conflict of Interest and Ethics Commissioner at the Office of the Conflict of Interest and Ethics Commissioner (OCIE), appeared before the Committee during his examination into Mr. Trudeau’s possible contravention of sections 6(1) (concerning decision-making), 7 (preferential treatment) and 21 (duty to recuse) of the *Conflict of Interest Act* (COI Act). As such, he could not comment on the details of the investigation at the time of his appearance.<sup>126</sup>

Mr. Dion nevertheless reminded the Committee that the duty to recuse in section 21 of the COI Act “is absolute. If the conditions are met, this [duty] applies to any decision, discussion, and so on, regardless of the relative importance of the issue.”<sup>127</sup>

In the opinion of Duff Conacher, co-founder of Democracy Watch, a not-for profit advocacy group advocating for democratic reform, government accountability and corporate responsibility, the Prime Minister breached the COI Act by failing to recuse himself.<sup>128</sup> He added that in his view, the Prime Minister “violated the [COI Act] in a separate way by participating in the process before that Cabinet meeting or by having [his] staff do so.”<sup>129</sup>

On 13 May 2021, Mr. Dion released the *Trudeau III Report*. He ultimately found that Mr. Trudeau did not contravene subsection 6(1), section 7 or section 21 of the Act. He determined that the Kielburger brothers and Mr. Trudeau are not “friends” for the purpose of the COI Act, and that “without an actual conflict of interest or a clear legislative prohibition against apparent conflicts of interest,” he could not conclude that a contravention of the COI Act had occurred.<sup>130</sup>

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125 Ibid., 1630 (Hon. Carla Qualtrough).

126 ETHI, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament 27 November 2020, 1310 (Mario Dion, Conflict of Interest and Ethics Commissioner, Office of the Conflict of Interest and Ethics Commissioner).

127 Ibid.

128 ETHI, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 10 August 2020, 1450 (Duff Conacher, Co-Founder, Democracy Watch).

129 Ibid., 1450.

130 Office of Conflict of Interest and Ethics Commissioner, *Trudeau III Report*.

## Former Minister of Finance's Relationship with WE Charity

The award of the CSSG contribution agreement to WE Charity also raised questions about potential conflict of interest due to the relationship between WE Charity and Minister Morneau, as outlined in Table 1. Appendix A discusses the non-appearance of selected members of the Prime Minister's staff and the Minister of Finance's staff before the Committee. Mr. Dion appeared before the Committee during his examination of Mr. Morneau's possible contravention of various sections of the COI Act. At the time of his appearance, the examination was focused on sections 6(1) (concerning decision-making), 11(2) (accepting gifts), 12 (accepting travel) and 21 (duty to recuse).

Mr. Dion later expanded his examination to include a possible contravention of section 7 of the COI Act (preferential treatment). However, in October 2020, Mr. Dion discontinued the portions concerning gifts and travel on the grounds that he believed Mr. Morneau was genuine in stating that he believed he had repaid the cost of his travel, which had been paid by WE Charity. Since the remainder of the examination was ongoing at the time of Mr. Dion's appearance, he was not at liberty to discuss specifics.<sup>131</sup>

According to Mr. Conacher, who appeared in August 2020, the Minister of Finance should have recused himself from the final Cabinet meeting at which the CSSG was approved. Mr. Conacher also believed Minister Morneau violated the COI Act by participating – and having his staff participate – in the CSSG process before that Cabinet meeting.<sup>132</sup>

In response to a Committee member's question, Ms. Kovacevic explained why various documents suggest that the Minister of Finance had approved funding for WE Charity before the CSSG was announced. According to those documents, the Minister of Finance approved \$912 million for the CSSG, including \$900 million for the CSSG and \$12 million for the WE Social Entrepreneurship Initiative.<sup>133</sup> Ms. Kovacevic indicated that, during the 21 April 2020 briefing, the Minister of Finance

verbally agreed on the \$900 million and he verbally agreed on the ESDC minister to return... we had attached [WE Charity's] \$12-million [social entrepreneurship] proposal to the briefing note without any information [because I] had raised the spectre that if we want to get out fast, this organization might be able to have some immediate

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131 ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament 27 November 2020, 1350 (Mario Dion).

132 ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 10 August 2020, 1450 (Duff Conacher).

133 ETHI, *Written Response Submitted to ETHI Pertaining to Questions of Conflict of Interest and Lobbying in Relation to Pandemic Spending* 15 April 2021 (Privy Council Office), p. 000112 [NO HYPERLINK AVAILABLE].



placements, while the minister of ESDC takes a few more days and weeks to conceive a design and return to Cabinet... the \$912 million you referenced was a mistake in the communications background. It is still \$900 million. No WE proposal was approved by the Prime Minister or the Minister of Finance at that point.<sup>134</sup>

Ms. Kovacevic added that she was not aware of Mr. Kielburger's 10 April 2020 email to the Minister of Finance, in which he outlines WE Charity's student entrepreneurship proposal, until the department's emails were released to the Finance Committee.<sup>135</sup>

On 13 May 2021, Mr. Dion released the [\*Morneau II Report\*](#), in which he found that Mr. Morneau had contravened subsection 6(1), section 7 and section 21 of the COI Act.<sup>136</sup>

## Employment and Social Development Canada Ministers' Relationships with WE Charity

ESDC falls under various ministers' portfolios. As part of this study, the Committee heard from two ministers with ESDC portfolios: Bardish Chagger, Minister of Diversity and Inclusion and Youth, and Carla Qualtrough, Minister of Employment, Workforce Development and Disability Inclusion.

### Minister of Diversity and Inclusion and Youth's Relationship with WE Charity

Minister Qualtrough and Mr. Shugart explained that Minister Chagger had signing authority for the CSSG because she is a full minister, associated by Order in Council with ESDC for matters concerning youth.<sup>137</sup> Ministers Chagger and Qualtrough confirmed that Minister Chagger had received that authority on 6 March 2020.<sup>138</sup> The Department of Finance later explained that the contribution agreement was not submitted to TBS for

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134 ETHI, [\*Evidence\*](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 4 December 2020, 1440) and 1445 (Michelle Kovacevic).

135 ETHI, [\*Evidence\*](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 4 December 2020, 1440.

136 Office of the Commissioner of Conflict of Interest and Ethics, [\*Morneau II Report\*](#).

137 ETHI, [\*Evidence\*](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 11 August 2020, , 1325 (Ian Shugart) and 1545 (Hon. Carla Qualtrough); and Privy Council Office, [\*Order in Council 20-0116\*](#), 6 March 2020.

138 ETHI, [\*Evidence\*](#), 11 August 2020, 1445 (Hon. Bardish Chagger) and 1610 (Hon. Carla Qualtrough).

approval because Minister Chagger already had the authority to implement and sign the contribution agreement for CSSG in addition to assessing the grant program.<sup>139</sup>

Minister Chagger stated that, between 5 April and 22 April 2020, she did not interact with officials from the Department of Finance.<sup>140</sup> She noted that she appeared at WE Day on 10 December 2019.<sup>141</sup> Her second interaction with WE Charity was during a call with Mr. Craig Kielburger and Ms. Marquez on 17 April 2020; both later stated that they discussed WE Charity's proposal for a youth social entrepreneurship program.<sup>142</sup> When asked whether anything other than the Kielburgers' social entrepreneurship proposal was discussed, Minister Chagger stated that she asked how the youth WE Charity was working with were doing during the pandemic.<sup>143</sup>

Mr. Craig Kielburger later stated that during the 17 April 2020 call, Minister Chagger had suggested adding a volunteer stream to WE Charity's initial proposal regarding youth entrepreneurship.<sup>144</sup> Ms. Marquez stated that she did not recall Minister Chagger mentioning the CSSG at that time.<sup>145</sup> Rather,

within the mandate of [Ms. Chagger's] office she was tasked with overseeing [...] the Canada Service Corps program, which has nothing to do with the [CSSG]... That program was something we were deeply interested in better understanding and supporting the federal government in scaling... I can't recall word for word what Minister Chagger said regarding the service piece, but I do remember it was focused mainly on the social entrepreneurship proposal that we had at hand.<sup>146</sup>

In addition, Ms. Marquez said she could not recall Minister Chagger "saying word for word that there was a specific service stream that we should have been building."<sup>147</sup> It

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139 Department of Finance Canada, *Finance Canada Response to Committee Undertaking December 4, 2020 Appearance before the Standing Committee on Access to Information, Privacy and Ethics on the issue of "Questions of Conflict of Interest and Lobbying in Relation to Pandemic Spending"* [NO HYPERLINK AVAILABLE].

140 ETHI, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 11 August 2020, 1450 (Hon. Bardish Chagger).

141 Ibid.

142 Ibid., 1450; and ETHI, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 15 March 2021, 1630 (Craig Kielburger).

143 ETHI, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 11 August 2020, 1515 (Hon. Bardish Chagger).

144 ETHI, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 15 March 2021, 1655 (Craig Kielburger).

145 ETHI, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 26 February 2021, 1330 (Sofia Marquez).

146 Ibid., 1335.

147 Ibid., 1350.



was, rather, her and Mr. Craig Kielburger’s 19 April 2020 call with Ms. Wernick that prompted her team to build a proposal based on Ms. Wernick’s directives.<sup>148</sup>

Minister Chagger did not recall any instances of the term “volunteer” being used during the 17 April 2020 call, but the term “service opportunities” was used.<sup>149</sup> Minister Chagger told the Committee that at the time of that call she was unaware that the Prime Minister would make an announcement regarding youth programming five days later, on 22 April 2020.<sup>150</sup>

Minister Chagger was provided a briefing note concerning the call, which has since been disclosed, but she did not take notes during the call. After that meeting she asked her team to follow up with other federal officials regarding WE Charity’s proposal.<sup>151</sup> She later stated that she never considered the entrepreneurship proposal, but that it was important for other officials “to be aware of it and to make sure they look into it and consider its merits.”<sup>152</sup> Minister Chagger explained that she did not mention her 17 April 2020 call with WE Charity to the Finance Committee because they did not discuss the CSSG during that call.<sup>153</sup>

## Minister of Employment, Workforce Development and Disability Inclusion

Minister Qualtrough explained that pursuant to the roles outlined in ministerial mandate letters, student employment, loans and benefit measures fall under her responsibilities, while the CSSG falls under Minister Chagger’s.<sup>154</sup> She was never asked to be the minister responsible for the CSSG and indicated that she was “not at all” involved in its development.<sup>155</sup>

As such, Minister Qualtrough first learned on 5 May 2020, as she was preparing for the Cabinet COVID-19 Committee, that WE Charity was being recommended to administer

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148 Ibid., 1355.

149 ETHI, [Evidence](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 11 August 2020, 1515 (Hon. Bardish Chagger).

150 Ibid.

151 Ibid.

152 Ibid.

153 Ibid., 1450 and 1505.

154 Ibid., 1535 (Hon. Carla Qualtrough).

155 Ibid., 1545 and 1550.

the CSSG.<sup>156</sup> However, she did not know at that time who had made the recommendation.<sup>157</sup> While Minister Qualtrough informed her chief of staff about the Cabinet COVID-19 Committee's decision to approve the CSSG, neither she nor her staff informed WE Charity of that decision.<sup>158</sup> She also stated that when the CSSG was pulled from the 8 May 2020 Cabinet meeting, it did not seem unusual, especially since "so many things were happening so quickly."<sup>159</sup>

Minister Qualtrough stated that she had spoken at one WE Charity event in November 2016, although she was not paid for this event and claimed no expenses for it.<sup>160</sup>

## Public Servants' Roles in Developing the Canada Student Service Grant

As outlined in Table 1, public servants from various departments were involved in its development since the 6 April 2020 announcement of upcoming student supports. The Committee heard additional evidence about the role of the public service in developing the CSSG, including how public servants interacted with WE Charity and whether they had received direction from ministers or political staff to select WE Charity.

Ms. Marquez explained that Ms. Wernick called Mr. Craig Kielburger on 19 April 2020 to explain that the government was interested in "developing a student service program on a much wider scale."<sup>161</sup> According to Mr. Craig Kielburger, Ms. Wernick asked WE Charity, "based on government requirements, to submit a proposal for how the charity could help assist to implement this for the civil service."<sup>162</sup> This call prompted WE Charity to "draft a proposal to ESDC, which was ultimately provided to government as a formal proposal on April 22."<sup>163</sup>

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156 Ibid., 1535.

157 Ibid., 1545.

158 Ibid., 1535.

159 Ibid., 1605.

160 Ibid., 1535.

161 ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 26 February 2021, 1305 (Sofia Marquez).

162 ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 15 March 2021, 1550 (Craig Kielburger).

163 ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 26 February 2021, 1305 (Sofia Marquez).



Ms. Kovacevic confirmed that it was ESDC officials who recommended to Minister Chagger that the government enter into a contribution agreement with WE Charity.<sup>164</sup> On 24 April 2020, Ms. Kovacevic and Ms. Wernick had a briefing call with Mr. Craig Kielburger and Ms. Marquez during which they discussed the “broad parameters” of what would become the CSSG.<sup>165</sup> Ms. Kovacevic indicated that that call was her only communication with WE Charity.<sup>166</sup> Prior to the announcement of the CSSG on 22 April 2020, Ms. Kovacevic had obtained WE Charity’s proposals from either ESDC or the Minister of Finance’s office.<sup>167</sup>

Ms. Fox explained that she was not involved in the decision to recommend WE Charity for the CSSG.<sup>168</sup> However, due to her previous experience as Deputy Minister of Intergovernmental Affairs and Youth at PCO, Mr. Craig Kielburger and Ms. Marquez called her on 20 April 2020 “to discuss their proposals for [a] youth entrepreneurship [program] and a youth service program.”<sup>169</sup> During that meeting, WE Charity provided a “brief... high-level overview of both proposals” but Ms. Fox did not help WE Charity focus its proposal.<sup>170</sup> While Ms. Fox shared this proposal with other officials and departments, she did not discuss the proposal with the Prime Minister’s or Deputy Prime Minister’s offices.<sup>171</sup>

Ms. Fox stated that, in her previous role, she had only worked with WE for one major event.<sup>172</sup> Nevertheless, she stated it was normal for stakeholders – especially during the pandemic – to reach out to public servants for solutions.<sup>173</sup> She believed that, at the time of their 20 April 2020 call, WE Charity “had already determined that the need existed and that something must be done for young people.”<sup>174</sup> Ms. Fox stated that her subsequent interaction with the CSSG file was on 21 May 2020, when she briefed the Prime Minister “to provide him with insight based on my previous experience with

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164 ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 4 December 2020, 1455 (Michelle Kovacevic).

165 ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, , 26 February 2021, 1305 and 1355 (Sofia Marquez).

166 ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 4 December 2020, 1455 (Michelle Kovacevic).

167 Ibid., 1455.

168 ETHI, [Evidence](#), 4 December 2020, 1500 (Christiane Fox).

169 Ibid., 1415.

170 Ibid., 1415 and 1420.

171 Ibid., 1410.

172 Ibid., 1420.

173 Ibid., 1425 and 1430.

174 Ibid., 1435.

ESDC's Canada service program.”<sup>175</sup> It was only on 22 May 2020 that Ms. Fox followed up with WE Charity “to make sure to convey what [she] felt were important considerations” and to share “general thoughts on a potential youth service program.”<sup>176</sup>

Minister Chagger reiterated that the CSSG proposal went to the Cabinet COVID-19 Committee on 5 May 2020 and that the government asked public officials for additional due diligence. They returned with the same recommendation, namely that WE Charity “was the only organization that could deliver the program to the scale, scope and timeline that we were looking for.”<sup>177</sup> Ms. Marquez noted that ESDC continued to request further information from WE Charity between 8 May 2020 and 22 May 2020.<sup>178</sup>

In response to a member’s question, Mr. Shugart acknowledged that it was “possible” there had been discussions about the program between the PMO and the PCO before 8 May 2020 but specified that “communication is not direction.”<sup>179</sup>

## Lobbying Concerns Related to the Canada Student Service Grant

Mr. Marc Kielburger told the Finance Committee on 28 July 2020 that WE Charity had not completed a registration under the *Lobbying Act* because he did not believe staff had met the time thresholds that would trigger that obligation.<sup>180</sup> On 13 August 2020, however, WE Charity representatives told the Finance Committee that they had retroactively registered lobbying activity back to January 2019, and that if they “had thought that was necessary before, [they] would have done it.”<sup>181</sup>

Mr. Craig Kielburger told the Committee that he and Mr. Marc Kielburger did not register as lobbyists because they are officially volunteers for the organization, and as such were not capable of registering.<sup>182</sup> However, despite the absence of any requirement for

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175 Ibid., 1415.

176 Ibid.

177 ETHI, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 11 August 2020, 1520 (Hon. Bardish Chagger).

178 ETHI, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, , 26 February 2021, 1305 (Sofia Marquez).

179 ETHI, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 11 August 2020, 1400 (Ian Shugart).

180 FINA, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 28 July 2020, 1425 and 1515 (Marc Kielburger).

181 FINA, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 13 August 2020, 1535 (Dalal Al-Waheidi Executive Director, WE Charity).

182 ETHI, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 15 March 2020, 1515 (Craig Kielburger).



volunteers to register lobbying activity under the *Lobbying Act*, WE Charity published the Kielburgers' lobbying activity online.<sup>183</sup>

Ms. Marquez explained that from July 2018 until her departure from WE Charity in July 2020, she was “responsible for engagement with all levels of government, as well as strategic stakeholders … in relation to domestic programs run by WE Charity in Canada.”<sup>184</sup> During her time at WE Charity, she took part of some, but not all initiatives and engagements.<sup>185</sup> In addition, she confirmed that Craig and Marc Kielburger were responsible for preparing WE Day invitations, including for ministers.<sup>186</sup> Ms. Marquez reiterated that she was never a “regular” or a “full-time” lobbyist, estimating that her lobbying activity never exceeded 20% of her time.<sup>187</sup>

Ms. Marquez also noted that the *Lobbying Act* places the responsibility for registering in-house lobbyists on WE Charity’s executive director, and that she had submitted the relevant records to her former employer in support of WE Charity’s response to the Commissioner of Lobbying and federal officials.<sup>188</sup> In response to a Committee member’s question, Ms. Marquez indicated that she had not been contacted by the Commissioner of Lobbying or the RCMP regarding lobbying activity at WE Charity.<sup>189</sup>

In addition, Minister Chagger and various government officials stated that although they had discussions with WE Charity representatives, the onus is on the third-party organization – not the officials being lobbied – to ensure lobbying registry obligations are respected.<sup>190</sup> When asked by a Committee member why she agreed to speak to an organization that was not on the Registry of Lobbying, Minister Chagger explained that she keeps an “open-door policy” to ensure she can have conversations with numerous organizations.<sup>191</sup>

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183 Ibid., 1630.

184 ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 26 February 2021, 1300 (Sofia Marquez).

185 Ibid., 1345.

186 Ibid., 1300.

187 Ibid. 1300 and 1325

188 Ibid., 1330.

189 Ibid., 1305.

190 ETHI, [Evidence](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 11 August 2020, 1450 (Hon. Bardish Chagger,); ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 4 December 2020, 1430 (Michelle Kovacevic) and Ibid., 1435 (Christiane Fox).

191 ETHI, [Evidence](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 11 August 2020, 1450 (Hon. Bardish Chagger).

## WE Charity's Capacity to Administer the Canada Student Service Grant in Both Official Languages

Some members raised concerns about the capacity of WE Charity, as an administrator of a federal program, to deliver the CSSG in both official languages. Mr. Marc Kielburger indicated that WE Charity had activities in a network of schools in Quebec and about 16 staff in its Montreal office when the CSSG was launched, but it needed help to run such a large program in a short timeframe.<sup>192</sup> Mr. Craig Kielburger added that WE Charity had previously run fully bilingual programs across Canada.<sup>193</sup> The Kielburgers explained that it “wasn’t unusual” for WE Charity to engage with communications firms in both English and French across Canada, and that NATIONAL Public Relations (NATIONAL) had been involved in WE Days in Montreal for years.

According to Martin Daraiche, President, NATIONAL, a WE Charity employee reached out to his firm on 15 May 2020 to initiate discussions about a French-language communications service proposal.<sup>194</sup> Following discussions about how NATIONAL could support the communication of CSSG information, NATIONAL received confirmation of its mandate at “the end of May … after Cabinet had made its decision.”<sup>195</sup>

Chantal Benoit, Director, NATIONAL, indicated that the firm’s role was

to provide communication support to WE to raise awareness for the grant program among non-profit organizations, students and other stakeholders in Quebec and in francophone communities outside of Quebec.<sup>196</sup>

This involved “preparing the French content, providing program-related media monitoring and developing the social media content.”<sup>197</sup> NATIONAL’s work for WE Charity began on 25 May 2020 and ended on 3 July 2020, when WE Charity transferred the program responsibility to the government.<sup>198</sup>

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192 ETHI, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 15 March 2021, 1530 (Marc Kielburger).

193 ETHI, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 15 March 2021, 1535 (Craig Kielburger).

194 ETHI, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 7 December 2020, 1105 (Martin Daraiche, President, National Public Relations).

195 Ibid., 1210.

196 Ibid., 1110 (Chantal Benoit, Director, National Public Relations).

197 Ibid.

198 Ibid.



Mr. Daraiche emphasized that NATIONAL was in no way involved in negotiations between WE Charity and the federal government concerning the CSSG, nor did it lobby on WE Charity's behalf.<sup>199</sup> He added that no elected officials or public servants contacted NATIONAL to help WE Charity obtain the contribution agreement.<sup>200</sup> The organization nevertheless reached out to selected members of Parliament at the end of June to ensure they were sharing public information about the CSSG in their ridings.<sup>201</sup>

Mr. Daraiche confirmed that NATIONAL was not mandated to manage the CSSG, but it reached out to not-for-profit organizations to ensure they were aware of the program.<sup>202</sup> Similarly, Ms. Benoit stated that NATIONAL was not mandated to act on behalf of WE Charity as an intermediary between the organization and the federal government.<sup>203</sup> In response to a member's question, Mr. Daraiche explained that the low percentage of Quebec youth who had enrolled in the CSSG before its cancellation was due to the three-week timeline National PR had to recruit them.<sup>204</sup>

## PALANTIR TECHNOLOGIES INC. AND THE INVOLVEMENT OF DAVID MACNAUGHTON AS A FORMER REPORTING PUBLIC OFFICE HOLDER

### Preventative Order Issued by the Conflict of Interest and Ethics Commissioner

On 16 September 2020, the Conflict of Interest and Ethics Commissioner issued a preventative order (the Order) under section 41(1) of the *Conflict of Interest Act* (COI Act) to nine public office holders. The Order sought to “restrict their official dealings with former reporting public office holder and ambassador David MacNaughton” for one year.<sup>205</sup> Section 41(1) of the COI Act allows the Commissioner to make such an order if a former reporting public office holder is not complying with his or her post-employment obligations.<sup>206</sup>

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199 Ibid., 1105 (Martin Daraiche).

200 Ibid.

201 Ibid., 1135 and 1145.

202 Ibid., 1140 and 1145.

203 Ibid., 1110 (Chantal Benoit).

204 Ibid., 1205 (Martin Daraiche).

205 Office of the Conflict of Interest and Ethics Commissioner, *Issuance of order: official dealings*, 16 September 2020.

206 *Conflict of Interest Act*, S.C. 2006, c. 9, s. 2, Part 3 (COI Act).

David MacNaughton was the Canadian ambassador to the U.S. from January 2016 to August 2019. Between 2 March and 1 May 2020, Mr. MacNaughton “communicated with or arranged multiple meetings with several public office holders for the purpose of offering pro bono assistance on behalf of Palantir Technologies Inc. (Palantir) in respect of the Government of Canada’s response to the COVID-19 pandemic.”<sup>207</sup>

Mr. Dion told the Committee that Mr. MacNaughton acknowledged, with the benefit of hindsight, that certain communications and meetings, to the extent they could have furthered the interest of his new employer, were contrary to section 33 of the COI Act. That section provides that “no former public office holder shall act in such a manner as to take improper advantage of his or her previous public office.” Considering the clear issue and number of contraventions, Mr. Dion decided to issue an order rather than continue to investigate.<sup>208</sup> Mr. Dion indicated that “pro bono is often the first step to a more lucrative type of situation, so it's on that basis that we decided to impose the order.”<sup>209</sup>

The Order also indicates that Mr. MacNaughton was named President of Palantir Technologies Inc. after consultations with the Conflict of Interest and Ethics Commissioner. Mr. Dion noted that any time someone wishes to discuss an offer of employment with him while they are still a public office holder and planning their future, he would invariably go through the provisions of the COI Act related to post-employment with that person. He told the Committee that he would surely have done the same with Mr. MacNaughton.<sup>210</sup>

## Public Office Holders Affected by the Order

One of the nine public office holders named in the Order, Mr. Simon Kennedy, Deputy Minister of Innovation, Science and Economic Development (ISED), appeared before the Committee. Mr. Kennedy indicated that he was invited by colleagues to attend a single virtual meeting with representatives of Palantir. The meeting was a software demonstration hosted by the company. Mr. MacNaughton was present during the

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207 Office of the Conflict of Interest and Ethics Commissioner, [Order under Section 41](#), 16 September 2020. Annex A of the Order contains a list of all the communications and subjects discussed in the reported meetings.

208 ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 27 November 2020, 1310 (Mario Dion).

209 *Ibid.*, 1315.

210 *Ibid.*, 1335.



meeting, but Mr. Kennedy did not speak with him.<sup>211</sup> By the end of the meeting, ISED representatives told Palantir that their software would not be useful.<sup>212</sup> No contract resulted from the meeting.

Mr. Kennedy explained that the virtual meeting with Palantir was one of many meetings ISED had held with companies that had offered their services pro bono during COVID-19, following the government's call to action in March 2020. Of almost 200 digital services firms and software firms that made such an offer, ISED met with more than 60 of them, including Palantir.<sup>213</sup> Mr. Kennedy insisted that there was no short list of companies on which Palantir would have been. ISED's practice was to respond to each of the companies that reached out. In total, ISED met with more than 1,000 of the 6,600 companies that had responded to the call to action.<sup>214</sup>

Mr. Kennedy confirmed that ISED is often lobbied. He explained that ISED deals with businesses as a matter of routine and that it is normal practice to consult with stakeholders on relevant legislation or programs, through informal discussions or formal consultation with a discussion paper.<sup>215</sup> He recognized that lobbying increased at ISED during the pandemic.<sup>216</sup> Companies approached ISED in various ways and for various reasons, for example, if the government had made a purchase from them or if an organization simply wanted data or advice from ISED, without necessarily applying for a contract or investment.<sup>217</sup>

Mr. Kennedy did not recall a discussion during which someone would have raised concerns about speaking to Mr. MacNaughton.<sup>218</sup> He was unaware that the day he attended a virtual meeting with representatives of Palantir, the Minister of Innovation, Science and Industry and the minister's Chief of Staff had also had communications with Mr. MacNaughton. He indicated that if he had known that Mr. MacNaughton was in breach of conflict of interest rules, he would have declined to attend the meeting.<sup>219</sup>

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211 ETHI, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 11 December 2020, 1305 (Simon Kennedy, Deputy Minister, Innovation Science and Economic Development).

212 Ibid., 1310.

213 Ibid., 1305.

214 Ibid., 1310 and 1330.

215 Ibid., 1315.

216 Ibid.

217 Ibid., 1350.

218 Ibid., 1310.

219 Ibid., 1330.

With respect to lobbying activities, he noted that he has “dealt routinely with businesses that have former politicians and others from both sides of the aisle or from different governments over time,” and that the obligations regarding the reporting of lobbying activities, fall on the person doing the lobbying.<sup>220</sup>

## The Nature of Palantir’s Work

Considering the communications between Palantir and public office holders, the Committee took an interest in the company itself and the nature of its work.

Mr. Jeramie Scott, Legal Counsel at the Electronic Privacy Information Centre (EPIC), a public interest research centre in Washington, D.C. explained that Palantir “has been scrutinized for the predictive policing service the company has provided to various law enforcement agencies within the United States.”<sup>221</sup> For example, Mr. Scott explained that Palantir compiles a target list of likely offenders and victims based on an analysis of mass data from a variety of sources (e.g., social media, criminal databases, probation and parole information, etc.). In addition, its software performs social network analysis to build webs of social connections to identify potential offenders or victims without prior police contacts. In almost all cases, Palantir has sought to implement predictive policing without community knowledge or consent.<sup>222</sup>

Mr. Scott noted that if Palantir is offering to work pro bono, it is for a reason, whether it is to obtain a government contract or to get access to free data to use in fine-tuning their software, or both.<sup>223</sup> He recommended due diligence on the part of the Canadian government regarding investment in Palantir, noting their link to U.S. Immigration and Customs Enforcement (ICE) and human rights issues such as family separation.<sup>224</sup> He further noted that there is a lack of transparency with respect to the sophisticated data mining software that Palantir uses, the data they have access to, and how that data is used by the U.S. government and other governments.<sup>225</sup>

With respect to transparency, Mr. Scott provided information to the Committee regarding two freedom of information lawsuits brought by EPIC to force U.S. government

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220 Ibid.

221 Ibid., 1420 (Jeramie Scott, Legal Counsel at the Electronic Privacy Information Centre).

222 Ibid., 1420 and 1425.

223 Ibid., 1450.

224 Ibid.

225 Ibid.



agencies to disclose records regarding its use of Palantir software.<sup>226</sup> One lawsuit was against U.S. Customs and Border Protection and sought records about its analytical framework for intelligence, which uses Palantir software to gather information to conduct general risk assessments of travellers and intelligence reports.<sup>227</sup>

The second lawsuit was against ICE and sought records related to systems used by ICE that are built on Palantir's software, known as the Falcon systems. These systems serve as ICE's primary data storage and analysis system and pull from various government databases. They contain numerous categories of sensitive information, as well as call record data and GPS data.<sup>228</sup> Using the Palantir software, Falcon systems can link together that data and other data through social network analysis, for example to locate undocumented immigrants.<sup>229</sup>

Neither Mr. MacNaughton nor any other representatives from Palantir appeared before the Committee during this study.

## Access to Senior Government Officials

Ms. Bélanger indicated that she could not comment on the level of access that Mr. MacNaughton had with high-level government officials, noting that her role is to determine whether a former designated public office holder, who is prohibited from lobbying, did any lobbying under the *Lobbying Act*.<sup>230</sup> Like the COI Act, the *Lobbying Act* contains post-employment obligations.<sup>231</sup>

Ms. Bélanger explained that the *Lobbying Act* prohibits a former designated public office holder, as defined in the Act, from lobbying as a consultant or as an in-house lobbyist for an organization. The ban is for five years. However, if a former designated public office holder is employed by a corporation rather than being a consultant or in-house, the

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226 Ibid., 1420.

227 Ibid.

228 Ibid.

229 Ibid.

230 ETHI, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 27 November 2020, 1430 (Nancy Bélanger, Commissioner of Lobbying).

231 *Lobbying Act*, R.S.C., 1985, c. 44 (4th Supp.), sections 10.11 and 10.12.

individual is entitled to lobby, as long as the communications do not amount to a significant part of his or her work.<sup>232</sup>

In March 2021, the Commissioner of Lobbying released her investigation report into Mr. MacNaughton, in which she found 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.”<sup>233</sup> She concluded that most of his communications with government officials did not relate to any subject matters referred to in paragraph 7(1)a) of the *Lobbying Act*. A small proportion of the other communications did. However, these did not meet the “significant part of work” exception set out in paragraph 10.11(1) of the Act which amounts to 20 percent or more of the time spent engaged in such communicative activities.<sup>234</sup>

## BAYLIS MEDICAL INC. AND A FORMER PARLIAMENTARIAN

This study includes “the consideration of all aspects of the government’s involvement with Baylis Medical Company Inc. (Baylis Medical), as well as former Liberal Member of Parliament Frank Baylis, including the awarding of a procurement contract for medical devices.”<sup>235</sup> Frank Baylis was a Member of Parliament from 2015 to 2019 and is currently Executive Chairman of the Board of Directors of Baylis Medical.

### Nature of the Contract

On 11 April 2020, FTI Professional Grade Inc. (FTI) signed a contract with Public Services and Procurement Canada to deliver 10,000 ventilators. On 16 April 2020, FTI signed a subcontract with Baylis Medical to manufacture these ventilators.<sup>236</sup> No federal contract was awarded directly to Baylis Medical. The value of the contract between FTI and the federal government was \$237,300,000.<sup>237</sup>

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232 ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 27 November 2020, 1410 (Nancy Bélanger).

233 Office of the Commissioner of Lobbying of Canada, [David MacNaughton, President of Palantir Canada](#), investigation report, March 2021.

234 Ibid.

235 ETHI, [Minutes of Proceedings](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 16 November 2020.

236 ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 4 December 2020, 1305 (Rick Jamieson, President, FTI Professional Grade).

237 Public Services and Procurement, [COVID-19 contract information](#).



The President of FTI, Rick Jamieson, explained that he decided to make ventilators following the government's call to action in March 2020. He reached out to the public service to discuss a plan to make ventilators, as a member of the Ventilators for Canadians Consortium (V4C), a group of entrepreneurs from the industrial manufacturing, technology, and engineering sectors. He had never participated in a public contracting process with the any government before.<sup>238</sup> He explained that FTI was incorporated on the day of tender because he was advised that a single purpose entity was appropriate.<sup>239</sup>

Mr. Jamieson confirmed that he communicated with the public service about V4C's plan before he ever spoke to Mr. Baylis or Baylis Medical.<sup>240</sup> He confirmed that he did not know Mr. Baylis and had never heard of Baylis Medical before 2020.<sup>241</sup> He also pointed out that his company was not the only one that had received a ventilator contract without prior medical equipment manufacturing experience.<sup>242</sup>

Neil Godara, Vice-President and General Manager at Baylis Medical, explained the reason behind the difference in price between the Baylis Medical ventilator and the model on which it is based. First, while Baylis Medical's device is a replica of the Medtronic PB560 ventilator, the former needed to provide many more accessories that would help hospitals to use the ventilator on multiple patients and to configure it specifically for COVID-19. Second, the production required establishing a completely new manufacturing facility dedicated specifically for ventilator production. It required hiring over 250 people and acquiring special tooling and equipment components, as well as securing a global supply chain. Finally, due to COVID-19, there were major changes in shipping costs. This resulted in a higher cost per unit.<sup>243</sup>

## Nature of the Involvement of a Former Member of Parliament

Mr. Baylis told the Committee that he was never in contact with any government representatives regarding the FTI ventilator contract nor did he have communications with the Prime Minister or Cabinet ministers. He "was not reaching out or doing any kind of backroom—as it's been suggested—request to anyone to get me a contract or to get

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238 ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 4 December 2020, 1305 (Rick Jamieson).

239 Ibid., 1345.

240 Ibid., 1335.

241 Ibid., 1330.

242 Ibid., 1350.

243 Ibid., 1320 and 1325 (Neil Godara, Vice President and General Manager, Baylis Medical Company Inc.).

Mr. Jamieson a contract, or Ventilators for Canadians or FTI.”<sup>244</sup> He noted that 14 contracts have been awarded by the federal government for ventilators and accessories.<sup>245</sup>

Mr. Baylis was informed by Mr. Godara that Mr. Jamieson had contacted Baylis Medical and wanted it to be part of the V4C consortium. He had one phone call with Mr. Jamieson, whom he did not previously know, regarding the involvement of Baylis Medical.<sup>246</sup> Mr. Godara confirmed that Baylis Medical was a subcontractor and only dealt with FTI. It was not involved in the negotiation of the contract between FTI and the federal government.<sup>247</sup> Mr. Godara worked closely with Mr. Jamieson and would inform Mr. Baylis of anything relevant.<sup>248</sup>

Both Mr. Baylis and Mr. Godara explained that Baylis Medical is one of the largest medical device companies in Canada and possessed the technical expertise required to conceive, develop, receive approval for, and manufacture quality medical devices.<sup>249</sup> Mr. Baylis also confirmed that Baylis Medical had obtained funding from the federal government twice before he became a member of Parliament in 2016—the first for a contract, and the second a loan.<sup>250</sup>

Mr. Baylis told the Committee that he did not communicate with the Conflict of Interest and Ethics Commissioner regarding Baylis Medical’s involvement in ventilator production. He only became aware that Mr. Dion was looking into the ventilator contract when the commissioner mentioned it publicly.<sup>251</sup>

Mr. Dion confirmed that as a former member of Parliament, Mr. Baylis is no longer subject to the *Conflict of Interest Code for Members of the House of Commons* (Members’ Code of Conduct). He noted that his office considered the public officials

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244 Ibid., 1325 (Frank Baylis, Executive Chairman, Baylis Medical Company Inc.).

245 Ibid., 1330.

246 Ibid., 1320 and 1325.

247 Ibid., 1400 (Neil Godara).

248 Ibid., 1350 (Frank Baylis).

249 Ibid., 1320 (Frank Baylis) and 1310 (Neil Godara).

250 Ibid., 1350 (Frank Baylis).

251 Ibid., 1340 and 1355.



involved in awarding the contract to V4C and determined that there were no reasonable grounds to believe that the COI Act might have been breached.<sup>252</sup>

## OVERSIGHT MECHANISMS FOR FEDERAL SPENDING AND PROCUREMENT

In addition to the three specific cases studied, the Committee heard testimony regarding federal spending and procurement, pandemic spending, and how oversight mechanisms can be improved to ensure that the allocation of federal funds is done transparently and without conflict of interest. Witnesses commented on current measures and practices, relevant laws or regulations and the role of commissioners responsible for the administration of these laws.

### Measures Already in Place

Minister Chagger highlighted several safeguards that currently apply to the federal government policies on procurement, contracting, grants and contributions, and all other federal spending policies to avoid, mitigate, and prevent conflict of interest.<sup>253</sup> She noted that the *Financial Administration Act* governs the distribution of financial support. In addition, the federal government is governed by the oversight and accountability procedures of TBS which include the policy on financial management, the policy on transfer payments, and the policy on results, evaluation, and internal audit.<sup>254</sup>

Specifically, Minister Chagger noted that the TBS Directive on Open Government promotes transparency and accountability across all departments. Canadians can also view grants and contributions that have been awarded on the open government portal along with key information (e.g. departmental plans, outcomes, costs incurred, contracts awarded, consultations and evaluations undertaken).<sup>255</sup>

Mandate letters to ministers include commitments toward a transparent, honest and accountable government, including the upholding the highest ethical standards. All

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252 ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 27 November 2020, 1340 (Mario Dion).

253 ETHI, [Evidence](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 11 August 2020, 1435 and 1440 (Hon. Bardish Chagger).

254 Ibid., 1435; Government of Canada, [Policy on People Management](#); Government of Canada, [Transfer payments](#); Government of Canada, [Results, Evaluation, and Internal Audit](#).

255 Ibid.

members of Parliament must comply with the Members' Code of Conduct, and ministers and parliamentary secretaries must also comply with the COI Act.<sup>256</sup>

Mechanisms are in place in all departments to prevent the risk of bias or conflict of interest. For example, Minister Chagger mentioned that at Canada Heritage, the approval of a grant or contribution is never done by a single person. Other mechanisms include conducting internal assessments, peer reviews or reviews through internal and external committees.<sup>257</sup>

Minister Chagger mentioned that ministers and parliamentary secretaries' staff "must meet a high standard of probity and integrity set out in policies for ministers' offices." She added that public servants are bound by strict rules of integrity, including the *Values and Ethics Code for the Public Sector*.<sup>258</sup> Employees involved in the delivery of transfer payments receive additional training to help them identify and deal with potential conflict of interests. Individuals and organizations applying for funding are required to disclose any potential conflicts of interest at the time of application. Several departments have internal control frameworks that outline financial management roles and responsibilities which are designed to provide reasonable assurance that public resources are used prudently and that financial management processes are effective and efficient.<sup>259</sup>

Similarly, Mr. Shugart reiterated that public servants who are public office holders follow the COI Act every day "with respect to declarations, the consultation with the Ethics Commissioner with regard to potential conflicts of interest, orders to divest, and screens for conflict that are set up sometimes beyond what the commissioner has called for."<sup>260</sup>

Ms. Kovacevic noted that for all programs the Department of Finance develops and for decisions on which she advises, she takes perspectives from researchers, ministers' offices, and third parties into consideration.<sup>261</sup> She added that her policy considerations "would be exactly the same irrespective of government [party]."<sup>262</sup>

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256 Ibid.

257 Ibid., 1440.

258 Government of Canada, *Values and Ethics Code for the Public Sector*.

259 ETHI, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 11 August 2020, 1435 and 1440 (Hon. Bardish Chagger).

260 Ibid., 1340 (Ian Shugart).

261 ETHI, *Evidence*, 4 December 2020, 1455 (Michelle Kovacevic).

262 Ibid., 1430.



Mr. Kennedy provided a glimpse into the practices and oversight mechanisms in place at ISED. He stated that ISED has a rigorous process for contract due diligence. An internal team reviews each contract to verify all legal requirements and conflict of interest issues, among others. In addition, there are internal financial controls to ensure that due diligence processes are followed prior to any contract. The process is overseen either by the Chief Financial Officer, or on occasion, for larger contracts, a committee.<sup>263</sup>

Mr. Kennedy used the Strategic Innovation Fund to explain why reviewing companies' financials is an important step before granting a contract. He explained that there can be financial, managerial and technology risk to a contract, and that among the things ISED would examine in the Strategic Innovation Fund are:

[w]hether the company has the financial wherewithal to do it. Are they going to be able to raise the funding? Maybe the taxpayer money is going to go in, but they're going to raise money from other sources. Are they able to do it? Do they have enough cash in the bank so that they're not going to run out of money halfway through the project?<sup>264</sup>

Mr. Kennedy told the Committee that if ISED is going "to partner and perhaps make an investment in a company, then we want to have a sense of the risk that's being presented for the taxpayer."<sup>265</sup>

## Pandemic Spending Oversight

Marc Tassé told the Committee that pre-pandemic rules should be applied during a pandemic.<sup>266</sup> If these rules cannot apply, however, alternative oversight and accountability mechanisms for the delivering of federal aid programs during a pandemic should be introduced "to compensate for the revocation of certain internal compliance controls."<sup>267</sup> He acknowledged that rapid action is needed in time of crises, but insisted that "maintaining an adequate level of due diligence at the supply chain level is essential to prevent corruption, fraud and other illegal and unethical practices."<sup>268</sup> He reiterated

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263 ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 11 December 2020, 1325 (Simon Kennedy).

264 Ibid., 1345.

265 Ibid.

266 ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 30 November 2020, 1205, 1215 and 1220 (Marc Tassé). Mr. Tassé also submitted a [brief](#) to the Committee.

267 Ibid., 1200.

268 Ibid.

that where controls in the existing procurement system may need to be bypassed or accelerated, enhanced due diligence is required.<sup>269</sup>

Mr. Tassé explained that in a pandemic situation, the government and senior officials need to be more vigilant and strengthen structures to reduce the risk of favouritism and clientelism in awarding contract. Therefore, while emergency exemptions may be permitted to award sole-source contracts, they must be necessary and non-selective considering that they provide deviant actors with bypass routes.<sup>270</sup>

Mr. Tassé questioned whether pre-pandemic planning could have better protected against government contract vulnerabilities and whether the people responsible for the administration of relevant laws have sufficient teeth to prevent, detect, and punish violations of these laws, especially where a conflict of interest arises during emergencies.<sup>271</sup> He mentioned that the current rules in the federal procurement system are excellent, but that public officials in procurement must be aware of the potential for real or apparent conflict of interest.<sup>272</sup> He further noted that a federal integrity program to prevent conflict of interest is in place and effective, but in the context of a pandemic “simply needs some adjusting to address some of the emergency measures related to the current context.”<sup>273</sup>

Denis Gallant, lawyer with Roy Bélanger Avocats, explained that in Canada, at both the federal level and in all provinces, the awarding of public contracts is strictly regulated by various laws and regulations. Their goal is to ensure the best product or service at the best price; guarantee freedom of competition; and give equal opportunity to all individuals who want to obtain a government contract. To meet these goals for awarding a public contract, a public call for tenders is mandatory, except in exceptional circumstances, such as an emergency.<sup>274</sup> However, he noted that urgency “must not become a reason to circumvent mandatory rules governing public contracts” and that it “shouldn’t also contribute to a lax approach to monitoring and overseeing taxpayer dollars.”<sup>275</sup>

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269 Ibid., 1210.

270 Ibid., 1205.

271 Ibid.

272 Ibid., 1220.

273 Ibid., 1225.

274 ETHI, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 11 December 2020, 1405 (Denis Gallant, Lawyer, Roy Bélanger Avocats S.E.N.C.R.L.).

275 Ibid.



Mr. Gallant expressed concern about the safeguards in place to prevent price gouging, possible fraud and waste during the pandemic. He recommended the integration of live integrity monitoring and oversight programs such as the ones found in some inspector general offices in the U.S.<sup>276</sup>

Mr. Conacher indicated that the *Financial Administration Act* and its regulations contain loopholes that allow for sole-source contracting. He suggested that using an existing rule that allows for a shorter 10-day call for tender under the Act would have been preferable to sole-sourcing contracts during the pandemic.<sup>277</sup>

## Pandemic Spending in Action

Mr. Kennedy, deputy minister of ISED, provided the Committee with an example of how pandemic spending occurred in one department. He explained that ISED managed to move swiftly to work with thousands of companies that offered their expertise to help combat COVID-19. This significant pivot was facilitated, for example, by shifting the focus of its business innovation program to concentrate on COVID-19.<sup>278</sup>

Mr. Kennedy confirmed that in the early days of the pandemic, people at ISED had to work long evenings and long hours, and noted that the intensity was continuing for him and some of his colleagues at the time of his appearance.<sup>279</sup> However, he noted that in emergency situations, it is still necessary to keep the paperwork and a complete history of the decision-making process to be able to justify ISED's actions.<sup>280</sup> He reiterated that while his team moved quickly, it did so responsibly. If risks had to be taken because of incomplete information, he indicated the his team tried to make "calculated, smart risks" and "to not let too much bureaucracy and red tape slow down what we all felt was the need to move quickly to make sure that the country was safe from a pretty desperate situation."<sup>281</sup>

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276 Ibid.

277 ETHI, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 10 August 2020, 1440 and 1500 (Duff Conacher).

278 Business innovation programming includes programs such as the Strategic Innovation Fund, the Innovation Superclusters, Innovative Solutions Canada and the National Research Council's industrial Research Assistance Program; ETHI, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 11 December 2020, 1305 (Simon Kennedy).

279 Ibid., 1340.

280 Ibid., 1325.

281 Ibid., 1355.

## Improving Oversight Mechanisms

Mr. Tassé identified fifteen questions that a government should ask before awarding a sole-sourced contract:

- Does the entity have the technical skills?
- Does the entity have the human resources to carry out the mandate properly?
- Does the entity have a transparent legal structure?
- Does the entity have a stable governance structure?
- Does the entity have the financial stability to complete the contract?
- Were audits of the entity's officers carried out prior to the awarding of the contract?
- Was the contract awarded in an emergency or personal safety context?
- Were apparent, potential and actual conflict of interest issues assessed prior to the awarding of the contract?
- Is the contract guided by due diligence with respect to the department's interest?
- Is the contract typical of the relationship between a department and an entity?
- Does the contract include a clause relating to ongoing monitoring of the ethics and compliance program of the entity that is considered to be retained?
- Does the contract include anti-corruption clauses?
- Does the contract contain clauses for the recovery of embezzled funds? [and]



- Was there a legal validation of the contract prior to its being awarded?<sup>282</sup>

He clarified that those questions could act as a guideline and that decisions based on the answers to these questions should be documented and may lead to additional questions.<sup>283</sup>

With respect to the federal approach to funding contribution agreements, which consists of releasing the funding in stages based on whether key performance indicators are met, Mr. Tassé agreed that it is prudent and responsible.<sup>284</sup> The Committee notes that contribution agreements and contracts are not governed under the same rules.<sup>285</sup>

Mr. Gallant noted a lack of continuous oversight in federal spending. In Quebec, the Autorité des marchés financiers (the public procurement authority) ensures that when contracts are awarded, a neutral and independent body provides that type of oversight. The Autorité des marchés publics has the power to cancel any contract in violation of the rules. He recommended appointing a similar body at the federal level which would be able to raise a red flag rapidly if there is an issue with a contract awarded by mutual consent (without tendering process).<sup>286</sup> Mr. Gallant explained that in Quebec,

to award a contract by mutual consent, the electronic tendering system must send a notice of intent. The notice indicates that a charity or business is about to be awarded a contract worth such and such an amount by mutual consent, and that is why no tendering process is taking place. This public request for proposals allows people who are interested and able to provide a service to the government in a tight 15-day timeframe.<sup>287</sup>

Mr. Conacher recommended stopping questionable sole-sourced spending and increasing due diligence. He recommended requiring institutions involved in significant spending to ask the Auditor General to conduct a compliance check before the spending process is initiated.<sup>288</sup>

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282 ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 30 November 2020, 1200 and 1205 (Marc Tassé).

283 Ibid., 1215.

284 Ibid. 1240.

285 Contribution agreements are governed by the Policy on Transfer Payments: Treasury Board Secretariat, [Policy on Transfer Payments](#). Contracts are governed by the [Government Contracts Regulations](#), SOR/87-402.

286 ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 11 December 2020, 1430 (Denis Gallant).

287 Ibid.

288 ETHI, [Evidence](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 10 August 2020, 1440 and 1505 (Duff Conacher).

Mr. Blumberg, lawyer specialized in charity law, noted that contrary to governments in other countries like the U.S., the United Kingdom and Australia, the Government of Canada does not request as much information from recipients of public contracts.<sup>289</sup> For example, he highlighted the fact that the CRA has been reducing the amount of information it publicly collects and provides about charities, despite the fact that transparency is vital to maintain public trust.<sup>290</sup> Mr. Blumberg noted that trust in the charity sector is vital.<sup>291</sup> He proposed several measures that could ensure greater transparency with respect to the finances and activities of charities that may be considered by the federal government to receive funding, including amendments to the *Income Tax Act*.<sup>292</sup>

## Conflict of Interest Rules and Commissioner's Role

The Committee heard from the Conflict of Interest and Ethics Commissioner on conflict of interest rules and his role in ensuring their enforcement, including during the pandemic. The Committee also heard testimony from academics and experts regarding the role of the Commissioner, the concept of conflict of interest, suggested amendments to the COI Act, the application of conflict of interests to the Prime Minister and the culture of ethics.

## Commissioner of Conflict of Interest and Ethics

Mr. Dion explained that it is important to have an independent officer of Parliament, appointed for seven years without possibility of removal, to work on ethical issues related to members of Parliament and public office holders. An independent officer can be objective and non-partisan in order to maintain public credibility.<sup>293</sup>

Mr. Dion noted that because it is possible that he – an independent decision-maker – and a parliamentary committee – which displays partisanship – could come to different conclusions on the same matter, such a result “would not serve the credibility vis-à-vis the public.”<sup>294</sup> In his view, that would not be a positive result for anyone involved.

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289 ETHI, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 11 December 2020, 1445 (Mark Blumberg).

290 Ibid., 1415.

291 Ibid., 1410.

292 Ibid., 1415 and 1510.

293 ETHI, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 27 November 2020, 1320 (Mario Dion).

294 Ibid., 1320.



Mr. Dion opined that his office would be better suited than the Committee to investigate the ethical behaviour of parliamentarians, considering the framework Parliament created in 2004. However, he indicated that committee studies on the same subject as his investigations do not impede his office's work and that his office follows what goes on at committee with interest.<sup>295</sup> He nevertheless reminded the Committee that he has the full power to investigate issues on his own, and that it would be "contrary to the law" for him to follow parliamentarians' advice in deciding how to conduct his investigations.<sup>296</sup> He further stated that he would not be happy if the Committee was investigating something that was identical to what he is investigating, notwithstanding the fact that the committee is at liberty to do so.<sup>297</sup>

Mr. Dion explained that if he hears conflicting evidence during an investigation, his role is to determine, on a balance of probabilities, who is telling the truth by asking for additional documents, interviewing other people, and looking at the totality of the facts. Once he comes to his conclusion, he shares them in a report to the Speaker of the House in the case of the Members' Code of Conduct, and the Prime Minister in the case of the COI Act. His report is final. He noted that the interpretation he gives to the COI Act "essentially cannot be attacked anywhere—it's final—although there are several grey zones."<sup>298</sup>

He added that the only body to which he has to defend his advice and decisions is Parliament itself or, if somebody seeks judicial review, the Federal Court of Appeal. A judicial review of a decision of the Conflict of Interest and Ethics Commissioner can only be requested in three specific cases relating to the exercise of the Commissioner's jurisdiction: procedural fairness, or perjury and fraud. Alleged errors of law are not a valid ground for a judicial review.<sup>299</sup>

With respect to communications with members of Parliament, Mr. Dion told the Committee that all advice provided to members remains confidential. He indicated that the Conflict of Interest and Ethics Commissioner provides advice to the Prime Minister

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295 Ibid., 1325.

296 Ibid., 1340 and 1345.

297 Ibid., 1345.

298 Ibid., 1355.

299 Ibid., 1345; COI Act, s. 66; *Federal Courts Act*, R.S.C., 1985, c. F-7, sections 18.1(4)(a), 18.1(4)(b) or 18.1(4)(e).

on the request of the Prime Minister but has the right to take the lead and provided unsolicited advice as well.<sup>300</sup>

## Academics and Experts

### Role of the Commissioner

Mary Dawson was the Conflict of Interest and Ethics Commissioner from 2007 to 2017. She reminded the Committee that the main activities of the OCIE include “giving advice, providing outreach and education, receiving information from public office holders, some of which is made public, and carrying out examinations in relation to alleged contraventions of the Act.” As commissioner, she felt that “the most important activity of the office was assisting public officer holders in avoiding contraventions through its advisory and educational role.”<sup>301</sup>

She noted that all reporting public office holders under the COI Act should have an adviser as a contact point at the OCIE to whom he or she can ask questions.<sup>302</sup> She also indicated that while she was commissioner, her office was available to meet with ministers’ offices or different commissions to discuss the ethics roles.<sup>303</sup>

Regarding appearances by the OCIE before parliamentary committees to discuss reports, Ms. Dawson told the committee that pursuant to the COI Act, “your report speaks for itself and you’re not supposed to divulge, as an Ethics Commissioner, any information you got in the course of your investigation, or anything outside of what you have put in your report.”<sup>304</sup>

## The Concept of Conflict of Interest and General Rules

The concept of conflict of interest was explained by Chris MacDonald, Associate Professor at Ryerson University on ethics:

The concept of conflict of interest basically has to do with the fact that in modern life we often have people making important decisions on our behalf or advising us on

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300 Ibid., 1330 and 1345.

301 ETHI, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 11 August 2020, 1640 (Mary Dawson, former Conflict of Interest and Ethics Commissioner).

302 Ibid.

303 Ibid., 1725.

304 Ibid., 1730.



important decisions when we don't necessarily have either the proximity or the knowledge to monitor them, and so we need to be able to trust them, yet all decision-makers, including professionals and political leaders, have rich and complex lives that bring other factors to bear, so there's every chance in all kinds of situations that when you're entrusted with making a good decision on behalf of your employer, on behalf of the public or on behalf of your institution, other factors can intervene. What we want to do in those cases is try to figure out, given the necessity of this role, how we mitigate the challenges that might occur, including things like conflict of interest.<sup>305</sup>

Mr. MacDonald noted that one reason conflicts of interest are problematic is because where they are not dealt with properly, confidence in the decision-maker and the institution in which decision-making occurs may be shaken.<sup>306</sup> According to him “trust is imperilled if people even suspect that experts or office-holders, who are inherently difficult to monitor, might be in a position to improperly profit from their privileged status.”<sup>307</sup>

Robert Czerny, the former President of the Ethics Practitioners’ Association of Canada, shared a similar view. He noted that trust is essential in public service, and that the public must trust the government. That is why it is important to keep private interest outside of government decision-making and operations. In his view, conflict of interest, whether real or apparent, can destroy the public’s trust in the government to act in its interest.<sup>308</sup> During his testimony, Mr. Tassé underscored the importance of government ethics to ensure people have confidence in the system.<sup>309</sup>

Nevertheless, Mr. MacDonald told the Committee that a conflict of interest, in and of itself, cannot be an accusation and can arise entirely innocently. If it arises, key steps are required to deal appropriately with conflicts of interest: avoidance, disclosure to relevant individuals; and removal from decision-making. Yet sometimes avoidance is impossible. Disclosure is often insufficient, leaving stakeholders wondering what to do with the information they have received. Recusal from decision-making can also be impossible due to relevant roles and responsibilities, and in some cases, it may not be effective.<sup>310</sup> Where recusal is impossible, for example because of the decision-maker’s

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305 ETHI, [Evidence](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 10 August 2020, 1645 (Chris MacDonald, Associate Professor, Ryerson University).

306 Ibid., 1615.

307 Ibid.

308 Ibid., 1625 (Robert Czerny, Former President, Ethics Practitioners’ Association of Canada).

309 ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 30 November 2020, 1240 (Marc Tassé).

310 ETHI, [Evidence](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 10 August 2020, 1615 (Chris MacDonald).

expertise, a conflict of interest can be attenuated by having more people participate to the decision-making process.<sup>311</sup>

Mr. Tassé identified similar ways for public servants to address conflict of interest, namely disclosure and the removal, recusal or resignation from duties. He also recommended having laws with “teeth;” a level of due diligence commensurate with the urgency of decisions; and transparency mechanisms to review decisions after the fact to hold decision-makers accountable.<sup>312</sup>

Mr. MacDonald identified a distinction between an appearance of conflict of interest and a real conflict of interest. He noted that the perception of a conflict of interest is often based on a misunderstanding of the facts of the case. In that case, trying to fix the misperception can help, but it still needs to be dealt with since it can erode the confidence of the public or stakeholders.<sup>313</sup> In the case of a perceived conflict of interest, Mr. MacDonald stated that “presumably there's nothing to remove yourself from, so recusal doesn't make sense at that point. Some other form of verbal distancing may be helpful.”<sup>314</sup>

M. Czerny told the Committee that there are codes of ethics at other levels of government in Canada that prohibit the appearance of a conflict of interest and noted that in his view, it is not only the “actual” conflict of interest that needs to be addressed by legislation.<sup>315</sup>

With respect to recusal and whether someone should immediately recuse themselves the minute they wonder whether they are in a conflict of interest, Mr. MacDonald had a nuanced approach. He noted that while a gut reaction might be a reason to pause, it is not necessarily a reason to remove someone from an entire conversation in a definitive manner. He explained that it is possible that the conflict is not what it seems or that once the conflict is disclosed, the relevant decision-makers will still want the person to be part of the decision-making because of his or her perspective or expertise. He reminded the Committee that “at the end of the day, it's the reactions of external stakeholders that we need to worry about the most.”<sup>316</sup>

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311 Ibid., 1645 and 1715.

312 ETHI, Evidence, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 30 November 2020, 1200 (Marc Tassé).

313 ETHI, Evidence, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 10 August 2020, 1635 (Chris MacDonald).

314 Ibid., 1640.

315 Ibid., 1455 and 1705 (Robert Czerny).

316 Ibid., 1645 (Chris MacDonald).



Mr. Czerny noted that non-partisan public servants and elected representatives must collaborate in the work of government and that “there needs to be clarity about their complimentary roles and operating principles.”<sup>317</sup> Mr. Czerny noted the importance of speaking up and speaking truth to power, which is needed at every level of government, from junior staff to the interaction between a minister and his or her deputy. However, he highlighted the fact that while speaking up is necessary, confidentiality is also an “absolute necessity for public servants to be able to give honest advice to ministers and for ministers to seek it.”<sup>318</sup>

Mr. Czerny made several recommendations regarding conflict of interest at the Cabinet level and in the public service. He recommended that the standard procedure at all Cabinet meetings be that the chair begins by raising the issue of conflict of interest and inviting recusal. He recommended a similar process at the departmental level, for example by ensuring that in preparation for Cabinet meetings, the deputy minister’s briefing of the minister include a reminder to assure himself or herself that they are not in a conflict of interest regarding any of the agenda items.<sup>319</sup> In addition, he explained that

Requests to a department from a minister or Cabinet can be as broad as “provide feasible options for achieving x”, but the request can also be as narrow as “conduct due diligence on choice y for achieving x”. In order to give the best possible advice, in order to speak truth to power and protect ministers from possible risks, the deputy’s response to a narrower request could add any other pertinent intelligence that departmental staff can generate.<sup>320</sup>

Mr. Czerny also suggested adding a statement in the *Values and Ethics Code for the Public Sector* to the effect that “it is a violation of this code to pressure a federal public servant to contravene it.”<sup>321</sup> Mr. Tassé explained that a conflict of interest may arise in all environments. He noted that everyone has private interests, but that civil servants have a duty to serve the public interest and make decisions using criteria in an impartial manner.<sup>322</sup>

Mr. Tassé confirmed that public office holders are responsible for understanding the obligations they have under the COI Act and Members of Parliament are responsible for

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317 Ibid., 1625 (Robert Czerny).

318 Ibid.

319 Ibid.

320 Ibid.

321 Ibid.

322 ETHI, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 30 November 2020, 1200 (Marc Tassé).

understanding the Members' Code of Conduct, but recognized that sometimes the rules may be confusing.<sup>323</sup> He noted that conflict of interest rules in place are sufficient, but that it is important to identify people who will try to find the loopholes and stop them.<sup>324</sup>

### **Suggested Amendments to the Conflict of Interest Act and Other Legislation**

With respect to potential amendments to the COI Act, Ms. Dawson noted that only one legislative review has occurred since the adoption of the Act in 2013-2014. One review was mandatory under the Act. The review did not lead to any amendments. She referred the Committee to a summary of the 75 recommendations she had made during the legislative review, which are summarized in the 2016-2017 annual report of the OCIE.<sup>325</sup>

Ms. Dawson reminded the Committee that section 4, which defines conflict of interest, is not a substantive provision of the COI Act. It is a definitional provision. Therefore, for a contravention of the Act to have occurred, there must be a violation of one of its substantive provisions (sections 5 to 19). She recommended moving the definition in section 4 to the definition section of the Act, to avoid confusion.<sup>326</sup>

Mr. MacDonald told the Committee that the definition of "conflict of interest" in section 4 of the COI Act has a key flaw.<sup>327</sup> That section provides that

For the purposes of this Act, a public officer holder is in a conflict of interest when he or she exercises an official power, duty or function that provides an opportunity to further his or her private interests or those of his or her relatives or friends or to improperly further another person's private interests.

According to Mr. MacDonald, the definition is flawed because it refers to the exercise of an official power and fails to correspond to the view of many scholars that conflict of interest is a kind of situation, not a kind of action. He suggested that a more appropriate definition would be that "a conflict of interest is a situation in which a person has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties as, say, a public official, an employee or a professional."<sup>328</sup> Under

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323 Ibid., 1215.

324 Ibid., 1220.

325 ETHI, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 11 August 2020, 1645 (Mary Dawson).

326 Ibid., 1705.

327 ETHI, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 10 August 2020, 1615 (Chris MacDonald).

328 Ibid.



that definition, all that would be required for a conflict of interest is the “existence of a certain kind of professional duty, one that is in tension with some personal interest that stands to affect judgment.”<sup>329</sup>

Ms. Dawson noted that the term “friend” is not defined in the COI Act.<sup>330</sup> She also noted that the term “private interest” is not defined in the Act. While she has always felt that it was significantly tied to financial matters and generally did not apply to political interests, she acknowledged that the current Conflict of Interest and Ethics Commissioner has expanded the interpretation of that term to include such interests in the *Trudeau II Report*.<sup>331</sup> The Committee recognizes that the current commissioner’s interpretation is the one that prevails. Mr. Conacher recommended adding a definition of “private interest” in the Act which would define the term as including political, social and financial interests.<sup>332</sup>

With respect to section 11 of the COI Act, which deals with gifts, Ms. Dawson recommended increased transparency, for example by lowering the threshold for disclosure. She also recommended removing the exception found in that section that makes it acceptable for a public office holder to receive a gift from a friend.<sup>333</sup>

As for other provisions in the COI Act, she recommended strengthening post-employment obligations; adding some reporting obligations for non-reporting public office holders; and harmonizing some of the provisions of the COI Act and the Members’ Code of Conduct to avoid confusion, especially for ministers who must follow two different sets of rules.<sup>334</sup>

Ms. Dawson does not favour adding stringent monetary sanctions in the COI Act. She reminded the Committee that the COI Act is not a criminal piece of legislation. Many provisions already exist in the criminal sphere for severe activities such as bribery and fraud. If a criminal offence has been committed, the Conflict of Interest and Ethics Commissioner must refer the matter to the people who look after criminal matters and discontinue any ongoing investigation.<sup>335</sup>

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329 Ibid.

330 ETHI, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 11 August 2020, 1650 (Mary Dawson).

331 Ibid., 1755.

332 ETHI, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 10 August 2020, 1435 (Duff Conacher).

333 ETHI, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 11 August 2020, 1645 (Mary Dawson).

334 Ibid., 1750.

335 Ibid., 1650 and 1710.

Contrary to Ms. Dawson, Mr. Conacher noted a lack of sanctions in the COI Act where administrative rules are infringed. He noted, for example, the maximum penalty for failing to disclose assets and liabilities accurately and on time is only \$500.<sup>336</sup> While Mr. Conacher recognized that the COI Act exists as a civil, non-criminal means to prevent conflict of interest and is important to maintain government integrity, he suggested that penalties under the Act should be very high. He proposed one year's salary for a violation of the rules in the Act.<sup>337</sup> Mr. Tassé also recommended that the COI Act allow for the imposition of penalties that reflect the severity of the violation and provide clarity as to what constitutes a serious violation versus a minor violation.<sup>338</sup>

Mr. Conacher also recommended adding a rule requiring honesty in the COI Act and the Members' Code of Conduct "to ensure that politicians and government officials are penalized if they mislead voters about anything, including their own wrongdoing."<sup>339</sup> He also suggested eliminating the rule that allows divestment by placing assets in a blind trust, which he describes as "not blind at all, because a person knows what they put in the trust, chooses the trustee and can even give instructions."<sup>340</sup>

Mr. Conacher suggested prohibiting the OCIE from setting up conflict of interest screens, despite the fact that the Federal Court of Appeal has determined that they are reasonable enforcement tools.<sup>341</sup> Under Section 29 of the COI Act, the Commissioner has the authority to determine appropriate measures to ensure compliance with the Act. This includes setting up conflict of interest screens, a preventative compliance measure that ensures that where a conflict of interest may arise, the public office holder is not involved in decision-making processes or discussions in respect of matters that could give rise to a conflict of interest.<sup>342</sup>

Mr. MacDonald noted that one section of the COI Act allows for exceptions to be made to some of its requirements "if the Commissioner is of the opinion that the contract or interest [involved] is unlikely to affect the exercise of the official powers, duties and functions."<sup>343</sup> Mr. MacDonald stated that "whether conflict of interest will have an

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336 ETHI, [Evidence](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 10 August 2020, 1435 (Duff Conacher).

337 Ibid., 1510 (Duff Conacher).

338 ETHI, [Evidence](#), 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 30 November 2020, 1225 (Marc Tassé).

339 ETHI, [Evidence](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 10 August 2020, 1420 (Duff Conacher).

340 Ibid., 1420 and 1455 (Duff Conacher).

341 Ibid., 1420 and 1505; [Democracy Watch v. Canada \(Attorney General\)](#), 2018 FCA 194 (CanLII).

342 Office of the Conflict of Interest and Ethics Commissioner, [Conflict of Interest Screens](#).

343 ETHI, [Evidence](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 10 August 2020, 1620 (Chris MacDonald).



impact on decision-making is only half the point.” Rather, the key question should be “whether participation in a decision will reduce public confidence in the relevant decision-making process.”<sup>344</sup>

Similarly, Mr. Conacher recommended closing what he describes as a loophole in the COI Act. He explained that currently, ministers and top government officials are not required to step aside when they have a conflict of interest “As long as the decision applies generally”, for example to decisions relating to a change in the law.<sup>345</sup> In Mr. Conacher’s view, “everyone in federal politics must be prohibited from participating in any decision-making process when they have even the appearance of a conflict of interest.”<sup>346</sup>

In addition, he recommended that the government stop “big money” in politics by prohibiting large donations and loans, banning gifts and restricting all favours, including volunteer help or campaigns, and requiring their disclosure.<sup>347</sup> This, he believes, would avoid conflict of interest in federal spending.

Notwithstanding the flaws in the COI Act he identified, Mr. MacDonald noted that the Act “certainly has the ingredients to point public officials in the right direction with regard to conflict of interest,” for example, by requiring public officials to arrange their own affairs in a manner that will prevent them from being in a conflict of interest and to abstain from deciding matters in which they have a private interest.<sup>348</sup>

Ms. Dawson also told the Committee, despite her recommendations, that the Act in its current form is “generally pretty good.” She indicated that while she was in office, various countries sought to learn from Canada’s legislation and the administration of the conflict of interest regime in place at the federal level. She noted that provinces have similar regimes in place.<sup>349</sup>

## Conflict of Interest and the Prime Minister

Ms. Dawson accepted that the prime minister may have a greater duty, if only a symbolic one, to be careful about conflict of interests, but insisted that the COI Act applies to everyone indiscriminately, whether it is the prime minister or the lowest officials

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344 Ibid.

345 ETHI, [Evidence](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 10 August 2020, 1450 (Duff Conacher).

346 Ibid., 1420.

347 Ibid., 1415.

348 ETHI, [Evidence](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 10 August 2020, 1620 (Chris MacDonald).

349 ETHI, [Evidence](#), 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 11 August 2020, 1645 and 1720 (Mary Dawson).

covered by the Act. The rules are the same for all.<sup>350</sup> She also accepted that there may be an increased duty to be aware of conflict of interest when a million-dollar contract is awarded to a party without calls for tender “if there is time to do so.” Ms. Dawson told to the Committee that section 19 of the COI Act specifies that compliance with the Act is a condition of appointment or employment as a public office holder. It should have a bearing on what happens to a person who may be found to have contravened the Act.<sup>351</sup>

Ms. Dawson also recognized a distinction between people who deliberately contravene the COI Act, and those who do so unintentionally. In her view, malicious intent or forethought should be considered in evaluating those cases.<sup>352</sup>

### Culture of Ethics

Mr. MacDonald told the Committee that simply having a clear set of rules relating to conflict of interest accomplishes little. Individuals need to understand the values underpinning the rules through training that involves more than just reading the legislation. He noted that individuals “need to experience the relevant ethical challenges in order to both appreciate their seriousness on an emotional level and to practise—to develop the habit of—doing what the rules require.”<sup>353</sup> For example, Mr. MacDonald described his research projects, IN.Lab, which immerses individuals in realistic scenarios and allow them to engage in ethical decision-making in real-time. He indicated that while learning through experience may be valuable, having the training take place ahead of time to give people a real enough sense of what these problems are like, is ideal.<sup>354</sup>

Mr. Czerny agreed that simulations help people become sophisticated in how to think of principles and ideals, which can lead them to come up with the best possible answer.<sup>355</sup> In his experience, people operate better and more maturely when they are challenged to understand principles and then have the chance to apply them in various scenarios.<sup>356</sup>

Mr. MacDonald explained that rules can always be made clearer, but more rules are not necessarily better. In many cases, the problem is not the lack of rules but that “people

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350 Ibid., 1705 (Mary Dawson).

351 Ibid., 1705 and 1710.

352 Ibid., 1735.

353 ETHI, Evidence, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 10 August 2020, 1620 (Chris MacDonald).

354 Ibid., 1420, 1635.

355 Ibid., 1720 (Robert Czerny).

356 Ibid.



either didn't know how to apply the rules, or the culture of a particular organization encouraged not following the rules.”<sup>357</sup> He did agree, however, that the COI Act deserves some tuning up, adding that “laws can never be complete enough to outline all the things that might be forbidden,” which is one reason why there is a Conflict of Interest and Ethics Commissioner and an ethics committee.<sup>358</sup>

Mr. Czerny agreed that more rules are not necessary. He explained that the key to creating an ethical culture in an organization is to have explicit expectations that are “announced and reinforced throughout the organization by communications, by training and by constant dialogue,” with those at the top leading and cascading the ethical culture throughout the organization.<sup>359</sup> He noted that there is “a solid set of best practices to encourage ethical conduct in organizations,” which include, for example, the articulation of values and codes of conduct; training and dialogue; and counselling and mediation services.<sup>360</sup> Organizations can have a code of conduct, which spells out bottom line of rules and norms, or a statement of values, which articulates the aspirations of the organization, or both. In his view, having both is more likely to inspire initiative and excellence in personnel.<sup>361</sup>

Mr. Czerny further noted that the culture of an organization is shaped by behaviour at all levels, and the tone at the top of that organization is key. He stated that “the ethics of senior leaders is signalled by their actions even more than by their words, and it filters down throughout the organization.”<sup>362</sup> He recommended that senior leaders constantly support and participate in dialogue and training regarding an organization’s ethical culture.<sup>363</sup> Similarly, Mr. Tassé recommended that the government “think about ethics and support programs for individuals in positions of power in order to anchor a truly ethical work culture based on discernment and questioning before making decisions.”<sup>364</sup>

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357 Ibid., 1705 (Chris MacDonald).

358 Ibid., 1655.

359 Ibid., 1710 and 1720 (Robert Czerny).

360 Ibid., 1625.

361 Ibid.

362 Ibid.

363 Ibid.

364 ETHI, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 30 November 2020, 1205 (Marc Tassé).

## Lobbying Rules and Commissioner's Role

The Committee heard from the Commissioner of Lobbying about the Lobbying Act and her enforcement role. Mr. Conacher also commented on lobbying.

Ms. Bélanger, the Commissioner of Lobbying, explained that it does not matter whether the federal government contacts an organization or the other way around under the Lobbying Act. Registering as a lobbyist does not clear an organization of wrongdoing or of its statutory obligations, nor does it mean her office's review ends. While there is no financial threshold for registration as a lobbyist, only people paid by a company that could benefit from that lobbying need to register.<sup>365</sup>

With respect to investigations, Ms. Bélanger indicated that since April 2020, she had opened 16 preliminary assessments. Three of the files were referred to the RCMP. She explained that when a file is referred to the RCMP, she must suspend her investigation until the matter is dealt with by the authorities. At the time of her appearance before the Committee, she had five open investigations.<sup>366</sup>

Ms. Bélanger noted that she has yet to issue a report to Parliament on alleged illegal lobbying since she was nominated as Commissioner of Lobbying but she has sent 10 reports to the RCMP on breaches of the *Lobbying Act* in the past three years.<sup>367</sup> She confirmed that she refers a matter to the RCMP if the evidence gives her a reason to believe that an offence has occurred.<sup>368</sup>

To determine if an organization that has someone doing government relations should register as an in-house lobbyist, Ms. Bélanger indicated to the Committee that this would require looking at the number of communications they had, the number of oral and arranged meetings that have occurred, and how many presentations they have done in order to calculate whether or not they meet the "significant part of the duties" threshold (described below). This determination is made on a case-by-case basis.<sup>369</sup>

In addition, Ms. Bélanger indicated that lobbying registrations increased in 2020 due to the pandemic. She confirmed that health was the top subject for which registration and communications occurred in February, March and April 2020, but at the time of her

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365      ETHI, *Evidence*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 27 November 2020, 1430, 1435 and 1455 (Nancy Bélanger).

366      Ibid., 1405 and 1425.

367      Ibid., 1410.

368      Ibid., 1435.

369      Ibid., 1415 and 1435.



appearance, economic development had been the top subject since May 2020.<sup>370</sup> She added that three staff were responsible for assisting 1,700 new registrants who registered for reasons related to the pandemic.<sup>371</sup>

Ms. Bélanger explained that since the beginning of the pandemic, the client service team of the Office of the Commissioner of Lobbying has been providing guidance to lobbyists. It published guidelines to ensure continued compliance from lobbyists. It offered presentations to lobbyists and public office holders on the lobbying regime. In April 2020, it launched its new website which, according to Ms. Bélanger, “remains the main tool to reach lobbyists and the public.”<sup>372</sup>

With respect to communications in relation to the awarding of contracts, Ms. Bélanger indicated that such communication is a registrable activity under *Lobbying Act*, but only for consultant lobbyists. It is not a registrable activity for in-house lobbyists which includes corporations and organizations. Rather, for in-house lobbyists, the Act requires the most senior paid officer of the organization or corporation to file a registration, but only if the collective lobbying activities of that organization or corporation represents “a significant part of the duties of one employee,” meaning 20% or more of the overall duties.<sup>373</sup>

Ms. Bélanger recommended removing the significant part of the duties threshold from the *Lobbying Act*, enhancing the spectrum of sanctions available under the Act, and harmonizing the time limits for registration for consultant and in-house lobbyists.<sup>374</sup> She further recommended the “the elimination of discrepancies related to in-house lobbyists regardless of whether they are employed by a corporation or organization.” In her view, that “would increase fairness and clarity in ensuring that both corporations and organizations are subject to the same requirements.”<sup>375</sup>

Ms. Bélanger reminded the Committee that federal procurement and the regulation of that process do not fall under her mandate as Commissioner of Lobbying. She reiterated that “communications to do with contract awarding do not constitute lobbying for organizations and corporations” because she assumes that “there are rules in place for contracting, which strikes something of a balance and also requires some

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370 Ibid., 1405 and 1425.

371 Ibid., 1420.

372 Ibid., 1405.

373 Ibid., 1410.

374 Ibid., 1410 and 1415.

375 Ibid., 1410.

transparency.”<sup>376</sup> However, Ms. Bélanger drew a distinction between contracting communications and communications about contribution agreements; the latter constituting lobbying, the former being only a registrable activity for consultants.<sup>377</sup>

With respect to who bears the responsibility of complying with the *Lobbying Act*, Ms. Bélanger confirmed that it is the responsibility of the lobbyists, including former designated public office holders. Her office sends an email to around 5% of designated public office holders who were lobbied during a certain month to confirm the accuracy of lobbyists’ communication reports. She added that there is no onus on a designated public office holder or their staff to confirm lobbyists’ registration status. Their only obligation is to be able to confirm details of with whom they met if asked by Ms. Bélanger, which allows the Commissioner of Lobbying to confirm a lobbyist’s account in the Registry of Lobbyists.<sup>378</sup>

Regarding the lobbying regime itself, Ms. Bélanger noted that Canada’s lobbying disclosure regime is “ahead of the curve in the sense that internationally we are a model.” She does not believe that there is a pervasive problem of lobbyists trying to circumvent registration and reporting requirements in Canada.<sup>379</sup>

In terms of her powers, Ms. Bélanger explained that if she finds a violation of the *Lobbying Act*, she cannot impose penalties, but she may refer the case to the RCMP. For violations of the *Lobbying Code of Conduct*, she may report to Parliament.<sup>380</sup> She recommended empowering the Commissioner of Lobbying to impose sanctions for violations.<sup>381</sup> She may stop an investigation, as is permitted under the Act if “it becomes clear that it was started under a false assumption.” She confirmed that she would not cease an investigation on the grounds that a company has ceased to exist.<sup>382</sup>

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376 Ibid., 1420 and 1440.

377 Ibid., 1440.

378 Ibid., 1420, 1445 and 1450.

379 Ibid., 1445.

380 Ibid., 1450.

381 Ibid.

382 Ibid.



Following her appearance before the Committee, the Commissioner of Lobbying prepared a report containing her preliminary recommendations to improve the *Lobbying Act*.<sup>383</sup> She recommended amending the *Lobbying Act* to:

- remove the “significant part of duties” registration threshold for in-house lobbyists and replace it with an obligation to register lobbying activities by default unless a limited exemption based on objective criteria applies;
- harmonize the registration deadline for consultant and in-house lobbyists to 15 days;
- make all corporations and organizations subject to the same registration requirements;
- deem paid members of boards of directors to be employees of corporations and organizations for the purposes of the Act;
- require that registrants disclose prescribed contextual information in their monthly communication reports;
- harmonize the five-year post-employment prohibition on lobbying by making former designated public office holders subject to the same post-employment restrictions regardless of whether they are employed by a corporation or an organization;
- add a range of compliance measures, including training, administrative monetary penalties and temporary prohibitions, to allow for greater flexibility and proportionality in addressing contraventions of the Act;
- allow orders, i.e., summonses and production orders, issued by the Commissioner of Lobbying to become orders of the Federal Court;
- allow referrals relating to alleged offences under the *Lobbying Act* or other federal or provincial legislation to be made not only to peace officers, but also to any other appropriate authority, including the Commissioner of Lobbying’s provincial counterparts; and

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<sup>383</sup> Office of the Commissioner of Lobbying of Canada, *Improving the Lobbying Act: Preliminary recommendations*.

- provide immunity against civil or criminal proceedings for the Commissioner of Lobbying and those acting on behalf or under the direction of the Commissioner.

Ms. Bélanger also recommended amending the *Lobbying Registration Regulations* so that “monthly communication reports are required for all oral communications with designated public office holders and list all those who participated in the communication.”<sup>384</sup>

Regarding communications, Mr. Conacher expressed the view that “if you are communicating with regard to decisions, you should have to register, whether you’re paid or unpaid, no matter how much time you’re spending.”<sup>385</sup> He would therefore expand the application of the *Lobbying Act*. He would eliminate the rules in the *Act* that provide that only oral pre-arranged communications have to be registered in monthly communications reports and that unpaid lobbying does not need to be registered. He would also eliminate the significant part of the duties threshold.<sup>386</sup>

Mr. Conacher noted that a review of the *Lobbying Act* is three years overdue.<sup>387</sup> The last review of the *Lobbying Act* was in 2012.<sup>388</sup> Section 14.1(1) of the *Lobbying Act* requires a comprehensive review of the provisions and operation of the *Act* “every five years after this section comes into force, by the committee of the Senate, of the House of Commons, or of both Houses of Parliament, that may be designated or established for that purpose.”

Mr. Conacher further noted that any individual or community activist that helped a member of parliament get elected should not be able to lobby them.<sup>389</sup> A similar rule is already reflected in the *Lobbyists’ Code of Conduct*, which provides that “when a lobbyist undertakes political activities on behalf of a person which could reasonably be seen to create a sense of obligation, they may not lobby that person for a specified period if that person is or becomes a public office holder.” The rule also adds that “if that person is an elected official, the lobbyist shall also not lobby staff in their office(s).”<sup>390</sup>

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384 Ibid.

385 ETHI, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 10 August 2020, 1425 (Duff Conacher).

386 Ibid.

387 Ibid., 1435.

388 ETHI, *Report*, *Statutory Review of the Lobbying Act: Its First Five Years*.

389 ETHI, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 10 August 2020, 1515 (Duff Conacher).

390 Office of the Commissioner of Lobbying of Canada, *Lobbyists’ Code of Conduct*.



Mr. Conacher also recommended putting an end to what he described as secret or unethical lobbying and closing loopholes that are contained in the *Access to Information Act* to “to end the culture of excessive secrecy that often hides wrongdoing and wrongdoers in the federal government,” without providing details on these loopholes.<sup>391</sup>

Finally, Mr. Conacher also recommended strengthening enforcement for all watchdogs. He stated that watchdogs are hand-picked by Cabinet ministers and top government officials; that they do not have the power to impose penalties; and that they can do secret rulings. He argued that anyone should be able to challenge watchdogs’ rulings in Court; that the watchdogs need to be chosen by an independent commission; that they should be required to conduct audits and issue public rulings on every questionable situation; and that they must be empowered to impose high fines. He added that whistle-blower protections should be extended to everyone who works as political staff for political parties.<sup>392</sup>

## COMMITTEE’S OBSERVATIONS AND RECOMMENDATIONS

The Prime Minister has stated he was aware there was a perception of conflict when he voted on the WE Charity proposal. Neither he, nor the Finance minister recused themselves and there is no evidence in the 5,000 pages of documents that this failure to recuse was considered a problem. To reassert public trust, the Committee is of the view that prior to all Cabinet decisions, an evaluation and determination as to whether a conflict of interest screen, agreed upon pursuant to section 29 of the COI Act by a public office holder and the Conflict of Interest and Ethics Commissioner, should be put in place for any member of the Cabinet, as a preventative measure to avoid conflict of interest.

### Recommendation 1 on Cabinet decisions

**That the Government of Canada consider making mandatory, prior to all Cabinet decisions on awarding a contract or contribution agreement, an evaluation and determination as to whether a conflict of interest screen, agreed upon pursuant to section 29 of the *Conflict of Interest Act* by a public office holder and the Conflict of Interest and Ethics Commissioner, should be put in place for any member of Cabinet, as a preventative measure to avoid conflict of interest.**

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391      ETHI, *Evidence*, 1<sup>st</sup> session, 43<sup>rd</sup> Parliament, 10 August 2020, 1420 (Duff Conacher).

392      Ibid., 1425.

The Committee notes that the personal friendship between Mr. Craig Kielburger and Bill Morneau has been established and was known within his ministerial office. In its view, the fact that Mr. Craig Kielburger was able to lobby directly to the Finance Minister on the \$12 million entrepreneurship proposal is deeply concerning.

**Recommendation 2 on decisions made in the Finance Minister's Office**

**That the Government of Canada make mandatory, prior to decisions made in the Finance Minister's Office, an evaluation and determination as to whether a conflict of interest screen, agreed upon pursuant to section 29 of the *Conflict of Interest Act* by a public office holder and the Conflict of Interest and Ethics Commissioner, should be put in place for the minister or any public office holder involved in that decision and that it conduct a review to examine how groups not registered to lobby were able to have direct access to the Finance Minister.**

The Committee notes that when Minister Bardish Chagger spoke at Finance committee she failed to disclose her 17 April 2020 meeting with Mr. Craig Kielburger. In follow-up testimony before this Committee, she failed to disclose that those discussions included discussions about giving the WE Group the heads up that a "separate service stream" was in consideration. Ms. Chagger failed in her obligation to be accurate with a committee and potentially impeded our work.

**Recommendation 3 on ministerial accountability**

**That, given the failure of Minister Bardish Chagger to reveal her 17 April 2020 meeting with Mr. Craig Kielburger, a review of ministerial accountability to committees must be undertaken.**

The Committee is also of the view that the failure of Minister Chagger to have notes of what took place in her 17 April 2020 meeting is problematic. The Committee was forced to rely on the emails of WE staff Mr. Craig Kielburger and Ms. Sophia Marquez to learn about what took place at this meeting.

**Recommendation 4 on record-keeping in the context of a meeting with lobbyists**

**That the Government of Canada implement a mandatory rule requiring, except in exceptional circumstances, that senior public office holders be accompanied by at least one staff during any meeting with lobbyists for the purpose of taking notes.**

The Committee recognizes that during the pandemic urgency was a priority. But it is clear from the documents and testimony that following the meeting between Bardish



Chagger and Craig Kielburger on 17 April 2020 no efforts were made to seek out competing bids or other groups who could have delivered this program. This put the government at a significant disadvantage in making a choice that put the public interest first.

#### **Recommendation 5 regarding the outsourcing of projects**

**That the Government of Canada establish a mandatory competitive process to select recipients for contribution agreements valued above a predetermined threshold.**

The Committee was unable to find any due diligence reports that actually tested the credibility of the claims made by the WE Charity. This group had never undertaken a project close to this magnitude and it remains unclear whether they had the means to ensure that students across the country could be put to work with credible results. The Committee is of the view that it is unacceptable that bureaucrats and ministers pushed the project forward based on the claims of this group.

#### **Recommendation 6 regarding due diligence reports**

**That the Government of Canada make it mandatory to produce a due diligence report for any contract or contribution agreement between the government and a third party.**

The Committee is of the view that the decision of the Liberal government of Canada to sign a contract worth over \$500 million with a shell company “WE Charity Foundation” is deeply troubling. The WE group stated they used the shell company to limit their liability. In reality, this procedure had the potential to put a huge investment of taxpayers funds at risk because the deal was with a shell company with no assets.

#### **Recommendation 7 on contracting with shell companies**

**That the Government of Canada ensure that no future contracts or contribution agreements be signed with shell companies that lack assets in order to avoid liability.**

The Committee notes that over the 10 months of its study, it was unable to get a clear picture of the financial structure of the WE group. We were unable to ascertain a clear division between how monies flowed through the charitable wing and their for-profit operations. We were also denied information on the ownership structure of their multitude of side companies. If the government of Canada is to sign future contracts or contribution agreements with WE Charity, its affiliates or subsidiaries, such clarifications must be required.

**Recommendation 8 on contracting with WE Charity, its affiliates, or subsidiaries**

**That the Government of Canada refrain from further contracts or contribution agreements with the WE group until an independent audit or a Canada Revenue Agency forensic audit can be undertaken to determine exactly how the finances flow between their charitable operations and their multitude of side companies and real estate holdings.**

The Committee is of the view that the CSSG failed to meet a credible threshold of participation of youth in Quebec. This was a project being run by an organization with roots in English Canada but clearly no strong presence on the ground in Quebec. Any future national program must ensure full access to francophone communities.

**Recommendation 9 on Quebec and Francophone communities outside of Quebec's access to federal programs**

**That the Government of Canada insist that projects that involve hiring people across Canada are properly vetted regarding their obligation to ensure full participation of Quebec and Francophone communities outside of Quebec.**

The Committee notes that prior to August 2020, WE Charity was engaged in multiple negotiations with various government departments but was not registered to lobby. They hired a government and stakeholder relations director, but it appears for the CSSG the majority of negotiations was undertaken directly by Mr. Craig Kielburger. The Committee is of the view that the loophole that allows “founders” of organizations to lobby and negotiate with government without registering as lobbyists must be addressed as should the 20% rule (the significant part of the duties threshold for in-house lobbyists).

**Recommendation 10 regarding the significant part of duties threshold for in-house lobbyists**

**That the Government of Canada remove the significant part of duties threshold from the *Lobbying Act* for in-house lobbyists and clarify lobbying rules applicable to founders of organizations that may lobby government.**

**Recommendation 11 regarding the powers of the Commissioner of Lobbying of Canada**

**That the Government of Canada introduce legislative changes to the *Lobbying Act* to give the Commissioner of Lobbying real powers to investigate, issue fines and impose lobbying bans to those who disregard the Act.**



During this study, questions were raised as to whether the government's CSSG plan to use a volunteer program broke Canadian labour laws. The Committee is of the view that future use of a volunteering program must be vetted by legal experts to ensure that it does not undermine minimum wage laws in Canada.

**Recommendation 12 regarding volunteer programs**

**That the Government of Canada review future volunteer programs to ensure they are not used to undercut minimum wage laws.**

An order of the House was issued for key witnesses to testify before Committee. The government instructed these witnesses to defy the will of the House of Commons and not testify. This degrades the public's confidence in the House of Commons.

**Recommendation 13 regarding compliance with Orders from the House of Commons**

**That the Government of Canada comply with orders of the House of Commons and not block testimony of key witnesses in studies relating to conflict of interest and lobbying.**

The Committee is of the view that the Conflict of Interest and Ethics Commissioner should be empowered to impose serious penalties to public office holders who contravene the COI Act, commensurate with the offender's status and the severity of the contravention.

**Recommendation 14 regarding the powers of the Conflict of Interest and Ethics Commissioner**

**That the Conflict of Interest and Ethics Commissioner be provided with more tools to sanction public office holders who contravene the *Conflict of Interest Act*.**

During this study, serious questions have been raised about the human rights track record of Palantir. The Committee is of the view that the government must include a review of companies looking to collect data on the private information of Canadian citizens and ensure there are proper ethical processes in place for how that data is collected and which companies are employed.

**Recommendation 15 regarding the use of new technology**

**That the Government of Canada refrain from using any new technology that has the potential of violating the privacy rights of Canadians until it has been examined by the Office of the Privacy Commissioner of Canada and given the parameters of use.**

**Recommendation 16 regarding the Cabinet decision-making process**

**That, as part of the Cabinet decision-making process, members must immediately recuse themselves from discussions on a subject that places them in a conflict of interest or the appearance of a conflict of interest, in order to maintain public trust. If the member or members in a real or apparent conflict of interest do not recuse themselves, the other members of Cabinet must suspend them from Cabinet as soon as they are aware of the issue, or Cabinet will be unable to legitimately meet.**

**Recommendation 17 on the appearance of a conflict of interest**

**That the Government of Canada amend the *Conflict of Interest Act* to explicitly provide that the failure to recuse by a public office holder where there is an appearance of conflict of interest constitutes a contravention of the Act.**

**Recommendation 18 regarding the review of the *Conflict of Interest Act***

**That the Government of Canada conduct a comprehensive review of the *Conflict of Interest Act*, especially section 7, respecting the reasons a public office holder may be led to give preferential treatment to a third party and the appropriateness of broadening the scope of this section in order to restore and foster public trust in the various offices that make up the government and its departments. This review should also assess whether it is appropriate to define or amend certain terms employed in the Act, such as “friend” and “preferential treatment,” in order to broaden the concept of conflict of interest and encompass all the circumstances that may result in a violation of the Act. Further, the review should assess the appropriateness of implementing a hierarchy of penalties based on the number of repeat violations or the gravity of the violation. That this review be duly submitted to Parliament for study and approval.**

**Recommendation 19 on access to programs in both official languages**

**That the Government of Canada, in any contracting process or call for proposals to engage a person or third-party organization to provide services to the public or administer government programs, ensure that the services and programs will be provided in accordance with its official languages obligations so that Francophones in Quebec and Francophone communities outside of Quebec can receive the same programs and services in their language as Anglophone Canadians.**

The Committee recognizes that the economic situation during the COVID-19 pandemic put pressure on the federal government to act quickly to support youth and students. It extends its thanks to federal public servants for their hard work and adaptability while



operating under stringent time constraints. Notwithstanding the circumstances, the Committee believes that more comprehensive due diligence assessments of WE Charity and its subsidiaries could have prevented or mitigated conflict-of-interest and lobbying concerns about the CSSG.

Similarly, the Committee recognizes that the economic situation during the COVID-19 pandemic put pressure on the federal government to act quickly and to engage with many companies in order to ensure that the technology and equipment required to fight the virus could be purchased or manufactured.

However, the Committee is of the view that communications by a former reporting public office holder to government officials in contravention of his post-employment obligations during the pandemic have revealed the importance of the roles of the Conflict of Interest and Ethics Commissioner and the Commissioner of Lobbying. They also highlight the need to ensure compliance among those subject to the post-employment obligations in the *Conflict of Interest Act and the Lobbying Act*.

The Committee notes that documenting federal government decision-making is vital to maintaining Canadians' trust, especially in emergencies. It underlines that transparency measures, including full and timely disclosure, allow for oversight on potential conflicts of interest. Transparency is especially important in contracting and subcontracting processes such as the ventilator contract awarded to FTI and subcontracted to Baylis Medical.

In light of the above, the Committee makes the following additional recommendations.

**Recommendation 20 on oversight and accountability during emergencies**

**That the Government of Canada establish oversight and accountability mechanisms specifically designed to ensure rapid and transparent allocation of federal funds during emergency situations.**

**Recommendation 21 on the review of contribution agreement processes**

**That the Government of Canada explore measures to increase the fairness, openness and transparency of its contribution agreement award processes.**

**Recommendation 22 on post-employment obligations**

**That the Government of Canada review the *Conflict of Interest Act* and the *Lobbying Act* and make amendments where required to ensure better compliance with the post-employment obligations of a public office holder, whether through greater sanctions or other means.**

**Recommendation 23 on the review of contracts and contracting processes**

**That the Government of Canada provide an independent organization, such as the Office of the Procurement Ombudsman, the powers necessary to proactively review departmental contracting processes, including their use of sole-sourced contracts.**



## **APPENDIX A: CHALLENGES CONCERNING THE APPEARANCE OF WITNESSES AND THE PROCUREMENT OF DOCUMENTS**

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The Committee wishes to highlight the fact that throughout this study, it has faced challenges related to the appearance of witnesses and the procurement of documents. While appearances before Committees are normally done through invitations, which witnesses accept voluntarily, some witnesses only appeared before Committee after threats of summons in this case. In addition, the Committee is of the view that some of the witnesses' responses to requests for documents or written answers to questions were incomplete. Despite all the documents and written responses received, the Committee believes it is still left with many questions.

The sections below address the non-appearance of ministerial staff before Committee following a motion adopted in the House of Commons.

### **A. MOTION OF 25 MARCH 2021**

On 25 March 2021, the House of Commons adopted the following motion:

That, with a view to support the authority of committees in their important inquiries of public interest:

(a) regarding the study on questions of conflict of interest and lobbying in relation to pandemic spending by the Standing Committee on Access to Information, Privacy and Ethics,

(i) an order of the House do issue for due diligence reports, in the care, custody or control of the Privy Council Office, respecting the Canada Student Service Grant, and that these documents be deposited, in both official languages, with the Clerk of the Committee no later than Thursday, April 1, 2021,

(ii) Rick Theis, the Prime Minister's Director of Policy and Cabinet Affairs, be ordered to appear before the committee on Monday, March 29, 2021, at 2:00 p.m.,

(iii) Amitpal Singh, the Deputy Prime Minister's Policy Advisor, be ordered to appear before the committee on Wednesday, March 31, 2021, at 2:00 p.m.,

(iv) Ben Chin, the Prime Minister's Senior Advisor, be ordered to appear before the committee on Thursday, April 8, 2021, at 2:00 p.m.;

[...]

(c) should the Prime Minister instead appear before the committees mentioned in paragraphs (a) and (b), at any of the dates and times mentioned, for at least three hours, the witness otherwise scheduled to appear, and any other witnesses scheduled to appear before the same committee at a later time, be relieved of their obligation to appear pursuant to this order; and

(d) it be an instruction to the Chairs of the committees mentioned in paragraphs (a) and (b) to convene televised meetings of their respective committee, at the dates and times mentioned, for at least three hours, for the purpose of receiving evidence from the individuals then ordered to appear or the Prime Minister, as the case may be, unless the individual has been relieved from attending under the provisions of paragraph (c), provided that the witnesses be required to appear until discharged by the committee.<sup>1</sup>

## **B. ADVICE FROM THE LAW CLERK AND PARLIAMENTARY COUNSEL OF THE HOUSE OF COMMONS**

Noting the absence of these witnesses, and notwithstanding an appearance by Minister Rodriguez and a letter expressing Minister Fortier's intention to appear, the Committee heard from Philippe Dufresne, Law Clerk and Parliamentary Counsel of the House of Commons on the topic of orders of the House and potential actions by the Committee. In response to members' questions, Mr. Dufresne explained that a similar situation occurred in 2010, when a parliamentary committee ordered political staff to appear. At that time, ministers appeared instead of political staff, based on the argument that ministers were the appropriate witnesses to respond to the committee based on the

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<sup>1</sup> House of Commons, *Journals*, 25 March 2021.

principles of responsible government. However, he noted that that instance was based on an order from the committee and not from the House of Commons.<sup>2</sup>

Nevertheless, Mr. Dufresne stated that political staff and public servants have no immunity, by virtue of their positions, from requests to testify before parliamentary committees.<sup>3</sup> He also suggested that the topics of discussion and the different roles that ministers and political staff play have been factors for deciding which person is the more appropriate witness to testify on a given topic.<sup>4</sup>

Mr. Dufresne argued that because the House of Commons ordered the witnesses to appear, only the House of Commons has the power to absolve a witness from that order.<sup>5</sup> He thus urged further dialogue on this issue.<sup>6</sup> He added that “there is very strong encouragement to the House and committees to consider public policy imperatives when exercising those powers.”<sup>7</sup>

## C. MOTION OF 3 MAY 2021

During Meeting 32, the Committee adopted the following motion:

Pursuant to the motion adopted by the House of Commons on Thursday, March 25, 2021:

1. The Standing Committee on Access to Information, Privacy and Ethics met on:
  - a. March 29, 2021, at 2 p.m. to hear witness Rick Theis;
  - b. March 31, 2021, at 2 p.m. to hear witness Amitpal Singh; and
  - c. April 8, 2021, at 2 p.m. to hear witness Ben Chin.

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2 ETHI, *Evidence*, 1<sup>st</sup> Session, 43<sup>rd</sup> Parliament, 12 April 2021, 1320 (Philippe Dufresne, Law Clerk and Parliamentary Counsel, House of Commons).

3 Ibid., 1340.

4 Ibid.

5 Ibid., 1325.

6 Ibid., 1335.

7 Ibid., 1325.

2. The Committee noted the absence of these witnesses, who had been called to appear before the Committee pursuant to the order in the motion adopted by the House on March 25, 2021;
3. The Committee confirms that it has not released these witnesses from their obligation to appear;
4. The Committee also noted the absence of the Prime Minister, who was given the option of appearing in place of these witnesses in the motion of March 25, 2021;
5. Minister Pablo Rodriguez appeared on March 29, 2021, instead of Rick Theis who followed the government instructions that staff are not to appear before committees which were outlined during the debate in the House on March 25, 2021; [and]
6. that Minister Mona Fortier also requested to appear on March 31 and April 8, 2021 on behalf of witnesses Amitpal Singh and Ben Chin who followed the government instructions that staff are not to appear before committees which were outlined during the debate in the House on March 25, 2021;

That the non attendance of witnesses be added to an annex to the main report on the study of Questions of Conflict of Interest and Lobbying in Relation to Pandemic Spending.<sup>8</sup>

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8 ETHI, *Minutes of Proceedings*, 23 April 2021.

## APPENDIX B

### LIST OF WITNESSES

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The following table lists the witnesses who appeared before the committee at its meetings related to this report. Transcripts of all public meetings related to this report are available on the committee's [web page for this study](#).

Organizations and Individuals	Date	Meeting
<b>Office of the Commissioner of Lobbying</b> Nancy Bélanger, Commissioner of Lobbying of Canada	2020/11/27	12
<b>Office of the Conflict of Interest and Ethics Commissioner</b> Mario Dion, Conflict of Interest and Ethics Commissioner	2020/11/27	12
<b>As an individual</b> Marc Y. Tassé, Chartered Professional Accountant and Chartered Accountant (Ontario – Quebec), University of Ottawa	2020/11/30	13
<b>Baylis Medical</b> Frank Baylis, Executive Chairman Neil Godara, Vice-President and General Manager	2020/12/04	14
<b>Department of Finance</b> Michelle Kovacevic, Assistant Deputy Minister Federal-Provincial Relations and Social Policy Branch	2020/12/04	14
<b>Department of Indigenous Services</b> Christiane Fox, Deputy Minister	2020/12/04	14
<b>FTI Professional Grade</b> Rick Jamieson, President	2020/12/04	14
<b>NATIONAL Public Relations</b> Martin Daraiche, President Chantal Benoit, Director	2020/12/07	15
<b>Speakers' Spotlight</b> Martin Perelmutter, President	2020/12/07	15

Organizations and Individuals	Date	Meeting
<b>As an individual</b>	2020/12/11	16
Denis Gallant, Lawyer Roy Bélanger Avocats S.E.N.C.R.L.		
<b>Blumberg Segal LLP</b>	2020/12/11	16
Mark Blumberg, Partner		
<b>Department of Industry</b>	2020/12/11	16
Simon Kennedy, Deputy Minister Innovation, Science and Economic Development Canada		
<b>Electronic Privacy Information Center</b>	2020/12/11	16
Jeramie D. Scott, Senior Counsel		
<b>As an individual</b>	2021/02/26	22
Reed Cowan, Donor and Fundraiser Wesley Smiles Coalition, Free The Children		
Sofia Marquez, Former Staff Member Government and Stakeholder Relations, WE Charity		
<b>WE Charity</b>	2021/03/15	24
Craig Kielburger, Founder		
Marc Kielburger, Founder		
Hon. Pablo Rodriguez, P.C., M.P., Leader of the Government in the House of Commons	2021/03/29	26
<b>House of Commons</b>	2021/04/12	29
Philippe Dufresne, Law Clerk and Parliamentary Counsel		

## APPENDIX C

### LIST OF WITNESSES

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The following table lists the witnesses who appeared before the committee at its meetings related to this report. Transcripts of all public meetings related to this report are available on the committee's [web page for this study](#).

#### 43<sup>rd</sup> Parliament – 1<sup>st</sup> Session

Organizations and Individuals	Date	Meeting
<b>House of Commons</b>	2020/07/30	10
Philippe Dufresne, Law Clerk and Parliamentary Counsel		
<b>As an individual</b>	2020/08/10	11
Mary Dawson		
<b>Democracy Watch</b>	2020/08/10	11
Duff Conacher, Co-Founder		
<b>Ethics Practitioners' Association of Canada</b>	2020/08/10	11
Robert Czerny, Former President		
<b>Ted Rogers School of Management</b>	2020/08/10	11
Chris MacDonald, Associate Professor		
Ryerson University		
<b>As an individual</b>	2020/08/11	12
Mary Dawson		
<b>Department of Canadian Heritage</b>	2020/08/11	12
Hon. Bardish Chagger, Minister of Diversity and Inclusion and Youth		
Gina Wilson, Deputy Minister		
Diversity and Inclusion and Youth		
<b>Department of Employment and Social Development</b>	2020/08/11	12
Hon. Carla Qualtrough, Minister of Employment, Workforce Development and Disability Inclusion		
Benoît Robidoux, Associate Deputy Minister		

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<b>Organizations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>Privy Council Office</b> Ian Shugart, Clerk of the Privy Council and Secretary to the Cabinet	2020/08/11	12

## APPENDIX D

### LIST OF BRIEFS

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The following is an alphabetical list of organizations and individuals who submitted briefs to the committee related to this report. For more information, please consult the committee's [web page for this study](#).

**Tassé, Marc Y.**

**Trus, Richard**



# REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the committee requests that the government table a comprehensive response to this Report.

A copy of the relevant *Minutes of Proceedings* ([Meetings Nos. 10 to 12](#)) from the 43rd Parliament, 1st Session and ([Meetings Nos. 11 to 16, 22, 24, 26 to 29, 33 and 37](#)) from the 43<sup>rd</sup> Parliament, 2<sup>nd</sup> Session is tabled.

Respectfully submitted,

Chris Warkentin  
Chair



## Dissenting opinion of the Liberal Party of Canada

In November 16, 2020, the House of Commons Standing Committee on Access to Information, Privacy and Ethics (the Committee) adopted a motion to study the issues of conflict of interest and the Lobbying Act in relation to pandemic spending, and more specifically on the awarding of some of the contracts , including the one related to the Canada Student Service Grant. The motion reads as follows:

That, pursuant to Standing Order 108(3)(h), this committee undertake a study into issues of conflict of interest and the Lobbying Act in relation to pandemic spending;

that this study continue our work relating to the Canada Student Service Grant, including this committee's work to review the safeguards to prevent conflicts of interest in federal government expenditures; government spending, WE Charity and the Canada Student Service Grant; and the administration of the Canada Student Service Grant and WE Charity;

and that this study include:

- (a) the consideration of all aspects of the government's involvement with Baylis Medical Company Inc., as well as former Liberal Member of Parliament Frank Baylis, including the awarding of a procurement contract for medical devices;
- (b) an examination into Palantir Canada's relationship with the government including the breach of the Conflict of Interest Act by its president and former Canadian ambassador to the U.S. David MacNaughton;
- (c) the committee study mainly, contracts with regards to speeches of Justin Trudeau and Sophie Grégoire Trudeau within the framework of activities organized by Speakers' Spotlight since October 14, 2008;
- (d) that the committee invite Speakers' Spotlight representatives to testify about all files related to speeches organized since October 14, 2008, for Justin Trudeau and Sophie Grégoire-Trudeau;
- (e) that an order be issued to Speakers' Spotlight to obtain a copy of all records related to speeches organized since October 14, 2008, for Justin Trudeau and Sophie Grégoire Trudeau—including, for each speech, the amounts paid, any expenses reimbursed and the name of the company, organization, person or entity that organized it;
- (f) that the documents listed in section (e) be delivered to the clerk of the committee within seven days of the adoption of this motion and that their consideration be in camera;
- (g) that for the consideration of documents studied during in camera meetings:
  - i. only committee members be allowed to participate;
  - ii. no mobile or electronic device be allowed in the room during these meetings;

- iii. numbered hard copies of documents be given to committee members by the clerk at the beginning of each meeting scheduled for that purpose and that these copies be given to the clerk at the end of each meeting;
- iv. copies of documents be kept in the clerk's office and that outside of meetings committee members can only view them by going to the clerk's office, and no mobile or electronic device be in the room during the consultation of documents; and

that the committee report its findings to the House with recommendations to better permit the government to conduct the business of government with public confidence in its integrity.

We note that We Charity announced its withdrawal from the CSSG contribution agreement on July 3, 2020, several months before the adoption of said motion. Therefore, neither We charity, nor We foundation were ever able to fulfill their obligations and provide the program to Canadian students.

The Liberal members of the Committee supported and participated in this study given the importance of ensuring that the rules of the Conflict of Interest and Lobbying Acts are fully respected, even in the context of a pandemic. The Liberal members were also keen in examining, reviewing, and modifying if necessary, the safeguards in place in order to prevent conflicts of interest in federal government expenditures as well as the provisions of the Lobbying Act.

We must point out that opposition members and/or their colleagues presented many aspects of the November 2020 motion adopted by our committee before other Standing Committees in the summer and fall of 2020. Indeed, over 5,000 related documents, emails and testimonies were transmitted and delivered to other Standing Committees. It became evident that we would replicate the work undertaken by other committees and that this was a political ploy by opposition members to fish for information in order to discredit the work of the government.

Some the witnesses invited by opposition members to our committee offered non-relevant testimony that centered on issues of a litigious nature between themselves and before the courts. The issues raised and discussed did not involve the government nor did it fall within the scope of the motion. Clearly the objective was aimed to add drama before the media limelight, desperately trying to keep the story alive, as Canadians were indifferent.

Furthermore, opposition members refused to accept testimony from Associate Minister of Finance and Minister of Middle Class Prosperity, the Honorable Mona Fortier, who appeared before the Committee to answer questions in the place of political staff members who had been ordered to appear. Given that political staff members are not elected, nor do they make political decisions, it was appropriate for a Minister of the Crown to appear before the Committee, but opposition members refused to hear from her.

During this time, the Committee members also learned that the main portions of the study were being independently investigated by the Conflict of Interest and Ethics (COIE) Commissioner and the Commissioner of Lobbying. For example:

- a) Rick Jamieson, president of FTI Professional Grade Inc. told the Committee that the idea of seeking a contract from the Federal government to produce ventilators was his alone. Mr. Jamieson, a Conservative donor, was quoted as saying “I did not know Mr. Baylis, number one, and number two, it never dawned on me that politics would ever into my relationships with my subcontractors.” There was no evidence of Baylis Medical being in breach of the Lobbying Act. As for Frank Baylis himself, the COIE Commissioner told the committee that as a former member of Parliament, Mr. Baylis is no longer subject to the Conflict of Interest Code.
- b) In March 2021, the Commissioner of Lobbying released her investigation report concerning Mr. MacNaughton, President of Palantir Canada. She concluded he had not contravened the restrictions on lobbying to which he was subject as a former designated public office holder.
- c) With regards to Justin Trudeau, we include a link below to the COIE Commissioner’s report dated May 13, 2021, which concludes that Mr. Trudeau did not contravene the Conflict of Interest Act. In reading the report, we learned that the complaints were brought forward by two opposition members of this Committee in June and July 2020 using much of the same grounds found again in the motion adopted November 16, 2020-forcing concurrent parallel investigations.

Unfortunately, the numerous tactics used by the opposition members both during and outside of committee work, stalled the completion of the study, subjected individuals to personal and material damages, and undermined the credibility and role of the COIE Commissioner.

Indeed, it was the public harassment and violent threats against witnesses called to testify for this study that were especially troubling. As noted in paragraph 10 of the study report, WE Charity co-founder Craig Kielburger reported multiple intimidation and death threats against him and his family, including his elderly parents, during the duration of the multiple studies being conducted by parliamentary committees on the CSSG. Long-time owners of the non-partisan agency Speakers’ Spotlight, Martin and Farah Perelmuter, and their employees were also subjected to persistent and escalating online harassment and physical intimidation as noted in paragraph 59 of the study report. This started in August 2020 when Conservative MPs began publicly calling on the company to disclose speaking fees earned over the past 12 years by the prime minister, his wife, mother and brother- even though that would mean Speakers’ Spotlight would be contravening privacy laws. Former Chair Conservative MP David Sweet apologized to the Perelmutes on behalf of our Committee but the Conservative members in question have yet to do so.

Other witnesses were subjected to public criticism and reputational slurs because of their efforts to produce vital medical equipment. Given the pandemic restrictions, it was difficult for witnesses to rapidly comply with voluminous and detailed document requests, in one case due to a grave illness, but nevertheless some committee members openly questioned the integrity

of individuals whose only “crime” was to work for or be remotely connected with an entity connected to the CSSG or the Liberals.

### **Our Recommendations**

The Liberal members welcomed the expert testimony of current and former Parliamentary Commissioners as well as academics and practitioners in the fields of organizational ethics and oversight which provided much needed objective context to the unfortunate partisan nature of our study. Given the wasted time and resources spent by Parliamentary committees conducting their own witch-hunts, it is of note that in spite of pandemic restrictions the COIE Commissioner conducted confidential, thorough and fair investigations into the accusations against both former Finance Minister Morneau and Prime Minister Trudeau and that his findings, including the complete exoneration of the Prime Minister, were duly reported to the House before the Committee’s own study was completed.

Liberal members recognize the need to ensure the integrity of emergency spending decisions. However, many of the recommendations adopted by the opposition members are either unhelpful or outside the scope of this study.

Instead we recommend the following:

- a) That the Standing Committee on Access to Information, Privacy and Ethics conduct, at the earliest opportunity, a full statutory review of the Conflict of Interest Act with appropriate recommendations
- b) That the Standing Committee on Access to Information, Privacy and Ethics conduct, at the earliest opportunity, a full statutory review of the Lobbying Act with appropriate recommendations
- c) That the Standing Committee on Access to Information, Privacy and Ethics refrain from conducting parallel investigations with any independent Office of Parliament into the conduct of members of Parliament, either directly or by proxy.

The Liberal members of the Committee would like to thank the House of Commons analysts and clerks for their hard work on this important study as well as the expert testimony of witnesses that helped inform the substance of this report.

Website of the Office of the Conflict of Interest and Ethics Commissioner

<https://ciec-ccie.parl.gc.ca/en/investigations-enquetes/Pages/trudeau3Report.aspx>

## **Supplementary Opinion of the Conservative Party of Canada**

### **Introduction**

The Conservative Party of Canada would like to thank the Clerk of the Committee, Miriam Burke, and the staff of the Standing Committee on Access to Information, Privacy, and Ethics for their work on this study and the analysts for their diligence in writing this report. To the witnesses who responded to the Committee's invitations and provided their testimony into the government's pandemic spending conflicts of interest – Conservatives thank you.

Following the Prime Minister's prorogation of Parliament and shuttering of committees to avoid scrutiny of the depth of Cabinet's involvement in the WE Scandal, this study and subsequent report emerged out of a Liberal filibuster equal to twenty meetings of the Committee. This Committee was not the only one to be subject to the Liberal's blocking of investigations into Justin Trudeau's WE Scandal. The Standing Committees on Finance, Procedure and House Affairs, and Government Operations and Estimates all faced similar tactics of filibuster and blocking.

In addition to the Liberal's attempts to evade accountability for Justin Trudeau's WE Scandal, the Committee was met with difficulties from key players who refused the invitations of the Committee to testify on their role in the scandal. These individuals openly challenged and rebuked the Committee's authority to send for persons, papers, and records. Further, the government ordered key senior staff to disobey an Order of the House of Commons and refuse to appear before the Committee.

### **Liberal record of scandals**

The abdication of accountability and responsibility leading to this study should come as no surprise. The WE scandal being just the latest in a long line of major scandals and a litany of Member's Code breaches from this Liberal government. The government's record speaks for itself.

Prime Minister Justin Trudeau was found guilty of contravening sections 5, 11, 12, and 21 of the Conflict of Interest Act for illegal vacations taken on Bells Cay, the Bahamian private island owned by the Aga Khan. The Prime Minister was found to have been in conflict of interest, accepted gifts that could influence him, accepted travel on a private aircraft, and for failing to recuse himself from discussions in which he was in a conflict of interest.

The Prime Minister was again found guilty for contravening section 9 of the Conflict of Interest Act for politically interfering in the criminal prosecution of SNC-Lavalin. A company charged with fraud and corruption for bribing Libyan officials in the Muammar Gaddafi government to the tune of \$48 million and for defrauding Libyan organizations out of \$130 million. The Prime Minister was found to have undertaken a concerted campaign to pressure the then Minister of

Justice and Attorney General, Jody Wilson-Raybould, into offering SNC-Lavalin a deferred prosecution agreement in the name of political considerations and his re-election in Quebec.

The fallout of the Prime Minister's SNC-Lavalin scandal was severe. Ms. Wilson-Raybould and President of the Treasury Board Jane Philpott were removed from Cabinet and the Liberal Caucus for speaking out against corruption. In addition, the Prime Minister's Principal Secretary Gerald Butts and Clerk of the Privy Council Michael Wernick resigned their posts in disgrace.

With the Prime Minister's continuous tendency for throwing ethics law to the wayside and setting the bar incredibly low, it is not hard to believe this mentality would leech out of the PMO and into Cabinet. The former Minister of Finance Bill Morneau, and the former Fisheries Minister Dominic Leblanc, both followed in the footsteps of the Prime Minister and were in turn found guilty of breaking ethics law.

Mr. Leblanc was found guilty of contravening sections 6(1) and 21 of the Conflict of Interest Act for awarding a lucrative Surf Clam fishing contract to a company meant to be run by his wife's first cousin worth nearly \$24 million. The private financial interests of the Minister's family stood to benefit from this clear conflict of interest and refusal to recuse himself from deliberations.

Mr. Morneau in his role as Finance Minister on no less than two occasions was found guilty of contravening the Conflict of Interest Act. He failed to disclose that he owned a villa in the French countryside as well as a corporation in which he had directorship. For two years, the former Finance Minister did not report his assets in France, an act of disclosure that is required of all Parliamentarians and especially Cabinet Ministers.

Mr. Morneau was further found guilty of contravening sections 6(1), 7, and 21 of the Conflict of Interest Act for improperly furthering the WE organization's private interests, failing to recuse himself from decisions relating to WE, and by giving WE preferential treatment. In his role as Finance Minister, Mr. Morneau gave unfettered access to the corridors of power to the Kielburger brothers of WE and allowed his senior Ministerial staff to assist WE with funding proposals, and even had them intervene on behalf of WE at the Federal, Provincial, and Municipal levels.

The ties between the Morneau family and WE are clear. Mr. Morneau accepted a \$41,000 vacation from the organization, his daughter worked for WE, and on multiple occasions he welcomed Craig Kielburger to the Morneau family home for brunch and other events. In the wake of the WE Scandal, Mr. Morneau was removed from Cabinet and resigned his seat as a Member of Parliament under the guise of a bid for the position of Secretary-General of OECD. Predictably and despite being given 19 public servants to work on the bid, Mr. Morneau dropped out of the race.

### **Damaging the Public Trust in Institutions**

Whether it is illegal vacations to billionaire island, ClamScam, forgotten French villas, political interference in the criminal prosecution of SNC-Lavalin, or the WE Scandal – this Liberal government's complete disregard for good ethical governance has greatly damaged Canadian's trust in their governing institutions. The existence of a two-tiered set of laws is a reality for everyday Canadians. There is one set of rules for the Liberal elite in this country and another set for everyone else.

This couldn't be clearer with the constant unbridled access that Liberal insiders have to Cabinet and how these insiders drive public policy to suit their own needs, rather than what's in the best interest of Canadians. Under the approval of Justin Trudeau, insiders will always be given the inside track and be able to jump the queue while everyday Canadians are left behind.

The judicial system, in which Canadians must have absolute confidence in, is also given to Liberal insiders that are handed the fast track in appointments to the bench. Consistently the names that find themselves on top of the list of judicial appointments also find themselves on top of this Liberal government's donor list.

As far as the Canadian public is concerned, beyond the scandals, ethical breaches, and insider access, the very appearance of a conflict of interest from a public office holder is just as damaging to the public trust as a realized conflict of interest.

### **Questions Remaining**

There are major questions left unanswered stemming from revelations found in the documents obtained by the Committee. The WE organization welcomed corporations onto the stage of their events, to be publicly vetted, which runs into the hundreds of thousands of dollars that a corporation must give WE to receive such treatment. The Prime Minister receives this treatment and public vetting by WE for free. A politician being brought before tens of thousands of potential voters, and built up by WE, is of great value to the receiving politician.

In the documents, WE stated that ten videos, which starred the Prime Minister on one occasion, were produced by Door Knocker Media and paid for by WE at a total cost of \$127,000 plus HST. Although the exact cost of each individual video has not being provided for, the high overall price tag for the ten videos, shows that the video starring the Prime Minister is of significant monetary value.

Besides the troubling financial implications of the Prime Minister's video, the platform it provided the leader of a political party for self-promotion is problematic. In the video the Prime Minister can be quoted saying, "I pledge to work hard for all Canadians... to invest in our youngest leaders – you." A promise to represent their interests as soon-to-be Canadian voters is a clear political message rather than a philanthropic endorsement of the WE organization. The video was an opportunity gifted to him by his friends the Kielburgers to further his personal and political brand.

Further, these new documents told the Committee that the Prime Minister's wife received a \$20,000 weekend away to attend the 2020 WE Day in London just weeks before WE was given the contract for the half-billion-dollar CSSG. The amount of both financial and in-kind benefit that the Prime Minister and his family have received from WE is astounding. These facts, and the appearance of a clear conflict of interest, have been severely damaging to the public's confidence in their democratic institution.

### **Accountability Measures**

With the cronyism and corruption rampant in the Liberal government, a new and comprehensive anti-corruption law must be passed to return accountability to Ottawa. To begin to restore the public's trust in their governing institutions.

Conservatives support a review of the Conflict of Interest Act and the Conflict of Interest Code for Members to strengthen ethics laws and empower the Ethics Commissioner. A strengthened Ethics Commissioner could impose meaningful sanctions on those who are found to have contravened the Act and Code commensurate with the status of the offender and the severity of the contravention.

Conservatives also agree with the opinion of Nancy Bélanger, the Lobbying Commissioner, that the Lobbying Act must be reviewed and strengthened by removing loopholes and empowering the Lobbying Commissioner to seek a range of compliance measures. Including monetary sanctions and prohibitions.

In closing, Conservatives point out the government's bad faith actions throughout this study and adoption of this report as further evidence of the ethical breaches, insider access, and cronyism of Justin Trudeau and his Liberal government and the damage they have done to the Canadian public trust.