

## **Opinion Respecting a Private Prosecution**

1. You have asked for my opinion whether the Prime Minister of Canada committed any criminal offences in connection with his conduct in relation to the SNC Lavalin case in the months of September 2018 to January 2019.
2. It is my opinion that there are reasonable and probable grounds to believe that the Prime Minister committed the offence of Obstruction of Justice under s. 139(2) of the Criminal Code and possibly the offence of Breach of Trust by a Public Official under s. 122 of the Criminal Code. The reasons for my opinion are set out below.

### **Background Facts**

3. The facts are largely taken from the report of the Conflict of Interest and Ethics Commissioner, Mr. Mario Dion, published in August of 2019 and the testimony of the Honourable Minister of Justice and Attorney General, Ms. Jody Wilson-Raybould at the House of Commons Justice Committee hearings on February 27, 2019.
4. Mr. Dion summarized some of the background early in his report where he said:

Mr. Trudeau testified that he first heard of SNC-Lavalin's desire for the Government of Canada to adopt a remediation agreement regime when he and his Senior Advisor, Mr. Mathieu Bouchard, met with the company's CEO and other senior representatives in early 2016. According to Mr. Trudeau, during this meeting they discussed the company's legal issues, the reform efforts that SNC-Lavalin had undertaken and the impacts a criminal conviction would have on the company. Mr. Trudeau believed SNC-Lavalin also mentioned to him what other countries were doing with remediation agreements.

Mr. Trudeau testified that he believed that if the company had indeed reformed itself, a criminal conviction would be an unfortunate loss for employees, as SNC-Lavalin is a significant employer across Canada, and that it would also be an unfortunate loss in terms of infrastructure projects in Canada.

5. It is not clear whether any other investigation has taken place to obtain first-hand evidence from those who were directly involved in the matter, however, if such an investigation ever took place, none of the results have ever been made available to the public.
6. Mr. Dion's report contains summaries of the witnesses who testified under oath, including the Prime Minister. While his conclusions appear rational and reasonable given the evidence he heard, I have not relied upon his conclusions or opinions in forming this opinion. Instead, I have relied on his summaries of what each of the witnesses said in their evidence.

### **The Prosecution**

7. The issue respecting SNC-Lavalin arose because of a criminal prosecution launched by the Director of Public Prosecutions on February 19, 2015. The charges were under s. 3(1)(b) of the *Corruption of Foreign Public Officials Act* and section 380(1) of the *Criminal Code of Canada*.
8. Section 3(1)(b) of the *Corruption of Foreign Public Officials Act* states:

**Bribing a foreign public official**

**3 (1)** Every person commits an offence who, in order to obtain or retain an advantage in the course of business, directly or indirectly gives, offers or agrees to give or offer a loan, reward, advantage or benefit of any kind to a foreign public official or to any person for the benefit of a foreign public official

(a) as consideration for an act or omission by the official in connection with the performance of the official's duties or functions; or

(b) to induce the official to use his or her position to influence any acts or decisions of the foreign state or public international organization for which the official performs duties or function.

9. Section 380(1) of the *Criminal Code* states:

**380 (1)** Every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security or any service,

(a) is guilty of an indictable offence and liable to a term of imprisonment not exceeding fourteen years, where the subject-matter of the offence is a testamentary instrument or the value of the subject-matter of the offence exceeds five thousand dollars; or

(b) is guilty

(i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or

10. In Canada, bidders for contracts with *Public Services and Procurement Canada* must conform to the Integrity Regime legislation passed in July 2015. The Integrity Regime is designed to exclude suppliers that have ethics-related criminal convictions, such as bribery, price fixing, or lobbying offences. SNC-Lavalin faced such charges. If convicted, SNC-Lavalin could be banned from bidding on

federal government contracts for up to ten years. As SNC-Lavalin earned significant income from its contracts with the Federal Government, this provision caused considerable alarm for the company.

11. The Company and its senior officials and counsel then began a lengthy lobbying campaign for the government to change the law to provide for remediation agreements so that SNC-Lavalin could avoid the consequences if it was convicted of the offences and continue to do business with the Canadian Government. Those efforts lasted several months. David Cochrane of the CBC reported on February 14, 2019, that the lobbying campaign launched by SNC-Lavalin took “20 months and involved 51 meetings” between representatives of SNC-Lavalin and senior officials of the Canadian government.
12. The *Criminal Code* was subsequently amended to provide for remediation agreements under Part XXII.1, Section 715.3. The amendment to the Criminal Code was contained in the Budget Implementation Act and came into force on September 19, 2018.
13. It should also be noted that SNC-Lavalin was charged with two other offences that arose from approximately the same period. One charge alleged that SNC-Lavalin had organized political contributions from its employees to Canadian political parties (most of them to the Federal Liberals) which it then reimbursed to its employees by means of an allegedly improper scheme. The second was an alleged kickback to a municipal official respecting contract work on the Jacques Cartier Bridge in Montreal.

## **The Allegations against SNC-Lavalin and its Employees**

14. The allegations at the root of the prosecution were serious allegations of criminal conduct. Central to the charge was the allegation that SNC-Construction, part of the SNC-Lavalin Group had paid millions of dollars in bribes to two foreign corporations.
15. The allegations were summarized in a blog published in the research website Mondaq under the title *Canada Lays Corruption and Fraud Charges Against SNC-Lavalin* in this way:

The allegations against SNC-Lavalin are that the three entities offered or paid bribes of C\$47,689,868 million or more, directly or indirectly to Libyan government officials, and that the entities defrauded the Libyan government, the “Management and Implementation Authority of the Great Man Made River Project” of Libya, the “General People’s Committee for Transport Civil Aviation Authority” of Libya, Lican Drilling Co Ltd, and the “Organization for Development of Administrative Centers” of Benghazi in Libya of property, money or valuable security or service of a value of approximately C\$129,832,830.

16. One of the senior executives of the corporations was Riadh Ben Assia who pled guilty to criminal charges in Switzerland related to the payments. Some of the money was allegedly directed to Saadhi Gaddafi, the son of Moammar Gadaffi. A portion of the money was allegedly paid to decorate Saadhi Gadaffi’s condominium in Toronto and was part of a \$1.9 million dollar payment which covered a single trip to Canada. SNC-Lavalin paid for the entire \$1.9 million dollars the trip cost. The cost of the trip was said to include approximately \$30,000 for sexual activities purchased by Mr. Gadaffi. SNC-Lavalin

was also charged with defrauding Libyan organizations of approximately \$130 million dollars.

17. The purpose of the payments was to obtain contracts for SNC-Lavalin. If convicted of the allegations, SNC-Lavalin would be barred from bidding on Canadian contracts for a period of up to 10 years from the date of conviction.
18. SNC-Lavalin wanted to avoid the consequences of a conviction and discussions were held with senior ministers of the Canadian Government to amend the Criminal Code of Canada to include a provision to allow “deferred prosecution agreements”, or *remediation* agreements which would allow a criminal case to be resolved by the payment of a significant financial penalty but without an actual criminal conviction.
19. Deferred prosecution agreements are a relatively new process that have already been adopted by the United Kingdom, France, and Australia. There is nothing wrong with such agreements in proper circumstances, particularly with charges against large corporations that will continue to operate after the charges have been resolved. The corporation benefits by avoiding conviction and the money can be directed to reimburse victims or another worthy purpose. If an agreement is reached it must be approved by a judge, so the criminal justice system remains open and public.
20. Such an agreement would allow SNC-Lavalin to continue to bid and be awarded contracts from the Government of Canada, something

that SNC- Lavalin clearly wanted, and the government seemed anxious to facilitate.

21. Canada did not have legislation in place to authorize a deferred prosecution agreement, so that alternative was not initially available in the case of SNC-Lavalin. That problem was remedied following discussions between SNC-Lavalin executives and senior government officials that began in 2016. The result was the amendment to the Criminal Code that was included in the Budget Implementation Act in 2018.
22. Once the new amendments were in place, SNC-Lavalin applied to the Director of Public Prosecutions, Ms. Kathleen Roussel, for approval of a deferred prosecution agreement or remediation agreement respecting the charges related to the allegations respecting Libya. Ms. Roussel refused the request.
23. Given the fact that the Government had acted promptly to implement the changes to the Criminal Code, the decision of Ms. Roussel was a surprise to both SNC-Lavalin and the Government.
24. It seems clear from the Report of the Ethics Commissioner, Mr. Mario Dion, that issue of the prosecution of SNC-Lavalin was brought to high levels of the Federal Government soon after the prosecution was launched. After SNC-Lavalin was charged, the issue of the impact of a conviction under the charges was brought to the government by SNC-Lavalin officials. The government appeared unusually keen to become involved. It appeared to be readily apparent that the

government's willingness to intervene in the matter had absolutely nothing to do with the principles of the Criminal Law.

25. In early 2016 Mr. Mathieu Bouchard, a senior advisor to the Prime Minister was asked to investigate the vehicle of a deferred prosecution agreement, or a remediation agreement as it is also known.
26. Mr. Trudeau and Mr. Bouchard met with the CEO and other senior officials of SNC-Lavalin and apparently provided a sympathetic hearing. It was quickly apparent that the government was amenable to amending the Criminal Code to include a new provision to allow remediation agreements to be available in Canada.
27. The Budget Implementation Bill contained the proposed amendment and remediation agreements became part of the Criminal Law on September 19, 2018.
28. It appears from the investigation of the Ethics Commissioner, and the evidence of Ms. Wilson-Raybould, that the Criminal Code amendments were specifically intended to be applied to benefit SNC-Lavalin to avoid the consequences of its conduct and specifically to avoid the prosecution that had already been commenced. Ms. Wilson-Raybould said that the Prime Minister's Principal Secretary, Gerald Butts told her the amendments were made to assist SNC-Lavalin.
29. It also seems clear that the government was afraid that if convicted of the charges it was facing, there was a possibility of job losses SNC-Lavalin's Quebec based business, and the possibility of relocating the business outside of Canada completely. As to possibility of moving, it



appears the Corporation was under an obligation to a creditor to maintain the head office and the CEO of the Corporation in Quebec while the loan was outstanding. There is no evidence that SNC-Lavalin disclosed that obligation to the government.

30. Once the Criminal Code was amended, the government appears to have expected, rather than hoped, that the prosecution of SNC-Lavalin would be dropped, and a remediation agreement worked out. However, the Director of Prosecutions was not prepared to drop the prosecution and instead advised SNC-Lavalin that it would not be invited to negotiate a remediation agreement.
31. In mid-August 2018 Mr. Chin, the Chief of Staff to Finance Minister Morneau contacted Jessica Prince the Chief of Staff to the Attorney General Ms. Wilson-Raybould to discuss the prosecution of SNC-Lavalin. Apparently, SNC-Lavalin felt that the negotiations were taking too long and wanted the government to speed things up. Ms. Prince advised that SNC-Lavalin had already been advised that the Director of Public Prosecutions was not prepared to offer a remediation agreement on the file.
32. Ms. Prince also advised Mr. Chin that she did not consider it proper to be requesting updates from the Director of Public Prosecutions as it could be considered improper interference with the discretion of the prosecution. She reminded Mr. Chin that the prosecutors were independent of government interference and pointed out what could and could not be considered when deciding how to deal with any

prosecution and, in particular, whether to offer a remediation agreement.

33. Ms. Prince noted that this was the first time a Minister had called her about a prosecution file.

### **Criminal Code Amendment**

34. It is perhaps useful at this point to look at the terms of the Criminal Code amendment respecting remediation agreements. As noted, it was inserted as a special part of the Criminal Code under part XXII.1, section 715.3.

#### **Conditions for remediation agreement**

**715.32 (1)** The prosecutor may enter into negotiations for a remediation agreement with an organization alleged to have committed an offence if the following conditions are met:

(a) the prosecutor is of the opinion that there is a reasonable prospect of conviction with respect to the offence;

(b) the prosecutor is of the opinion that the act or omission that forms the basis of the offence did not cause and was not likely to have caused serious bodily harm or death, or injury to national defence or national security, and was not committed for the benefit of, at the direction of, or in association with, a criminal organization or terrorist group;

(c) the prosecutor is of the opinion that negotiating the agreement is in the public interest and appropriate in the circumstances; and

(d) the Attorney General has consented to the negotiation of the agreement.

#### **Marginal note: Factors to consider**

(2) For the purposes of paragraph (1)(c), the prosecutor must consider the following factors:

- (a) the circumstances in which the act or omission that forms the basis of the offence was brought to the attention of investigative authorities;
- (b) the nature and gravity of the act or omission and its impact on any victim;
- (c) the degree of involvement of senior officers of the organization in the act or omission;
- (d) whether the organization has taken disciplinary action, including termination of employment, against any person who was involved in the act or omission;
- (e) whether the organization has made reparations or taken other measures to remedy the harm caused by the act or omission and to prevent the commission of similar acts or omissions;
- (f) whether the organization has identified or expressed a willingness to identify any person involved in wrongdoing related to the act or omission;
- (g) whether the organization — or any of its representatives — was convicted of an offence or sanctioned by a regulatory body, or whether it entered into a previous remediation agreement or other settlement, in Canada or elsewhere, for similar acts or omissions;
- (h) whether the organization — or any of its representatives — is alleged to have committed any other offences, including those not listed in the schedule to this Part; and
- (i) any other factor that the prosecutor considers relevant.

**Marginal note: Factors not to consider**

(3) Despite paragraph (2)(i), if the organization is alleged to have committed an offence under section 3 or 4 of the *Corruption of Foreign Public Officials Act*, the prosecutor must not consider the national economic interest, the potential effect on relations with a state other than Canada or the identity of the organization or individual involved. (Emphasis added)

35. SNC-Lavalin was advised of the prosecutor's decision not to invite it to enter a remediation agreement on September 4, 2018. The prosecutor also advised the Attorney-General as she was required to do respecting any important prosecution that involved questions of public interest.
36. The Ethics Commissioner noted in his report that when the decision reached the Prime Minister's office and the office of the Minister of Finance a few days later, there was concern in that neither Mr. Trudeau nor Mr. Morneau could understand why the prosecutor was not prepared to engage in discussions that would lead to a remediation agreement. It appears from his report that both Ministers felt that the Attorney-General should intervene to issue a direction to the prosecutor. The government apparently felt that the prosecutor did not appreciate the economic consequences on Canadians and the possible job losses that might occur in the event SNC-Lavalin was convicted, or, for that matter, the possible political consequences.
37. The Attorney-General, for her part, had been informed of the details of the prosecution and considered the issue carefully. She said that she was aware the prosecutor's decision would likely reach the office of the Prime Minister and she was therefore careful and thorough in her review of the matter. She said that she consulted senior members of her staff before making her decision not to intervene.

38. The Attorney-General was contacted by Mr. Marques of the Prime Minister's office who requested a memo on the matter which she prepared and forwarded approximately September 5, 2018. In the memo, she outlined the concept of prosecutorial independence and reviewed the relevant law. Mr. Marques testified at the Ethics Commissioner's hearing that he advised the Prime Minister of the contents of the memo.
39. Thus, it appears the Prime Minister was aware of the principles of prosecutorial independence and the reasons why SNC-Lavalin was not invited to negotiate a remediation agreement. By September 11, 2018, the Attorney-General had made it clear she would not interfere in the prosecution of SNC-Lavalin.
40. Minister Morneau advised the Attorney-General that he was surprised and shocked at the decision of the prosecutor. He said that SNC-Lavalin would be faced with a loss of business, there would be job losses and probably loss of pensions. In addition, two senior advisors from the Prime Minister's Office also shared some of their concerns with the Attorney-General. On September 16, 2018, Mr. Bouchard and Mr. Marques requested a meeting with the Attorney-General; she agreed to meet.
41. Around the same time, senior executives were meeting with officials from the Prime Minister and Mr. Morneau's offices to deal with the prosecution. In a democracy governed by the rule of law for an accused corporation charged with serious criminal offences, to be meeting with political operatives at the highest level of government

to try and find a way to work around the prosecution is hopefully, highly unusual. It is obviously not an option open to most of those charged with serious criminal offences.

42. On September 17, 2018, the Attorney-General had a previously scheduled meeting with the Prime Minister on an unrelated matter, but one the Attorney-General believed was important. That morning, prior to his meeting with the Attorney-General, the Prime Minister met with Ms. Telford his Chief of Staff and Mr. Wernick, the Clerk of the Privy Council and they discussed the Attorney-General's memo of September 5, 2018, that dealt with the impropriety of political interference in a criminal prosecution.
43. When the Attorney-General arrived for the meeting, she said she was surprised to find Mr. Wernick present. She had just recently met with Ms. Telford and Mr. Wernick to discuss the SNC-Lavalin prosecution and had made it clear she had decided not to interfere. She said that before she could raise the issue she wanted to address at the meeting, the Prime Minister began a discussion of the SNC-Lavalin prosecution.
44. She said that at the meeting she made it clear to the Prime Minister that it was improper to interfere with an ongoing prosecution and she again pointed out the content of the September 5, 2018, memo that had clearly set out the principles of law involved. She again stated that she was not going to interfere with the prosecutor's decision not to offer a remediation agreement to SNC-

Lavalin. She said the Prime Minister spoke of economic and political consequences if SNC-Lavalin was convicted of the charges it faced.

45. Mr. Wernick tried to persuade the Attorney-General that a remediation agreement was appropriate and necessary for SNC-Lavalin. The Attorney-General repeated that she had carefully considered the matter and had decided against interfering with the decision of the prosecutor. The Prime Minister told her that he was not trying to interfere in the prosecution, but it was in the public interest to “find a solution” to the problem. Finding a solution became a constant theme in the Attorney General’s discussions with various officials from the Prime Minister’s office.
46. The fact that the Prime Minister was clearly aware of the legal principles and the impropriety of trying to interfere in a criminal prosecution was confirmed by Mr. Bouchard in his evidence to the Ethics Commissioner. Clearly, from that point on, the Prime Minister was aware of the law surrounding the issue prohibiting any attempt to politically interfere in a prosecution.
47. He was no doubt also aware that pursuant to s.715.3 of the Criminal Code the prosecutor must not consider the “... national economic interest, the potential effect on relations with a state other than Canada or the identity of the organization or individual involved”. Throughout this matter the major factors raised by the Prime Minister and other government officials were the possible economic effect and the political repercussions if SNC-Lavalin was convicted.

48. It is also clear from the Ms. Wilson-Rabould's evidence before the Ethics Commissioner and at the House of Commons Justice Committee hearing that she made it clear to the Prime Minister and Mr. Wernick that she had made her decision, had already advised others in the government of her decision and that she was not prepared to change her decision.
49. It does not appear that the Prime Minister met with the Attorney-General again until the weeks surrounding her move from Attorney-General and Minister of Justice to Minister of Veterans Affairs.
50. There is a suggestion in the report of the Ethics Commissioner that a decision was made to ensure the Prime Minister was kept away from any meetings with the Attorney-General to avoid any suggestion of political interference in the prosecution of SNC-Lavalin. Obviously, any such concern could have been easily avoided by a direction from the Prime Minister that the Attorney-General had carefully considered the matter, decided not to intervene and no remediation agreement was to be offered; SNC-Lavalin would have to deal with the consequences of the prosecution without any government help. That, in my view, was the appropriate statement to make.
51. On September 18, 2018, the day after the meeting with the Prime Minister, the Attorney-General met with Ms. Prince, her Chief of Staff, and other senior staff to discuss the issue and review what had been happening respecting the pressure she was feeling to change her decision on SNC-Lavalin.



52. On September 19, 2018, the Attorney-General again met with Mr. Wernick. Once again, Mr. Wernick brought up the issue of SNC-Lavalin and stressed the possible economic issues arising from a conviction. The Attorney-General was not moved to change her mind but did say that SNC-Lavalin could write to her outlining its position respecting the prosecution and their public interest arguments and she would consider the letter and forward it to the Director of Public Prosecutions. No letter was ever received.
53. Also on September 19, 2018, the Attorney-General contacted Mr. Morneau's office and requested a brief meeting with the Minister. They spoke later that day at the House of Commons and the Attorney-General told him that it was inappropriate for his staff to be contacting her with respect to SNC-Lavalin and that it had to stop. She said that, in response, Mr. Morneau again raised the issue of adverse economic consequences if SNC-Lavalin was convicted. However, it appears she had no further contact with Mr. Morneau respecting the issue after that day.
54. On October 9, 2018, The Director of Public Prosecutions informed SNC-Lavalin that it would not be offered the opportunity to negotiate a remediation agreement respecting the outstanding prosecution. It also appears that between mid-September 2018 and early October, senior staff of the government continued to engage in discussions with SNC-Lavalin officials.
55. On October 12, 2018, Mr. Wernick obtained a copy of an opinion on the Attorney-General's power to issue directions to the Director of

Public Prosecutions. He noted that the Attorney-General had the authority to seek an outside opinion on an issue where she feels it is necessary.

56. A few days later, on October 18, 2018, Mr. Bouchard from the Prime Minister's office contacted Ms. Prince to suggest that the Attorney-General seek an outside opinion on whether it would be appropriate for her to direct the prosecutor to offer a remediation agreement to SNC-Lavalin. Mr. Bouchard suggested that, given the option of a remediation was a new provision in the Criminal Code, an outside opinion might be appropriate.

57. On October 14, 2018, Mr. Scott Bryson, President of the Treasury Board contacted the Attorney-General to advise that he had been contacted by SNC-Lavalin, as had other Ministers of the Crown respecting SNC-Lavalin's concerns that it was not offered a remediation agreement. After hearing the Attorney-General's explanation Mr. Bryson apparently accepted that the prosecutor and the Attorney-General had made their decisions and he made no further contact with the Attorney-General on the issue.

58. On October 15, 2018, Mr. Wernick met with Mr. Kevin Lynch, the Chair of SNC-Lavalin. Mr. Lynch expressed frustration at the refusal of the prosecutor and the Attorney-General to reconsider a remediation agreement to avoid the prosecution it faced. Mr. Lynch repeated the apparent "frustration" of SNC-Lavalin officials that the prosecution against it was going ahead.

59. Once again, it is astounding that any senior member of the government was willing to meet with officials of SNC-Lavalin to discuss a criminal prosecution it was facing, let alone after it had been made very clear to SNC-Lavalin that a remediation agreement was not going to be offered.
60. Around this time, SNC-Lavalin filed an application for judicial review of the prosecutor's decision not to offer a remediation agreement. The application was subsequently dismissed by the Court. The decision can be found at [2019 FC 282](#). The essence of the decision can be found at para.117.
61. On October 26, 2018, Ms. Prince spoke to a senior official in the Ministry of Justice litigation unit. He had been asked if it was possible for the Attorney-General to intervene in the prosecution of SNC-Lavalin. She replied that it was possible. Later that day, Mr. Bouchard spoke again to Ms. Prince on the issue of the Attorney-General intervening in the prosecution. He was advised that it was not possible as SNC-Lavalin was pursuing judicial review of the prosecutor's decision. Ms. Prince was also advised that the Prime Minister did not want to "close the door" on the matter.
62. Mr. Bouchard was aware that the Attorney-General believed any intervention was not warranted and, in any event, would set a bad precedent for any future high-profile prosecution. Mr. Bouchard again raised the issue of an external opinion.
63. In November 2018, SNC-Lavalin continued to enjoy the privilege of having meetings with officials from the Prime Minister's office. SNC-

Lavalin said it was close to moving to what it called “Plan B” which it suggested would have serious economic consequences in Quebec. That information was apparently shared with senior officials, Ministers, Ministerial staff, and senior staff in the Prime Minister’s office and, one suspects, with the Prime Minister.

64. Around this time, an opinion was obtained by the government from retired Supreme Court of Canada Justice Major, apparently with respect to the ability of the Attorney General to intervene in the prosecution or her right to seek an outside opinion. It is not clear what Mr. Major’s opinion was as, notably, it was not shared with the Attorney-General or her staff.
65. In mid-November a meeting was held between Mr. Morneau and Mr. Lynch of SNC-Lavalin and others in Beijing, China. Mr. Lynch encouraged the government to press the Attorney-General to obtain an outside opinion, this time from former Chief Justice of Canada McLachlin. It was suggested she had already been contacted and briefed on the matter by SNC-Lavalin’s counsel Mr. Iacobucci and a senior member of the Prime Minister’s office.
66. SNC-Lavalin also requested a meeting with the Prime Minister on the issue. No meeting was granted but it appears the Prime Minister did send a letter to the Attorney General along with a memo confirming she had the power to intervene in the matter.
67. On November 18, 2018, Mr. Bouchard met with Mr. Butts and Ms. Telford to brief them on SNC-Lavalin. Mr. Bouchard was directed to accept a prior indication from the Attorney-General made sometime

earlier, that she was prepared to meet with Mr. Bouchard. That meeting took place on November 22, 2018. Mr. Bouchard and Mr. Marques met with the Attorney-General and she said she again explained the principles of prosecutorial independence and advised them that in her view the continued pressure on her constituted political interference in a prosecution. She was again reminded of the economic and political consequences if SNC-Lavalin was convicted.

68. On November 26, 2018, retired Supreme Court of Canada Justice Iacobucci, legal counsel to SNC-Lavalin met with the Prime Minister. In his evidence before the Ethics Commissioner the Prime Minister said the meeting was unrelated to SNC-Lavalin, however the timing is suspicious given the ongoing issues related to the prosecution of SNC-Lavalin and its desire to stop the prosecution and the government's apparent urgent wish for the same outcome. There is no suggestion of any other issue involving Mr. Iacobucci that would warrant a personal meeting with the Prime Minister, nor is there any apparent social connection between the two. Mr. Iacobucci has apparently never been asked about the meeting.

69. On November 27, 2018, Mr. Bouchard met with SNC-Lavalin counsel and others to discuss the legal opinions of Mr. Iacobucci and Mr. Major. They considered some options to achieve the apparently mutual goal of the government and SNC-Lavalin to stop the prosecution and to negotiate a remediation agreement.

70. One of the proposals was to engage retired Supreme Court Chief Justice McLachlin to preside over a settlement discussion between the

prosecution and SNC-Lavalin. SNC-Lavalin said that it would withdraw its judicial review application if it was invited to negotiate a remediation agreement. Ms. Telford of the Prime Minister's office was briefed on the proposal and the details of the meeting; however, the Prime Minister denied any knowledge of the meeting.

71. Another avenue discussed at the meeting was to have the Attorney-General invite Ms. McLachlin to provide an outside opinion or perhaps other assistance to resolve the matter. As noted, she had already been briefed by Mr. Iacobucci and by someone in the Prime Minister's office. Apparently, Ms. McLachlin wanted to be retained by the Attorney-General not the government. It does not appear that she was ever engaged to participate in the matter or that she had any further involvement.
72. On December 5, 2018, the Attorney-General and Mr. Butts, the Prime Minister's principal secretary met at the request of the Attorney-General to have dinner. The dinner was held at a restaurant in the Gatineau area of Quebec. Ms. Wilson-Raybould testified at the House Committee hearing that she told Mr. Butts that the pressure upon her needed to stop. Mr. Butts replied that they needed to find a solution to the problem. Ms. Wilson-Raybould said that a solution was offered months ago; SNC-Lavalin should write a letter to her outlining its position and she would forward the letter to the Director of Public Prosecutions. Mr. Butts denied that portion of the conversation but conceded that he did press for an external report to assist the Attorney-General.

73. It is noted that in his evidence, the Prime Minister was clearly aware of what he referred to as a “difficulty” in that the Attorney-General held an “overly rigid” perspective regarding the proposed remediation agreement.
74. On December 18, 2018, Ms. Prince, Mr. Butts, and Ms. Telford met. Ms. Prince was asked why the Attorney-General had not done anything to advance the SNC-Lavalin desire for a remediation agreement. Ms. Prince replied that the Attorney-General had done all she can and explained again the principles of prosecutorial independence and the legal precedents that dictated there should be no political interference with that independence. Mr. Butts continued to press the matter and Ms. Prince alleges that he said the remediation agreement amendments to the Criminal Code were implemented specifically for SNC-Lavalin. He also stressed the political and economic concerns that had been repeatedly expressed to the Attorney-General and her staff.
75. The next day, December 19, 2018, the Prime Minister met with Mr. Butts, Ms. Telford, and Mr. Wernick. The Prime Minister was advised of the Attorney-General’s position and her refusal to interfere in the prosecution. Mr. Wernick was directed by the Prime Minister to speak again with the Attorney-General and to emphasize the public interest concerns of job losses and political issues that the government apparently believed would result from a conviction of SNC-Lavalin.

76. That night Mr. Wernick contacted the Attorney-General by telephone. By this time, it appears the Attorney-General felt she had heard enough on the issue, and she recorded the call without telling Mr. Wernick. During the call Mr. Wernick made it clear that the Prime Minister was determined to “get it done”, referring to the remediation agreement. He went on to say that the Prime Minister was going to find a way to get it done – one way or the other. The Attorney-General held her ground.
77. On January 7, 2019, Ms. Wilson-Raybould was advised she was being moved from the position of Attorney-General. She was moved to the position of Minister of Veterans Affairs and held that position until she resigned from the Cabinet on February 12, 2019.

### **Conclusions drawn from these Facts**

78. The September 5, 2018, memo was prepared by the Attorney-General’s office and provided to the Prime Minister’s office. His attention was apparently clearly drawn to this passage:
- "prosecutorial decisions must be made in a nonpartisan and objective manner that is independent from the political pressures of the government and protected from the influence of improper political and other vitiating factors." The memorandum also set out the Attorney General's role with regard to the Director of Public Prosecutions
79. If that is so, there can be no doubt that all the principals of the Prime Minister’s office, including the Prime Minister himself were aware of the principle of prosecutorial independence and that it was improper to interfere in the decision of a prosecutor including, the Attorney-General, the government’s chief prosecutor.



80. There can also be no doubt from the facts set out above (as drawn from the report of the Ethics Commissioner and the testimony of Ms. Wilson-Raybould), that there was considerable pressure upon the Attorney-General to direct the Director of Public Prosecutions to stop the prosecution of SNC-Lavalin and invite it to enter a remediation agreement.

81. The Prime Minister has denied any improper interference in the prosecution of SNC-Lavalin. Yet it is apparent from the evidence he gave at the Ethics Commissioner's inquiry that he was aware that members of his staff and other senior people in the government were continuing to press the Attorney-General to interfere in the prosecution of SNC-Lavalin.

82. The Ethics Commissioner noted in his report this portion of the evidence of the Prime Minister:

Mr. Trudeau said that he knew Ms. Wilson-Raybould would not be pleased with the continued engagement from others, asking that she revisit her decision, or to reflect on the matters at hand. However, Mr. Trudeau believed that these engagements were appropriate. Mr. Trudeau testified that the end goal was to prevent layoffs. He was hopeful his staff would continue to look for a path that would prevent this, all the while ensuring that the means were legal, moral, ethical and responsible.

83. That paragraph reveals that:

- 1) the Prime Minister was aware of the "continued engagement from others" with the Attorney-General;
- 2) that he wanted her to change the decision she had made;
- 3) that the critical issues to him were the economic consequences if SNC-Lavalin was convicted; and
- 4) that he wanted his staff to keep trying to find a way that would prevent SNC-Lavalin from a conviction notwithstanding

the fact that she had told him personally that interfering in the independence of the prosecutor was highly improper.

84. The important principle here is that of prosecutorial independence and freedom from political interference. That principle is embodied in the *Shawcross Doctrine* which is summarized in this way by Prof. Roach of the University of Toronto Faculty of Law in his article "*The SNC-Lavalin Controversy, the Shawcross Doctrine and Prosecutorial Independence*", SSRN, April 5, 2019:

The Shawcross Principle articulated in 1951 is a constitutional convention that while the Attorney General (AG) is entitled to consult Cabinet colleagues about the policy implications of prosecutorial decisions, he or she is not to be directed or pressured on such decisions by the Cabinet and that the decision should be made by the AG alone.

85. The report of the Ethics Commissioner concluded that the Prime Minister had violated the provisions of the *Shawcross Doctrine*. In his report he reached this conclusion:

I find that Mr. Trudeau used his position of authority over Ms. Wilson-Raybould to seek to influence 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. 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. For these reasons, I find that Mr. Trudeau contravened section 9 of the Act.

86. On the facts as he found them, I believe Mr. Dion reached the correct conclusion. I also believe the facts support the conclusion that the Prime Minister was fully aware of the principles of law and

custom that prohibit trying to interfere with the decision the Attorney-General had made respecting the SNC-Lavalin prosecution. He was also aware that the Attorney-General had the authority to direct the Director of Public Prosecutions to stop the prosecution and substitute a remediation agreement and he plainly wanted her to use that power.

87. There is also clear evidence that the introduction of a remediation agreement into the Criminal Code was driven by the desire to make it available to SNC-Lavalin so it could avoid the consequences of a conviction. The evidence taken at the ethics inquiry and the House Justice Committee in my view, support that conclusion.

### **Do the Actions of the Prime Minister Constitute an Offence under the Criminal Code?**

88. The *Shawcross Doctrine* is a constitutional custom and not a provision of the Criminal Code. There is no basis for a prosecution of the Prime Minister for the violation of a custom.

89. However, the Criminal Code contains two provisions that have relevance to the issue. The first is s.139 of the Criminal Code which provides:

**139(2)** Every person who intentionally attempts in any manner other than a manner described in subsection (1) to obstruct, pervert or defeat the course of justice is guilty of

(a) an indictable offence and liable to imprisonment for a term of not more than 10 years; or

(b) an offence punishable on summary conviction.

90. The essence of the charge in our circumstances is in the attempts to “obstruct, pervert or defeat” the course of justice. The allegation at the heart of the SNC-Lavalin matter is that the Prime Minister and those responsible to him tried to stop the prosecution of SNC-Lavalin because it would possibly be harmful to the economy or certain political interests. It seems to me that trying to stop a prosecution that had been commenced and replace it with a less onerous process that did not have such severe consequences to SNC-Lavalin fits within the wide terms of the section. By its nature the section is broad. It has wide application and can occur when a person deliberately attempts to hinder or hamper a criminal prosecution.

91. A couple of examples might be useful. In *R. v. Beaudry*, [2007] 1 S.C.R. 190, a police officer apprehended an off-duty police officer who the officer believed was driving while impaired. He performed only some of his duties in dealing with the accused officer, but he deliberately did not demand a breath sample because he felt that evidence would result in a certain conviction of the off-duty officer. He thus failed to perform his sworn duty in an attempt to help a fellow officer avoid the consequences of impaired driving. The accused was convicted.

92. In *Beaudry*, the actions of the accused in failing to do his duty in gathering evidence to assist a favoured accused was at the heart of the offence. Likewise, in this case it appears the government and, in particular, the Prime Minister went to extraordinary lengths to try and assist SNC-Lavalin which was also clearly a favoured accused. The

attempts were unsuccessful at least until the Attorney-General, Ms. Wilson-Raybould left office.

93. In an older case, *R v Kalick*, [1920] SCJ No 58, 61 SCR 175, the accused attempted to bribe a police officer not to commence a prosecution against him for a violation of the Saskatchewan Temperance Act. The import of this case is that the question before the court was whether the accused's act in trying to prevent a prosecution constituted an attempted to "interfere with the administration of justice." The court held that it was.
94. There are other cases that illustrate the wide scope of the section, but the law appears clear that trying to stop or prevent a prosecution of an accused constitutes an attempted interference in the course of justice. A criminal charge is within the definition of "judicial proceeding" in s. 118 of the Criminal Code.
95. It is perhaps useful at this point to create a draft charge under s. 139(3) to illustrate the essential elements of the offence. The offence is clearly a "specific intent" offence, meaning that the accused must intend to interfere in a judicial proceeding and not simply do so through inadvertence.
96. A draft charge under s. 139(2) in these circumstances would look something like this:

The informant has reasonable and probable grounds to believe and does believe that (JT) between the first day of September 2018 and the 15th day of January 2019 at or near Ottawa, in the Province of Ontario did by himself and others under his direction, wilfully attempt to obstruct pervert or defeat the course of justice in a judicial proceeding by unlawfully

pressuring the Attorney General of Canada to intervene to stop a prosecution against SNC-Lavalin Group Inc., contrary to s. 139(2) of the Criminal Code of Canada.

97. One of the difficulties in this case is, of course, that all the evidence available to me is taken from public documents, most importantly the Ethics Commissioner's report and the evidence of Ms. Wilson-Raybould given to the House Committee on Justice. There is no doubt other evidence that is controlled by the government in the form of Cabinet documents and communications and the evidence of the staff of the Prime Minister's office and of other Ministries of the Crown. That evidence will be hard to obtain and even if witnesses are subpoenaed, their evidence will be very likely given without any opportunity to know in advance what they will say.
98. Nevertheless, in my opinion, there is evidence available to meet the test of sufficient reasonable and probable grounds to support a prosecution.
99. My reasons for my opinion are that first, the Prime Minister was aware of the contents of the September 5, 2018, memo that stated that it was improper to attempt to influence a prosecution. Ms. Wilson-Raybould says she made the Prime Minister aware that it was improper to interfere in the prosecution and Mr. Bouchard confirmed that he also made the Prime Minister aware of the contents of the memo.
100. Ms. Wilson-Raybould also made it clear to the Prime Minister that the new provisions of the Criminal Code respecting remediation

agreements did not allow consideration of national economic issues in the deciding whether to invite an accused to enter a remediation agreement. Yet, other than a stated belief the corporation had reformed itself, the only reasons advanced by the Prime Minister and his staff were related to job losses and political issues in Quebec.

101. While he told the Ethics Commissioner that he believed the Attorney-General's decision was not final, she testified at the House Committee that she told the Prime Minister she had carefully and fully considered the matter and had decided not to intervene. In every meeting respecting SNC-Lavalin with the Prime Minister and anyone from his office she maintained that position without any wavering whatsoever. That she was firm in her decision must have been obvious to everyone who had contact with her on the issue of the SNC-Lavalin prosecution.

102. Senior government officials met with legal counsel and senior executives of SNC-Lavalin on several occasions over the roughly 4-month period that the Attorney-General said she was pressured to interfere in the prosecution. It is inconceivable that the Prime Minister was not aware of the meetings, the result of the meetings and the Attorney-General's continued refusal to change her position.

103. He said that he believed the Attorney-General held an "overly rigid" position on the SNC-Lavalin case and that she refused to intervene to direct the Director of Public Prosecutions to stop the prosecution, yet even with that knowledge, he nevertheless directed

the Clerk of the Privy Council to contact her on December 19, 2018, to yet again put pressure on her to change her mind.

104. The Prime Minister acknowledged in his evidence before the Ethics Commissioner that he was aware the Attorney-General would “be annoyed” by the continued pressure by those under his direction, yet he persisted.

105. Ultimately, having had no success in persuading the Attorney-General to do what he wanted to intervene in the prosecution of SNC-Lavalin, the Attorney-General was moved from her position to another cabinet post. Subsequently, SNC-Lavalin was offered and successfully negotiated a remediation agreement, presumably after the new Attorney-General issued a direction to the Director of Public Prosecutions to offer a remediation agreement and to stop the prosecution of SNC-Lavalin.

106. Following the allegations of impropriety on the part of the Prime Minister respecting the prosecution, he repeated on several occasions that he had no regrets about acting to protect Canadian Jobs, one of the factors the Criminal Code states clearly cannot be a factor in the consideration of a remediation agreement.

107. In my opinion, the facts alleged show that the Prime Minister was aware of the impropriety of interfering with a decision of the Attorney-General. It also appears that he avoided personal involvement to protect himself against complaints of political interference in the prosecution, a step that was unnecessary if he had respected her decision and let the matter be resolved by the justice



system. He directed his senior staff to continue to put pressure on the Attorney-General to intervene in the prosecution even though she had clearly decided not to do so. Unable to persuade the Attorney-General to change her mind he removed her as Attorney-General. Finally, he said on several occasions when questioned about SNC-Lavalin prosecution that he did not regret acting to protect jobs in Canada.

108. It is most unusual for an accused corporation charged with serious offences to be able to have access to the highest levels of government, including the offices of the Prime Minister and the Minister of Finance for the purpose of trying to prevent the prosecution from going ahead.

109. The offences alleged against SNC-Lavalin had been thoroughly investigated by the police in an investigation that took several years; analyzed and assessed by the Director of Public Prosecutions and her staff; and a prosecution was duly commenced. The Attorney-General of Canada also thoroughly reviewed the matter, discussed it with her senior staff and decided not to intervene.

110. It is incomprehensible that while one level of the federal government had used significant resources to investigate and commence a prosecution against SNC-Lavalin, the Prime Minister and the highest levels of the federal government were trying to stop the prosecution and substitute an alternative that avoided some of the consequences of a conviction.

111. There is another section of the Criminal Code that may have some application to the facts of this matter. That section is a breach of public trust under s.122 of the Criminal Code. That section states:

### **Breach of trust by public officer**

**122** Every official who, in connection with the duties of their office, commits fraud or a breach of trust, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person, is guilty of

(a) an indictable offence and liable to imprisonment for a term of not more than five years; or

(b) an offence punishable on summary conviction.

112. In my opinion, this section has limited applicability, but the case law shows some basis for its application, perhaps as an alternate charge. In the case of *R v. Boulanger*, [2006] 2 S.C.R. 49 the daughter of a municipal official in charge of public safety for the municipality was involved in a motor vehicle accident. Her father asked the investigating police officer to prepare a second more complete report that when released, found the official's daughter was not at fault. The official was convicted at trial and the conviction was upheld on appeal to the Court of Appeal. On further appeal to the Supreme Court of Canada, an acquittal was entered.

113. The court set out the following principles of the section at para. 58: 1)The accused is an official; 2)The accused was acting in connection with the duties of his or her office; 3)The accused

breached the standard of responsibility and conduct demanded of him or her by the nature of the office; 4)The conduct of the accused 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, for a dishonest, **partial**, corrupt, or oppressive purpose. (Emphasis added)

114. If it can be shown that the Prime Minister used his office to improperly favour SNC-Lavalin this charge may result in a conviction may result, but I think it is not the best choice.

### **Issues Respecting a Private Prosecution**

115. The difficulty with both these charges is that some of the behaviour leading to the actions targeted as criminal is perfectly proper. There can be no doubt that members of the federal cabinet are able to discuss issues like the prosecution of SNC-Lavalin and to try and persuade the Attorney-General that she should intervene. Some of the debate and argument, even aggressive and heated discussions, are acceptable. However, at some point it ceases to be discussion and persuasion and it changes to improper, unlawful pressure.

116. That, in my view, is what happened with SNC-Lavalin. The evidence indicates that the Attorney-General listened to her colleagues and the Prime Minister when they tried to persuade her to intervene in the prosecution. She said she did her own careful

research and decided against intervening. That should have ended the matter, but the efforts to persuade her did not end. Instead, the attempts to persuade became intense pressure to give in to their demands and in my opinion, became criminal conduct under s. 139(2).

117. Arguably, the Prime Minister also violated s. 122 of the Criminal Code by using his office as the Prime Minister to intervene in the prosecution of SNC-Lavalin based on partiality towards the corporation. He wanted the prosecution stopped and replaced with a less onerous procedure and he appeared determined to achieve that goal regardless of contrary advice that it was improper.

### **Concluding Thoughts**

118. The pressure put upon the Attorney-General to grant relief from prosecution for SNC-Lavalin is very troubling in a country that claims to take pride in the belief that it is governed by the rule of law. One suspects and hopes that the surprisingly easy access of SNC-Lavalin to the highest levels of government and retired Supreme Court judges, including the former Chief Justice of Canada while charged with serious criminal offences is unprecedented in a Western Democracy. It makes one uneasy to think that no one involved, other than the Attorney-General seemed to believe they were doing anything improper.

119. When those charged with criminal offences find it acceptable to seek political intervention in a prosecution they are facing, there must be an unmistakable signal that their entreaties will be

welcomed. They most certainly were in this case. Such a government will find it equally easy to reverse the process and use the criminal justice system to prosecute those towards whom it is unfriendly. Signals from the highest levels of government that criminal prosecutions should be pursued or abated create a very dangerous atmosphere for the rule of law. The comparison of a sleazy citizen trying to get the mayor to “fix” a parking ticket comes to mind.

120. In my opinion, the facts in this case show a determined and protracted effort on the part of SNC-Lavalin to escape the consequences of a criminal prosecution by soliciting senior members of the Federal Government to intervene on its behalf. The government appears to have responded to SNC-Lavalin’s efforts with enthusiasm. The government allowed SNC-Lavalin executives and legal counsel to meet with Ministers and senior members of the government and engaged in a concerted effort to stop a prosecution it was facing.

121. While it was arguably acceptable for the government to listen to SNC-Lavalin’s pleas for assistance and to investigate the matter, the government went far beyond what was acceptable. It changed the law to create a vehicle for an accommodation for the corporation and it tried to persuade the Attorney-General to intervene in the prosecution. In my view it was improper for the government to entertain any attempts to intervene in a prosecution.

122. When the Attorney-General stood firm, senior members of the government, including government ministers continued to pressure

the Attorney-General to change her mind. Those efforts took place over several months. When the Attorney-General refused to intervene, she was replaced as Attorney-General.

123. The rule of law requires freedom from political interference in any criminal prosecution. When the government comes to the aid of an accused it favours in a criminal proceeding confidence in the justice system is eroded. Likewise, if the government believes it can intervene to assist an accused and stop a prosecution for those it favours, it may also feel that it can intervene to press for prosecution for those it does not favour.

124. In my opinion, in this case, senior government officials under the direction of the Prime Minister, wilfully embraced the desire of SNC-Lavalin to avoid the consequences of a possible conviction and embarked on a campaign to persuade the Attorney-General to intervene and to stop the prosecution. That campaign involved several meetings with the Attorney-General to put pressure on her to change her decision not to give a direction to the Director of Public Prosecutions to stop the prosecution. Those efforts in my view, constituted an attempt to obstruct, pervert or defeat the course of justice contrary to s. 139(2) of the Criminal Code.

125. The dinner meeting between the Attorney-General and Mr. Butts illustrates the attitude of the government. When the Attorney-General told him the pressure had to stop he responded that the government needed to “find a solution”.

## How is a Prosecution Commenced?

126. The process to prefer or lay an information before the court is straightforward. The process is commenced with the swearing of an information which is Form 2. Section 504 of the Criminal Code provides that:

**504** Any one who, on reasonable grounds, believes that a person has committed an indictable offence may lay an information in writing and under oath before a justice, and the justice shall receive the information, where it is alleged

**(a)** that the person has committed, anywhere, an indictable offence that may be tried in the province in which the justice resides, and that the person

**(i)** is or is believed to be, or

**(ii)** resides or is believed to reside,

within the territorial jurisdiction of the justice;

**(b)** that the person, wherever he may be, has committed an indictable offence within the territorial jurisdiction of the justice;

**(c)** that the person has, anywhere, unlawfully received property that was unlawfully obtained within the territorial jurisdiction of the justice;  
or

**(d)** that the person has in his possession stolen property within the territorial jurisdiction of the justice.

127. Normally, this part of the process is conducted by the police.

An officer attends before a justice of the peace with one or often several files with charges to be sworn. The justice usually asks for some background of the facts to ensure that there are reasonable and probable grounds to proceed. Once the Information is sworn the file is forwarded to the appropriate crown counsel to pursue the matter in court. The prosecutor will apply the appropriate policy and decide whether to continue the matter or to withdraw the charge.

### **Who has Jurisdiction to Prosecute?**

128. One of the essential elements that must be proved in any criminal case is that the court has jurisdiction over the matter. In this case, almost all the conduct took place in or near Parliament Hill and the offices of government Ministers and their staff. All the relevant area is within the boundaries of the City of Ottawa except for one meeting between the Attorney-General and Mr. Butts that apparently was held near Ottawa in the Gatineau area of Quebec.
129. While some allegations of misconduct that involve Ministers of the Crown are investigated by the RCMP and prosecuted by federal prosecutors, this case involves alleged criminal behaviour that is alleged to have taken place “at or near the City of Ottawa, in the Province of Ontario.” In my opinion the matter rests squarely with the Ottawa City Police and the Ontario Attorney-General.
130. As can be seen by the words of the section the standard to swear an information is that of “reasonable grounds”. Several provinces have imposed policies to guide prosecutors in proceeding with criminal charges. Those policies impose guidelines such as “a reasonable likelihood of conviction”, or perhaps a substantial likelihood of conviction. Most also impose a “public interest” standard that requires any prosecution to be deemed to be in the public interest.



131. Prosecutors have a broad discretion in this regard and the courts are reluctant to interfere with that discretion. The discretion is not unlimited and must be exercised in a fair and unbiased manner. It must be remembered however, that those are policies not laws. The standard in the Criminal Code is that of reasonable grounds.
132. The reasonable grounds standard has two components. The first is an objective standard that requires a factual basis that logically supports the conclusion leading to a belief that an offence has been committed by the accused at the time and place alleged. The second is an honest belief on the part of the informant that those facts give rise to a criminal offence and that the proposed accused committed the offence.
133. In this case it is my opinion that the facts outlined above support both requirements for the laying of an information. I have suggested one proposed accused, the Prime Minister, however, clearly others participated. I suggest that any prosecution name the only the Prime Minister as the evidence before the Ethics Commissioner and the House Committee on Justice focussed primarily on the Prime Minister.
134. In Ontario, the government has posted online the Crown Prosecution Manual and a helpful manual on private prosecutions. The website for the Crown Prosecutors' Manual is:  
[https://files.ontario.ca/books/crown\\_prosecution\\_manual\\_english\\_1.pdf](https://files.ontario.ca/books/crown_prosecution_manual_english_1.pdf)
135. The link to the Guide for Applying for a Private Prosecution is:

<https://www.ontariocourts.ca/ocj/files/guides/guide-private-prosecution-EN.pdf>

136. This proposed prosecution will meet with many obstacles if it proceeds. Reluctance to move forward will be the reaction at almost every level. The Province of Ontario has set out a procedure to follow which is very helpful and is designed to ensure that a fair and proper hearing is conducted when a private citizen seeks to swear a private Information.
137. However, the facts outlined by the Ethics Commissioner and the evidence of Ms. Wilson-Raybould at the House Committee on Justice indicate that the Prime Minister and his staff set out to interfere in the prosecution of SNC-Lavalin by trying to stop the prosecution and replace an apparently properly founded prosecution with a less onerous process that would avoid the consequences of a conviction for SNC-Lavalin.
138. One can only speculate about the impact of the government's intervention on the investigators who spent many, many months of work on the investigation and the prosecutors who prepared the case and organized the material and the witnesses needed to carry out the prosecution. One might also wonder whether the actions of SNC-Lavalin in seeking political intervention from the highest levels of government to avoid the possible consequences of its alleged conduct supports the conclusion that it has fully reformed itself.

139. Whatever the result, the fact that the senior officials of SNC-Lavalin, including its legal counsel, a former Supreme Court of Canada Judge, all apparently felt it was appropriate to seek high level political intervention to avoid a prosecution for serious criminal allegations is surprising, to say the least. All of those involved should have known better.