



Office of the Commissioner
of Lobbying of Canada

Commissariat au lobbying
du Canada

INVESTIGATION REPORT

Mark Aldridge,

President & CEO, MCAP Commercial LP

Senior officer responsible for MCAP pursuant to s. 7(1) of the
Lobbying Act

JUNE 2021

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Preface

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

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

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

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

THIS REPORT WAS TABLED BY:

Nancy Bélanger
Commissioner of Lobbying of Canada

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Executive summary

This report follows an investigation conducted by the Office of the Commissioner of Lobbying (OCL) pursuant to section 10.4 of the *Lobbying Act* (Act). This investigation focused on whether Mr. Mark Aldridge, President and CEO of MCAP Commercial LP (MCAP) and senior officer responsible for MCAP, failed to register in-house (corporation) lobbying activities in accordance with subsection 7(1) of the Act. This investigation arose in connection with communications that Mr. Robert Silver, Senior Vice-President of Strategy, Risk and Policy for MCAP, had with federal public office holders with respect to both MCAP's role in administering the Canada Emergency Commercial Rent Assistance program on behalf of the Government of Canada as well as the eligibility of limited partnerships, such as MCAP, to claim the Canada Emergency Wage Subsidy (CEWS) in respect of their employees.

Based on all of the information gathered during this investigation, I determined that Mr. Aldridge, as senior officer responsible for MCAP, did not fail to register in-house (corporation) lobbying activities pursuant to subsection 7(1) of the Act.

In order to make this determination, I was required to ascertain whether any of the communications that Mr. Silver and/or any other employees of MCAP had with federal public office holders between January 1 and August 10, 2020, the date on which I initiated the preliminary assessment of this matter, were in respect of any of the subject matters referred to in paragraph 7(1)(a) of the Act. If so, I had to further determine whether the volume of any such communications, individually or collectively, constituted a significant part of the duties of any one MCAP employee in accordance with the requirements of paragraph 7(1)(b) of the Act.

Subject matter of MCAP's communications

Based on all of the information gathered, I determined that, between January 1 and August 10, 2020, MCAP employees, including Mr. Silver, had communications with officials from the Canada Mortgage and Housing Corporation, the Prime Minister's Office, the Office of the Minister of Finance and the Bank of Canada as well as with the Minister of Immigration, Refugees and Citizenship.

I also determined that a significant majority of these communications were with officials who do not qualify as "public office holders" as this term is defined in subsection 2(1) of the Act, were not in respect of a subject matter referred to in paragraph 7(1)(a) of the Act, and/or were not made on behalf of MCAP as required by paragraph 7(1)(a).

I further determined that, between April 15 and May 15, 2020, Mr. Silver had communications on behalf of MCAP with public office holders in the Office of the Minister of Finance in respect of subject matters referred to in paragraph 7(1)(a) of the Act, namely the making or amendment of a regulation and the development or amendment of a policy or program of the Government of Canada.

In particular, I found that these communications focused on proposing changes to the definition of “eligible entity” in regulations then under consideration, and which were subsequently issued pursuant to section 221 of the *Income Tax Act*, that would have allowed MCAP to claim the CEWS in respect of all of its employees. Given that the CEWS is a program of the Government of Canada, I found that these communications can also be understood to relate to the development or amendment of a policy or program of the federal government.

Significant part of duties

Based on the information gathered, I determined that, between April 15 and May 15, 2020, Mr. Silver spent approximately one hour and ten minutes (1 hr. 10 min.) communicating on behalf of MCAP with federal public office holders in the Office of the Minister of Finance in respect of subject matters referred to in paragraph 7(1)(a) of the Act, namely a proposed amendment to a CEWS-related regulation then under consideration.

I also determined that MCAP employees, including MCAP’s Chief Financial Officer, cumulatively spent approximately two (2) hours developing this proposed amendment, including sought-after changes to the specific language used in one paragraph of the definition of “eligible entity” in this regulation.

Taken together, I determined that the low volume and short duration of Mr. Silver’s communications with public office holders in respect of subject matters referred to in paragraph 7(1)(a) of the Act, including the approximately two (2) hours of associated preparation time, fell well short of the significant part of duties registration threshold set out in paragraph 7(1)(b) of the Act. Consequently, the senior responsible officer for MCAP was not required to register in-house (corporation) lobbying activities on behalf of MCAP during the period under investigation.

Observations

This investigation underscores the challenges of tracking, monitoring and accounting for the time spent engaging in what amounts to in-house lobbying activities for the purposes of applying the “significant part of duties” registration threshold. In practice, this standard is difficult to apply and enforce.

More importantly, this threshold allows for a substantial volume of in-house lobbying activity to go unreported.

As I recently recommended in my Preliminary Recommendations to the Standing Committee on Access to Information, Privacy and Ethics, the Act should be amended to remove the “significant part of duties” registration threshold for in-house lobbyists and replaced by an obligation for all corporations and organizations whose employees lobby federal public office holders to register such in-house lobbying activities by default, unless they qualify for a limited exemption based on objective criteria.

In my view, this change would enhance transparency by requiring a greater proportion of paid lobbying activities to be reported in the Registry of Lobbyists. It would also reduce complexity for corporations and organizations in determining whether they are required to register and lessen the administrative burden of tracking, monitoring and accounting for the time their employees spend engaged in such in-house lobbying activities. For a more comprehensive description of this recommendation and other suggested improvements to the Act, please refer to the report entitled "[Improving the Lobbying Act: Preliminary Recommendations](#)".¹

Introduction

This Report follows an investigation conducted by the Office of the Commissioner of Lobbying (OCL) pursuant to section 10.4 of the *Lobbying Act* (Act). This investigation focused on whether Mr. Mark Aldridge, President and CEO of MCAP Commercial LP (MCAP) and senior officer responsible for MCAP, failed to register in-house (corporation) lobbying activities in accordance with subsection 7(1) of the Act. This investigation arose in connection with communications that Mr. Robert Silver, Senior Vice-President of Strategy, Risk and Policy for MCAP, is alleged to have had with federal public office holders with respect to both MCAP's role in administering the Canada Emergency Commercial Rent Assistance (CECRA) program on behalf of the Government of Canada as well as the eligibility of limited partnerships, such as MCAP, to claim the Canada Emergency Wage Subsidy (CEWS) in respect of their employees.

Background

In mid- to late-January 2020, Mr. Silver joined MCAP as Senior Vice-President of Strategy, Risk and Policy.

MCAP is an independent mortgage financing company. As set out on its website, MCAP "operates in three key lines of business: residential mortgages, commercial mortgages and construction loans" and "originates, securitizes, trades and services mortgages".²

On January 15, 2020, before beginning his employment with MCAP, Mr. Silver wrote to the OCL through counsel to confirm his understanding of the restrictions to which he would be subject in engaging in any in-house lobbying activities on behalf of MCAP in light of the fact that he is married to Ms. Katie Telford, Chief of Staff to the Prime Minister of Canada. Counsel noted that the Prime Minister's Office (PMO) had established a conflict of interest screen to ensure that Ms. Telford would not be involved in any matters relating directly to MCAP or any mortgage-related policy decisions in which MCAP may have an interest. Counsel also noted that Mr. Silver understood that he should not lobby the Prime Minister or the Prime Minister's Office, but that he was not otherwise precluded from lobbying "other Ministers and offices in government" provided that he complies with the requirements of the Act and the *Lobbyists' Code of Conduct* (Code). Counsel indicated that Mr. Silver understood that other employees or officers of MCAP would not be precluded from lobbying the Prime Minister or the Prime Minister's Office, but confirmed that such MCAP personnel would never lobby Ms. Telford.

On January 16, 2020, the OCL's Director of Registration, Policy and Public Affairs responded to counsel to Mr. Silver. The Director confirmed that, based on the information provided by counsel, Mr. Silver should not lobby the Prime Minister or the Prime Minister's Office. The Director also provided additional guidance to assist Mr. Silver in complying with his obligations under the Code and, in particular, with the requirements of Rules 6, 7 and 8.³ The Director indicated that, in light of his relationship with Ms. Telford, Mr. Silver would be at risk of contravening these Rules to the extent that he either lobbied, or arranged any meetings for other MCAP employees, with any public office holders in the Prime Minister's Office. The

Director also indicated that such other MCAP employees would not be precluded from lobbying public office holders in the Prime Minister's Office, provided that they otherwise complied with the requirements of the Act and Code.

On August 7, 2020, the *Globe and Mail* reported⁴ that Mr. Silver participated in a meeting on June 22 with a communications official from the Canada Mortgage and Housing Corporation (CMHC) regarding the public reporting of the number of applications received for the federal government's Canada Emergency Commercial Rent Assistance (CECRA) program, which provided relief for small businesses that experienced financial hardship due to COVID-19. The article quoted a spokesperson from CMHC as confirming that, on May 15, 2020, MCAP had signed a \$56 million contract to administer the CECRA program on behalf of CMHC⁵ and that, as a result of a subsequent extension in July 2020, the contract was ultimately worth a maximum value of \$84 million, an amount that covered the design and maintenance of an application portal, processing applications, providing services to applicants and disbursing approved funds. The spokesperson noted that Mr. Silver was not involved in any of the contract negotiations between MCAP and CMHC or with the delivery of services related to the CECRA program. The spokesperson also noted that CMHC was not aware of any other communications between Mr. Silver and CMHC officials. As set out in this article, the Office of the Minister of Finance confirmed that the Cabinet had no role in awarding MCAP the contract to administer the CECRA program on behalf of CMHC or in the related decision to engage a third party to administer this program. The article noted that the Prime Minister announced the CECRA program in April⁶ and that it opened for applications on May 25, 2020.

On August 13, 2020, Mr. Evan Siddall, then-President and CEO of the Canada Mortgage and Housing Corporation (CMHC), publicly stated on Twitter that, after consulting his colleagues and conducting a full review of all relevant emails, CMHC's selection of MCAP to administer the CECRA program was entirely proper. Mr. Siddall further stated not only that Mr. Silver "had no involvement whatsoever in [CMHC's] selection of MCAP nor the terms of [MCAP's] engagement", but also that "no one in [the Prime Minister's Office] or any part of government, and certainly not [Ms. Telford], had any involvement whatsoever in any matter concerning MCAP's work with [CMHC] on [the CECRA]".⁷

On August 21, 2020, *Vice News* first reported⁸ that Mr. Silver communicated with officials in both the Office of the Minister of Finance and the Prime Minister's Office in an effort to amend the legislative criteria governing the eligibility of employers to claim the Canada Emergency Wage Subsidy (CEWS) to include limited partnerships, such as MCAP. As detailed in the article, the CEWS program provides a 75 percent wage subsidy for eligible business that experienced economic hardship as a result of the COVID-19 pandemic. As noted in the article, however, MCAP is a partnership, one of whose major investors is the Caisse de dépôt et placement du Québec, a tax-exempt pension fund created by the Government of Quebec. According to the sources interviewed for this article, the Caisse de dépôt did not qualify for the CEWS program because of its tax-exempt status and MCAP, in turn, did not qualify because it is in a limited partnership with an ineligible entity.⁹

According to this article, after Bill C-14 – the legislation that created CEWS – was tabled in Parliament in April 2020, Mr. Silver contacted Mr. Elder Marques, then-Chief of Staff to former Finance Minister Bill Morneau, and Mr. Tyler Meredith, then-Director of Policy in the Office of the Minister of Finance, and urged them to expand the eligibility criteria to include limited partnerships, such as MCAP. Sources interviewed for this article stated that Mr. Silver made multiple phone calls and sent multiple emails to Mr. Marques and Mr. Meredith, in some of which he requested specific amendments to Bill C-14. They also indicated that the Office of the Minister of Finance informed Mr. Silver that these requests were inappropriate given that MCAP “does business with Ottawa” and that his wife is the Chief of Staff to the Prime Minister. According to the article, Mr. Silver subsequently made the same request of Mr. Michael McNair, then a special policy advisor in the Prime Minister’s Office, who referred Mr. Silver back to ministerial staff in the Office of the Minister of Finance. A government source interviewed for this article indicated that Mr. McNair was an informal advisor at the time of his communications with Mr. Silver and, therefore, not a “public office holder”. The article also quoted a source as confirming that Ms. Telford was never part of the conversation around MCAP’s eligibility for CEWS and noted that a spokesperson for the Prime Minister’s Office confirmed that Ms. Telford had not been involved in any discussions related to MCAP.

Process

On August 10, 2020, shortly following the publication of the initial article in *The Globe and Mail* (described above), I initiated a preliminary assessment to determine if an investigation was necessary to ensure that MCAP had complied with the registration requirements of subsection 7(1) of the Act. This assessment focused on the period from January 2020, when Mr. Silver joined MCAP, and August 10, 2020, the date on which this preliminary assessment was initiated.

Later that same day, Mr. Pierre Poilievre, Member of Parliament for Carleton, and Mr. Michael Barrett, Member of Parliament for Leeds–Grenville–Thousand Islands and Rideau Lakes, jointly wrote to me to express concerns about communications that Mr. Silver reportedly had with a CMHC communications official given that neither MCAP nor Mr. Silver had registered any activities or reported any communications in the Registry of Lobbyists. Mr. Poilievre and Mr. Barrett requested that the OCL conduct a review to ensure that MCAP had complied with the registration requirements set out in the Act.

On August 11, 2020, counsel to Mr. Aldridge and Mr. Silver wrote to me to affirm, in light of recent media reports (described above), that Mr. Silver takes his compliance obligations seriously and that he had been careful to follow the guidance that the OCL provided in mid-January 2020 (also described above). Counsel noted he had been advised that MCAP was below the applicable registration threshold set out in the Act and indicated that Mr. Silver was prepared to cooperate with the OCL if and as required.

On the evening of August 23, 2020, shortly following the publication of the article in *Vice News* (described above) and related media coverage, counsel to Mr. Silver wrote to the OCL. Counsel noted that the press reports about Mr. Silver and MCAP contained “a number of mischaracterizations, incorrect facts and contextual sequencing issues” and indicated that they would be providing full disclosure of all relevant facts to the OCL, following which they were confident that the OCL would share the view that MCAP had complied with all of its legal obligations. To that end, counsel indicated that Mr. Silver would be providing the OCL with “a full list of all of [his] communications with government on behalf of MCAP”. Counsel further indicated that, out of an abundance of caution, Mr. Silver would not be communicating with federal government officials until this matter was resolved.

On August 24, 2020, I expanded the scope of the preliminary assessment to include all communications that Mr. Silver and/or any other employees of MCAP may have had respecting any subject matters referred to in paragraph 7(1)(a) of the Act with any federal public office holders during the time period under examination, including any such communications in respect of the Canada Emergency Wage Subsidy (CEWS).

On September 1, 2020, I sent letters requesting information to the Canada Mortgage and Housing Corporation (CMHC), the Prime Minister’s Office (PMO) and the Office of the Minister of Finance.

In the letter to CMHC, I requested that CMHC confirm whether any members of the CMHC Board of Directors, including the Chairperson, the eight (8) Directors and two (2) *ex officio* Directors, had any communications with Mr. Silver and/or any other representatives of MCAP since January 1, 2020. I further requested that CMHC indicate whether any representatives of MCAP, including Mr. Silver, had any other communications with any officers or employees of CMHC during the time period under investigation.

In the letter to the PMO, I requested that the Prime Minister confirm whether any current or former PMO ministerial staff members, including Mr. McNair, had any communications with Mr. Silver and/or any representatives of MCAP during the time period under investigation. I further requested that the Prime Minister indicate whether he and/or any current or former ministerial staff members were aware of any communications between any representatives of MCAP, including Mr. Silver, and any other ministers, parliamentary secretaries, members of Parliament or any of their respective staff members during the time period under investigation.

In the letter to the Office of the Minister of Finance, I requested that the Honourable Chrystia Freeland, Deputy Prime Minister and Minister of Finance, confirm whether any current or former ministerial staff members in the Office of the Minister of Finance, including Mr. Marques and Mr. Meredith, had any communications with Mr. Silver and/or any representatives of MCAP during the time period under investigation. I further requested that Ms. Freeland indicate whether she and/or any current or former ministerial staff members were aware of any communications between any representatives of MCAP, including Mr. Silver, and any other ministers, parliamentary secretaries, members of Parliament or any of their respective staff members during the time period under investigation.

On September 3, 2020, Mr. Poilievre and Mr. Barrett jointly wrote to me to request that, in light of public reporting following the article published by *Vice News*, the OCL conduct an assessment of whether Mr. Silver had engaged in unregistered lobbying in connection with his reported communications with the Prime Minister's Office and the Office of the Minister of Finance regarding the CEWS program.

That same day, I responded to Mr. Poilievre and Mr. Barrett and confirmed that the OCL was conducting a preliminary assessment with respect to all communications that Mr. Silver and/or any other representative(s) of MCAP may have had with any federal public office holders during the time period under review, including any that related to the CEWS program.

On September 4, 2020, counsel to Mr. Aldridge and Mr. Silver wrote to disclose the particulars of Mr. Silver's communications on behalf of MCAP since starting in his current role in January 2020 with the following federal government officials:

- one official from the CMHC and one ministerial staff member in the Prime Minister's Office regarding the Canada Emergency Commercial Rent Assistance (CECRA) program;
- two ministerial staff members from the Office of the Minister of Finance and one official from the Prime Minister's Office regarding the CEWS;

- official(s) from the Bank of Canada to discuss “MCAP’s business” on one occasion and the Insured Mortgage Purchase Program on another; and
- the Minister of Immigration, Refugees and Citizenship in relation to a “request for information on whether there were any changes to Canada’s intended immigration targets during and following the COVID-19 pandemic”.

With respect to the CECRA program, counsel indicated that CMHC first communicated the basic policy outline of the CECRA program to MCAP and other stakeholders on April 2, 2020 and that it followed up the next day with Mr. Don Ross, Executive Vice-President of MCAP, to initiate a discussion about MCAP playing a role in the administration of the CECRA program. Counsel also indicated that, on April 21, 2020, at CMHC’s request, Mr. Ross submitted a non-binding proposal on behalf of MCAP to administer the CECRA program, that CMHC informed Mr. Ross on April 23 that MCAP had been selected from the competitive process to administer the CECRA program and that the Government of Canada announced details of the CECRA program on April 24. Counsel further indicated that MCAP and CMHC entered into a formal legal agreement with respect to the administration of the CECRA program on May 15, 2020 and that MCAP’s involvement in administering the CECRA program was published on CMHC’s website on May 19. Counsel noted that this agreement has been the subject of extensions and change orders and that, as of the date of this letter to the OCL, MCAP continued to administer the CECRA program and remained committed to honouring its commitments to CMHC.

Counsel stated that Mr. Silver did not have any communications with any officials from CMHC with respect to the awarding or negotiation of the contract by which MCAP agreed to administer the CECRA program. Counsel noted (as described in the Background section above) that Mr. Siddall, the then-President and CEO of CMHC, had publicly stated that Ms. Telford had no involvement in the awarding of the CECRA administration contract. Counsel also noted that, to the best of MCAP’s knowledge, no political staff or elected officials were in any way involved in the decision to award this contract to MCAP.

Counsel indicated that, on April 9, 2020, Mr. Silver was copied on a memorandum from Mr. Ross to CMHC that provided “requested input into the CECRA program”. Counsel further indicated that, after the administration contract had been concluded between MCAP and CMHC, Mr. Silver had communications with two (2) officials about the CECRA program, including:

- one (1) communication with Ms. Sarah Goodman, Senior Advisor, PMO, consisting of a twenty-five (25) minute telephone call on June 3, 2020 to “discuss CMHC and MCAP’s progress with respect to the CECRA program”; counsel noted that Mr. Silver understood Ms. Goodman’s role at that time to have involved tracking the implementation of COVID-19-related programs and indicated that their conversation focused on “MCAP providing ... information about CECRA program applicants and their experiences”; and
- one (1) communication with Mr. Scott Drover, Senior Business Partner, Communications and Marketing at CMHC, consisting of a thirty (30) minute telephone call on June 22, 2020 focused on “identifying CECRA program applicants with a positive experience who could provide testimonials for social media, so as to encourage reluctant

landlords to apply”; Ms. Heather Baker, an Executive Vice-President at MCAP whose responsibilities include communications, also participated in this communication.

Counsel stated that Mr. Silver recalled that neither of these two communications involved any discussion about amendments or extensions of the CECRA program or MCAP’s contract to administer this program and that Mr. Silver did not advocate for any accommodation or change on behalf of MCAP. Counsel further stated that neither of these communications were in respect of any of the subject matters listed in paragraph 7(1)(a) of the Act and that they were voluntarily disclosed in the interests of full transparency about Mr. Silver’s communications with government officials regarding the CECRA program.

With respect to Mr. Silver’s communications with officials from the Office of the Minister of Finance and PMO regarding CEWS, counsel noted, by way of background, that the CEWS program, which was announced by the Government of Canada on March 27, 2020, provided a 75 percent wage subsidy for a certain number of weeks, retroactive to March 15, 2020, for eligible businesses that suffered a significant decrease in revenues as a result of the economic circumstances arising from the COVID-19 pandemic. Counsel further noted that Parliament passed legislation on April 11, 2020 to implement the CEWS program, which was administered by the Canada Revenue Agency under the *Income Tax Act*.

Counsel explained that, when the CEWS program was introduced, MCAP’s subsidiary, MCAP Service Corporation, which represents approximately 35 percent of MCAP’s employees, was eligible for CEWS. Counsel further explained, however, that the remaining 65 percent of MCAP employees were not eligible for CEWS “because of a technical issue arising from the fact that MCAP is a limited partnership, and one of its major investors is a Quebec based pension fund that is tax exempt”. Counsel indicated that this result “struck MCAP management as possibly being the unintentional consequence of a technical oversight resulting from tight timelines in the context of the pandemic” and that it was in this context that Mr. Silver reached out to officials in the Office of the Minister of Finance in an attempt to understand and clarify this issue.

Counsel confirmed that, between April 17 and May 15, 2020, Mr. Silver had nine (9) communications, consisting of telephone calls as well as email and text exchanges, with Mr. Tyler Meredith, then-Director of Policy in the Office of the Minister of Finance, and Mr. Elder Marques, then-Chief of Staff to the Minister of Finance and Mr. Michael McNair, who counsel described as a “former public office holder”. Counsel further indicated that these communications had a total combined duration of approximately one hour and thirteen minutes (1 hr. and 13 min.). In this connection, counsel noted that the two brief communications, totalling approximately 7 minutes, that Mr. Silver had with Mr. McNair on May 11 and May 15, 2020 were not subject to the Act as Mr. McNair was not a public office holder on these dates.¹⁰

Counsel stated that, contrary to media reports, Mr. Silver was never told by anyone at the Department of Finance that his communications with Mr. Meredith and Mr. Marques were inappropriate. Counsel noted that the Department of Finance subsequently issued a public

statement on August 21, 2020 that any report that Mr. Silver had applied inappropriate “pressure” was “completely false”.¹¹

Counsel further noted that, although changes were made to the legislation that created the CEWS program, none of these changes had any impact on MCAP’s eligibility for CEWS and that MCAP remained 65 percent ineligible for the CEWS program.

In addition to these communications, Mr. Silver disclosed four (4) other communications during the time period under investigation, including:

- two (2) communications with officials from the Bank of Canada, one of which consisted of a meeting with Mr. Paul Beaudry, Deputy Governor of the Bank,¹² on February 20, 2020 that lasted approximately 90 minutes and the other of which consisted of a call with unspecified Bank official(s) to discuss the Insured Mortgage Purchase Program on March 31, 2020 that lasted approximately 30 minutes; Mr. Don Ross, Executive Vice-President of MCAP, participated in both of these communications;
- one (1) additional communication with Mr. Meredith on April 22, 2020 that lasted approximately two (2) minutes, which consisted of a courtesy message to inform Mr. Meredith that the Insured Mortgage Purchase Program was “having implementation issues”; and
- one (1) communication with the Honourable Marco Mendicino, Minister of Immigration, Refugees and Citizenship, on May 11, 2020 that lasted approximately 30 minutes, which consisted of a “request for information on whether there were any changes to Canada’s intended immigration targets during and following the COVID-19 pandemic”.

On September 14, 2020, I initiated an investigation to ensure that MCAP had complied with the requirements of subsection 7(1) of the Act.

On September 18, 2020, I wrote to the Bank of Canada to request that it provide detailed information about the two (2) communications Mr. Silver acknowledged having with Bank officials. I further requested that the Bank provide information about any other communications that Mr. Silver and/or any other representatives of MCAP may have had with any members of the Bank’s Governing Council or any other officers or employees during the time period under investigation.

This same day, I also wrote to the Honourable Marco Mendicino, Minister of Immigration, Refugees and Citizenship, to request that he provide detailed information about the communication Mr. Silver acknowledged having with him on May 11, 2020. I also requested that Mr. Mendicino provide information about any communications Mr. Silver and/or any other representatives of MCAP may have had with him and/or any current or former staff members in his ministerial office during the time period under investigation. I further requested that Mr. Mendicino indicate whether he was aware of any communications involving any representatives of MCAP, including Mr. Silver, and any other Ministers, Parliamentary Secretaries, members of Parliament or any of their respective staff members during the time period under investigation and, if so, to provide detailed information about any such communications.

Between September 23 and November 5, 2020, the OCL received responses to all five of its requests for information.

On September 29, 2020, the Prime Minister responded to my request for information. The Prime Minister confirmed that Ms. Sarah Goodman, Senior Advisor in the PMO, had a communication with Mr. Silver and indicated that she would be providing the OCL with a separate letter setting out the relevant details. The Prime Minister also confirmed that Mr. Michael McNair had been contacted by Mr. Silver in May 2020. The Prime Minister noted that, at the time of Mr. McNair's interaction with Mr. Silver in May, Mr. McNair was not an employee and did not hold a position in the PMO. The Prime Minister indicated that Mr. McNair was providing volunteer support during the pandemic at the time of this interaction. The Prime Minister further indicated that Mr. McNair consulted the Office of the Conflict of Interest and Ethics Commissioner in April and that the Commissioner had confirmed that Mr. McNair was not a designated public office holder at that time. The Prime Minister indicated that, when Mr. Silver contacted Mr. McNair in May 2020, Mr. Silver was redirected to the Office of the Minister of Finance. The Prime Minister also indicated that Mr. McNair joined the PMO as an employee from June 15 to September 25, 2020, during which time he qualified as a designated public office holder pursuant to the determination of the Office of the Conflict of Interest and Ethics Commissioner.¹³

On this same day, as part of the response provided by the Prime Minister, the OCL received a separate letter from Ms. Goodman, which described communications that she had with Mr. Silver and provided an associated document.

On September 30, 2020, Ms. Freeland responded to my request for information. Ms. Freeland noted that the events under investigation by the OCL took place during the tenure of her predecessor, the Honourable Bill Morneau. Ms. Freeland confirmed that, during the time period under investigation, two individuals employed by the Office of the Minister of Finance had interacted with MCAP, namely Mr. Elder Marques, former Chief of Staff to then-Minister Morneau, and Mr. Tyler Meredith, Mr. Morneau's then-Director of Policy. Ms. Freeland provided an annotated timeline setting out dates on which Mr. Marques and Mr. Meredith had communicated with Mr. Silver along with associated documents. In particular, Ms. Freeland confirmed that, as detailed in the timeline provided by her office, Mr. Marques had one phone call on April 28, 2020 and one email exchange that took place over April 27 and 28, 2020 with Mr. Silver. Ms. Freeland also confirmed that she was informed that these were the sole interactions that Mr. Marques had with representatives of MCAP. Ms. Freeland further confirmed that, as detailed in the timeline provided by her office, Mr. Meredith had two phone calls with Mr. Silver, one on April 17 and the other on May 4, that email communications between Mr. Meredith and Mr. Silver took place on April 17 and 27 as well as May 4, 6 and 15 and that Mr. Meredith and Mr. Silver exchanged Twitter direct messages on April 17. Ms. Freeland provided copies of the correspondence between Mr. Meredith and Mr. Silver detailed in the timeline provided by her office. Ms. Freeland also indicated that Mr. Meredith had prepared a separate letter detailing his interactions with MCAP that he would be providing to the OCL.

On this same day, as part of the response provided by Ms. Freeland, the OCL received a separate letter from Mr. Meredith, which described communications that he had with Mr. Silver and provided associated documents.

On October 5, 2020, I separately wrote to the Prime Minister and Ms. Freeland to inform each of them that, after I had made my initial request for information and before either of them had provided their respective responses, I had initiated an investigation to determine whether the senior officer responsible for MCAP had been required to register in-house lobbying activities pursuant to the Act. As each of their respective responses had been provided under the auspices of a preliminary assessment, I requested that the Prime Minister and Ms. Freeland each provide sworn affidavits confirming that all information relevant to the OCL's investigation had been provided.

On October 19, 2020, the Prime Minister provided a sworn affidavit as requested. The Prime Minister confirmed all of the information provided in his initial response to my request for information, including the information provided in respect of Ms. Goodman and Mr. McNair's interactions with Mr. Silver.

The Prime Minister confirmed that his office had canvassed all current and relevant recent former ministerial staff in the Prime Minister's Office dating back to January 1, 2020 to determine if they had any information relevant to my request for information. The Prime Minister further confirmed that all responsive and relevant information that was gathered had been forwarded to the OCL.¹⁴

On November 5, 2020, Ms. Freeland provided a sworn affidavit as requested. Ms. Freeland confirmed all of the information provided in her initial response to my request for information, including the information provided in respect of Mr. Marques and Mr. Meredith's interactions with Mr. Silver. Ms. Freeland further confirmed that her office had canvassed all current and former ministerial staff in the Office of the Minister of Finance dating back to January 1, 2020 to determine if they had any information relevant to my request for information. Ms. Freeland confirmed that, other than Mr. Marques and Mr. Meredith, all of these current and former ministerial staff members confirmed that they had no interactions with Mr. Silver or MCAP while employed in the Office of the Minister of Finance.

On May 14, 2021, I wrote to Mr. Meredith to request that he provide additional clarifications and confirm the information that he provided in his letter of September 30, 2020 in the form of a sworn affidavit.

On May 17, 2021, I wrote to Mr. Michael Sabia, Deputy Minister of Finance to confirm whether any public servants in the Department of Finance involved in developing or amending the CEWS, including any public servants in the Tax Policy Branch, had any communications with any representatives of MCAP in respect of CEWS between April 1 and May 31, 2020.

By letter dated May 28, 2021, Mr. Sabia confirmed that there were no indications that any public servants in the Department of Finance involved in developing or amending CEWS,

including any public servants in the Tax Policy Branch, had any communications with any representatives of MCAP between April 1 and May 31, 2020.

On May 31, 2021, Mr. Meredith provided a sworn affidavit in which he confirmed the information he had previously provided to the OCL and provided additional detail.

The information set out in each of these responses is described in greater detail in the Findings of Fact and Analysis section, below.

After receiving undertakings of confidentiality from Mr. Aldridge, Mr. Silver and their counsel on June 1, 2021, the OCL provided Mr. Aldridge and Mr. Silver with a draft copy of this investigation report (without the observation section) in order to provide them with an opportunity to make representations.

On June 4, 2021, counsel to Mr. Aldridge and Mr. Silver responded and made limited representations consisting of “three minor comments”, all of which are reflected in this report.

Findings and analysis

This investigation focused on whether Mr. Aldridge, the senior officer responsible for MCAP, failed to register in-house (corporation) lobbying activities pursuant to subsection 7(1) of the Act in connection with communications that Mr. Silver and/or any other employees of MCAP had with federal public office holders between January 1 and August 10, 2020, the date on which the OCL initiated its preliminary assessment of this matter.

In order to make this determination, I was required to ascertain whether any of the communications that Mr. Silver and/or any other employees of MCAP had with federal public office holders during the time period under investigation were in respect of any of the subject matters referred to in paragraph 7(1)(a) of the Act, including the making or amendment of a regulation or the development or amendment of a policy or program of the Government of Canada.

If so, I had to further determine whether the volume of any such communications constituted, either individually or collectively, a significant part of the duties of any one MCAP employee in accordance with the requirements of paragraph 7(1)(b) of the Act.

Subsection 7(1) of the *Lobbying Act*

Subsection 7(1) of the Act requires organizations and corporations to register in-house lobbying activities when one or more individuals they employ:

- 1) communicate with federal public office holders on their behalf in respect of any of the subject matters listed in paragraph 7(1)(a) of the Act; and
- 2) engaging in such communications constitutes, either individually or collectively, a "significant part of the duties" of any one employee within the meaning of paragraph 7(1)(b).

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

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

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

As reflected in Hansard debates, Parliament intended to include the awarding of government contracts as a reportable subject matter for consultant but not in-house lobbyists. In particular, Parliament considered it necessary to include this reporting requirement for consultant lobbyists in order to ensure that it was known on whose behalf consultants were acting in communicating with federal public office holders about the awarding of government contracts as this information would not otherwise be publicly available. By contrast, Parliament intended for this subject matter not to be reportable by in-house lobbyists so as not to capture a significant volume of communications about government procurement contracts for products and services that were already publicly disclosed through other mechanisms.¹⁵

As such, any communications that in-house lobbyists have with federal public office holders on behalf of their organization or corporation in respect of the awarding of any federal government contracts do not constitute registrable communications for the purposes of paragraph 7(1)(a) of the Act.

It is also worth noting that the OCL has issued an interpretation bulletin setting out its approach to interpreting and applying the “significant part of duties” registration threshold set out in paragraph 7(1)(b) of the Act.¹⁶ In particular, the OCL has interpreted a significant part of duties as the equivalent of 20 percent or more of the duties of any one employee, inclusive of preparation time.

Based on a 40-hour work week, the significant part of duties registration threshold would be met to the extent that one or more employees, individually or collectively, spend 32 hours in any given four-week period engaged in communicating with federal public office holders on behalf of their employer in respect of any of the subject matters referred to in paragraph 7(1)(a) of the Act.

To the extent that both of these two conditions are met, the employee who holds the most senior office in the organization or corporation is responsible for filing an in-house registration return on behalf of the organization or corporation in the Registry of Lobbyists. In this eventuality, the senior responsible officer would also be required to file monthly communications reports pursuant to subsection 7(4) of the Act accounting for any oral communications arranged in advance that employees of the organization or corporation had with any designated public office holders in respect of any of the subject matters referred to in paragraph 7(1)(a). Failure to comply with the requirements of subsections 7(1) and 7(4) of the Act are each offences punishable on summary conviction (fines of up to \$50,000 and/or prison terms not more than six months) or by way of indictment (fines of up to \$200,000 and/or prison terms not exceeding two years).

Subject matter of MCAP's communications

In order to determine whether the senior officer responsible for MCAP failed to register in-house (corporation) lobbying activities, I had to first evaluate the nature of the communications that Mr. Silver and/or any other MCAP employees had with federal public office holders during the time period under investigation and assess whether any of these communications were in respect of any of the subject matters referred to in paragraph 7(1)(a) of the Act.

Based on all of the information gathered, I determined that, between January 1 and August 10, 2020, Mr. Silver had communications on behalf of MCAP with officials from the Canada Mortgage and Housing Corporation (CMHC), the Office of the Minister of Finance, the Prime Minister's Office (PMO) and the Bank of Canada as well as with the Minister of Immigration, Refugees and Citizenship.

The OCL did not obtain any evidence that any other MCAP employees had any other communications with officials in any of these institutions, other than CMHC and the Bank of Canada, the details of which are described in greater detail below.

The nature of Mr. Silver's communications with officials from each of these government institutions is analyzed in greater detail in the sections that follow.

Communications with officials from the Canada Mortgage and Housing Corporation and the Prime Minister's Office re: the CECRA Program

Members of the CMHC Board of Directors, including the President and CEO, the Chairperson of the Board, the Deputy Ministers of Employment and Social Development and Finance, each of whom sit as members of the CMHC Board, as well as the other eight (8) Directors all qualify as "public office holders" within in the meaning of paragraph (b) of the definition of this term set out in subsection 2(1) of the Act.¹⁷ Significantly, however, officers and employees of CMHC do not qualify as public office holders as they are explicitly deemed not to be "officers or employees of Her Majesty in Right of Canada" in CMHC's enabling legislation.¹⁸ As set out in further detail below, CMHC nonetheless provided detailed information regarding interactions between its officers and employees and representatives of MCAP during the time period under investigation.

With respect to communications involving members of the CMHC Board of Directors, CMHC stated that the Deputy Ministers of both Employment and Social Development and Finance and six (6) of the eight (8) Directors had not had any communications with any representatives of MCAP, including Mr. Silver, since January 1, 2020.

CMHC also stated that two (2) of the Directors hold positions outside of their roles on the CMHC Board and unrelated to CMHC that gave rise to communications with representatives of MCAP, but that those communications had no bearing or relation to their roles and responsibilities as Directors on the CMHC Board.

CMHC further stated that Mr. Siddall, the former President and CEO of CMHC, had two email communications with representatives of MCAP during the time period under investigation, both of which were provided to the OCL as part of its response.

The first communication consisted of a brief exchange of emails between Mr. Siddall and Mr. Mark Aldridge, President and CEO of MCAP, on April 24, 2020, the day after CMHC had notified MCAP that it had been selected to administer the CECRA program and the same day that the Government of Canada had publicly announced details of the CECRA program.

In his email to Mr. Aldridge, Mr. Siddall thanked MCAP for its support of CMHC as it launched the CECRA program. He noted that CMHC is very focused on housing and indicated that MCAP's involvement in administering the CECRA program "allows [CMHC] to support Canadian small businesses in a way that minimizes [its] diversion from [its] strategy" and therefore that MCAP's work "serves both small businesses directly and households". Mr. Siddall closed by stating that CMHC was pleased to have MCAP as a partner.

Mr. Aldridge responded as follows shortly thereafter:

Thank you for your note and for this opportunity. We are very happy to be working with CMHC on your CECRA program. We like the idea of helping out, especially in this environment. It has been very interesting for us so far, as we are using aspects of each of our business lines to do this. We are also very pleased to be your partner on this program.

Although this email exchange referenced the CECRA program, it consisted of an exchange of courtesies between the senior officers for CMHC and MCAP and took place after the decision that MCAP would administer the CECRA program had been made. Seen in this light, this communication cannot be understood to have been in respect of any of the subject matters referred to in paragraph 7(1)(a) of the Act.

The second communication consisted of a group email, dated June 4, 2020, from Mr. Siddall to a group of approved lenders, including MCAP. In particular, the email, which was addressed to forty (40) individuals representing at least sixteen (16) different approved lenders and included Mr. Aldridge and Mr. Paul Bruce on behalf of MCAP, focused on changes to CMHC's underwriting policies for insured mortgages that CMHC had publicly announced earlier that same day.

Seen in this light, this second email cannot be understood to have been either in respect any of the subject matters referred to in paragraph 7(1)(a) of the Act or made on behalf MCAP.

With respect to communications involving CMHC officers and employees, CMHC began by indicating that MCAP is an approved lender and, therefore, that CMHC frequently interacts with MCAP in the ordinary course of business as part of its mortgage loan insurance operations. As described in its response to my request for information, CMHC characterized such interactions as generally relating to underwriting and administering mortgage loans advanced and/or serviced by MCAP and insured by CMHC. CMHC confirmed, however, that these interactions were operational in nature and unrelated to the CECRA program.

CMHC also confirmed that no communications took place between CMHC and MCAP representatives relating to the CECRA program, prior to March 15, 2020.

In its response, CMHC provided a comprehensive list of the names and titles of every CMHC employee that worked on the CECRA program and described the nature of their communications with representatives of MCAP.

With respect to the fifty-six (56) CMHC employees identified as forming part of its CECRA Team, CMHC characterized the vast majority of these employees' communications with MCAP representatives as consisting of purely operational exchanges related to the implementation of the CECRA program, none of which related to any subject matters listed in paragraph 7(1)(a) of the Act. CMCH indicated that these "working-level interactions" and "operational exchanges" related to:

- the design of the application and process changes to improve the application process;
- the operation of the CECRA program, including funding approved applications and processing requests for exceptions to established program procedures (for example, adding additional tenants to previously submitted applications);
- reporting on program activity, including the numbers of applications submitted, approved and declined;
- discussions related to applications made by individual property owners/tenants (for example, correspondence and/or meetings to support property owners with multiple properties who made large numbers of applications);
- program interpretation, including communications relating to individual applications that required further discussion (for example, where a given application pertained to a potentially ineligible property type);
- information technology (IT) issues, including the maintenance of or issues with the application portal and related infrastructure (for example, technical issues involving applicants' inability to log into the application portal); and
- recurring "stand up" meetings to discuss program delivery (for example, numbers of applications reviewed, approved and declined), program issues (for example technical and process issues) and updates on design changes (for example, implementation of program extensions).

As has been noted, none of the CMHC employees involved in these operational interactions is a public office holder within the meaning of subsection 2(1) of the Act. Moreover, none of these operational interactions between these CMHC employees and MCAP representatives relate to any of the subject matters referred to in paragraph 7(1)(a) of the Act.

CMHC also provided all communications and associated documents that a group of seven (7) senior CMHC employees had with representatives of MCAP between March 15 and September 17, 2020 in respect of the following subject matters:

- contracting with MCAP in relation to the CECRA program, including the selection of MCAP to administer the program on April 21, 2020 and the negotiation of the contract governing MCAP's administration of the CECRA program that was concluded on May 15, 2020;
- the design of the CECRA program up to the launch of this program on May 25, 2020; and
- the extensions of the CECRA program in July, August and September, 2020.

Significantly, none of the senior CMHC employees who were involved in these communications with MCAP representatives is a public office holder within the meaning of subsection 2(1) of the Act. For this reason alone, none of these communications is subject to the significant part of duties registration threshold set out in paragraph 7(1)(b) of the Act.

In addition, the communications relating to MCAP's April 21 submission, the associated contract that was concluded on May 15 and the subsequent extensions in July, August and September all constitute communications in respect of the awarding of a federal government contract, which is not referred to among the list of subject matters set out in paragraph 7(1)(a) of the Act.

For all of these reasons, none of the communications between any of these CMHC employees and representatives of MCAP are included in determining whether MCAP employees, individually or collectively, met the significant part of duties registration threshold set out in paragraph 7(1)(b) of the Act.

As noted in the Process section above, Mr. Silver indicated that he had a twenty-five (25) minute telephone call on June 3, 2020 with Ms. Sarah Goodman, Senior Advisor, PMO, to discuss CMHC and MCAP's progress with respect to the CECRA program. Mr. Silver noted that he understood Ms. Goodman's role at that time to have involved tracking the implementation of COVID-19-related programs and further indicated that their conversation focused on providing information about CECRA program applicants and their experiences.

In her response to my request for information, Ms. Goodman began by noting that, shortly after the COVID-19 pandemic began, she was given additional duties related to the delivery of economic relief and support programs, including both the CECRA and CEWS programs.

Ms. Goodman indicated that Mr. Silver sent her an email on June 3, 2020 requesting a "chat about CECRA and how the program is progressing" and that she spoke with him by telephone later that same day.

Ms. Goodman noted that Mr. Silver began the call by stating that Ms. Telford had voluntarily established a screen to prevent any real or apparent conflicts of interest from arising and that he stated the purpose of the call was to discuss the implementation of the CECRA program.

Ms. Goodman also noted that she was interested to hear Mr. Silver's perspective as the initial volume of applications following the launch of the CECRA program on May 25, 2020 was lower than had been anticipated, landlords and tenants had expressed concerns about what they perceived as an "overly robust application process" and media reports had highlighted challenges with the CECRA program. Ms. Goodman further noted that her call with Mr. Silver came at time when "parties were trying to determine if there were ways to streamline the [CECRA] program, while also maintaining appropriate integrity measures".

Ms. Goodman indicated that Mr. Silver explained how CMHC and MCAP were working through various issues with the CECRA application process, recognizing both the complexity of commercial rent agreements and the need to take appropriate measures to deter and prevent fraud. Ms. Goodman stated that although she did not recall Mr. Silver's specific comments, she did recall that his views on the implementation of the CECRA program were generally consistent with updates that had been provided by CMHC officials. Ms. Goodman further stated that she benefitted from her conversation with Mr. Silver, which gave her a better understanding of the operation of the CECRA program and the perspective of someone who works in the commercial rental market sector.

Ms. Goodman indicated that Mr. Silver emailed her the following day, forwarding a message from a commercial property owner that "detailed the process around CECRA, which in part explained the low initial uptake, but inferred that application volumes would climb as landlords and tenants worked through the process".

Ms. Goodman also stated that she initiated a subsequent follow-up call with Mr. Silver. She indicated that although she was unable to confirm the exact date of the call, she believed that it occurred one or two weeks following her initial conversation with Mr. Silver. Ms. Goodman indicated that, at the time of this second call, the volume of CECRA applications remained low and she was interested to know if Mr. Silver had any further insights as well as the nature of any feedback MCAP had received from users of the CECRA program. Ms. Goodman indicated that Mr. Silver reiterated his view that "uptake would climb as more large tenants came on board" and stated that this follow-up conversation was the last communication, written or verbal, that she had with Mr. Silver.

In this connection, Ms. Goodman further stated that, as she had responsibilities relating to the CEWS program and was aware that the OCL was "looking into Mr. Silver's engagements on CEWS", she did not recall Mr. Silver ever raising the CEWS program during their communications or having any discussion with him related to the CEWS program.

Although Ms. Goodman's communications with Mr. Silver in June 2020 were in respect of the CECRA program, they appear to have been focused on operational aspects of implementing and administering this program, which would not qualify as a subject matter referred to in paragraph 7(1)(a) of the Act.

That said, however, to the extent that any of these communications contributed to changes in the manner in which the CECRA program was administered, they could be construed, on a

purposive interpretation, as relating to the development or amendment of a program of the Government of Canada within the meaning of subparagraph 7(1)(a)(iv) of the Act.

In any event, however, the low volume and short duration of these communications – either on their own or in combination with all other communications that representatives of MCAP, including Mr. Silver, had with federal public office holders in respect of the subject matters referred to in paragraph 7(1)(a) of the Act during the time period under investigation – falls well short of the significant part of duties registration threshold set out in paragraph 7(1)(b) of the Act.

As also noted above, Mr. Silver indicated that he and one of his MCAP colleagues had a thirty (30) minute telephone call on June 22, 2020 with Mr. Scott Drover, Senior Business Partner, Communications and Marketing at CMHC, that focused on identifying CECRA program applicants who could provide positive testimonials about their experiences for circulation on social media in order to encourage reluctant landlords to make applications.

As a CMHC employee, Mr. Drover is not a public office holder within the meaning of subsection 2(1) of the Act. Consequently, this communication is not included in determining whether MCAP employees, including Mr. Silver, met the significant part of duties registration threshold set out in paragraph 7(1)(b).

Communications with public office holders in the Office of the Minister of Finance and an official in PMO re: CEWS and Insured Mortgage Purchase Programs

As noted in the Process section above, Mr. Silver confirmed that, between April 17 and May 15, 2020, he had communications, consisting of telephone calls as well as email and text exchanges, with Mr. Tyler Meredith, then-Director of Policy in the Office of the Minister of Finance,

Mr. Elder Marques, then-Chief of Staff to the Minister of Finance and Mr. Michael McNair, who was, at that time, providing volunteer support in the PMO during the pandemic.¹⁹

In his letter to the OCL on September 4, 2020, Mr. Silver provided the following detailed information about his communications with Mr. Meredith, Mr. Marques and Mr. McNair:

- On April 17, 2020, shortly after the legislation that created the CEWS program had received royal assent, Mr. Silver contacted Mr. Meredith to discuss “CEWS eligibility”; Mr. Silver confirmed that this contact resulted in a telephone call and an exchange of text messages totalling approximately thirty (30) minutes; Mr. Silver noted that Mr. Meredith confirmed that the Office of the Minister of Finance had heard from a number of organizations about this eligibility issue; Mr. Silver indicated that he suggested that MCAP’s Chief Financial Officer speak with Ministry of Finance officials about this matter;
- On April 21, 2020, Mr. Silver indicated that he provided Mr. Meredith with the text of the short legislative amendment proposed by MCAP’s Chief Financial Officer to address the issue of CEWS eligibility; Mr. Silver estimated that it took him approximately two (2) minutes to prepare and send this message;

- On April 22, 2020, Mr. Silver indicated that he sent Mr. Meredith a message to ensure that Mr. Meredith was aware that the Insured Mortgage Purchase Program was having implementation issues; Mr. Silver stated that he did not advocate any position, change or outcome with respect to this program and estimated that it took him approximately two (2) minutes to send this message;
- On April 23, 2020, Mr. Silver indicated that he followed up with Mr. Meredith to advise him that MCAP's Chief Financial Officer had not heard back from "applicable civil servants"; Mr. Silver estimated that this communication took approximately five (5) minutes;
- On April 28, 2020, Mr. Silver spoke with Mr. Marques and forwarded him the proposed legislative language that he had previously provided to Mr. Meredith; Mr. Silver estimated that this communication took approximately fifteen (15) minutes;
- On May 4, 2020, Mr. Meredith called Mr. Silver to advise him that an announcement would be made shortly with respect to amendments to the legislation that created the CEWS program; Mr. Silver stated that the substance of the amendments was not discussed during this call;
- On May 6, 2020, Mr. Silver stated that he sent Mr. Meredith an email thanking him for his time and requesting that Mr. Meredith notify MCAP when the legislative changes would be posted; Mr. Silver estimated that his communications with Mr. Meredith on May 4 and May 6, 2020 took a combined total of seven (7) minutes;
- On May 11, 2020, Mr. Silver contacted Mr. McNair to ask him if he knew what progress was being made with regard to the amendments to the legislation; Mr. Silver stated that the substance of the amendments was not discussed; and
- On May 15, 2020, Mr. Silver followed up with Mr. McNair; Mr. Silver estimated that his communications with Mr. McNair on May 11 and May 15, 2020 took a combined total of seven (7) minutes.

As also noted in the Process section above, counsel to Mr. Silver contends that the two communications with Mr. McNair on May 11 and May 15 are not subject to the Act as Mr. McNair was not a public office holder on these dates. This representation is consistent with the information provided by the Prime Minister, which confirmed that Mr. McNair was not employed in the PMO at the time of these communications. As Mr. McNair was not employed as a ministerial staff member in the PMO when he communicated with Mr. Silver in May 2020, I am of the view that he did not meet the definition of "public office holder" within the meaning of subsection 2(1) of the Act at that time. For this reason, Mr. Silver's two brief communications with Mr. McNair are not included in determining whether MCAP employees, either individually or collectively, met the significant part of duties threshold set out in paragraph 7(1)(b) of the Act.

In his letter to the OCL, transmitted as part of the response provided by Ms. Freeland, Mr. Meredith confirmed that he spoke by telephone with Mr. Silver on April 17 and May 4, 2020

and that he and Mr. Silver communicated by email during this period of time. In particular, Mr. Meredith provided the OCL with copies of eleven (11) emails with Mr. Silver between April 17 and May 15, 2020, including three (3) on April 17, one (1) on April 27, four (4) on May 4, one (1) on May 6 and two (2) on May 15. With the exception of three (3) emails, discussed in greater detail below, these emails were logistical in nature and involved making arrangements to speak by telephone on April 17 and May 4, 2020. This information is consistent with both the annotated timeline and the associated documents provided to the OCL by Ms. Freeland.

With respect to his conversation with Mr. Silver on April 17, 2020, Mr. Meredith stated that he told Mr. Silver that it would be best for MCAP's Chief Financial Officer to discuss eligibility for CEWS with departmental officials. In particular, Mr. Meredith indicated that he referred Mr. Silver to Mr. Ted Cook, Director General, Tax Legislation in the Department of Finance. Mr. Meredith noted that Mr. Cook was an official in the Tax Policy Branch specializing in interpretations of the *Income Tax Act* and that Mr. Cook had been involved in assisting then-Minister Morneau with the design of the Canada Emergency Wage Subsidy legislation.

Mr. Meredith confirmed this information in his sworn affidavit, adding that during this telephone conversation, Mr. Silver sought to clarify "the impact of non-taxable entity ownership interests in a limited partnership" on such a limited partnership's qualification for CEWS. In his affidavit, Mr. Meredith indicated that he told Mr. Silver that this was an interesting policy question and that he mentioned "that it was relevant because other stakeholders were raising other policy issues around interpretation and implementation of CEWS rules". He noted that "such live issues were anticipated" given that CEWS was a "swift and sweeping program". Mr. Meredith also reiterated that he suggested that Mr. Silver not directly engage with the Department of Finance and that, in his view, "it would be best for [MCAP's] Chief Financial Officer or someone else within the MCAP organization to speak with an official in Finance Canada". Mr. Meredith estimated that this telephone conversation lasted approximately twenty (20) minutes. This time estimate is consistent with the thirty (30) minutes that Mr. Silver estimated the call and associated messages he exchanged with Mr. Meredith on April 17, 2020 to have taken.

In his affidavit, Mr. Meredith clarified that, on April 17, 2020, after his phone conversation with Mr. Silver, he called the Associate Assistant Deputy Minister (AADM) of the Tax Policy Branch in the Department of Finance. Mr. Meredith indicated that he informed the AADM that he had been receiving "questions and comments from stakeholders on the details of the disqualification of non-taxable entity ownerships from the CEWS benefit". Mr. Meredith further indicated that he and the AADM agreed that "if anyone wanted to speak to the department about CEWS interpretation matters, they should speak with Mr. Ted Cook, the Director General of Tax Legislation at Finance Canada" as Mr. Cook was "involved in the design of the CEWS legislation".

In his affidavit, Mr. Meredith further clarified that, on April 17, 2020, after his call with the AADM, he followed up with Mr. Silver and indicated that MCAP's Chief Financial Officer could reach out to Mr. Cook. Mr. Meredith also indicated that he advised Mr. Silver that Finance Canada "had not yet sorted out the materiality test with respect to the CEWS exemption". Mr. Meredith further indicated that he did not recall how this communication took place or for how long it lasted.

In his initial letter to the OCL, Mr. Meredith stated that, following this conversation, Mr. Silver followed up with him via Twitter direct message on or around April 17, 2020 to “offer some specific legislative language to address MCAP’s specific concern about eligibility [for CEWS]”. Mr. Meredith stated that, to the best of his recollection, he encouraged Mr. Silver to engage with departmental officials about any such proposals. Mr. Meredith indicated that he no longer had these records as they were deleted sometime in the Spring of 2020 as he routinely does for transitory communications on his personal social media accounts.

In his sworn affidavit, Mr. Meredith confirmed the information that he provided in his initial letter to the OCL, specifying that “some days following” his phone call with Mr. Silver on April 17, 2020, Mr. Silver sent him a direct message through Twitter in which Mr. Silver “offered some specific legislative language to address MCAP’s concern about CEWS eligibility”. Mr. Meredith stated that he did not recall the exact date on which this occurred. Mr. Meredith reiterated that he encouraged Mr. Silver to have MCAP’s Chief Financial Officer engage with departmental officials about any such proposals. Mr. Meredith indicated that he is no longer in possession of this record as it is not unusual for him to delete transitory communication on his social media accounts, including on Twitter. Mr. Meredith further stated that, to the best of his recollection, this exchange most likely corresponds to the April 21 communication described by Mr. Silver in his letter to the OCL on September 4, 2020.

In this connection, it is important to note that, as indicated in the Process section above, the Deputy Minister of Finance confirmed that there is no indication that any public servants in the Department of Finance involved in developing or amending CEWS, including Mr. Cook and/or any other public servants in the Tax Policy Branch, had any communications with any representatives of MCAP, including both Mr. Silver and MCAP’s Chief Financial Officer, in respect of CEWS between April 1 and May 31, 2020. Mr. Meredith also confirmed in his sworn affidavit that he was not aware of Mr. Silver or any other representatives of MCAP having any communication in respect of CEWS during the period of April 1 and May 31, 2020 with any public servants in the Department of Finance, including Mr. Cook.

It is also worth noting that, in his initial response, Mr. Meredith stated that he did not brief Mr. Morneau “on the outreach from MCAP or their suggested legislative changes” and that such outreach “did not factor into any decision”. Mr. Meredith further stated that “[n]o preferential treatment was asked for, considered, or given to MCAP on this matter” and that “[t]his is the only matter on which I have ever interacted with anyone at MCAP”.

In his sworn affidavit, Mr. Meredith indicated that he was not able to locate a copy of Mr. Silver’s April 22, 2020 email in respect of the Insured Mortgage Purchase Program. However, Mr. Meredith stated that he recalled that Mr. Silver had reached out to him regarding this program and that Mr. Silver had indicated that, in his view, this program had not been priced effectively. Mr. Meredith also stated that he thanked Mr. Silver for this feedback and that he did not have any further discussion of this issue with Mr. Silver or any other representatives of MCAP.

In his affidavit, Mr. Meredith stated that, to the best of his recollection, he may have exchanged one other message, likely a direct message on Twitter, and/or had one additional phone call with Mr. Silver during the week of April 20, 2020. Mr. Meredith further stated, however, that he does not have any records or a firm recollection of any such other communication(s).

Mr. Meredith stated that he “would not have conveyed anything firm or substantive, as the decision on the CEWS eligibility matter had not yet been confirmed”. Mr. Meredith also stated that he “likely would have explained the difficulty associated with this issue and that [Finance Canada] had heard from a number of stakeholders”.

With respect to the communication that Mr. Silver indicated he had with Mr. Meredith on April 23, 2020, in which he advised Mr. Meredith that MCAP’s Chief Financial Officer had not heard back from any officials in the Department of Finance, Mr. Meredith stated that he had not been able to locate a copy of any document from Mr. Silver on this date. Mr. Meredith further stated that, to the extent this communication had taken place on Twitter, he would have deleted it as a transitory communication as described above.

On April 27, 2020, Mr. Silver emailed Mr. Meredith and asked if he had time that day to speak. According to the annotated timeline provided by Ms. Freeland, Mr. Meredith did not respond to this request. In his sworn affidavit, Mr. Meredith stated that, to the best of his recollection, he did not immediately respond to Mr. Silver’s April 27 email. Based on the information collected, no such conversation took place.

As set out in the documents provided by Ms. Freeland,²⁰ Mr. Silver emailed Mr. Marques later that same day to ask Mr. Marques if he had time for a brief conversation “in the next day or so”. Mr. Marques responded by email to say that he had time the following afternoon and they agreed to speak at 1:00 pm in a subsequent exchange.

On April 28, 2020, Mr. Marques and Mr. Silver had a telephone conversation, following which Mr. Silver emailed Mr. Marques proposed changes to CEWS. As reflected in the email provided by Ms. Freeland, Mr. Silver’s April 28 email to Mr. Marques reads as follows:

Thanks again for your time.

The language that works for us but keeps out crown corps is:

‘A partnership, where members owning a minimum of 10 percent of partnership units directly or indirectly are described in this paragraph or any of paragraphs (a) to (d)’

Happy to discuss at any time with anyone in your office or in the ministry.

Appreciate it.

RS

[emphasis added]

As described in greater detail below, this proposed language would modify paragraph (e) of the definition of “eligible entity” included among the legislative amendments to the *Income Tax Act* that created CEWS when the *COVID-19 Emergency Response Act, No. 2* (Bill C-14) received royal assent on April 11, 2020:

(e) a partnership, all of the members of which are described in this paragraph or any of paragraphs (a) to (d);²¹

[emphasis added]

As originally promulgated, paragraph (a) of the definition of “eligible entity” provided as follows:

(a) a corporation, other than a corporation that is exempt from tax under this Part or is a public institution;²²

The combined effect of paragraphs (a) and (e) was to preclude MCAP from being eligible to claim benefits under the CEWS program in respect of 65% of its employees because, as described in Mr. Silver’s letter to the OCL dated September 4, 2020 and set out above, one of MCAP’s major investors, the Caisse de dépôt et placement du Québec, is a tax exempt pension fund. As such, MCAP did not qualify as an “eligible entity” as this term was originally defined in the legislation that created CEWS because it was in a limited partnership with an ineligible entity, namely a tax-exempt corporation excluded from this definition under the exception set out in paragraph (a).

As set out in the annotated timeline provided by Ms. Freeland, Mr. Marques did not respond to Mr. Silver’s April 28 email.

According to this timeline and as reflected in the associated documents provided by both Mr. Meredith and Ms. Freeland, Mr. Meredith emailed Mr. Silver on May 4, 2020 to request a telephone conversation. Mr. Silver responded shortly thereafter and they agreed to speak that same day. On May 4, 2020, Mr. Silver and Mr. Meredith had a telephone conversation.

In his affidavit, Mr. Meredith confirmed that he spoke with Mr. Silver by telephone on May 4, 2020. Mr. Meredith indicated that he does not have any records or a firm recollection of this conversation. Mr. Meredith again stated that he would not have conveyed anything substantive at that time given that the Department of Finance had not made any decision with respect to CEWS eligibility and that he likely explained the complexity associated with this issue. Mr. Meredith stated that, to the best of his recollection, this conversation would have taken approximately five (5) to ten (10) minutes.

On May 6, 2020, Mr. Silver emailed Mr. Meredith to thank him for his time and to request that Mr. Meredith let him know “when the exemptions are official and public” or, alternatively, “where [the announcement] will be posted so [he] can keep an eye out for it”.

As set out in his sworn affidavit, Mr. Meredith stated that, in mid-May, Michael McNair, former Head of Policy and Senior Economic Advisor to the Prime Minister, “reached out to me in follow up to an apparent communication he had with Mr. Silver”. Mr. Meredith stated that Mr. McNair

suggested that he respond to Mr. Silver “to let him know that Finance Canada’s policy decision would soon be reached”.

As reflected in the annotated timeline and the associated documents provided by both Mr. Meredith and Ms. Freeland, Mr. Meredith emailed Mr. Silver on May 15, 2020 to advise him that updates to CEWS would be announced shortly. Mr. Meredith’s email to Mr. Silver reads as follows:

Sorry for the delay the timeline has been a bit all over the map because of moving pieces on other items related to the package it’s part of. That’s now resolved You should see a final announcement very shortly.

Approximately twenty (20) minutes thereafter, Mr. Silver responded to Mr. Meredith by email, the text of which reads as follows:

I appreciate you finally getting back to me.

I’m really upset about the substantive decision - the logic you gave me makes even less sense the more I thought it through - but even more disappointed about the process.

But life goes on.

Be well.

On May 15, 2020, the Department of Finance issued a news release in which then-Minister Morneau announced not only that the Government of Canada would be extending CEWS by an additional twelve (12) weeks to August 29, 2020, but also that “regulations to extend eligibility for the CEWS” had been approved, including for “partnerships that are up to 50 percent owned by non-eligible members”.²³ This is the “announcement” about the “package” referred to in Mr. Meredith’s May 15 email.

In contrast to the 10 percent ownership threshold for non-eligible members set out in the proposed language that Mr. Silver provided to Mr. Marques on April 28, 2020, the 50 percent threshold that was ultimately included in the approved regulation continued to preclude MCAP from claiming benefits under the CEWS program in respect of 65 percent of its employees.

As set out in the *Canada Gazette*,²⁴ the approved regulation, entitled *Regulations Amending the Income Tax Regulations (COVID-19 — Eligible Entities)*,²⁵ was made by the Governor in Council on the recommendation of the Minister of Finance pursuant to section 221 of the *Income Tax Act*. The amendments to the definition of the term “eligible entity” effected through this regulation were deemed to have come into force on April 11, 2020, the date on which Bill C-14 originally received royal assent.

Based on all of the information gathered, I am of the view that Mr. Silver’s communications with Mr. Meredith and Mr. Marques in April and May 2020 were focused on proposing changes to the definition of “eligible entity” to be included in a regulation that was under consideration at that time by the then-Minister of Finance and which was subsequently approved by the

Governor in Council and publicly announced on May 15, 2020, the last day on which Mr. Silver communicated with Mr. Meredith.

Seen in this light, I am also of the view that these communications were in respect of “the making or amendment of a regulation as defined in subsection 2(1) of the *Statutory Instruments Act*” within the meaning of sub-paragraph 7(1)(a)(iii) of the Act.

Subsection 2(1) of the *Statutory Instruments Act* defines the term “regulation” as:

a statutory instrument

(a) made in the exercise of a legislative power conferred by or under an Act of Parliament, or

(b) for the contravention of which a penalty, fine or imprisonment is prescribed by or under an Act of Parliament,

and includes a rule, order or regulation governing the practice or procedure in any proceedings before a judicial or quasi-judicial body established by or under an Act of Parliament, and any instrument described as a regulation in any other Act of Parliament; (*règlement*)

[emphasis added]

As noted above, the *Regulations Amending the Income Tax Regulations (COVID-19 — Eligible Entities)* were made pursuant to section 221 of the *Income Tax Act*, which confers broad regulation-making authority upon the Governor in Council. As such, these *Regulations* were clearly made in the exercise of a legislative power conferred by or under an Act of Parliament within the meaning of subsection 2(1) of the *Statutory Instruments Act*.

In addition, given that CEWS is a program of the Government of Canada, these communications can also be understood to relate to “the development or amendment of a policy or program of the Government of Canada” as set out in subparagraph 7(1)(a)(iv) of the Act.

Communications with officials from the Bank of Canada

Members of the Board of Directors of the Bank of Canada, including the Governor and Senior Deputy Governor,²⁶ the Deputy Minister of Finance, who sits as a member of the Board, as well as the other twelve (12) Directors all qualify as “public office holders” within in the meaning of paragraph (b) of the definition of this term set out in subsection 2(1) of the Act.²⁷

Significantly, however, officers and employees of the Bank of Canada, including the four Deputy Governors appointed pursuant to subsection 7(1) of the *Bank of Canada Act*, do not qualify as “public office holders” as defined in the Act as they do not qualify as “officers or employees of Her Majesty in Right of Canada” within the meaning of subsection 2(1).²⁸

With respect to the current and former Governors of the Bank of Canada, Mr. Tiff Macklem and Mr. Stephen Poloz, respectively, the former Senior Deputy Governor, Ms. Carolyn A. Wilkins, the

twelve (12) Directors on the Bank's Board of Directors and the Deputy Minister of Finance, the Bank confirmed that none of these individuals had any communications with any representatives of MCAP, including Mr. Silver.

As noted above, Mr. Silver indicated that on February 20, 2020, he and Mr. Don Ross, Executive Vice-President of MCAP, participated in a ninety (90) minute meeting with Mr. Paul Beaudry, one of four Deputy Governors of the Bank of Canada, during which the participants discussed MCAP's business. Mr. Silver also indicated that he and Mr. Ross participated in a thirty (30) minute call on March 31, 2020 with unspecified Bank officials to discuss the Insured Mortgage Purchase Program.

As further clarified in the representations that Mr. Aldridge and Mr. Silver provided on June 4, 2021, Mr. Silver did not play any role in arranging either of these two meetings with officials from the Bank of Canada.

As also noted above, the Deputy Governors of the Bank of Canada do not qualify as "public office holders" within the meaning of subsection 2(1) of the Act. As such, Mr. Silver and Mr. Ross' meeting with Mr. Beaudry is not included in determining whether representatives of MCAP, including Mr. Silver, met the significant part of duties registration threshold set out in paragraph 7(1)(b) of the Act.

For the same reasons, the thirty (30) minute call that Mr. Silver and Mr. Ross had on March 31, 2020 with unspecified Bank officials to discuss the Insured Mortgage Purchase Program is similarly not included in determining whether representatives of MCAP met the significant part of duties registration threshold. In responding to my request for information, the Bank confirmed that none of the individuals who qualify as "public office holders" within the meaning of subsection 2(1) of the Act had any communications with any representatives of MCAP, including Mr. Silver. None of the Bank's officers or employees, including the unspecified officials who participated in this call, qualify as "public office holders".

Communication with Minister Mendicino

As noted in the Process section above, Mr. Silver indicated that he communicated with Mr. Mendicino for approximately thirty (30) minutes on May 11, 2020 and that this communication consisted of a "request for information on whether there were any changes to Canada's intended immigration targets during and following the COVID-19 pandemic".

In responding to the OCL, Mr. Mendicino began by noting that he has known Mr. Silver since his election as a Member of Parliament in 2015, that he has socialized on occasion with Mr. Silver and developed a friendship based, in part, on a shared understanding of the impacts of public life on family as well as a shared interest in baseball.

Mr. Mendicino confirmed that he had a communication with Mr. Silver by telephone on May 11, 2020 for approximately 20 to 30 minutes. Mr. Mendicino characterized this communication as a personal conversation during which he and Mr. Silver spoke "mostly about our families and the daily challenges of life presented by the initial wave of the COVID-19

pandemic". Mr. Mendicino indicated that this conversation included a brief and general discussion about immigration, during which he mentioned his repeated and publicly-stated belief that immigration will continue to play a role in Canada's economic recovery and long-term prosperity. Mr. Mendicino further indicated that during this conversation, he sought Mr. Silver's suggestions on "possible validators who shared an equally positive outlook in the hopes of sustaining public confidence on immigration" and noted that he did not connect this conversation to any role that Mr. Silver has with MCAP as he was unaware at that time that Mr. Silver was employed by MCAP.

Mr. Mendicino confirmed that no other public office holders and no other representatives of MCAP participated in this telephone conversation and that no items were identified for follow up.

Mr. Mendicino also provided copies of text messages he exchanged with Mr. Silver between May 11 and August 20, 2020. These messages were mostly of a personal nature and involved comments on family life, current events and baseball.

Mr. Mendicino noted that he and Mr. Silver had brief personal telephone calls on May 31 and July 17, 2020. Mr. Mendicino indicated that both calls involved brief personal exchanges. Mr. Mendicino further indicated that the call on May 31 included a short discussion following up on his request for "ideas about validators for the perspective that immigration would have a beneficial impact on Canada's post-economic recovery" and that the July 17 call touched on "Major League Baseball's request to play in Canada during its regular season".

Mr. Mendicino confirmed that, to the best of his knowledge and recollection, neither he nor any current or former ministerial staff members in the Office of the Minister of Immigration, Refugees and Citizenship had any other communications with any representative(s) of MCAP, including Mr. Silver, since January 1, 2020.

Mr. Mendicino also confirmed that he was not aware of any communications between any representatives of MCAP, including Mr. Silver, and any Cabinet Ministers, Parliamentary Secretaries, members of Parliament or any of their respective staff members since January 1, 2020.

Based on the information collected, there were differences in the stated purpose of the May 11, 2020 communication in Mr. Silver and Mr. Mendicino's respective representations.

In particular, whereas Mr. Silver stated that his May 11, 2020 conversation with Mr. Mendicino consisted of a "request for information on whether there were any changes to Canada's intended immigration targets during and following the COVID-19 pandemic", Mr. Mendicino stated that this May 11 communication was a personal conversation which included a brief general discussion about immigration and during which he sought Mr. Silver's suggestions on "possible validators who shared an equally positive outlook in the hopes of sustaining public confidence on immigration".

In addition, Mr. Mendicino provided copies of text messages he exchanged with Mr. Silver between May 11 and August 20, 2020, which were mostly of a personal nature and involved

comments on family life, current events and baseball. Mr. Mendicino also noted that he and Mr. Silver had brief personal telephone calls on May 31, which included a short discussion following up on his request for his ideas about validators with positive views about the contributions immigration could make to Canada's post-pandemic economic recovery, and July 17, 2020, which touched on "Major League Baseball's request to play in Canada during its regular season".

In his voluntary disclosure to the OCL on September 4, 2020, Mr. Silver did not make reference to either of the two telephone calls on May 31 or July 17 or to the text messages he exchanged with Mr. Mendicino between May 11 and August 20, 2020. In the representations provided to the OCL on June 4, 2021, Mr. Silver stated that he did not identify these communications as being relevant because they were not made on behalf of MCAP. Mr. Silver clarified that his objective in making his voluntary disclosure was to provide a full list of all of his "communications with government on behalf of MCAP" and that it was not his intent to omit anything that could be relevant to the OCL.

To the extent that Mr. Silver's conversation with Mr. Mendicino on May 11, 2020 did, in fact, consist of a request for information on Canada's intended post-pandemic immigration targets, this communication would not appear to be subject to the Act on the basis that it constituted a "request for information" within the meaning of paragraph 4(2)(c).

With respect to Mr. Mendicino and Mr. Silver's exchange of text messages and telephone conversation on July 17, 2020 regarding Major League Baseball, Mr. Mendicino was seeking perspective from Mr. Silver in his personal capacity and, therefore, these communications were not on behalf of MCAP as required by paragraph 7(1)(a) of the Act. There is also no indication that Mr. Silver sought to influence any particular decisions that Mr. Mendicino made in this regard. For these reasons, these communications are not included in determining whether MCAP met the significant part of duties threshold set out in paragraph 7(1)(b).

With respect to Mr. Mendicino's request that Mr. Silver provide suggestions about individuals who could act as possible pro-immigration validators, such communications could only be understood to constitute a subject matter referred to in paragraph 7(1)(a) of the Act (and hence included in determining whether MCAP met the significant part of duties registration threshold) to the extent that they could be seen to have been not only on behalf of MCAP, but also in respect of the development of an immigration-related policy, program or legislative initiative of the Government of Canada.

Even to the extent that any communications between Mr. Silver and Mr. Mendicino could be understood to have engaged Mr. Silver's work on behalf of MCAP and to have related to the development of a policy, program or legislative initiative of the Government of Canada, these communications, which spanned a more-than-three-month time period, were both low in volume and short in duration and, consequently, could not be understood to have met the significant part of duties registration threshold set out in paragraph 7(1)(b) of the Act.

Significant part of duties

As noted above, the senior officer responsible for an organization or corporation must register in-house lobbying activities when employees of the organization or corporation communicate with federal public office holders on their behalf in respect of any the subject matters referred to in paragraph 7(1)(a) *and* those communications constitute, either individually or collectively, a “significant part of the duties” of any one employee within the meaning of paragraph 7(1)(b) of the Act.

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

As set out above, the period between April 15 and May 15, 2020 was the highest-volume four-week period of activity during which Mr. Silver had communications with federal public office holders in respect of a subject matter referred to in paragraph 7(1)(a) of the Act. During this period of time, Mr. Silver spent approximately one hour and ten minutes (1 hr. 10 min.) communicating via telephone, email and Twitter direct message with Mr. Meredith and Mr. Marques, then-ministerial staff members in the Office of the Minister of Finance, about a proposed amendment to the definition of “eligible entity” in regulations then under consideration, and which were subsequently issued pursuant to section 221 of the *Income Tax Act*, that would allow MCAP to claim the Canada Emergency Wage Subsidy (CEWS) in respect of all of its employees.

As noted above, the OCL includes preparation time in determining whether in-house lobbyists employed by an organization or corporation have individually or collectively met the significant part of duties registration threshold set out in paragraph 7(1)(b) of the Act.

In this investigation, I am of the view that the time spent by MCAP’s Chief Financial Officer and any other MCAP employees in developing the proposed amendment to the definition of “eligible entity” to be used in a regulation then under consideration by the former Minister of Finance, including the specific language of this proposed amendment, should count as preparation time for the purposes of determining whether MCAP employees met the significant part of duties threshold.

As stated in the representations that MCAP made to the OCL on June 4, 2021, MCAP’s Chief Financial Officer recalls that the time he spent preparing to communicate with Mr. Meredith and Mr. Marques about MCAP’s proposed change to the definition of “eligible entity” was short, less than one hour, and that the cumulative time spent by all MCAP employees making these preparations was well under two hours.

I find this to be a credible estimate of preparation time in light of the limited changes proposed. As reflected in the text of the change to paragraph (e) of the definition of the term “eligible entity” proposed by MCAP’s CFO, cited above in Mr. Silver’s April 28, 2020 email to Mr. Marques, the sought-after amendment was narrow and tailored to MCAP’s partnership structure insofar as it proposed replacing six (6) words from paragraph (e) of the definition of “eligible entity” (“all of the members of which”) with fourteen (14) different words (“where members owning a minimum of 10 percent of partnership units directly or indirectly”). The net effect of this proposed change would have been to allow MCAP to claim benefits under the CEWS program in respect of all MCAP employees, notwithstanding the tax-exempt status of one of its members. As noted above, the regulation that was ultimately passed extended CEWS eligibility to allow partnerships that were up to 50 percent owned by non-eligible members to qualify.

As noted, Mr. Silver spent a cumulative total of approximately one hour and ten minutes (1 hr. 10 min.) communicating with federal public office holders in respect of a subject matter referred to in paragraph 7(1)(a) of the Act between April 15 and May 15, 2020. To the extent that MCAP employees cumulatively spent an additional two (2) hours of associated preparation time during this period, the total amount of time spent by MCAP employees engaged in communications on registrable subject matters falls well below the significant part of duties registration threshold set out in paragraph 7(1)(b) of the Act.

This conclusion would remain unchanged even to the extent that Mr. Silver’s communications with Mr. Mendicino on May 11, May 31 and July 17, 2020 were included in this calculation.

Taken together, the low volume and short duration of Mr. Silver’s communications with public office holders in respect of subject matters referred to in paragraph 7(1)(a) of the Act, including two (2) hours of associated preparation time spent by MCAP employees, falls well short of the significant part of duties registration threshold set out in paragraph 7(1)(b) of the Act. Consequently, the senior responsible officer for MCAP was not required to register in-house (corporation) lobbying activities on behalf of MCAP during the period under investigation.

Conclusion

For all of these reasons, I conclude that Mr. Aldridge, the senior officer responsible for MCAP, did not fail to register in-house (corporation) lobbying activities pursuant to subsection 7(1) of the Act.

In light of this conclusion, Mr. Aldridge, as the senior officer for MCAP, was not subject to the obligation, set out in subsection 7(4) of the Act, to report eligible communications between MCAP employees and designated public holders in respect of any of the subject matters referred to in paragraph 7(1)(a).

It also follows, in accordance with paragraph 10.3(1)(b) of the Act, that none of MCAP’s employees, including Mr. Aldridge and Mr. Silver, was subject to the *Lobbyists’ Code of Conduct* during the time period under investigation.

Observations

The information collected during the course of this investigation demonstrates that the officer responsible for MCAP complied with the requirements of subsection 7(1) of the *Lobbying Act* (Act).

However, this investigation also demonstrates the challenges of tracking, monitoring and accounting for the time spent engaging in what amounts to in-house lobbying activities for the purposes of applying the “significant part of duties” registration threshold. In practice, this standard is difficult to apply and enforce.

More importantly, this threshold allows for a substantial volume of in-house lobbying activity to go unreported.

As noted above, subsection 7(1) of the Act requires organizations and corporations to register in-house lobbying activities when one or more individuals they employ:

- 1) communicate with federal public office holders on their behalf in respect of any of the subject matters listed in paragraph 7(1)(a) of the Act; and
- 2) engaging in such communications constitutes, either individually or collectively, a “significant part of the duties” of any one employee within the meaning of paragraph 7(1)(b).

To the extent that both of these two conditions are met, the employee who holds the most senior office in the organization or corporation is responsible for filing an in-house registration return on behalf of the organization or corporation in the Registry of Lobbyists.

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

As I recently recommended in [Recommendation 1](#) of the preliminary recommendations I made to improve the Act at the request of the Standing Committee on Access to Information, Privacy and Ethics, the Act should be amended to remove the “significant part of duties” registration threshold for in-house lobbyists set out in paragraph 7(1)(b) and replaced by an obligation for all corporations and organizations whose employees lobby federal public office holders to register such in-house lobbying activities by default, unless they qualify for a limited exemption based on objective criteria.

In my view, this change would enhance transparency by requiring a greater proportion of paid lobbying activities to be reported in the Registry of Lobbyists. It would also reduce complexity for corporations and organizations in determining whether they are required to register and

lessen the administrative burden of tracking, monitoring and accounting for the time their employees spend engaged in such in-house lobbying activities. For a more comprehensive description of this recommendation and other suggested improvements to the Act, please refer to the report entitled "[Improving the *Lobbying Act*: Preliminary Recommendations](#)" on the OCL website.

Endnotes

- 1 "Improving the *Lobbying Act*: Preliminary recommendations" (February 2021), Office of the Commissioner of Lobbying, online: <https://lobbycanada.gc.ca/en/reports-and-publications/improving-the-lobbying-act-preliminary-recommendations/>
- 2 MCAP Corporate Profile, online: <https://www.mcap.com/about-mcap/corporate-profile>
- 3 Rule 6 of the Code precludes lobbyists from proposing or undertaking any actions that would place a federal public office holder in a real or apparent conflict of interest. Rules 7 and 8 of the Code preclude lobbyists from arranging a meeting for another person with (Rule 7) and from lobbying (Rule 8) a public office holder with whom the lobbyist shares a relationship that could reasonably be seen to create a sense of obligation.
- 4 Marieke Walsh, "Spouse of PM's chief of staff had meeting on Liberal rent-relief program", *The Globe and Mail* (August 7, 2020), online: <https://www.theglobeandmail.com/politics/article-spouse-of-pms-chief-of-staff-had-meeting-on-liberals-rent-relief/>
- 5 This article quoted the spokesperson as confirming that CMHC elected to engage the services of a sub-administrator to deliver the CECRA program as CMHC did not have the internal capacity to quickly stand up this program. The spokesperson also confirmed that the contract to administer the CECRA program was awarded to MCAP after CMHC requested proposals from two institutions, noting that "MCAP presented a stronger proposal and the lowest cost of the two".
- 6 On April 24, 2020, the Prime Minister [announced](#) that the federal government had reached an agreement in principle with all provinces and territories to implement the Canada Emergency Commercial Rent Assistance (CECRA) program for small businesses, which would lower rent by 75 per cent for small businesses that had been affected by COVID-19.

« Prime Minister announces partnerships with provinces and territories to deliver the Canada Emergency Commercial Rent Assistance for small businesses », (News Release, April 21, 2020), Prime Minister of Canada, online : <https://pm.gc.ca/en/news/news-releases/2020/04/24/prime-minister-announces-partnerships-provinces-and-territories>
- 7 See Evan Siddall's Twitter thread on August 13, 2020, online: <https://twitter.com/ewsiddall/status/1293849329757835265>
- 8 Justin Ling, "Spouse of Trudeau's Chief of Staff Lobbied for COVID Wage Subsidy Changes to Benefit his Company", *Vice News* (August 21, 2020), online: <https://www.vice.com/en/article/935m87/spouse-of-justin-trudeaus-chief-of-staff-lobbied-for-covid-wage-subsidy-program-changes-to-benefit-his-company>
- 9 Bill C-14 (*A second Act respecting certain measures in response to COVID-19*), which was assented to on April 11, 2020, amended the *Income Tax Act* to introduce an emergency wage subsidy as part of the response to the COVID-19 pandemic. This measure applied to "eligible entities", which were defined as including, among other categories of businesses: corporations, other than a corporation that is exempt from tax under this Part or is a public institution (paragraph (a)); and partnerships, all of the members of which are described in this paragraph or any of paragraphs (a) to (d) (paragraph (e)). The Caisse de dépôt did not qualify as an eligible entity as it met the exception set out in paragraph (a) and MCAP did not qualify on the basis that one of the members of its partnership was an ineligible entity pursuant to the exception in paragraph (a).

10 In his response to my request for information, the Prime Minister confirmed that, at the time of Mr. McNair's communications with Mr. Silver in May, Mr. McNair was not an employee and did not hold a position in the Prime Minister's Office (PMO). The Prime Minister noted that Mr. McNair provided volunteer support during the pandemic and that he joined the PMO as an employee from June 15 to September 25, 2020. The Prime Minister indicated that Mr. McNair consulted with the Office of the Conflict of Interest and Ethics Commissioner, which confirmed that Mr. McNair was not a designated public office holder when he communicated with Mr. Silver in May 2020 and that he did qualify as a designated public office holder during his period of employment at PMO between June 15 and September 25, 2020. The Prime Minister stated that, when Mr. Silver contacted Mr. McNair in May 2020, Mr. Silver was redirected to the Office of the Minister of Finance.

11 See Bill Curry, "Watchdog reviewing report that Rob Silver contacted senior Liberal staff on behalf of employer", *The Globe and Mail* (August 21, 2020), online:

<https://www.theglobeandmail.com/politics/article-watchdog-reviewing-report-that-rob-silver-contacted-senior-liberal/>

In response to questions about whether Mr. Silver contacted the Office of the Minister of Finance in respect of CEWS, the article quoted a spokesperson from that Office as follows:

Our office interacts regularly with a broad range of stakeholders to answer questions on government programs, including the wage subsidy [CEWS]. These discussions are always done in full respect of the rules in place. ... Any report of any interaction that could be described as pressure is completely false.

12 As set out in the "Communications with officials from the Bank of Canada", Mr. Beaudry is not a public office holder within the meaning of subsection 2(1) of the Act.

13 Although the Office of the Conflict of Interest and Ethics Commissioner would be consulted to determine if an individual is either a "public office holder" or a "reporting public office holder" as those terms are defined in subsection 2(1) of the *Conflict of Interest Act*, the term "designated public office holder" is a term of art used and formally defined in the *Lobbying Act*.

14 In his sworn affidavit, the Prime Minister also confirmed that his office identified five (5) former staff members, who held positions in which they were likely to interact with stakeholders. Four (4) of these former staff members confirmed that they did not have any interactions with Mr. Silver or any other representatives of MCAP while employed in the Prime Minister's Office. One (1) former staff member, Mr. Maxime Dea, stated that he interacted with Mr. Silver in January 2020, before Mr. Silver joined MCAP, in order to provide information to the Conflict of Interest and Ethics Commissioner to facilitate a voluntary conflict of interest screen established for Ms. Telford, Chief of Staff to the Prime Minister and spouse to Mr. Silver.

The Prime Minister further confirmed that two current staff members in his office had interactions with Mr. Silver. In particular, the Prime Minister indicated that Mr. Brett Thalmann, Executive Director, People, Planning and Administration in the PMO, communicated with Mr. Silver in January 2020, before Mr. Silver joined MCAP, for the purposes of setting up Ms. Telford's conflict of interest screen. The Prime Minister stated that Mr. Thalmann did not communicate with Mr. Silver on any government-related matters or on any matters related to Mr. Silver's work at MCAP. The Prime Minister also indicated that Ms. Brooke Malinoski, Manager of the Office of the Chief of Staff to the Prime Minister in the PMO, had numerous communications with Mr. Silver related to Ms. Telford's personal affairs. The Prime Minister stated that none of Ms. Malinoski's communications with Mr. Silver involved government matters or matters related to Mr. Silver's work at MCAP.

15 Canada, Parliament, *House of Commons Debates*, 33rd Parl, 2nd Sess, Vol 1, No 1-4 (12 April 1988).

16 "A significant part of duties (The 20% rule)" (July 2009), Office of the Commissioner of Lobbying, online: <https://lobbycanada.gc.ca/en/rules/the-lobbying-act/advice-and-interpretation-lobbying-act/a-significant-part-of-duties-the-20-rule/>

- 17** As set out subsections 6(2) and 7(1) of the *Canada Mortgage and Housing Corporation Act* (CMHC Act), respectively, the Chairperson of the CMHC Board of Directors and the President of CMHC are each appointed to their positions by the Governor in Council. In addition, the other eight (8) Directors on the CMHC Board are appointed by the Minister of Families, Children and Social Development with the approval of the Governor in Council pursuant to subsection 6(4) of the CMHC Act. The Deputy Ministers of Employment and Social Development and Finance are each appointed to their positions by the Governor in Council pursuant to paragraph 127.1(1)(a) of the *Public Service Employment Act*. Each of these individuals meets the definition of “public office holder” set out in paragraph (b) of the Act (“[any] person who is appointed to an office or body by or with the approval of the Governor in Council or a Minister of the Crown, other than a judge receiving a salary under the *Judges Act* or the lieutenant governor of a province”).
- 18** Subsection 2(1) of the Act defines public office holders as “any officer or employee of Her Majesty in Right of Canada” and goes on to set out a non-exhaustive list of specific categories of individuals who qualify as public office holders for the purposes of the Act. Subsection 13(1) of the CMHC Act, which empowers the CMHC Executive Committee to employ officers and employees for such purposes and on such terms and conditions as it may determine, explicitly provides that CMHC officers and employees “are not officers or servants of Her Majesty”. Taken together, therefore, CMHC officers and employees are explicitly excluded from the definition of the term “public office holder” set out in the Act.
- 19** As noted in the Process section, the Prime Minister confirmed that, at the time of Mr. McNair’s communications with Mr. Silver in May, Mr. McNair was not an employee and did not hold a position in the Prime Minister’s Office (PMO). The Prime Minister noted that Mr. McNair provided volunteer support during the pandemic and that he joined the PMO as an employee from June 15 to September 25, 2020.
- 20** As set out in the Ms. Freeland’s response, Mr. Marques was no longer employed by the Government of Canada at the time of the OCL’s request for information.
- 21** *COVID-19 Emergency Response Act, No. 2, S.C. 2020, c. 6, s. 2.*
- 22** *Ibid.*
- 23** “Government extends the Canada Emergency Wage Subsidy” (News Release, May 15, 2020), Department of Finance Canada, online: <https://www.canada.ca/en/department-finance/news/2020/05/government-extends-the-canada-emergency-wage-subsidy.html>
- 24** *Canada Gazette*, Part II, Volume 154, Number 11, online: <https://gazette.gc.ca/rp-pr/p2/2020/2020-05-27/html/sor-dors107-eng.html>
- 25** SOR/2020-107.
- 26** Subsection 6(1) the *Bank of Canada Act* provides that the Governor and Deputy Governor are each appointed by the Directors on the Bank’s Board of Directors with the approval of the Governor in Council. Subsection 7(1) of the *Bank of Canada Act* provides that additional Deputy Governors may be appointed by the Bank’s Board of Directors. The appointment of these additional Deputy Governors does not require the approval of either the Governor in Council or the Minister of Finance. As set out on its website, from 1934-1954, the Bank of Canada had one Deputy Governor, who exercised the responsibilities of the position now referred to as the Senior Deputy Governor. By 1955, the Bank had more than one Deputy Governor and by 1970 the position of Senior Deputy Governor was created. From May 2014 to December 2020, Ms. Carolyn A. Wilkins held the position of Senior Deputy Governor of the Bank of Canada. The Bank of Canada currently has four (4) Deputy Governors: Mr. Paul Beaudry, Mr. Toni Gravelle, Mr. Timothy Lane and Mr. Lawrence Schembri.

- 27** As set out subsection 6(1) of the *Bank of Canada Act*, the Governor and the Senior Deputy Governor, as this position is currently known, are each appointed to their positions by the Directors on the Bank's Board of Directors with the approval of the Governor in Council. In addition, the twelve (12) Directors on the Bank's Board of Directors are appointed by the Minister of Finance with the approval of the Governor in Council pursuant to subsection 9(1) of the *Bank of Canada Act*. The Deputy Minister of Finance is appointed to their position by the Governor in Council pursuant to paragraph 127.1(1)(a) of the *Public Service Employment Act*. Each of these individuals meets the definition of "public office holder" set out in paragraph (b) of the Act ("[any] person who is appointed to an office or body by or with the approval of the Governor in Council or a Minister of the Crown, other than a judge receiving a salary under the *Judges Act* or the lieutenant governor of a province").
- 28** The Bank of Canada made representations acknowledging that the Governor, Senior Deputy Governor and the other members of the Bank's Board of Directors, including the twelve Directors appointed pursuant to subsection 9(1) of the *Bank of Canada Act* and the Deputy Minister of Finance, are "public office holders" as they all qualify as individuals appointed by or with the approval of the Governor in Council or a Minister of the Crown within the meaning of paragraph (b) of the definition of this term set out in subsection 2(1) of the Act. The Bank persuasively argued that other officers and employees of the Bank, including the four (4) Deputy Governors appointed pursuant to subsection 7(1) of the *Bank of Canada Act*, are not "public office holders" as defined in the Act on the basis that they cannot be understood to be "officers or employees of Her Majesty in Right of Canada" as required by the core of the definition of this term as set out in subsection 2(1).

