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émocratie en surveillance

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Brenda Lucki, Commissioner of the RCMP
RCMP National Headquarters
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Via email to: RCMP.Nat.Intake-Triage.Nat.GRC@rcmp-grc.gc.ca

February 11, 2020

RE: Request for public update concerning the state of the examination of 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

Dear Commissioner Lucki:

Democracy Watch requests a public update from the RCMP and Crown prosecutors concerning the state of the examination of 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 an explanation of all decisions made concerning that examination and any subsequent investigations that have been undertaken, and all decisions concerning prosecuting anyone involved in the situation.

A. 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.

B. 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.

C. 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.

What should the RCMP 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 was crossed for each person so charged.

D. Silence since August 2019 by RCMP and prosecutors is unjustified

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/>

There are several reasons why the silence from the RCMP and Crown prosecutors since August 2019 is completely unacceptable and unjustifiable:

1. Obstruction of justice is a serious criminal offence.
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. 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."

5. 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/>.
6. 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).
7. Last, but certainly not least, the public has a right to know what decisions have been made, given that the RCMP and prosecutors.

E. Canadians have a right to a full explanation now of all decisions made

Democracy Watch's position is that, given all of the above, and given two years have passed since the situation was made public, and given many of the facts of the situation have been known for almost two years, the public deserves, and has a right to, a full, public explanation now of the RCMP's decision whether or not to investigate, and of the investigation, and of the decisions of Crown prosecutors concerning the evidence gathered during that investigation, and how the law applies to that evidence, and what prosecutors have decided concerning proceeding with a prosecution of anyone involved in the situation.

Are the RCMP and prosecutors waiting for another election to pass? Are they doing what so often happens in Canada when powerful politicians and government officials are involved in alleged illegal activities – delaying and then burying the results of an investigation, and then delaying further until the public pressure becomes too great, or until the politicians or officials resign or retire, and then finally disclosing that no charges will be laid?

I request that you respond to this letter, or issue a public statement, that makes it clear when a full report will be made public that explains the above decisions by the RCMP and prosecutors.

Sincerely,



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