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	SUB-DIVISION – SOUS-DIVISION CROPS		
	DETACHMENT – DÉTACHEMENT Sensitive & International Investigations		
RE – OBJET			
<b>Conclusions and Recommendations</b> <b>Obstruction of Justice – SNC-Lavalin Affair</b>			PAGE 1 OF/DE 8

**I. SYNOPSIS**

1. On February 7, 2019, the Globe and Mail published an article alleging that officials in the Prime Minister’s Office pressured Ms. Wilson-Raybould to overrule federal prosecutors by offering a remediation agreement to SNC-Lavalin.
2. On February 27, 2019, after almost three weeks of political controversies, the Honourable Jody Wilson-Raybould appeared before the House of Commons Standing Committee on Justice and Human Rights (Justice Committee) and provided a statement in relation to allegations of political interference she experienced in her role as Attorney General of Canada. Ms. Wilson-Raybould testified that between September and December 2018, herself or her staff were pressured by individuals from the Department of Finance, the Prime Minister’s Office (PMO) or the Privy Council Office (PCO) to intervene in the matter involving SNC-Lavalin. Ms. Wilson-Raybould indicated that this pressure continued over the 4-month period and involved 11 people from the PMO, the PCO and the Office of the Minister of Finance. This pressure involved statements regarding the necessity of intervening in the SNC-Lavalin matter. This pressure culminated on December 19, 2018, with a conversation between Ms. Wilson-Raybould and the Clerk of the PCO in which she perceived veiled threats.

**II. ALLEGATIONS**

3. Since February 2019, the RCMP received several correspondences from members of the public and from the Honourable Andrew Scheer, former Leader of the Official Opposition requesting an investigation into the matter. These correspondences were citing alleged violations of the *Criminal Code* as it pertained to obstruction of justice. Based on the initial reporting and publicly available information, the following two *Criminal Code* offences were identified as potentially relevant to the current matter:
  - a. Obstruction of Justice - Section 139(2); and
  - b. Intimidation of a Justice System Participant - Section 423.1.

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4. Subsequent probing into the matter did not establish additional potential viable offences.

### III. INVESTIGATIVE SUMMARY

#### Scope and Limitation

5. At the onset, the RCMP Sensitive and International Investigations undertook a proactive review of the publicly available information in an effort to determine if the current allegations were criminal in nature. Given that this matter was shrouded in cabinet and client-solicitor privileges, the RCMP sought a waiver and authorization from the Department of Justice allowing the RCMP to conduct inquiries with potential witnesses. In order to fully review the matter, the RCMP requested an expansion to the scope of the Order in Council 2019-0105 which only applied to testimonies before the Justice Committee and the examination of the Ethics Commissioner. However, the RCMP were only granted the same parameters as found in the Order in Council 2019-0105.
6. The RCMP took a phased approach which consisted initially of conducting a preliminary review of the publicly available information in order to assess the scope of the allegations. Following each phase, an assessment was made as to the need and capacity to further the evidence gathering activities.
7. In its review, the RCMP assessed several points which included:
  - a. the current legislative framework;
  - b. a review of external reports;
  - c. an analysis of the evidence (See Assessment Report dated February 2, 2021); and
  - d. the prospect of further investigative activities.

#### Synopsis of the Evidence

8. The assessment of the matter has identified the following elements which are believed to be relevant to allegations of criminality. Please refer to the Assessment Report dated February 2, 2021 for a more exhaustive account of the evidence.
  - a. The Public Prosecution Services of Canada decided not to invite SNC-Lavalin to negotiate a remediation agreement in its prosecution case. On September 4, 2018, the Attorney General was notified of the Director of Public Prosecution's (DPP) decision through the submission of a section 13 notice. Following a due diligence process, the Attorney General decided not to intervene in the DPP's decision. During this due diligence process, legal advice documents were prepared by various employees attached to the Office of the Minister of Justice and Attorney General.

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These documents detailed various options available to the Attorney General as well as considerations associated to these options. These documents were shared with the PMO and the PCO.

- b. The Attorney General communicated her decision to the Prime Minister and the Clerk of the PCO during a meeting held on September 17, 2018. At the time, the Attorney General undertook with the Prime Minister to consult with her Deputy Minister and to meet again with the Clerk of the PCO. Mr. Trudeau's direct interaction with Ms. Wilson-Raybould on the matter was limited to this single meeting.
- c. Between September and December 2018, Ms. Wilson-Raybould or her staff were pressured by individuals from the Department of Finance, the PMO or the PCO to intervene in the matter involving SNC-Lavalin. This pressure culminated on December 19, 2018, with a conversation between Ms. Wilson-Raybould and the Clerk of the PCO in which she perceived veiled threats.
- d. At the same time, SNC-Lavalin actively lobbied the PMO, PCO and Department of Finance in an effort to pursue a remediation agreement. The lobbying involved 14 contacts over a period of about 15 weeks with members from the Department of Finance, the PMO and the PCO.
- e. Representations were made to Ms. Wilson-Raybould or her staff about the effects a conviction might have on the company and in particular the negative consequences that a conviction might have for its operations in Canada. Further representations were made about the need to explore other options such as seeking an external opinion. While such a step would be almost unheard of in Canadian prosecutorial practice, without more, there is nothing criminal about lobbying on this basis. Representations also included comments about how a conviction could affect the 2018 Quebec provincial election and the 2019 federal election.
- f. Over the past years, SNC-Lavalin had undergone a corporate restructuring, including downsizing of the workforce, within Canada. The general message identified supported that SNC-Lavalin was publicly advertising the loss of jobs and the potential move of their operations outside of Canada.
- g. The recurring theme that emerged in the evidence was the necessity to find a solution that would limit the impact that a conviction would have on innocent third parties. It was clear that the government was hoping that the legislative tools available in the *Criminal Code* be utilized. At no time did anyone order the Attorney General or her staff to instruct the Director of Public Prosecutions to enter negotiations for a

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remediation agreement; nor did they have such the authority. While the former Attorney General and her Chief of Staff have warned the dissenting parties that they were politically interfering, neither warned them that their conducts were crossing into the realm of criminality.

h. The Cabinet shuffle was attributed to Minister Brison's resignation.

Legislative Framework

9. This matter involves a wide range of applicable legislations, principles and doctrine. This legislative framework creates a unique situation which decrease the likelihood of a successful prosecution of a case, even when sufficient evidence would exist. While the principles of prosecutorial independence are well established, the legislation pertaining to remediation agreement was relatively new.
10. The Shawcross doctrine remains at the center of this matter given the parameters it offers on ministerial consultations. While it is agreed that ministerial discussions should be encouraged, it is also widely accepted that the Attorney General should not be pressured in reaching a decision. The Shawcross Doctrine represents a constitutional convention or practice, not a rule of law. This would suggest that unless the elements of a criminal offences were met, a breach of the doctrine is more in the realm of ethical consideration with political ramifications and consequences. Based on the information at hand, it can be argued that the interactions were violating convention or practice, but not the law.

External Reports

11. Following a review of the information, it became apparent that the dual roles of Minister of Justice and Attorney General added to the complexity of the matter. It was clear from Ms. McLellan's report and recommendations that more guidance is required as it relates to the process governing ministerial consultation. This lack of clarity would surely be actively debated in any criminal court proceeding.
12. The *Trudeau II Report* has provided additional context into the extent of SNC-Lavalin's lobbying activities and outreach into the government. It is clear that the government was actively attempting to find a solution that would allow for SNC-Lavalin to keep operating. While information from the report is concerning from an ethical standpoint, it does not provide factual evidence that would bridge the gap between the impugned activities and a criminal intent to obstruct the course of justice.
13. From his examination, Mr. Dion found that Mr. Trudeau used his position of authority over the former Attorney General to seek to influence, both directly and indirectly, her decision on

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whether she should overrule the DPP's decision not to invite SNC-Lavalin to negotiate a remediation agreement. As a result, Mr. Dion found that Mr. Trudeau contravened section 9 of the *Conflict of Interest Act*. However, this finding of guilt cannot be transposed to a criminal matter.

14. Finally, it should be noted that despite having access to a wider range of documents and testimonies, the Commissioner did not suspend his examination which would be required as per section 49(1)(a) of the *Conflict of Interest Act* if evidence of criminal wrongdoing was discovered.

Criminal Intent

15. Between September and December 2018, it was reiterated that the decision on the matter was for the Attorney General to take. It was noted that the essence of the messages was often leaning towards finding a solution within the “*legitimate toolbox*” or to ensure that all options have been explored. While other comments give cause for concerns, they remain open for debate as to their interpretation. Furthermore, some of these comments were clarified during testimonies before the Justice Committee; in which an opposing view was provided. While one might not accept these explanations, there are currently no strong contradicting evidence.
16. Also, the fact that discussions (leaving aside the purely partisan considerations) on the matter are proper on occasions but inappropriate in others creates a situation in which a clear delineation of when the activities become improper subjective and open to interpretation. When assessing a case, it is the Attorney General’s responsibility to consider only appropriate factors as set out in the *Criminal Code*; a rule that her Cabinet colleagues do not have to follow. Ms. Wilson-Raybould testified that despite the pressure she encountered, it did not impede her in the performance of her duties as it pertained to SNC-Lavalin nor did it made her reconsider her position.
17. It is clear in Ms. Wilson-Raybould’s testimony that her decision had been reached by September 17, 2018. However, that same level of clarity wasn’t shared by other witnesses during statements to the Ethics Commissioner or the Justice Committee. It seems that this decision date is significant as it would delineate between proper and improper. However, this line becomes more subjective when factoring the concept of continuous assessment of a situation. For instance, despite a decision made by September 17, Ms. Wilson-Raybould agreed to meet with the Clerk on a following day and to discuss the matter with her Deputy Minister. Notwithstanding her informed decision on the subject, this might be viewed as an opening for further discussions and would be actively debated in the context of a criminal prosecution.

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18. Finally, the version of events, as provided by the former Attorney General, is critical in assessing the situation. It should be recognized that Ms. Wilson-Raybould, as an accomplished lawyer, a former Crown Counsel and former Attorney General, possess a strong understanding of the law. As such, the former Attorney General's comments pertaining to the legality of the events that unfolded would be heavily scrutinized. When questioned before the Justice Committee, Ms. Wilson-Raybould characterized the situation as being inappropriate as opposed to illegal. In her subsequent statements to the RCMP, Ms. Wilson-Raybould further explained those comments by explaining how her opinion was based on the confines of the waiver and information she was privy to. The review of the communications and documents available to the RCMP did not yield sufficient evidence to establish a criminal intent; particularly when factoring public statements made by the dissenting parties. Her opinion that the pressure did not impede her performance of her duties and that it did not amount to criminal misconduct, in essence, might defeat a criminal prosecution.

Cabinet Shuffle

19. It is believed, should evidence exist that the Cabinet shuffle was orchestrated to allow for another Attorney General to reach a different decision, that it would likely be the strongest theory towards an offence of obstructing justice. When examining this Cabinet shuffle, the powers of the Prime Minister in appointing Ministers cannot be set aside. In the current legislative framework, the Prime Minister has complete latitude in promoting, demoting or dismissing an Attorney General. While the Prime Minister is not compelled by law to provide an explanation, one was provided which linked the decision to the retirement of Minister Brison. During his testimony before the Justice Committee, Mr. Butts provided a clear rationale explaining the decision making process. Mr. Wernick further supported this version of events. Finally, the documentary evidence showed that the Prime Minister and Mr. Butts denied any correlation between the SNC-Lavalin matter and the Cabinet shuffle when confronted on the subject. At present, there is no information or evidence available to investigators to support the contrary.

20. Mr. Lametti, as the newly appointed Attorney General, testified before the Justice Committee that while he had a general knowledge of this matter as a Montreal Member of Parliament, he did not speak with the Prime Minister or any member of his office about it prior to his appointment. He further added that he was not aware of any details of the conversations that took place between Ms. Wilson-Raybould and the Prime Minister or his office. Finally, Mr. Lametti testified that he never experienced inappropriate pressure by the Prime Minister or anyone in the PMO on the issue of remediation agreement or any other legal issues. While a desired outcome is not a pre-requisite to an offence of obstruction, it would be argued that

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the absence of directives by Mr. Lametti is further evidence that the government did not intent to coerce the Attorney General to reach a specific decision.

Waiver and Authorization

21. Leaving aside the level of evidence, it is believed that given the current parameters of the waiver and authorization, a full investigation into the matter would be greatly impacted. It was noted in the *Trudeau II Report* that Commissioner Dion faced similar challenges when his request to expand the scope of the Order in Council 2019-0105 was denied; despite his pleas to the PCO and the Prime Minister. Beside the fact that witness testimonies have been limited by the parameters of the Order in Council, at this time, the RCMP does not have additional arguments in support of an extension of the waiver and authorization.

**IV. CONCLUSION AND RECOMMENDATION**

22. Notwithstanding the privilege barriers, it is believed that there is insufficient evidence to obtain production orders or search warrants for additional material based on the totality of the circumstances and the evidence gathered. When factoring the principles of a full, fair and frank disclosure of the matter, it is believed that the evidence at hand is insufficient to convince a trier of fact of the alleged offences.

23. It should be emphasised, that the conclusions reached in this report does not translate to the absence of a criminal offence. Instead, given the current legislative framework, the overall assessment of the evidence, and the evidence threshold required for a criminal conviction, it is believed that there is insufficient evidence to support further investigative actions or a criminal prosecution.

24. However, should additional evidence be uncovered corroborating a criminal intent to obstruct justice, it would be recommended that the occurrence be reopened for further investigation.

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