

# RCMP-GRC



ROYAL CANADIAN MOUNTED POLICE • GENDARMERIE ROYALE DU CANADA



## General Findings and Analysis *Trudeau II Report*

Royal Canadian Mounted Police  
National Division  
Sensitive and International Investigations

September 6, 2019  
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Royal Canadian Mounted Police  
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Canada

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## Executive Summary

1. On February 8, 2019, following media reports on the matter, the Conflict of Interest and Ethics Commissioner, Mr. Mario Dion, commenced an examination under subsection 45(1) of the *Conflict of Interest Act* (the Act) as he had reason to believe that a possible contravention of section 9 of the Act had occurred.
2. The objective of the examination was to determine whether the Right Honourable Justin Trudeau (Mr. Trudeau) used his position to seek to influence the decision of the Attorney General of Canada (AG) relating to a criminal prosecution involving SNC-Lavalin contrary to section 9 of the Act. Mr. Trudeau was informed of the examination on February 8, 2019.
3. Mr. Dion found that Mr. Trudeau used his position of authority over the former AG, Ms. Wilson-Raybould, to seek to influence, both directly and indirectly, her decision on whether she should overrule the Director of Public Prosecutions' decision not to invite SNC-Lavalin to enter into negotiations towards a remediation agreement. Therefore, Mr. Dion found that Mr. Trudeau contravened section 9 of the Act.

## Applicable Section of the Act

4. As per the Act, section 9 prohibits public office holders from using their position to seek to influence a decision of another person so as to further their own private interests or those of their relatives or friends, or to improperly further another person's private interests.

## Objective

5. The objective of this report is to assess the findings of the *Trudeau II Report* released by the Office of the Conflict of Interest and Ethics Commissioner on August 14, 2019.

## Scope and Limitations

6. The report presented the findings of Mr. Dion's examination undertaken pursuant to the *Conflict of Interest Act* pertaining to the conduct of the Mr. Trudeau. Mr. Dion's objective was to determine whether Mr. Trudeau used his position to seek to influence the decision of the AG relating to a criminal prosecution involving SNC-Lavalin contrary to section 9 of the Act.
7. All or part of the evidence and testimony presented in the *Trudeau II Report* may have been gathered pursuant to the Commissioner's powers under Section 48 of the Act, which allows him to summon witnesses, and to require those witnesses to give evidence and/or produce documents.
8. The Commissioner's findings in the *Trudeau II Report* originated from testimonies and/or submissions provided to the Commissioner by various witnesses and/or by Mr. Trudeau.
9. Section 48(4) of the Act prohibits information given under that section from being used against the person in a court or in any other proceeding (except a prosecution for the offence of perjury). As such, it is likely that any evidence provided to the Ethics Commissioner or any of the findings contained in the *Trudeau II Report* would be admissible in criminal proceedings.
10. In the course of his examination, Mr. Dion obtained information from 14 witnesses, 6 of whom were interviewed<sup>1</sup>.

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<sup>1</sup> Reference: Trudeau II Report - Schedule: List of witnesses



## Production of Documents

11. On February 8, 2019, Mr. Dion wrote to Mr. Trudeau to inform him of his examination of his conduct and to request the production of all relevant documents in the possession, custody or control of the Prime Minister's Office.
12. The Commissioner's report is based on the following information obtained from Mr. Trudeau:
  - (a) a first set of documents from Mr. Trudeau's legal counsel on March 29, 2019;
  - (b) a written submission from Mr. Trudeau on May 2, 2019;
  - (c) an interview with Mr. Trudeau on May 3, 2019;
  - (d) a second set of documents from Mr. Trudeau's legal counsel on June 27, 2019; and
  - (e) supplemental written submissions from Mr. Trudeau's legal counsel on July 16, 2019.
13. The Commissioner also requested production of relevant documents from 13 witnesses and received documentation from one additional witness without making a formal request. Between March 29, 2019, and July 5, 2019, the Commissioner's office received documentation from 14 witnesses and conducted interviews with six of those witnesses (see Schedule: List of Witnesses). Mr. Dion also requested follow-up information, via sworn affidavit, from Mr. Trudeau and three witnesses.
14. During this examination, nine witnesses informed the Commissioner that they had information they believed to be relevant, but that could not be disclosed because, according to them, this information would reveal a confidence of the Queen's Privy Council and would fall outside the scope of Order in Council 2019-0105. The Ethics Commissioner engaged with the PCO to obtain an extension to the Order in Council. The matter was also brought up to the Prime Minister. With the issue unresolved, on May 28, 2019, the Ethics Commissioner reached out to the new Clerk of the PCO, Mr. Ian Shugart.
15. In a letter dated June 13, 2019, the Clerk of the Privy Council declined Mr. Dion's request for access to all Cabinet confidences in respect of his examination. Mr. Trudeau's legal counsel indicated that the decision on whether to expand the waiver was made by the Privy Council Office without the involvement of the Prime Minister or his office. Mr. Dion indicated that even though he was unable to fully discharge the investigatory duties conferred under the Act, he had gathered sufficient factual information to properly determine the matter on its merits.

## Findings from Report

### Charge

16. On February 19, 2015, SNC-Lavalin was charged with bribery under the *CFPOA* and fraud under the *Criminal Code* which allegedly took place between 2001 and 2011. The laying of the charges preceded the implementation of a remediation agreement regime which was only adopted as part of the 2018 federal budget following public consultation and lobbying efforts from SNC-Lavalin.

### Implementation of a Remediation Agreement Regime

17. In early 2016 SNC-Lavalin began lobbying several federal officials for the adoption of a remediation agreement regime. The lobbying activities were directed at ministerial staff in the Prime Minister's Office, the offices of the ministers of Finance, International Trade, and



Innovation, Science and Economic Development, as well as officials in the Privy Council Office and at Public Services and Procurement Canada.<sup>2</sup>

18. In early 2016, Mr. Trudeau instructed Mr. Bouchard to look into the matter of remediation agreement, to pay attention to the SNC-Lavalin matter and to identify existing levers that could lead to a positive outcome for everyone. Mr. Bouchard started seeking information on remediation agreements from other ministerial and departmental staff and organized internal meetings in order to discuss the concept of a regime as well as SNC-Lavalin's legal issues. These meetings resulted in a consensus from participants that the federal government would run a public consultation on the possibility of adopting a remediation agreement regime in Canada. This public consultation was launched in the fall of 2017, from September 25 to November 17, 2017.<sup>3</sup>
19. Despite the public consultations, SNC-Lavalin continued to lobby for the adoption of a remediation agreement regime. Meetings took place between SNC-Lavalin, the Honourable Bill Morneau and other members of the Ministry of Finance where the company advocated for the adoption of the regime while describing potential negative economic impacts if SNC-Lavalin were unable to reach a remediation agreement. In a follow up meeting, SNC-Lavalin presented a confidential discussion document outlining reasons in support of a remediation agreement regime and the company's request for timely implementation of a regime via the federal budget. According to the document, this strategy would increase the likelihood of a settlement of the company's pending criminal charges, of the company maintaining its head office in Canada for the foreseeable future and of an increase in its workforce.<sup>4</sup>
  - (a) From the report, it appears that SNC-Lavalin lobbied the government for the adoption of a remediation agreement regime. It appears that the settlement of the company's pending criminal charges were linked to the company maintaining its head office in Canada and the continued prosperity of the company.
20. On February 22, 2018, the Government of Canada published the results of the public consultations, which supported the implementation of a remediation agreement regime. Five days later, amendments to the *Criminal Code* allowing remediation agreements were announced in Budget 2018 and subsequently inserted into an omnibus budget bill (C-74). According to witnesses, non-fiscal items are typically included in a federal budget bill to expedite passage through Parliament. These types of inclusions stem from discussions between the Prime Minister and the Minister of Finance, and discussions between the Prime Minister's Office and the Minister of Finance's office. In this case, given that amendments to the *Criminal Code* would be included in the budget bill, Mr. Trudeau stated that Ms. Wilson-Raybould likely would have been involved in the discussions as well.<sup>5</sup>
21. Ms. Wilson-Raybould testified that it was her understanding that the need to create a regime was primarily because of SNC-Lavalin. Given the importance of the amendments to the *Criminal Code*, she expressed concern that the process, including the public consultations and the amendments, had been rushed in order to include them in the 2018 federal budget bill. As a result, she made the decision not to lead the memorandum to Cabinet regarding the amendments to the *Criminal Code* and not to speak publicly or before parliamentary committees about the regime.<sup>6</sup>
22. On March 27, 2018, the government tabled budget implementation Bill C-74, which included amendments to the *Criminal Code* for the establishment of a remediation

<sup>2</sup> Reference: Trudeau II Report – paragraph [24]

<sup>3</sup> Reference: Trudeau II Report – paragraphs [29, 33-35]

<sup>4</sup> Reference: Trudeau II Report – paragraphs [36-38]

<sup>5</sup> Reference: Trudeau II Report – paragraphs [40-42]

<sup>6</sup> Reference: Trudeau II Report – paragraph [44]



agreement regime. Bill C-74 was reviewed in its entirety by the House of Commons Standing Committee on Finance and by several Senate committees.<sup>7</sup>

23. On June 21, 2018, Bill C-74 received Royal Assent. The *Criminal Code* provisions would come into force 90 days later, on September 19, 2018.<sup>8</sup>
24. Before the amendments came into force, in mid-August 2018, Mr. Ben Chin, Chief of Staff to the Minister of Finance, contacted Ms. Jessica Prince, Chief of Staff to the Minister of Justice and Attorney General, to discuss SNC-Lavalin. According to Ms. Prince's notes of the discussion, Mr. Chin stated that he had been speaking with SNC-Lavalin, and that the company's perception was that the process of negotiating a remediation agreement was taking too long. Ms. Prince responded that since the Prosecution Service is statutorily independent of government, simply asking for a status update could be perceived as, and may be, improper political interference.<sup>9</sup>
25. On September 4, 2018, Ms. Wilson-Raybould received the Director's section 13 memorandum concerning SNC-Lavalin. Following receipt, Ms. Wilson-Raybould conducted a due diligence process which involved several discussions with her staff, her Deputy Minister, Mr. Gregoire Webber<sup>10</sup> and advices from several former attorneys general. Ms. Wilson-Raybould also benefited from memoranda drafted by her office and her department.<sup>11</sup>
  - (a) A first memorandum was prepared on September 5, 2018, by Ms. Carver and Mr. Webber at the request of Mr. Marques. The note focused on the prosecutorial independence of the Attorney General, the remediation agreement regime, the Director of Public Prosecutions' decision not to negotiate with SNC-Lavalin, and political considerations regarding an intervention from the Attorney General.<sup>12</sup>
  - (b) Ms. Wilson-Raybould also received an opinion entitled "*The power to issue directives and to assume the conduct of proceedings*", which was prepared by the Department of Justice Canada and submitted in a draft form to Ms. Wilson-Raybould's chief of staff on September 8, 2018.<sup>13</sup>
26. It appears that the Minister of Finance and the PM were shocked by the DPP's decision. Documentary evidence shows that as a result of the Director of Public Prosecutions' September 4, 2018 decision, senior staff in Mr. Morneau's office and senior staff in the Prime Minister's Office contacted Ms. Wilson-Raybould's staff to discuss options and to find out what, if anything, could be done in the SNC-Lavalin matter.<sup>14</sup>
27. In a conversation between Ms. Prince, Mr. Bouchard and Mr. Marques on September 16, 2018, Ms. Prince wrote that the two senior advisors to the Prime Minister voiced their concerns about the loss of many jobs and the context of the upcoming provincial election in Quebec if SNC-Lavalin did not receive a remediation agreement. During a September 19, 2018 discussion with Mr. Bouchard and Mr. Marques, Ms. Prince informed them that Ms. Wilson-Raybould would be happy to speak with them on the matter.<sup>15</sup>

<sup>7</sup> Reference: Trudeau II Report – paragraphs [45, 48]

<sup>8</sup> Reference: Trudeau II Report – paragraph [49]

<sup>9</sup> Reference: Trudeau II Report – paragraphs [51-52]

<sup>10</sup> Mr. Webber was an external agent employed with her ministerial office.

<sup>11</sup> Reference: Trudeau II Report – paragraphs [65,67]

<sup>12</sup> Reference: Trudeau II Report – paragraphs [68-69]

<sup>13</sup> Reference: Trudeau II Report – paragraph [73]

<sup>14</sup> Reference: Trudeau II Report – paragraph [86]

<sup>15</sup> Reference: Trudeau II Report – paragraph [88]



28. In their written submissions, both Mr. Bouchard and Mr. Marques stated that during their discussions with Ms. Prince, they emphasized that they did not want to cross any lines and that they were well aware of the importance of prosecutorial independence.<sup>16</sup>
29. Documentary evidence also shows that at the same time, the same individuals in the Prime Minister's Office and in the Minister of Finance's office who had raised concerns with Ms. Wilson-Raybould and her staff were also engaging in discussions with SNC-Lavalin representatives and their legal counsel to assist the company in finding solutions in order to initiate negotiations towards a remediation agreement.<sup>17</sup>

September 17 – Pre-Meeting with PM and Clerk of PCO

30. Before the meeting with Ms. Wilson-Raybould, Mr. Trudeau held a pre-brief meeting with Ms. Katie Telford, his Chief of Staff, Mr. Gerald Butts, his Principal Secretary, Mr. Bouchard and Mr. Michael Wernick, Clerk of the Privy Council. They discussed various issues, including SNC-Lavalin since the Budget Implementation Act, including the *Criminal Code* amendments that introduced a remediation agreement regime, would be coming into force in the final weeks of September. Mr. Trudeau was not only aware that Ms. Wilson-Raybould was not inclined to intervene in the Director of Public Prosecutions' decision but was also aware that he could not ask or direct the Attorney General, nor could he interfere in the matter. Mr. Trudeau was presented with a memorandum, dated September 5, 2018, which outlined the legal and constitutional implications of interfering with a criminal prosecution.<sup>18</sup>

September 17 – Meeting with PM & Clerk of PCO

31. According to Ms. Wilson-Raybould's written account of her meeting with Mr. Trudeau and Mr. Wernick, Mr. Trudeau brought up SNC-Lavalin and asked her to help find a solution, stating that if the company did not benefit from a remediation agreement, it would move from Montreal and there would be many jobs lost. There were also arguments of a political nature that were brought up such as Mr. Trudeau being a Member of Papineau, the Quebec provincial election. Mr. Trudeau does not specifically recall Ms. Wilson-Raybould asking him if he was politically interfering in the matter. He said that Ms. Wilson-Raybould tended to view any form of engagement or advice by the Prime Minister's staff on decisions she had already made as "interference".<sup>19</sup>
32. In his March 6, 2019 appearance before the House of Commons Justice and Human Rights Committee, Mr. Wernick stated that while he did mention the provincial election in Quebec, it was not out of partisan considerations. Based on the company's upcoming public-disclosure obligations, Mr. Wernick was concerned that a federal issue could surface in the last two weeks of a rather heated provincial electoral campaign. According to Mr. Wernick, he sought to remind Mr. Trudeau and Ms. Wilson-Raybould about existing conventions which seek to prevent any federal government influence during provincial elections.<sup>20</sup>

[NOTE: The Quebec provincial election was held on October 1, 2018. The *Parti Liberal du Québec* was defeated by the *Coalition Avenir Québec*.]

33. Following the meeting, Mr. Trudeau informed his staff that Ms. Wilson-Raybould had agreed to revisit the matter and asked his staff to continue to try to understand her position and to express the concern about the impact of a conviction on Canadian stakeholders. Mr.

<sup>16</sup> Reference: Trudeau II Report – paragraph [89]

<sup>17</sup> Reference: Trudeau II Report – paragraph [90]

<sup>18</sup> Reference: Trudeau II Report – paragraphs [92-95]

<sup>19</sup> Reference: Trudeau II Report – paragraphs [97, 105]

<sup>20</sup> Reference: Trudeau II Report – paragraph [106]



Trudeau would have likely instructed Mr. Bouchard to keep an eye on the file and would have instructed Mr. Wernick to engage with the Deputy Minister of Justice to identify which pathways and conversations were permissible.<sup>21</sup>

September 18 – MOJAG Staff Meeting

34. According to Ms. Prince's notes of the meeting, they again discussed the option of informally reaching out to the Director of Public Prosecutions. However, Ms. Wilson-Raybould indicated being very uncomfortable with the idea.<sup>22</sup>
35. Ms. Drouin testified that Ms. Wilson-Raybould, as Attorney General, was ultimately accountable before Parliament on her decision making and that, consequently, she had the responsibility to ensure that she had all of the necessary information to make a determination on whether or not to intervene. Ms. Drouin believed that, in this case, given that the remediation agreement regime was new and given that the potential impacts could affect innocent victims such as pensioners, Ms. Wilson-Raybould could have benefited from receiving additional information.<sup>23</sup>

September 19 – Meeting with Clerk of PCO

36. During the meeting, Ms. Wilson-Raybould said that the only option available to the company would be for it to write her a letter setting out their public interest arguments, which she could in turn submit to the Director of Public Prosecutions.<sup>24</sup>
37. Following the meeting, Mr. Wernick briefed a Privy Council official and staff in the Prime Minister's Office stating that Ms. Wilson-Raybould said that she would not intervene and that her decision was final. However, Mr. Wernick testified that, according to his understanding of the law, her decision could not be final, as it was always possible for the Attorney General to receive new facts or considerations. Ms. Wilson-Raybould briefed her staff that this would be the last time they would speak about SNC-Lavalin.<sup>25</sup>

September 19 – Discussion with Minister Morneau

38. Ms. Wilson-Raybould and Mr. Morneau spoke briefly in a public area near the Commons Chamber before Question Period. According to both accounts of the discussion, Ms. Wilson-Raybould brought up her concerns about Mr. Morneau's staff repeatedly speaking to her staff about SNC-Lavalin and said that it was inappropriate. She told Mr. Morneau that his staff needed to stop contacting her office on the matter and that they were undermining the fundamental tenets of democracy and prosecutorial independence.<sup>26</sup>

Mr. Morneau testified that he responded by relaying the significant economic impact that could result from the DPP's decision to not pursue a remediation agreement with SNC-Lavalin and reiterated the appropriateness and importance of interdepartmental communications. Both parties indicated that because of their apparent differences over the fundamental issue, the conversation lasted only a few minutes. Mr. Morneau believed that as Minister of Finance, it is his responsibility to consider the economic impacts of government decisions. He said he expected that as a Cabinet colleague, Ms. Wilson-Raybould would have requested information relating to the consequences for the company, its employees and its pensioners. Mr. Morneau testified that while it may or may not have been useful for Ms. Wilson-Raybould to have this information, she had, in his view,

<sup>21</sup> Reference: Trudeau II Report – paragraph [109]

<sup>22</sup> Reference: Trudeau II Report – paragraph [113]

<sup>23</sup> Reference: Trudeau II Report – paragraph [114]

<sup>24</sup> Reference: Trudeau II Report – paragraph [118]

<sup>25</sup> Reference: Trudeau II Report – paragraph [119]

<sup>26</sup> Reference: Trudeau II Report – paragraph [122]



a responsibility to at least consider those economic impacts. As a result, Mr. Morneau did not believe Ms. Wilson-Raybould had conducted her due diligence in this matter.<sup>27</sup>

#### SNC-Lavalin Lobbying

39. On October 9, 2018, SNC-Lavalin were officially informed that an invitation to negotiate a remediation agreement was not appropriate in this case. The company believed the Director of Public Prosecutions had not considered the public interest in her September 4, 2018 decision.<sup>28</sup>
40. From mid-September to early October 2018, SNC-Lavalin representatives met with government officials in the Privy Council Office and the Department of Finance to discuss submitting to the Prosecution Service public-interest considerations in support of a remediation agreement.<sup>29</sup>
41. In a September 18, 2018 meeting with Mr. Wernick and another official with the Privy Council Office, Mr. Bruce and another SNC-Lavalin representative discussed the consequences of the Director of Public Prosecutions' decision not to enter into remediation agreement negotiations with the company, and the potential harm that decision could have on the public interest.<sup>30</sup>
42. Mr. Bruce and his staff held several discussions with the Deputy Minister of Finance, his Chief of Staff, and an Assistant Deputy Minister of Finance on public-interest considerations. According to SNC-Lavalin, the company presented a draft PowerPoint document it had prepared on public-interest considerations that would be submitted to the Prosecution Service. The parties reviewed the presentation and officials with the Department of Finance suggested possible additional factors relevant to the public interest. It also outlined a "Plan B" as a potential result of not being invited to negotiate a remediation agreement, which involved the creation of two SNC-Lavalin sourced companies. One would consist of a trio of possibly convicted entities carrying on reduced business operations in Canada or heading towards an eventual wind-up. The other group would be made up of parts of the SNC-Lavalin Group that had no role in the wrongful behaviour and would be reconstituted and headquartered in another jurisdiction.<sup>31</sup>
43. On October 11, 2018, SNC-Lavalin forwarded to the Prime Minister's Office a research piece entitled "*SNC: Thanks for Nothing, DPPSC*". The document noted that the value of SNC-Lavalin's share price had dropped 14% following the public disclosure the day before and included details on key financial metrics, as well as a recommendation for investors.<sup>32</sup>
44. On October 15, 2018, Mr. Wernick spoke to Mr. Kevin Lynch, Chairman of SNC-Lavalin. According to SNC-Lavalin, during this conversation, Mr. Lynch reiterated the key messages and concerns expressed in the October 10 press release, as well as the frustration of having been given no reasons as to why the company was not asked to enter into remediation agreement discussions, and asked Mr. Wernick for any advice. Mr. Wernick offered no views on ways forward other than through the judicial process.<sup>33</sup>
45. In November 2018, legal counsel for SNC-Lavalin and representatives of the company began to increase their communications with government officials and staff in the Prime Minister's Office with a view to finding solutions to override the Director of Public Prosecutions' decision. SNC-Lavalin's legal counsel prepared two legal opinions which were

<sup>27</sup> Reference: Trudeau II Report – paragraphs [123, 125]

<sup>28</sup> Reference: Trudeau II Report – paragraph [128]

<sup>29</sup> Reference: Trudeau II Report – paragraph [129]

<sup>30</sup> Reference: Trudeau II Report – paragraph [130]

<sup>31</sup> Reference: Trudeau II Report – paragraphs [132-133]

<sup>32</sup> Reference: Trudeau II Report – paragraph [137]

<sup>33</sup> Reference: Trudeau II Report – paragraph [138]



subsequently shared with government officials, ministers, ministerial staff and staff in the Prime Minister's Office. One was drafted by former SCC Justice Frank Iacobucci while the other was drafted by former SCC Justice John Major.

- (a) Mr. Iacobucci, prepared a legal opinion that was to be shared with the Minister of Justice and Attorney General. It outlined the legitimacy for her to intervene in criminal matters seized by the Prosecution Service. Mr. Iacobucci's legal opinion was shared with Mr. Brison in a November 2, 2018 email from Mr. Prichard. In the email, Mr. Prichard wrote: "We are also considering other ways to make it easier for the Minister to engage and reverse the [Director of Public Prosecutions'] decision. In the end, however, it will take a deliberate decision from the center [...]." Mr. Brison forwarded the email and attachments to senior advisors in the Prime Minister's Office. Mr. Brison stated that a number of his Cabinet colleagues also received the legal analysis prepared by SNC-Lavalin's legal counsel.<sup>34</sup>
- (b) On November 1, 2018, Mr. Iacobucci requested an opinion from former SCC Justice John Major, on whether the failure of the DPP to provide reasons for her refusal to invite SNC-Lavalin was unlawful and whether the refusal itself was unlawful. Mr. Major's opinion was submitted on November 13, 2018.<sup>35</sup>
46. At the request of an SNC-Lavalin representative, Mr. Morneau and Mr. Brison each had a meeting with Mr. Lynch while they were in Beijing, China, attending a conference in mid-November 2018. According to SNC-Lavalin, the discussion also focused on the idea of whether third-party legal experts could provide information to assist in understanding the appropriateness of remediation agreements. Mr. Morneau testified that, during their discussion, Mr. Lynch may have brought up the idea of having the Right Honourable Beverley McLachlin, former Chief Justice of the Supreme Court, act as a third-party expert.<sup>36</sup>
47. On November 27, 2018, Mr. Bouchard and Mr. Marques met with Mr. Prichard to discuss SNC-Lavalin two legal opinions. Both SNC-Lavalin's summary and Mr. Bouchard's handwritten notes of the meeting indicated that the idea of engaging Ms. McLachlin to approach Ms. Wilson-Raybould had been revisited. Mr. Bouchard noted that Mr. Iacobucci had reached out to Ms. McLachlin and provided her with the file for review, and that Ms. McLachlin had responded that she would meet with Ms. Wilson-Raybould. Mr. Bouchard also noted a proposal suggested by SNC-Lavalin: Ms. McLachlin would be asked to preside over a settlement conference between the Director of Public Prosecutions and SNC-Lavalin over the ongoing legal matters, and the Government of Canada could appoint Ms. McLachlin to support the negotiation of the remediation agreement.<sup>37</sup>

#### Legal Opinion - MOJAG

48. On October 12, 2018, Mr. Wernick received the opinion entitled "*The power to issue directives and to assume the conduct of proceedings*" prepared by the Department of Justice for Ms. Wilson-Raybould and given to her Chief of Staff on September 8, 2018.<sup>38</sup>
49. On October 18, 2018, Mr. Bouchard contacted Ms. Prince to discuss the opinion, which he received from the Privy Council Office. According to Ms. Prince, Mr. Bouchard asked that Ms. Wilson-Raybould look at the option of seeking external advice with respect to the exercise of her powers under the Director of Public Prosecutions Act.<sup>39</sup>

<sup>34</sup> Reference: Trudeau II Report – paragraphs [162,164-166]

<sup>35</sup> Reference: Trudeau II Report – paragraph [167]

<sup>36</sup> Reference: Trudeau II Report – paragraphs [171, 173]

<sup>37</sup> Reference: Trudeau II Report – paragraphs [190, 193]

<sup>38</sup> Reference: Trudeau II Report – paragraph [141]

<sup>39</sup> Reference: Trudeau II Report – paragraph [142]



50. On October 15, 2018, Mr. Bruce wrote to Mr. Trudeau to request a meeting with him to discuss the Director of Public Prosecutions' decision not to invite the company to negotiate a remediation agreement. On November 20, 2018, the Privy Council Office prepared a memorandum for Mr. Trudeau in response to that letter. The memorandum also made note of legal opinions prepared by the Department of Justice and by the Privy Council Office which confirmed the authority of the Attorney General to issue directives in relation to a specific prosecution or assume control of a prosecution. The memorandum outlined that doing either in this instance would draw attention as these provisions had not been used since the Director of Public Prosecutions Act came into force in 2006.<sup>40</sup>

November 22 – Meeting with Bouchard & Marques

51. According to Ms. Wilson-Raybould's notes of the meeting, she explained the relevant sections of the DPP Act and that prosecutorial independence was a constitutional principle. She also went through the section 13 memorandum and told Mr. Bouchard and Mr. Marques that they were politically interfering. Mr. Bouchard and Mr. Marques told her that if she was not sure in her decision that they could have an eminent person or panel, like Ms. McLachlin, advise her on possible options. Ms. Wilson-Raybould testified that she asked Mr. Bouchard and Mr. Marques what this person or panel could offer in terms of advice. According to Ms. Wilson-Raybould, she did not receive an answer to her question.<sup>41</sup>
52. Mr. Bouchard and Mr. Marques both testified that Ms. Wilson-Raybould was open to hearing options available to her and that at no time before or during the meeting, did she say that they were politically interfering, that she had made a decision or that they should not be discussing the matter with her.<sup>42</sup>
53. In his written submission, Mr. Bouchard recalled that early in the meeting, Ms. Wilson-Raybould indicated that she could speak to Ms. McLachlin. However, Mr. Bouchard wrote that at the end of the meeting, Ms. Wilson-Raybould was not inclined to seek an external advisor. She suggested the company write her a letter setting out their public-interest concerns, which she could provide to the Director of Public Prosecutions.<sup>43</sup>

December 5 – Pre-meeting with Mr. Butts, Mr. Bouchard and Mr. Marques

54. In preparation for his meeting with Ms. Wilson-Raybould, Mr. Butts requested a briefing on SNC-Lavalin from Mr. Marques and Mr. Bouchard. Mr. Bouchard testified that they discussed the September 8, 2018 opinion produced by the Department of Justice, which outlined the independence of the Attorney General and possible solutions. Mr. Marques and Mr. Bouchard also told Mr. Butts about the idea of having Ms. McLachlin provide Ms. Wilson-Raybould with advice on the matter. According to Mr. Bouchard, Mr. Butts said that he would raise the idea with Ms. Wilson-Raybould during his dinner. Mr. Marques was to reach out to Ms. McLachlin to inquire as to her interest in such a mandate.<sup>44</sup>

Additional Discussions - PMO & SNC-Lavalin on Ms. McLachlin's involvement

55. Ms. McLachlin had expressed to Mr. Iacobucci some reservations about her possible involvement. She was no longer a lawyer and could not offer legal advice. She would also require a proper briefing. Mr. Bouchard also noted that Ms. McLachlin would need to be

<sup>40</sup> Reference: Trudeau II Report – paragraphs [174, 176]

<sup>41</sup> Reference: Trudeau II Report – paragraph [181]

<sup>42</sup> Reference: Trudeau II Report – paragraph [183]

<sup>43</sup> Reference: Trudeau II Report – paragraph [185]

<sup>44</sup> Reference: Trudeau II Report – paragraphs [196-197]



invited by the Attorney General; Ms. McLachlin did not want to be retained by the Government of Canada.<sup>45</sup>

56. Mr. Butts also stated that he did not tell Ms. Wilson-Raybould that a solution needed to be found. According to Mr. Butts, he questioned why Ms. Wilson-Raybould felt it would not be in the interest of public policy to receive independent expert advice on a new law that had never been applied before.<sup>46</sup>

[It appears that there are different views between Ms. Wilson-Raybould and Mr. Butts]

57. Following Mr. Butts and Ms. Wilson-Raybould's dinner meeting, an SNC-Lavalin representative texted Mr. Bouchard and asked for an update ahead of the company's board of directors meeting. Mr. Bouchard replied that more time was needed but that the door remained open. Mr. Bouchard testified that Mr. Butts had briefed him on his discussion with Ms. Wilson-Raybould.<sup>47</sup>

#### December 18 – Meeting Between Prince & PMO

58. During the meeting, Ms. Prince explained the legal parameters of the remediation agreement regime to Ms. Telford and Mr. Butts, who had expressed their position (based on Mr. Bouchard's and Mr. Marques' opinions) that options were still available for Ms. Wilson-Raybould. Mr. Butts explained to Ms. Prince that the government had set up the remediation agreement regime to allow SNC-Lavalin to benefit from this tool, which is used in many other countries. Ms. Prince recounted that Mr. Butts emphasized possible job losses if nothing happened, that the company was at risk of being taken over and that the headquarters, located in Montreal, could move out of Canada. He referenced a shareholder or board meeting which was to take place in February 2019, as well as the upcoming federal election.<sup>48</sup>
59. In his written submission, Mr. Butts stated that in his role as Principal Secretary, he believed it was appropriate due diligence to seek external expert advice on the matter. Based on his dinner conversation with Ms. Wilson-Raybould, Mr. Butts stated that he did not feel he had a satisfactory understanding from her on the reason she did not want to seek outside, independent advice. It was Mr. Butts' understanding of the law that discussing the matter with Ms. Prince was normal and acceptable, and he thought that Ms. Prince believed the same.<sup>49</sup>

#### Telephone call between Ms. Wilson-Raybould and Mr. Wernick

60. Mr. Trudeau said that one of the challenges they were facing with the SNC-Lavalin matter was the Attorney General's view of political interference, which, according to Mr. Trudeau, Ms. Wilson-Raybould viewed askance. Mr. Trudeau testified that since his staff had been unsuccessful in engaging with Ms. Wilson-Raybould, he asked Mr. Wernick to speak with her about the public interest concerns. Mr. Trudeau believed that having the engagement of the public service would remove any political considerations which Ms. Wilson-Raybould viewed as political interference. Mr. Trudeau testified that he trusted Mr. Wernick to present Ms. Wilson-Raybould with independent arguments based on the public good.<sup>50</sup>
61. Mr. Wernick telephoned Ms. Wilson-Raybould that evening. According to the transcript of the discussion, which was made public, Mr. Wernick told Ms. Wilson-Raybould that *"the*

<sup>45</sup> Reference: Trudeau II Report – paragraph [199]

<sup>46</sup> Reference: Trudeau II Report – paragraph [202]

<sup>47</sup> Reference: Trudeau II Report – paragraph [203]

<sup>48</sup> Reference: Trudeau II Report – paragraph [208]

<sup>49</sup> Reference: Trudeau II Report – paragraph [211]

<sup>50</sup> Reference: Trudeau II Report – paragraph [215]

*Prime Minister wants to be able to say that he has tried everything he can within the legitimate toolbox, so he is quite determined, quite firm, but he wants to know why the DPA route which Parliament provided for isn't being used. I think he's going to find a way to get it done, one way or another. So he's in that kind of a mood, and I want you to be aware of it.*"<sup>51</sup>

#### Relationship between PM and MOJAG

62. Mr. Trudeau's relationship with Ms. Wilson-Raybould had become challenging and tense. Mr. Trudeau was concerned with the significant friction between Ms. Wilson-Raybould and the Prime Minister's Office, and the friction between her and her Cabinet colleagues. Mr. Trudeau's counsel cited a past example of Ms. Wilson-Raybould refusing to share information with Cabinet as part of a recommendation to Cabinet. To them, this was an example of how Ms. Wilson-Raybould felt that cooperation or collaboration with Mr. Trudeau's office and the rest of Cabinet was not something that she was required to do or even should do.<sup>52</sup>
63. Mr. Trudeau's legal counsel further submitted that Ms. Wilson-Raybould failed in her duty, as Attorney General, to acquaint herself with all the relevant facts. Rather than making a meaningful independent decision of her own, Ms. Wilson-Raybould reflexively deferred to the DPP's decision. In that regard, Mr. Trudeau's legal counsel pointed to concerns expressed by Ms. Drouin that more time and reflection were required in order to assess the information at hand and to seek additional information to better inform Ms. Wilson-Raybould's view. Mr. Trudeau also pointed out that any consultations Ms. Wilson-Raybould had done were to confirm a decision she had already made.<sup>53</sup>
64. Mr. Trudeau's counsel submitted that, in sum, Ms. Wilson-Raybould's decision-making process was inadequate and infected by legal misunderstanding and political motivation.<sup>54</sup>
65. First, Mr. Trudeau's counsel submitted that the Attorney General, as the superintendent of prosecutions, is responsible for considering the public interest in pursuing any prosecution. As a member of Cabinet, the Attorney General is able to receive input from Cabinet colleagues about their responsibilities, including on criminal prosecutions, provided that the Attorney General does not receive direction on a matter from Cabinet. In counsel's estimation, this is consistent with the constitutional convention of prosecutorial independence.<sup>55</sup>

#### Conclusion of Ethics Commissioner

66. Mr. Trudeau and his counsel raised several arguments to show that Ms. Wilson-Raybould's decision making was somehow inadequate or incorrect. I must state, from the outset, that I did not consider any arguments that have as their aim to revisit or reconsider either Ms. Wilson-Raybould's decision not to intervene or the Director of Public Prosecutions' reasons for not inviting SNC-Lavalin to enter into a remediation agreement. I believe their decisions to be firmly entrenched in the exercise of prosecutorial discretion.<sup>56</sup>
67. It is not for Mr. Trudeau, or for me, or for any other administrative body to judge whether an Attorney General has properly or sufficiently considered the public interest in matters of criminal prosecution or, for that matter, any other aspect of their decision-making process. Absent an abuse of process, even courts are reluctant to adjudicate on issues

<sup>51</sup> Reference: Trudeau II Report – paragraph [216]

<sup>52</sup> Reference: Trudeau II Report – paragraph [234]

<sup>53</sup> Reference: Trudeau II Report – paragraph [237]

<sup>54</sup> Reference: Trudeau II Report – paragraph [238]

<sup>55</sup> Reference: Trudeau II Report – paragraph [240]

<sup>56</sup> Reference: Trudeau II Report – paragraph [249]



involving the exercise of prosecutorial discretion. As the Deputy Minister of Justice and Deputy Attorney General testified, the Attorney General must shoulder the responsibility for such decisions and is ultimately accountable before Parliament.<sup>57</sup>

#### Seeking to Influence the Decision of Another Person

68. Ms. Wilson-Raybould's office had, on August 14, 2018, put their counterparts in the Minister of Finance's office on notice that merely requesting a status update on the SNC-Lavalin file from the Director of Public Prosecutions could be perceived as, and may indeed constitute, political interference.
69. Senior staff in the Prime Minister's Office made at least three attempts—on November 22, December 5, and December 18, 2018—to persuade Ms. Wilson-Raybould, directly and through her Chief of Staff, to re-examine the idea of seeking external advice on the matter.<sup>58</sup>
70. It must be reiterated that these legal opinions were circulated, and their contents discussed, during ongoing legal proceedings involving the Prosecution Service before the Federal Court of Canada and unbeknownst to the Attorney General.<sup>59</sup>
71. The fact that senior staff in the Prime Minister's Office pressed Ms. Wilson-Raybould on the idea of seeking external advice on the matter—all the while knowing the advice that would be given and selectively withholding other material information from Ms. Wilson-Raybould—was, in my view, a third attempt to bend the will of the Attorney General.<sup>60</sup>
72. The final and most flagrant attempt to influence Ms. Wilson-Raybould occurred during her conversation with the Clerk of the Privy Council on December 19, 2018. It is evident from the audio recording that Mr. Wernick was making an appeal, on behalf of Mr. Trudeau, to have the Attorney General reconsider her decision to not intervene in the criminal prosecution. Although the messenger had changed, the message remained the same: a solution was needed to prevent the economic consequences of SNC-Lavalin not entering into negotiations for a remediation agreement.<sup>61</sup>
73. As Prime Minister, Mr. Trudeau was the only public office holder who, by virtue of his position, could clearly exert influence over Ms. Wilson-Raybould. The authority of the Prime Minister and his office was used to circumvent, undermine and ultimately attempt to discredit the decision of the DPP as well as the authority of Ms. Wilson-Raybould as the Crown's chief law officer.<sup>62</sup>
74. Here, in contrast, the evidence abundantly shows that Mr. Trudeau knowingly sought to influence Ms. Wilson-Raybould both directly and through the actions of his agents.<sup>63</sup>

#### The nature of SNC-Lavalin's interests

75. The evidence gathered showed that SNC-Lavalin had significant financial interests in deferring prosecution. The Privy Council Office compiled a list of some of the most important federal government contracts involving the company. The evidence showed that SNC-Lavalin is significantly invested in major federal government infrastructure projects, including the Samuel DeChamplain Bridge and Montreal's light rail system. An unfavourable

<sup>57</sup> Reference: Trudeau II Report – paragraph [250]

<sup>58</sup> Reference: Trudeau II Report – paragraph [276]

<sup>59</sup> Reference: Trudeau II Report – paragraph [277]

<sup>60</sup> Reference: Trudeau II Report – paragraph [278]

<sup>61</sup> Reference: Trudeau II Report – paragraph [279]

<sup>62</sup> Reference: Trudeau II Report – paragraph [282]

<sup>63</sup> Reference: Trudeau II Report – paragraph [284]



judicial outcome would likely cause economic turmoil and uncertainty for SNC-Lavalin and its major shareholders.<sup>64</sup>

76. Throughout the public consultations and the ensuing legislative process to adopt the remediation agreement regime, SNC-Lavalin engaged in regular discussions with officials in the Prime Minister's Office, the Privy Council Office and the Minister of Finance's office. Moreover, SNC-Lavalin regularly kept the Prime Minister's Office apprised of upcoming board meetings, of negative media coverage, and of the fluctuations in its share price. The evidence showed an increase in the frequency of communications before board meetings, as well as a heightened level of concern on the part of SNC-Lavalin as discussions continued without substantial progress being made.<sup>65</sup>
77. There is no doubt that SNC-Lavalin's considerable financial interests would have been furthered had Mr. Trudeau successfully influenced Ms. Wilson-Raybould to issue a directive that SNC-Lavalin be invited to negotiate a remediation agreement.<sup>66</sup>
78. The common thread connecting the examples of impropriety in past examination reports and each use of the term "improper" in the Act is whether a public office holder used their office to commit a serious or fundamental error. Mere technical irregularities will likely not rise to the level of an improper furthering of private interests. In my view, an impropriety under the Act occurs when a public office holder exercises an official power, duty or function that goes against the public interest, either by acting outside the scope of his or her statutory authority, or contrary to a rule, a convention or an established process.<sup>67</sup>
79. With respect to the criterion of public interest, chapter 2.3 of the Deskbook enumerates several factors that may be properly considered, such as the nature of the alleged offence; the nature of the harm caused by or the consequences of the alleged offence; the circumstances, consequences to and attitude of victims; the level of culpability and circumstances of the accused; the need to protect sources of information; and confidence in the administration of justice. A series of factors that are deemed irrelevant when considering whether to prosecute include "possible political advantage or disadvantage to the government or any political group or party" (Public Prosecution Service of Canada, 2014, p. 8). Thus, in applying the test, prosecutors "must make decisions without fear of political interference or improper or undue influence."<sup>68</sup>
80. In my view, it remains unclear whether these factors are truly national economic interests, which must be excluded from consideration, or are legitimate factors that must be weighed in deciding whether to negotiate a remediation agreement. Regardless of how such interests are classified, in this case, the larger public considerations are inextricably linked to SNC-Lavalin's private interests. Accordingly, Mr. Trudeau could not properly put forward any arguments involving public or private interests to the Attorney General. The remediation agreement regime makes it clear that only the prosecutor must weigh (or exclude) these interests.<sup>69</sup>

#### Partisan Political Interests

81. While SNC-Lavalin would have benefited from Ms. Wilson-Raybould's intervention in the matter, the evidence showed that the governing party also considered the partisan political consequences of not being able to secure a remediation agreement for the company. For

<sup>64</sup> Reference: Trudeau II Report – paragraph [293]

<sup>65</sup> Reference: Trudeau II Report – paragraph [294]

<sup>66</sup> Reference: Trudeau II Report – paragraph [295]

<sup>67</sup> Reference: Trudeau II Report – paragraph [301]

<sup>68</sup> Reference: Trudeau II Report – paragraph [304]

<sup>69</sup> Reference: Trudeau II Report – paragraph [319]



the reasons that follow, any partisan political interest that was put to Ms. Wilson-Raybould in the context of her evaluation of the matter in question was improper.<sup>70</sup>

#### Discussion during Legal Proceedings

- 82.** The principles of prosecutorial independence and subjudice make it clearly improper for one branch of the Government of Canada to be communicating with applicants to a judicial review challenging a decision made by another branch of the Government of Canada, without the knowledge or involvement of the Attorney General or their delegated representative.<sup>71</sup>

#### Guilty - Section 9 of the Act

- 83.** The Ethics Commissioner found that Mr. Trudeau used his position of authority over Ms. Wilson-Raybould to seek to influence her decision on whether she should overrule the DPP's decision not to invite SNC-Lavalin to enter into negotiations towards a remediation agreement. Because SNC-Lavalin overwhelmingly stood to benefit from Ms. Wilson-Raybould's intervention, I have no doubt that the result of Mr. Trudeau's influence would have furthered SNC-Lavalin's interests. The actions that sought to further these interests were improper since the actions were contrary to the constitutional principles of prosecutorial independence and the rule of law.<sup>72</sup>

### Assessment of the Report

- 84.** The review of the report has revealed the following points of interest:
- (a)** SNC-Lavalin has been actively lobbying the government for the implementation of a remediation agreement regime. Once implemented, the lobbying activities continued but were now directed towards the use of this new tool in their criminal case. The lobbying activities were mainly directed at the PMO, PCO, and Ministry of finance;
  - (b)** The PMO, PCO, Ministry of Finance were not only concerned about jobs but also presented several partisan arguments (i.e. re-election);
  - (c)** Legal advice obtained by SNC-Lavalin were circulated at the PMO, PCO and Ministry of Finance and excluded the AG;
  - (d)** Recommendations made to the AG by the PMO, PCO had been supported/suggested by SNC-Lavalin;
  - (e)** The issue of the January 14 Cabinet shuffle or Ms. Wilson-Raybould's due diligence process were not factored in the Commissioner's decision;
  - (f)** Several witnesses felt that they could not provide relevant information given the current limitation of the Order in Council;
  - (g)** A request for an extension to the Order in Council by the Ethics Commissioner was made but declined by the PCO;
  - (h)** The Ethics Commissioner did not suspend his investigation which would be required if evidence of Criminal wrongdoing was believed;

<sup>70</sup> Reference: Trudeau II Report – paragraph [320]

<sup>71</sup> Reference: Trudeau II Report – paragraph [340]

<sup>72</sup> Reference: Trudeau II Report – paragraph [351-352]





(i) Prime Minister Trudeau was aware that he could not interfere in the course of a criminal prosecution.

85. The report also presented details on other communications and events that could be relevant to an examination of the overall matter or to provide context. Some of these events were added to the chronology of events.

Chronology

September 2018						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3	4	5	6	7	8
		DPP advised the AG of the intention not to invite SNC for a DPA (Section 13 Notice)		Phone call between Chin (Finance) and Prince (MOJAG)		
9	10	11	12	13	14	15
		Phone call between Francois Giroux (MOJAG) and Ben Chin				
16	17	18	19	20	21	22
Phone call between Prince, Bouchard and Marques (PMO)	Meeting between PM, Wernick (PCO) and Wilson-Raybould  Advised PM of decision not to interfere in SNC	Meetings between Wernick, Morneau and SNC-Lavalin	Meeting between Wernick and Wilson-Raybould  Discussion between Wilson-Raybould and Morneau  Phone call between Prince, Bouchard and Marques	Phone call between Prince and Chin and To		
23	24	25	26	27	28	29
30						



October 2018						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1	2	3	4	5	6
	Quebec provincial election					
7	8	9	10	11	12	13
		DPP informed SNC that no invitation will be made regarding DPA			PCO receives opinion from MOJAG on powers to intervene	
14	15	16	17	18	19	20
Mr. Brison contacted Ms. Wilson-Raybould	A letter from SNC is sent to the PM. Meeting is requested			Phone call between Prince and Bouchard regarding a second legal opinion on DPA	Court motion from SNC-Lavalin to quash the DPP's decision	
21	22	23	24	25	26	27
					Phone call between Prince and Bouchard regarding a second legal opinion on DPA	
28	29	30	31			
	Court – Preliminary inquiry into SNC-Lavalin charges					

November 2018						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2	3
				SNC requested a legal opinion from Mr. Major (former SCC)	Legal opinion from Mr. Iacobucci given to Scott Brison	
4	5	6	7	8	9	10
	Lobby Bouchard-SNC					
11	12	13	14	15	16	17
Meetings between SNC, Chin (Finance) and Bouchard (PMO)		SNC received legal opinion from Mr. Major. This was delivered to Morneau and senior advisors at PMO.		About – Morneau Brison meet with Lynch in China		
18	19	20	21	22	23	24
Meeting Bouchard, Telford, Butts to brief on SNC	Lobby Bouchard - SNC	PCO prepared a memorandum for Mr. Trudeau in response to SNC letter of Oct 15.		Meeting between Wilson-Raybould, Bouchard and Marques re options and solutions		
25	26	27	28	29	30	
		Meeting between Bouchard, Marques and Prichard (SNC) to discuss legal opinions	Meeting Iacobucci and Trudeau (unrelated meeting)			



December 2018						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3	4	5	6	7	8
			Meeting Bouchard, Marques and Butt – pre- meeting brief on SNC  Telephone call between Bouchard, Marques Prichard and Iacobucci  Meeting between Wilson- Raybould and Gerry Butts (PMO)	SNC Board meeting	Wilson-Raybould received a letter from PM with letter from SNC- Lavalin in attachment	
9	10	11	12	13	14	15
16	17	18	19	20	21	22
		Meeting between Prince, Telford and Butts	Meeting Trudeau, Telford, Butts and Wernick  Phone call between Wilson- Raybould and Wernick			
23	24	25	26	27	28	29
30	31					

