



democracy Watch
émocratie en surveillance

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Steve Bell, Interim Chief of the Ottawa Police Service
Ottawa Police Service Headquarters
474 Elgin St.
Ottawa, Ontario
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Via email to: info@ottawapolice.ca

July 21, 2022

RE: Given evidence of RCMP and federal Cabinet relationship, and failure of the RCMP to provide a public update, request that Ottawa Police Service investigate the allegation that Prime Minister Trudeau and other federal government officials obstructed justice by pressuring the Attorney General to stop the prosecution of SNC-Lavalin and, in so doing, committed a breach of trust

Dear Interim Chief Bell:

Democracy Watch is requesting that the Ottawa Police Service (OPS) investigate the allegation that Prime Minister Justin Trudeau, former Finance Minister Bill Morneau, some members of their staff, and former Clerk of the Privy Council Michael Wernick obstructed justice by pressuring then-Attorney General Jody Wilson-Raybould to stop the prosecution of SNC-Lavalin and, as a result, also committed a breach of trust. We also request that the OPS, when that investigation has been completed, provide a public explanation of all decisions made concerning that investigation, and all decisions concerning prosecuting anyone involved in the situation.

A. Reasons for request: RCMP independence in question; RCMP refusing to provide a public update since August 2019; alleged violations occurred in Ottawa

The reasons for this request are that recent disclosures concerning the investigation of the mass shooting situation in Nova Scotia have raised serious questions about whether the RCMP is subject to political pressure from the federal Cabinet, as has been reported in media articles, for example at: <https://www.theglobeandmail.com/politics/article-rcmp-commissioner-accused-of-interfering-in-nova-scotia-mass-shooting/>

and

<https://www.ctvnews.ca/politics/rcmp-official-lucki-claimed-direct-pressure-from-federal-minister-to-name-guns-1.5966770>

Given that the investigation is into allegations of wrongdoing by Prime Minister Trudeau and members of his staff and Cabinet, these questions raise the issue of whether the RCMP has the full independence needed to investigate and reach conclusions impartially concerning the SNC-Lavalin prosecution situation.

In addition, as mentioned in these recent media articles:

<https://www.theglobeandmail.com/politics/article-newly-released-documents-show-rcmp-considered-whether-to-charge-justin/>

and

<https://www.theglobeandmail.com/politics/article-aga-khan-trudeau-investigation/>

the RCMP has disclosed in response to an *Access to Information Act* request documents concerning the investigation into the trip gift given by the Aga Khan to Prime Minister Trudeau and his family. The documents show that the RCMP did not do a full investigation of that situation, neglecting to ask the Prime Minister key questions and to disclose key evidence. As a result, based on this flawed investigation, the RCMP and Crown prosecutors made a very questionable decision not to prosecute the Prime Minister.

Finally, despite Democracy Watch requesting a public update from the RCMP and Crown prosecutors concerning their examination of allegations of wrongdoing by Prime Minister Trudeau and the others in the SNC-Lavalin prosecution situation in February 2021

<https://democracywatch.ca/democracy-watch-calls-on-rcmp-and-prosecutors-to-issue-update-on-investigation-into-obstruction-of-snc-lavalin-prosecution-by-trudeau-cabinet-officials/>

and in June 2022

<https://democracywatch.ca/democracy-watch-again-calls-on-rcmp-and-prosecutors-to-issue-update-on-investigation-into-obstruction-of-snc-lavalin-prosecution-by-trudeau-cabinet-officials/>

neither the RCMP nor Crown prosecutors have issued any information or statement since August 2019.

The last public statement by the RCMP on its examination was issued on August 14, 2019:

<https://www.cbc.ca/news/politics/rcmp-snc-report-examining-carefully-1.5247119>

On September 10, 2019, the *Globe and Mail* reported in this article:

<https://www.theglobeandmail.com/politics/article-ottawa-blocks-rcmp-on-snc-lavalin-inquiry/>

that Ian Shugart, Clerk of the Privy Council, had also refused to waive Cabinet confidence to allow witnesses in the government to provide full information to the RCMP, and that sources within the RCMP said it was putting its examination on hold through the election campaign period.

The next day, former Attorney General Jody Wilson-Raybould stated publicly that she had been interviewed by the RCMP about the actions of the Prime Minister and other officials, as reported by the *Globe and Mail* in this article:

<https://www.theglobeandmail.com/politics/article-rcmp-interviews-jody-wilson-raybould-to-discuss-political-interference/>

Given almost three years have passed, the public has a right to know what the conclusions the RCMP and Crown prosecutors have reached.

As a result of the above reasons, we do not believe that the RCMP has examined the SNC-Lavalin situation properly, competently, professionally or with full independence.

Given the alleged violations took place in Ottawa, the Ottawa Police Service has full and clear jurisdiction to investigate the situation, and we request that the OPS commence its investigation promptly.

B. Ethics Commissioner's investigation blocked so incomplete

Some of the facts of this pressuring of the Attorney General, and related actions, by Justin Trudeau and the other government officials are contained in paragraphs 51-228 of the federal Conflict of Interest and Ethics Commissioner's August 2019 ruling on the situation which can be seen at:

<https://ciec-ccie.parl.gc.ca/en/publications/Documents/InvestigationReports/Trudeau%20II%20Report.pdf>.

However, Ian Shugart, Clerk of the Privy Council, refused to waive Cabinet confidence and, as a result, the Ethics Commissioner reported that he did not have access to all of the information concerning the actions of everyone involved as nine witnesses were prevented from giving him full information.

C. RCMP received allegations of obstruction of justice, other lawyers agree

The RCMP received two requests to examine the actions of Prime Minister Trudeau and the other officials. The first came in a letter from five former Attorney Generals on February 28, 2019, which can be seen at:

https://www.scribd.com/document/400834745/The-Letter-Former-Attorneys-General-Sent-To-RCMP-On-SNC-Lavalin#from_embed

and which stated that:

“Per section 139(2) of the Criminal Code it is prohibited to attempt to obstruct, pervert or defeat the course of justice. We believe that there are reasonable and probable grounds to suspect that the conduct of the Prime Minister’s Office has crossed that threshold.”

and, concerning another form of obstruction of justice:

“It is contrary to the section 423.1(1) of the Criminal Code to engage in any conduct with the intent to provoke fear in the Attorney General.”

The second was submitted on the same date by then-Conservative Party Leader Andrew Scheer, as reported in this article:

https://www.huffingtonpost.ca/2019/02/28/andrew-scheer-calls-rcmp-trudeau-snc-lavalin_a_23680804/?utm_campaign=canada_dau.

In addition, in an iPolitics.ca article published on February 7, 2019, which can be seen at:

<https://ipolitics.ca/2019/02/07/legal-community-raises-alarms-over-allegations-pmo-interfered-in-snc-lavalin-case/>

Michael Bryant, former Attorney General of Ontario for the provincial Liberal Party, is quoted as saying:

“I’d be surprised if a police investigation was not commenced,” he said. “A lot of police officers have laid a lot of obstruction of justice charges on a lot of ordinary Canadians, with a lot less evidence than this.”

and

“These allegations as they stand in the report right now — while denied by the prime minister — fall within the four corners of obstruction of justice.”

As well, in this article:

<https://www.cbc.ca/news/politics/rcmp-investigation-obstruction-questions-1.5037252>

two lawyers whose practices focus on criminal law stated that, even as early as March 2019, the evidence showed that all the elements of obstruction of justice were present in the situation.

We request that the Ottawa Police Service consider this information in its investigation of the situation.

D. Courts should be allowed to decide whether line was crossed

As mentioned above, the obstruction of justice provision subsection 139(2) of the *Criminal Code* (R.S.C., 1985, c. C-46) that applies to this situation, which can be seen at:

<https://laws-lois.justice.gc.ca/eng/acts/c-46/section-139.html>

states that it is a violation to intentionally attempt “to obstruct, pervert or defeat” the course of justice.

In addition, the breach of trust provision in section 122 of the *Criminal Code* also applies to the situation, as all five parts of the test for breach of trust set out in the Supreme Court of Canada’s ruling in *R. v. Boulanger*, 2006 SCC 32 (CanLII), [2006] 2 SCR 49, <<https://canlii.ca/t/1nwwj>> are met:

1. the accused (Prime Minister and others) are officials;
2. the accused were acting in connection with the duties of their offices;
3. as the Ethics Commissioner concluded, the accused breached the standard of responsibility and conduct demanded of him or her by the nature of the office;
4. the accused’s conduct represented a serious and marked departure from the standards expected of an individual in the accused’s position of public trust; and;
5. the accused acted with the intention to use his or her public office for a purpose other than the public good, for example, a dishonest, partial, corrupt, or oppressive purpose, namely obstruction of justice.

What should the Ottawa Police Service and prosecutors decide to do in such a situation? First of all, it is clear that the situation warrants a full investigation, given the pressure on the Attorney General was intentionally applied to stop a prosecution of a company that had clearly violated the law.

Secondly, the test for deciding to prosecute is whether there is a reasonable prospect of a conviction, and whether it is in the public interest.

The words in subsection 139(2) are general, and no one knows how they apply exactly to a situation like the pressure put on the former Attorney General because such a situation has never been made public before in Canada. As a result, given they have no past case rulings to rely on that have made it clear whether subsection 139(2) applies to the situation, the default position for any prosecutor should be to proceed with the prosecution and allow the courts to decide whether the line set out by subsection 139(2) has been crossed by anyone involved in the situation.

Given the pressure applied to the Attorney General was aimed at stopping a prosecution by the federal Public Prosecution Service (PPS), it should not be making any decisions concerning prosecutions in this situation. However, the

PPS “Deskbook” that sets out its prosecution policy can still serve as a useful guide to prosecution decisions in this situation. The Deskbook can be seen at: <https://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/tpd/d-g-eng.pdf>.

Part 2.3 of the PPS Deskbook states that the following factors should be considered to determine whether a prosecution is “in the public interest”:

- i. the seriousness of the offence;
- ii. the harm it caused to the victim and society in any way;
- iii. the degree of responsibility of the accused;
- iv. whether they were in a position of authority or trust;
- v. the need to protect confidential information, and;
- vi. whether a prosecution is needed to maintain confidence in the justice system.

The policy also says that prosecutors must not be influenced by, among other factors: “Possible political advantage or disadvantage to the government or any political group or party.”

Given the Ethics Commissioner determined that the pressure on the Attorney General violated Canada’s most important federal government ethics law, and that Prime Minister Trudeau applied some of the pressure himself and used his authority to direct other government officials also to apply the pressure, and given there is no confidential information that needs to be protected, and finally that the Supreme Court of Canada ruled in *R. v. Hinchey*, [1996] 3 S.C.R. 1128 that such violations fundamentally harm Canada’s democracy and public confidence in government, the default position should be to charge and prosecute anyone where there is clear evidence (such as emails or other written records) that they pressured the Attorney General. The courts should be given the opportunity to decide whether the obstructing justice line and/or the breach of trust line was crossed for each person so charged.

The following additional reasons also favour prosecuting and letting the courts decision whether the lines were crossed:

1. Obstruction of justice is a serious criminal offence, as is breach of trust.
2. Obstruction of justice is even more serious when committed behind closed doors by government politicians and officials, as it is then also an act of government corruption.
3. As set out above in section C, all of the elements needed to prove obstruction of justice are present in the actions of the Prime Minister and others as they pressured the Attorney General multiple times to stop the prosecution.
4. As set out above, all the elements needed to prove breach of trust are present in the actions of the Prime Minister and others.
5. Concerning intent, the Ethics Commissioner concluded in para. 284 of his ruling cited above that “Mr. Trudeau knowingly sought to influence Ms. Wilson-Raybould both directly and through the actions of his agents.”
6. Many legal and political experts dispute the claim by the Clerk of the Privy Council, and Prime Minister Trudeau, that it is proper for Cabinet to refuse

to waive Cabinet confidence and prohibit the RCMP (and the Ethics Commissioner) from seeing all documents and records concerning the actions of the Prime Minister and the other government officials in this situation, and prohibit all government witnesses to provide full testimony, as can be seen in this September 13, 2019 *Globe* article:
<https://www.theglobeandmail.com/politics/article-trudeau-controls-waiver-of-cabinet-confidentiality-on-snc-lavalin/>.

7. Prosecutors in Canada have, in recent years, usually provided public explanations of investigation and prosecution decisions in such cases (for example, B.C. special prosecutors in several recent cases, and the Commissioner of Canada Elections concerning the robocalls situation).

I request that you respond to this letter, or issue a public statement, that makes it clear what the Ottawa Police Service's decision is concerning investigation this situation.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Duff Conacher', written in a cursive style.

Duff Conacher, Co-founder of Democracy Watch
On behalf of the Board of Directors of Democracy Watch