



Office of the
Conflict of Interest and
Ethics Commissioner

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Trudeau II Report

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Mario Dion

Conflict of Interest and
Ethics Commissioner

Trudeau II Report

made under the *CONFLICT OF INTEREST ACT*

For additional copies of this document, please contact:

Office of the Conflict of Interest and Ethics Commissioner
Parliament of Canada
66 Slater Street, 22nd Floor
Ottawa, Ontario K1A 0A6

Telephone: 613-995-0721
Fax: 613-995-7308
Email: ciec-ccie@parl.gc.ca

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PREFACE

This report is submitted pursuant to the *Conflict of Interest Act* (Act) S.C. 2006, c.9, s.2.

The Conflict of Interest and Ethics Commissioner may conduct an examination under the Act at the request of a member of the Senate or House of Commons or, as is the case with this examination, on his own initiative.

When an examination is conducted on the Commissioner's own initiative, unless the examination is discontinued, the Commissioner is required to provide a report to the Prime Minister setting out the relevant facts of the case as well as the Commissioner's analysis and conclusions in relation to the examination. At the same time that the report is provided to the Prime Minister, a copy of the report is also provided to the public office holder or former public office holder who is the subject of the report and the report is made available to the public.

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EXECUTIVE SUMMARY

This report presents the findings of my examination under the *Conflict of Interest Act* (Act) of the conduct of the Right Honourable Justin Trudeau, Prime Minister of Canada. I sought to determine whether he used his position to seek to influence a decision of the Attorney General of Canada, the Honourable Jody Wilson-Raybould, relating to a criminal prosecution involving SNC-Lavalin, contrary to section 9 of the Act.

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

SNC-Lavalin was charged in February 2015 with criminal offences that allegedly took place between 2001 and 2011. Under a remediation agreement, also called a deferred prosecution agreement, the criminal charges could be deferred or suspended. At the time, Canada did not have a regime to allow remediation agreements. In early 2016, SNC-Lavalin began lobbying officials with the current government to adopt a remediation agreement regime. Following public consultations, amendments to the *Criminal Code* allowing for such a regime were adopted as part of the 2018 federal budget.

On September 4, 2018, the Director of Public Prosecutions informed the office of the Minister of Justice and Attorney General that she would not invite SNC-Lavalin to negotiate a possible remediation agreement. The Prime Minister's Office and the Minister of Finance's office were then informed of this decision by Ms. Wilson-Raybould's office. Mr. Trudeau then directed his staff to find a solution that would safeguard SNC-Lavalin's business interests in Canada.

The first step in my analysis was to determine whether Mr. Trudeau sought to influence the decision of the Attorney General as to whether she should intervene in a criminal prosecution involving SNC-Lavalin following the decision of the Director of Public Prosecutions. The evidence showed there were many ways in which Mr. Trudeau, either directly or through the actions of those under his direction, sought to influence the Attorney General.

Having reviewed several possible means of intervening in the matter, Ms. Wilson-Raybould made it known in September that she would not intervene in the Director of Public Prosecutions' decision.

Mr. Trudeau met with Ms. Wilson-Raybould on September 17, 2018, at which time she reiterated her decision to not intervene in the Director of Public Prosecutions' decision to not invite SNC-Lavalin to enter into a remediation agreement. She also expressed to Mr. Trudeau her concern of inappropriate attempts to interfere politically with the Attorney General in a criminal matter. Following this meeting, senior officials under the direction of Mr. Trudeau continued to engage both with SNC-Lavalin's legal counsel and, separately, with Ms. Wilson-Raybould and her ministerial staff to influence her decision, even after SNC-Lavalin had filed an application for a judicial review of the

Director of Public Prosecutions' decision. These attempts also included encouraging her to re-examine the possibility of obtaining external advice from "someone like" a former Chief Justice of the Supreme Court. Unbeknownst to the Attorney General at that time, legal opinions from two former Supreme Court justices, retained by SNC-Lavalin, had been reviewed by the Prime Minister's Office and other ministerial offices. Meanwhile, both SNC-Lavalin and the Prime Minister's Office had approached the former Chief Justice of the Supreme Court to participate in the matter. The final attempt to influence Ms. Wilson-Raybould occurred during a conversation with the former Clerk of the Privy Council on December 19, 2018, as an appeal, on behalf of Mr. Trudeau, to impress upon her that a solution was needed to prevent the economic consequences of SNC-Lavalin not entering into negotiations for a remediation agreement.

Simply seeking to influence the decision of another person is insufficient for there to be a contravention of section 9. The second step of the analysis was to determine whether Mr. Trudeau, through his actions and those of his staff, sought to improperly further the interests of SNC-Lavalin.

The evidence showed that SNC-Lavalin had significant financial interests in deferring prosecution. These interests would likely have been furthered had Mr. Trudeau successfully influenced the Attorney General to intervene in the Director of Public Prosecutions' decision. The actions that sought to further these interests were improper since they were contrary to the Shawcross doctrine and the principles of prosecutorial independence and the rule of law.

For these reasons, I found that Mr. Trudeau used his position of authority over Ms. Wilson-Raybould to seek to influence, both directly and indirectly, her decision on whether she should overrule the Director of Public Prosecutions' decision not to invite SNC-Lavalin to enter into negotiations towards a remediation agreement.

Therefore, I find that Mr. Trudeau contravened section 9 of the Act.

CONCERNS AND PROCESS

Examination Request

[1] On February 8, 2019, I received an examination request from Mr. Charlie Angus, Member of Parliament for Timmins–James Bay, and from Mr. Nathan Cullen, Member of Parliament for Skeena–Bulkley Valley, raising concerns that the Right Honourable Justin Trudeau, Prime Minister of Canada, had contravened section 7 of the *Conflict of Interest Act* (Act). Their concerns were based on a February 7, 2019 *Globe and Mail* article alleging that officials in the Prime Minister’s Office had pressured the Minister of Justice and Attorney General of Canada, the Honourable Jody Wilson-Raybould,¹ to instruct the Public Prosecution Service of Canada (Prosecution Service) to negotiate a remediation agreement with SNC-Lavalin.² It was reported that the Prosecution Service had previously decided not to initiate such negotiations.

[2] Section 7 prohibits public office holders, in the exercise of an official power, duty or function, from giving preferential treatment to any person or organization based on the identity of the person or organization that represents the first-mentioned person or organization.

[3] On the basis of the information contained in the request, I was of the view that the grounds set out in the letter did not correspond to a possible contravention of section 7 of the Act. I found that Mr. Angus’ and Mr. Cullen’s request for an examination did not satisfy the requirements of the Act and, therefore, I could not initiate an examination on its basis.

[4] Nonetheless, in light of the information provided in the request, in addition to other publicly available information gathered by our Office, I had reason to believe that a possible contravention of section 9 had occurred and therefore commenced on February 8, 2019 an examination under subsection 45(1) of the Act.

[5] Section 9 prohibits a public office holder from using their position as a public office holder to seek to influence a decision of another person so as to further their own private interests or those of a relative or friend, or to improperly further another person’s private interests.

¹ The titles attributed to all individuals mentioned in this report reflect the position held at the time of the events that form the subject matter of this examination.

² For the purposes of this report, we refer to “SNC-Lavalin Group Inc.,” “SNC-Lavalin International Inc.,” and “SNC-Lavalin Construction Inc.,” collectively, as “SNC-Lavalin.”

Production of Documents

[6] On February 8, 2019, I wrote to Mr. Trudeau to inform him that I was initiating an examination of his conduct.

[7] I informed Mr. Trudeau that the purpose of my examination was to determine whether he used his position to seek to influence the decision of Ms. Wilson-Raybould, in her capacity as Attorney General of Canada, so as to improperly further the private interests of SNC-Lavalin. I requested that Mr. Trudeau produce all relevant documents in the possession, custody or control of the Prime Minister's Office.

[8] Our Office received a first set of documents from Mr. Trudeau's legal counsel on March 29, 2019, as well as a written submission from Mr. Trudeau on May 2, 2019. I then interviewed Mr. Trudeau on May 3, 2019. We received a second set of documents from Mr. Trudeau's legal counsel, responsive to my original request, on June 27, 2019. On July 16, 2019, Mr. Trudeau's legal counsel made supplemental written submissions.

[9] I requested production of relevant documents from 13 witnesses. I received documentation from one additional witness without making a formal request. Between March 29, 2019, and July 5, 2019, our Office received documentation from 14 witnesses and conducted interviews with six of those witnesses (see Schedule: List of Witnesses). I also requested follow-up information, via sworn affidavit, from Mr. Trudeau and three witnesses.

[10] In keeping with the practice my predecessor had established, Mr. Trudeau was given an opportunity to review the transcript of his interview, excerpts of transcripts of interviews from the six witnesses interviewed and the relevant documentary evidence. On July 19, 2019, Mr. Trudeau was provided with an opportunity to comment on a draft of the factual portions of this report (Concerns and Process, Findings of Fact, and Mr. Trudeau's Position).

Confidences of the Queen's Privy Council

[11] On February 25, 2019, the Governor in Council issued Order in Council 2019-0105, which authorizes Ms. Wilson-Raybould and "any persons who directly participated in discussions with her" in relation to the exercise of her authority under the *Director of Public Prosecutions Act* in respect of the prosecution of SNC-Lavalin to disclose to the Standing Committee on Justice and Human Rights and to our Office any confidences of the Queen's Privy Council of Canada contained in any information or communication that was "directly discussed with her" while she held the office of the Attorney General.

[12] During this examination, nine witnesses informed our Office that they had information they believed to be relevant, but that could not be disclosed because, according to them, this information would reveal a confidence of the Queen's Privy Council and would fall outside the scope of Order in Council 2019-0105.

[13] In order to gain access to as much relevant information as possible, on March 29, 2019, I instructed legal counsel in our Office to engage with counterparts in the Privy Council Office to request that witnesses be enabled to provide all of their evidence to our Office. Despite several weeks of discussions, the offices remained at an impasse over access to Cabinet confidences.

[14] On May 3, 2019, I raised the matter directly with the Prime Minister during his interview. Through legal counsel, Mr. Trudeau stated that he would consult with the Privy Council Office to see whether the Order in Council could be amended.

[15] On May 28, 2019, with the issue of access to Cabinet confidences unresolved, I wrote to the newly appointed Clerk of the Privy Council, Mr. Ian Shugart. I set out the concerns expressed by witnesses, noted above, and explained what I believe to be the legislative framework that, at least implicitly, authorizes our Office to access such information. I cited provisions of both the *Conflict of Interest Act* and the *Parliament of Canada Act* that prohibit me from revealing confidences of the Queen's Privy Council in the context of public declarations of recusal and our annual reports, respectively. I explained that I understood these prohibitions to mean that our Office would have prima facie access to this information. I then drew the analogy between these prohibitions and the restrictions on the disclosure of confidential information placed on me in the course of examinations, and why I would have similar access to and a similar prohibition on publishing Cabinet confidences in that context.

[16] In a letter dated June 13, 2019, the Clerk of the Privy Council declined my request for access to all Cabinet confidences in respect of this examination.

[17] Mr. Trudeau's legal counsel indicated that the decision on whether to expand the waiver was made by the Privy Council Office without the involvement of the Prime Minister or his office.

[18] Because of the decisions to deny our Office further access to Cabinet confidences, witnesses were constrained in their ability to provide all evidence. I was, therefore, prevented from looking over the entire body of evidence to determine its relevance to my examination. Decisions that affect my jurisdiction under the Act, by setting parameters on my ability to receive evidence, should be made transparently and democratically by Parliament, not by the very same public office holders who are subject to the regime I administer.

[19] I am convinced that if our Office is to remain truly independent and fulfill its purpose, I must have unfettered access to all information that could be relevant to the exercise of my mandate. I must be satisfied that decisions made by the most senior public office holders, including those discussed at Cabinet, are free from any conflicts of interest.

[20] In the present examination, I have gathered sufficient factual information to properly determine the matter on its merits. Because of my inability to access all Cabinet confidences related to the matter I must, however, report that I was unable to fully discharge the investigatory duties conferred upon me by the Act.

FINDINGS OF FACT

Background: Criminal Charges Brought Against SNC-Lavalin

[21] On February 19, 2015, SNC-Lavalin was charged with offences contrary to paragraph 3(1)(b) of the *Corruption of Foreign Public Officials Act* and subsection 380(1) of the *Criminal Code* for actions that are alleged to have taken place between 2001 and 2011. Under federal rules, a bribery and fraud conviction against SNC-Lavalin would bar the company from bidding on any federal contracts for 10 years and would allow federal authorities to cancel the company's current contracts.

[22] According to publicly available information, in May 2015, the Chief Executive Officer (CEO) of SNC-Lavalin stated that he had made efforts to seek a settlement with the previous government in order to avoid a lengthy criminal trial. However, the talks had reportedly stalled, and the company was waiting to see which party would form the next government before recommitting to its efforts to obtain a settlement.

[23] In December 2015, in order to prevent a suspension from bidding on federal government contracts, SNC-Lavalin signed an administrative agreement under the Government of Canada's Integrity Regime that was newly amended in July 2015. The administrative agreement allows the company to continue to contract with or supply the Government of Canada while awaiting the final disposition of federal charges.

Mr. Trudeau and His Senior Advisor Meet with SNC-Lavalin Representatives in Early 2016

[24] The federal Registry of Lobbyists showed that the first contacts related to the issue of justice and law enforcement occurred in early February 2016, when SNC-Lavalin began lobbying several federal officials, including ministerial staff in the Prime Minister's Office, the offices of the ministers of Finance, International Trade, and Innovation, Science and Economic Development, as well as officials in the Privy Council Office and at Public Services and Procurement Canada, for the adoption of a remediation agreement regime.

[25] Also referred to as a deferred prosecution agreement, a remediation agreement allows prosecutors to negotiate with an organization accused of committing certain criminal offences with a view to deferring or suspending criminal charges instead of proceeding with a trial. Similar regimes are in place in France, Australia and the United Kingdom.

[26] 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.

[27] 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.

[28] According to documentation received from the Privy Council Office, SNC-Lavalin had several contracts with the federal government, some of which would span several decades. These contracts included the Samuel De Champlain Bridge project, the Gordie Howe International Bridge project, Montreal's light rail project and numerous other federal undertakings worth hundreds of millions of dollars. In his written submission, Mr. Trudeau stated that he knew in general terms that SNC-Lavalin was a significant contractor with Canadian governments and that he was aware of some of the major government contracts in question, such as the Samuel De Champlain Bridge project and the light rail project in Montreal.

[29] Mr. Trudeau testified that, in early 2016, he had limited knowledge of remediation agreements. He instructed Mr. Bouchard to look into the concept and see what existed in other countries. He also said that as part of his instructions, he told Mr. Bouchard to pay attention to the SNC-Lavalin matter and identify existing levers that could lead to a positive outcome for everyone.

[30] With regard to roles within the Prime Minister's Office, Mr. Trudeau testified that the most senior staff in his office are, to varying degrees, authorized to interact with and make representations to ministers, ministerial staff and other stakeholders on his behalf. Although they do not have free rein to make important decisions unilaterally, once they have a sense of Mr. Trudeau's direction on a matter, they are tasked with the day-to-day operations on a given file in accordance with their specific areas of specialization.

[31] Mr. Bouchard testified that he was given latitude on files and that it was his understanding that, when he was engaging with ministers and their staff, he was doing so on behalf of the Prime Minister.

[32] Mr. Trudeau said he would have received updates as issues arose and that he would have assumed that Mr. Bouchard was continuing the work that had been tasked to him. However, according to Mr. Trudeau, SNC-Lavalin's legal issues were not a matter that would have merited his continued close attention.

2016-2017: Departmental Meetings and Public Consultations on a Remediation Agreement Regime

[33] Mr. Bouchard testified that beginning in 2016, he started seeking information on remediation agreements from other ministerial and departmental staff. He also testified that the Prime Minister's Office asked the Privy Council Office to organize internal meetings with ministerial staff and departmental officials from the Department of Finance Canada, Public Services and Procurement Canada, the Department of Justice Canada, Innovation, Science and Economic Development Canada, and Global Affairs Canada (International Trade Diversification), in order to discuss the concept of a regime as well as SNC-Lavalin's legal issues.

[34] According to Mr. Bouchard, these meetings resulted in a consensus from participants that the federal government would run a public consultation on the possibility of adopting a remediation agreement regime in Canada.

[35] Led by Public Services and Procurement Canada with the support of the Department of Justice Canada, public consultations on the Government of Canada's tools dealing with corporate wrongdoing were held from September 25 to November 17, 2017. Discussion papers were accepted until December 8, 2017. As part of the consultations, possible enhancements to the government's Integrity Regime and the adoption of a remediation agreement regime in Canada were also discussed.

The Minister of Finance's Office's Discussions with SNC-Lavalin

[36] Following the consultations, documents submitted by SNC-Lavalin showed that the company's representatives continued to advocate for the adoption of a remediation agreement regime. The Minister of Finance, the Honourable Bill Morneau, met with Mr. Neil Bruce, CEO of SNC-Lavalin, on January 23, 2018, while in Davos, Switzerland, during the World Economic Forum Annual Meeting. According to SNC-Lavalin, during their meeting, which had been requested by SNC-Lavalin representatives, Mr. Bruce updated Mr. Morneau and his Director of Policy, Mr. Justin To, on the company's challenges, opportunities and strategies for growth.

[37] In his written submission, Mr. To recalled a conversation regarding Mr. Morneau's meeting with Mr. Bruce. According to Mr. To, Mr. Morneau generally noted SNC-Lavalin's view that the government should proceed with the implementation of a remediation agreement regime, as consultations on the issue were completed in 2017. Mr. Bruce described potential negative economic impacts if SNC-Lavalin were unable to reach a remediation agreement. Mr. Morneau testified that while he did not recall what was discussed, he believes that the company's desire for a remediation agreement regime would have been raised with him at this time.

[38] On February 2, 2018, Mr. To met with Mr. Bruce and other SNC-Lavalin representatives in Ottawa as a follow-up to their meeting in Davos, Switzerland. The company presented Mr. To with a confidential discussion document outlining reasons in support of a remediation agreement regime and the company's request for timely implementation of a regime via the federal budget. According

to the document, this strategy would increase the likelihood of a settlement of the company's pending criminal charges, of the company maintaining its head office in Canada for the foreseeable future and of an increase in its workforce.

[39] Mr. To stated that he did not share the document with the Prime Minister's Office nor did he discuss his February 2, 2018 meeting with them.

Inclusion of the Provisions Creating the Regime in the *Budget Implementation Act, 2018, No. 1*

[40] On February 22, 2018, the Government of Canada published the results of the public consultations, which stated that "[t]he majority of participants supported having a Canadian DPA [deferred prosecution agreement] regime, as they were of the view that DPAs could be a useful additional tool for prosecutors to use at their discretion in appropriate circumstances to address corporate criminal wrongdoing."

[41] Five days later, on February 27, 2018, amendments to the *Criminal Code* allowing remediation agreements were announced in Budget 2018. They were subsequently inserted into an omnibus budget bill (C-74). Several witnesses interviewed were of the view that non-fiscal items are typically included in a federal budget bill to expedite passage through Parliament.

[42] Mr. Trudeau and other witnesses testified that items included in a budget bill stem from discussions between the Prime Minister and the Minister of Finance, and discussions between the Prime Minister's Office and the Minister of Finance's office. In this case, given that amendments to the *Criminal Code* would be included in the budget bill, Mr. Trudeau stated that Ms. Wilson-Raybould likely would have been involved in the discussions as well.

[43] According to Mr. Trudeau, SNC-Lavalin was a timely example of a company with a significant number of employees in Canada, that had engaged in alleged wrongdoing under previous management, and that was now trying to reform. A remediation agreement regime offered a way through for SNC-Lavalin, as had been the case for other large engineering firms in Europe which had benefited from this type of regime.

[44] Ms. Wilson-Raybould testified that it was her understanding that the need to create a regime was primarily because of SNC-Lavalin. Given the importance of the amendments to the *Criminal Code*, she expressed concern that the process, including the public consultations and the amendments, had been rushed in order to include them in the 2018 federal budget bill. As a result, she made the decision not to lead the memorandum to Cabinet regarding the amendments to the *Criminal Code* and not to speak publicly or before parliamentary committees about the regime.

[45] On March 27, 2018, the government tabled budget implementation Bill C-74, which included amendments to the *Criminal Code* for the establishment of a remediation agreement regime.

[46] As set out in section 715.31 of the *Criminal Code*, one of the purposes of the regime is “to reduce the negative consequences of the wrongdoing for persons—employees, customers, pensioners and others—who did not engage in the wrongdoing, while holding responsible those individuals who did engage in that wrongdoing.”

[47] The regime also provides, under subsection 715.32(1), conditions that must be met in order for the prosecutor to enter into negotiations for a remediation agreement with an alleged wrongdoer, as well as public-interest factors to consider in determining whether such negotiations are appropriate. If an organization is alleged to have committed an offence under section 3 or 4 of the *Corruption of Foreign Public Officials Act*, the Director of Public Prosecutions must not consider the national economic interest, the potential effect on foreign relations, or the identity of the organization or individual involved.

[48] Bill C-74 was reviewed in its entirety by the House of Commons Standing Committee on Finance and by several Senate committees.

[49] On June 21, 2018, Bill C-74 received Royal Assent. The *Criminal Code* provisions would come into force 90 days later, on September 19, 2018.

[50] When asked if SNC-Lavalin representatives were involved in the legislative process that culminated in the amendments to the *Criminal Code*, Mr. Trudeau testified that while he assumed SNC-Lavalin would have been involved in the consultations that led up to the *Criminal Code* amendments, decisions relating to legislation are a matter for Cabinet and government, and not for private companies.

The Minister of Finance’s Office Seeks an Update on SNC-Lavalin

[51] In mid-August 2018, Mr. Ben Chin, Chief of Staff to the Minister of Finance, contacted Ms. Jessica Prince, Chief of Staff to the Minister of Justice and Attorney General, to discuss SNC-Lavalin. According to Ms. Prince’s notes of the discussion, Mr. Chin stated that he had been speaking with SNC-Lavalin, and that the company’s perception was that the process of negotiating a remediation agreement was taking too long. Mr. Chin asked whether anything could be done to expedite the process. In his written submission, Mr. Chin stated that he did not recall what led him to make this inquiry.

[52] In a follow-up email, Ms. Prince informed Mr. Chin that a senior official with the Public Prosecution Service of Canada (Prosecution Service) had previously informed staff within the office of the Minister of Justice and Attorney General that they could not seek an update from the Prosecution Service. Ms. Prince wrote that since the Prosecution Service is statutorily independent of government, simply asking for a status update could be perceived as, and may be, improper political interference. Ms. Prince also pointed to the relevant provisions setting out the prosecutor’s role in a remediation agreement regime, and the factors that could or could not be considered when making a decision.

[53] The same day, Mr. Chin forwarded Ms. Prince's email to Mr. Morneau and Mr. To. Mr. Morneau testified that he did not recall reading the email.

[54] Ms. Wilson-Raybould testified that Ms. Prince informed her of her discussion with Mr. Chin. Ms. Wilson-Raybould also testified that she could not recall any other time during her three-year tenure as Attorney General when another Minister's office had contacted her office to inquire about a specific prosecution.

The Director of Public Prosecutions' Decision Relating to SNC-Lavalin

[55] On September 4, 2018, the Prosecution Service informed SNC-Lavalin that Ms. Kathleen Roussell, Director of Public Prosecutions, had decided that a remediation agreement would be inappropriate in its case.

[56] The same day, Ms. Wilson-Raybould's office was also informed of the Director of Public Prosecutions' decision via a written memorandum provided under section 13 of the *Director of Public Prosecutions Act*. Under this provision, the Director of Public Prosecutions has a duty "to inform the Attorney General in a timely manner of any prosecution, or intervention that the Director intends to make, that raises important questions of general interest."

[57] Ms. Emma Carver, a ministerial advisor in Ms. Wilson-Raybould's office, forwarded the section 13 memorandum to senior staff in the Prime Minister's Office and the Minister of Finance's office, and added that there was not much that could be done if the independent prosecutor decided that a remediation agreement was not appropriate. Ms. Carver added that the Attorney General could issue a directive to prosecutors, but that this was something the Attorney General would not do since no Attorney General had ever issued a directive in a specific case. In response, Mr. To stated to Mr. Bouchard and Mr. Elder Marques, Senior Advisor in the Prime Minister's Office, that while they could take no action and hope for the best, if SNC-Lavalin decided to move their headquarters to the United Kingdom, it might be more painful to deal with in the future than now.

[58] In his written submission, Mr. To stated that his response was meant to express that the Director of Public Prosecutions' decision could have a negative impact, and that their respective departments needed to be prepared to deal with the impact in public, as well as in stakeholder communications and relations.

[59] Mr. Marques testified that before joining the Prime Minister's Office in September 2017 he was generally aware of the SNC-Lavalin matter and that he assisted Mr. Bouchard on the SNC-Lavalin file when he joined the Prime Minister's Office.

[60] Mr. Trudeau testified that while he does not specifically recall when he was informed of the Director of Public Prosecutions' decision, he would have been apprised of the development as it was relevant to him and his government, since Cabinet had passed remediation agreement measures as a way of helping with situations such as the one facing SNC-Lavalin.

Mr. Trudeau's General Direction Following the Director of Public Prosecutions' Decision

[61] Mr. Trudeau testified that the Director of Public Prosecutions' decision was of concern to him as there had been a hope that the new remediation agreement tool, which the government had adopted, would have provided a path forward to hold SNC-Lavalin accountable for its prior wrongdoing without leading to many job losses.

[62] In his written submission, Mr. Trudeau stated that he and his staff were puzzled by this development because, in his mind, SNC-Lavalin was precisely the kind of candidate for which the remediation agreement regime was designed: one that had taken significant steps to reform itself and whose conviction would harm many people who had not been involved in the wrongdoing. He recalled being concerned that the impact of the Director of Public Prosecutions' decision would extend beyond the case of SNC-Lavalin, and that it might be treated as a precedent for the decision to offer or not offer the opportunity to negotiate a remediation agreement in other cases.

[63] Mr. Trudeau testified that after being informed by his staff of the Director of Public Prosecutions' decision, he asked his staff for existing options to move the file forward. He recalled that he was told by his staff that the Prosecution Service is independent, that the Attorney General is the only person who can issue directives to proceed in the matter, and that there is no specific time limit on the Attorney General intervening. He also testified that, at the time, he would have told his staff that it was important that Ms. Wilson-Raybould take into account the potentially negative consequences on Canadians as she made a determination whether or not to intervene in the matter.

[64] Mr. Trudeau testified that while he asked to be kept informed of the situation, as this was an issue that could potentially affect thousands of jobs, it was not a matter for which he would have expected daily updates. At that time, other matters of national importance were largely occupying his time. He testified that he expected that his staff would continue their work.

The Attorney General Assesses the Information and Makes a Decision

[65] Ms. Wilson-Raybould testified that she typically received anywhere from two to eight section 13 memoranda from the Director of Public Prosecutions each month. When she received the Director's memorandum concerning SNC-Lavalin on September 4, 2018, and read it, Ms. Wilson-Raybould said that she conducted due diligence as she would have with any other section 13 memorandum that came into her office.

[66] Ms. Wilson-Raybould testified that given the importance and inclination that had been shown towards the adoption of a remediation agreement regime and given Mr. Morneau's staff's earlier inquiry into obtaining an update from the Prosecution Service on the matter, Ms. Wilson-Raybould knew that there was heightened awareness and a desire for a decision from the Director of Public Prosecutions in this case. Ms. Wilson-Raybould testified that she knew that if she agreed with the Director of Public Prosecutions' September 4, 2018 decision, this would result in

significant challenges for people within the government who had sought to have the remediation agreement regime in place, and that the decision would be scrutinized by the Prime Minister's Office. As a result, Ms. Wilson-Raybould explained that she sought to be entirely confident in her decision not to take any action.

[67] To do so, Ms. Wilson-Raybould testified that she had her Chief of Staff engage with her ministerial staff and with departmental officials. Ms. Wilson-Raybould further stated that she herself also had several discussions with her staff and with her Deputy Minister, sought advice from several former attorneys general and had discussions with an external agent, Mr. Grégoire Webber, employed with her ministerial office. Ms. Wilson-Raybould testified that she also benefited from memoranda drafted by her office and her department.

[68] A first memorandum was prepared on September 5, 2018, by Ms. Carver and Mr. Webber at the request of Mr. Marques. The note focused on the prosecutorial independence of the Attorney General, the remediation agreement regime, the Director of Public Prosecutions' decision not to negotiate with SNC-Lavalin, and political considerations regarding an intervention from the Attorney General.

[69] The memorandum also quoted from the leading Supreme Court of Canada decision on prosecutorial independence, stating that "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.

[70] Under the *Director of Public Prosecutions Act*, the Attorney General is empowered to issue directives to the Director of Public Prosecutions in respect of prosecutions generally or in respect of specific prosecutions. In addition, the Attorney General has the power to assume the conduct of prosecutions.

[71] Ms. Wilson-Raybould testified that her staff originally drafted the memorandum to ensure that the Prime Minister's Office understood the nature of the relationship between the Attorney General and the Director of Public Prosecutions.

[72] Mr. Marques testified that he discussed the memorandum with Ms. Wilson-Raybould's staff and said that he would have briefed Mr. Trudeau on the principles included in the memorandum, such as the authority of the Attorney General to issue directives, and what it would mean for the Attorney General to issue a directive. He said he also would have described to Mr. Trudeau some of the political considerations that were raised, such as the fact that an Attorney General had never issued a directive on a specific prosecution. Mr. Marques said that since the Director of Public Prosecutions had rendered a decision that entailed certain consequences, he sought to ensure that Mr. Trudeau understood the matter.

[73] Ms. Wilson-Raybould also received an opinion entitled "The power to issue directives and to assume the conduct of proceedings," which was prepared by the Department of Justice Canada and submitted in a draft form to Ms. Wilson-Raybould's chief of staff on September 8, 2018.

[74] Ms. Nathalie Drouin, Deputy Minister of Justice and Deputy Attorney General of Canada, testified that her office is not kept informed of communications between the Director of Public Prosecutions and the Attorney General relating to a particular prosecution matter, and could only recall one other instance in which Ms. Wilson-Raybould's office requested assistance from the Deputy Minister's office regarding a section 13 memorandum.

[75] The opinion outlined the Attorney General's responsibilities in relation to prosecutions: that her decisions must be made independently of Cabinet and of any political considerations, that policy considerations may be weighed in making decisions on criminal prosecutions, and that she may choose to consult members of Cabinet at a general level on policy considerations, but decisions related to the conduct of individual prosecutions must be hers alone and not the result of a Cabinet decision-making process.

[76] The opinion also indicated that the Attorney General is entitled to receive information from the Director of Public Prosecutions in order to understand a decision with respect to a remediation agreement in a specific case. The document stated that the Attorney General could undertake to seek external advice with respect to the exercise of their powers under the *Director of Public Prosecutions Act*. According to the opinion, Ms. Wilson-Raybould could engage someone outside the Office of the Director of Public Prosecutions to assess the case and advise her as to whether the conditions for a remediation agreement were met.

[77] The suggestion to seek external advice was discussed among Ms. Wilson-Raybould's senior staff who, according to documentary evidence, had concerns about the mechanics of seeking external advice on a prosecutorial matter. Ms. Drouin testified that it was she who first proposed the idea. Ms. Drouin said that when she was Deputy Attorney General of Quebec, a decision of the provincial Director of Criminal and Penal Prosecutions had been publicly challenged and the Attorney General of Quebec had been called upon to act. Ms. Drouin had suggested to the Attorney General of Quebec that she strike a panel of experts who could offer her recommendations on the matter.

[78] In an email exchange with Ms. Drouin, Ms. Wilson-Raybould's staff requested further clarification and information from the Deputy Minister, as they believed the suggested option to be unprecedented. They asked Ms. Drouin whether an Attorney General had ever sought external advice, and what mechanisms were in place to allow for an outside person to access the confidential information relating to a prosecution.

[79] Ms. Drouin testified that in response to queries from Ms. Wilson-Raybould's staff, she submitted a supplementary note on September 10, 2018. Ms. Drouin's supplementary note provided that, to the Department's knowledge, an Attorney General had never sought external advice on a prosecutorial decision. It was also stated that an external review of a Prosecution Service file would be unprecedented and that there was no guidance or established format available.

[80] Ms. Drouin's supplementary note also outlined a suggested course of action, which involved, as a first step, informal discussions with the Prosecution Service to identify their concerns or considerations that would need to be accommodated in carrying out an external review. According

to the note, the Prosecution Service and the Royal Canadian Mounted Police (RCMP) would likely have significant concerns regarding the protection of sources, investigative methods, and the disclosure of information that might harm future prosecution of the alleged offence. As such, it would require a third party who could be trusted to safeguard information of a sensitive nature. If necessary, the Attorney General could issue a directive that instructed the Prosecution Service to provide the external person with sufficient information with which to determine that the public interest criteria had been properly weighed.

[81] According to documents submitted by Ms. Prince, they did not receive written supplemental information from the Deputy Minister on the suggestion to seek external advice. However, documentary evidence indicated that Ms. Wilson-Raybould and her staff had discussed the idea with Ms. Drouin.

[82] During their discussion with Ms. Drouin, other possible interventions were explored, such as the Deputy Minister informally reaching out to the Director of Public Prosecutions. However, according to Ms. Prince's notes of the discussions, Ms. Wilson-Raybould and her senior staff had concerns that any intervention might be perceived to be political interference.

[83] According to Ms. Drouin's March 6, 2019 testimony before the Standing Committee on Justice and Human Rights, on September 11, 2018, Ms. Wilson-Raybould's senior staff member informed her that the Attorney General did not intend to intervene in the SNC-Lavalin matter.

[84] Ms. Wilson-Raybould testified in her interview that she felt confident in her decision not to take any action.

[85] According to Mr. Trudeau, his office was also informed of Ms. Wilson-Raybould's decision not to intervene. In his written submission, Mr. Trudeau stated that he and his staff were perplexed by the Attorney General's apparent position. Mr. Trudeau hoped to understand her position and if possible resolve the difference of views. Mr. Trudeau stated that whatever Ms. Wilson-Raybould would decide, his concern was whether this decision could be explained to others in government and to the affected Canadian public.

Discussions Between Ministerial Offices and with SNC-Lavalin Representatives

[86] Documentary evidence shows that as a result of the Director of Public Prosecutions' September 4, 2018 decision, senior staff in Mr. Morneau's office and senior staff in the Prime Minister's Office contacted Ms. Wilson-Raybould's staff to discuss options and to find out what, if anything, could be done in the SNC-Lavalin matter.

[87] Mr. Morneau testified that he was extremely surprised and shocked by the Director of Public Prosecutions' decision, as it had been his expectation that the new regime made sense for SNC-Lavalin's circumstances. When he heard the news, he immediately assumed that the company would be in jeopardy, either in the short or long term, and that as a result of a loss of business employees and pensioners would potentially lose their jobs and pensions respectively.

[88] In a conversation between Ms. Prince, Mr. Bouchard and Mr. Marques on September 16, 2018, Ms. Prince wrote that the two senior advisors to the Prime Minister voiced their concerns about the loss of many jobs and the context of the upcoming provincial election in Quebec if SNC-Lavalin did not receive a remediation agreement. During a September 19, 2018 discussion with Mr. Bouchard and Mr. Marques, Ms. Prince informed them that Ms. Wilson-Raybould would be happy to speak with them on the matter.

[89] In their written submissions, both Mr. Bouchard and Mr. Marques stated that during their discussions with Ms. Prince, they emphasized that they did not want to cross any lines and that they were well aware of the importance of prosecutorial independence.

[90] Documentary evidence also shows that at the same time, the same individuals in the Prime Minister's Office and in the Minister of Finance's office who had raised concerns with Ms. Wilson-Raybould and her staff were also engaging in discussions with SNC-Lavalin representatives and their legal counsel to assist the company in finding solutions in order to initiate negotiations towards a remediation agreement.

September 17, 2018 Pre-Brief Meeting Between Mr. Trudeau, his Senior Staff and the Clerk of the Privy Council

[91] On September 17, 2018, Mr. Trudeau had a scheduled meeting with Ms. Wilson-Raybould, at her request, to discuss a topic unrelated to SNC-Lavalin.

[92] Before his meeting with Ms. Wilson-Raybould, Mr. Trudeau held a pre-brief meeting with Ms. Katie Telford, his Chief of Staff, Mr. Gerald Butts, his Principal Secretary, Mr. Bouchard and Mr. Michael Wernick, Clerk of the Privy Council. They discussed various issues that might be addressed during the meeting, including SNC-Lavalin.

[93] Mr. Trudeau testified that he was aware before this meeting that Ms. Wilson-Raybould was not inclined to intervene in the Director of Public Prosecutions' decision.

[94] Mr. Wernick testified that the topic of SNC-Lavalin was to be discussed because the *Budget Implementation Act*, including the *Criminal Code* amendments that introduced a remediation agreement regime, would be coming into force in the final weeks of September. Mr. Wernick testified that they knew that as a publicly traded company, SNC-Lavalin would be required to disclose shortly the state of the criminal prosecution and that the Director of Public Prosecutions had decided against negotiating a remediation agreement.

[95] Mr. Bouchard testified that during this pre-brief meeting, the content of the September 5, 2018 memorandum drafted by Ms. Wilson-Raybould's staff, which outlined the legal and constitutional implications of interfering with a criminal prosecution, was presented to Mr. Trudeau. Mr. Bouchard stated that it was clear to Mr. Trudeau that he could not ask or direct the Attorney General, nor could he interfere in the matter.

[96] It was decided during the pre-brief that Mr. Trudeau would bring up the topic of SNC-Lavalin immediately upon beginning their meeting before moving on to other matters.

September 17, 2018 Meeting Between Mr. Trudeau and Ms. Wilson-Raybould

[97] According to Ms. Wilson-Raybould's written account of her meeting with Mr. Trudeau and Mr. Wernick, Mr. Trudeau brought up SNC-Lavalin and asked her to help find a solution, stating that if the company did not benefit from a remediation agreement, it would move from Montreal and there would be many jobs lost.

[98] Ms. Wilson-Raybould explained to Mr. Trudeau the state of the law and what the *Director of Public Prosecutions Act* allowed her, as Attorney General, to do in respect of issuing directives or assuming conduct of prosecutions. She told Mr. Trudeau that she had received the section 13 memorandum earlier in the month, that she had considered the matter very closely and had done her due diligence, and that she had made the decision not to interfere with the Director of Public Prosecutions' decision.

[99] According to Ms. Wilson-Raybould, the Clerk of the Privy Council made the case for the need to have a remediation agreement with SNC-Lavalin, stating that there was an upcoming board meeting with shareholders and that the company would likely move to the United Kingdom. Mr. Wernick also brought up the fact that there was an impending election in Quebec. Mr. Trudeau also brought up the provincial election in Quebec and reminded her that he was a Member of Parliament in that province.

[100] Ms. Wilson-Raybould stated that she then asked Mr. Trudeau if he was politically interfering with her role and her decision as Attorney General, and that Mr. Trudeau responded that he was not, but that they needed to find a solution.

[101] When asked at his interview what kind of solution he was looking to Ms. Wilson-Raybould to find, Mr. Trudeau testified that he had hoped that she would see that it was in the public interest to find a solution to the matter. Mr. Trudeau wanted to ensure that the Attorney General had properly explored all the tools at her disposal and had considered the potential negative economic consequences on SNC-Lavalin's employees in the form of job losses should the company be criminally prosecuted. Mr. Trudeau hoped Ms. Wilson-Raybould would engage with the Director of Public Prosecutions, either through a formal mechanism such as a directive issued under the *Director of Public Prosecutions Act*, or in a less formal way to have the Director reconsider her original decision in light of the amendments to the *Criminal Code* authorizing remediation agreements.

[102] However, Mr. Trudeau testified that he knew throughout that it was Ms. Wilson-Raybould's decision to make.

[103] In his written submission, Mr. Trudeau stated that he does not recall whether Mr. Wernick mentioned the fact that there was an upcoming provincial election in Quebec, or whether he appeared to agree with the Clerk of the Privy Council's comment. According to Mr. Trudeau, he was certainly cognizant of the value of avoiding doing something that could be perceived as disrupting a provincial election.

[104] Mr. Trudeau testified that he certainly would have mentioned that he was the Member of Parliament for Papineau, in Quebec. Mr. Trudeau explained that the mention of this role came from his understanding, in his early days as a Member, of the impact government decisions have on Canadians. Mr. Trudeau testified that he hoped Ms. Wilson-Raybould would reflect on the economic consequences for Canadians, as well as the political consequences of job losses.

[105] Mr. Trudeau testified that he does not specifically recall Ms. Wilson-Raybould asking him if he was politically interfering in the matter. He said that Ms. Wilson-Raybould tended to view any form of engagement or advice by the Prime Minister's staff on decisions she had already made as "interference."

[106] In his March 6, 2019 appearance before the House of Commons Justice and Human Rights Committee, Mr. Wernick stated that while he did mention the provincial election in Quebec, it was not out of partisan considerations. Based on the company's upcoming public-disclosure obligations, Mr. Wernick was concerned that a federal issue could surface in the last two weeks of a rather heated provincial electoral campaign. According to Mr. Wernick, he sought to remind Mr. Trudeau and Ms. Wilson-Raybould about existing conventions which seek to prevent any federal government influence during provincial elections.

[107] Mr. Trudeau testified that he asked Ms. Wilson-Raybould to speak with her Deputy Minister and with Mr. Wernick—two public servants—as a way to remove any political considerations from the discussions. Ms. Wilson-Raybould undertook to do so.

[108] Mr. Trudeau took from this that Ms. Wilson-Raybould had not made a final decision on whether to intervene in the Director of Public Prosecutions' decision. According to Ms. Wilson-Raybould, she told Mr. Trudeau that these conversations would not change her mind.

[109] In his written submission, Mr. Trudeau stated that he informed his staff that Ms. Wilson-Raybould had agreed to revisit the matter and asked his staff to continue to try to understand her position and to express the concern about the impact of a conviction on Canadian stakeholders. Mr. Trudeau testified that he likely would have instructed Mr. Bouchard to keep an eye on the file and would have instructed Mr. Wernick to engage with the Deputy Minister of Justice to identify which pathways and conversations were permissible.

[110] In his written submission, Mr. Bouchard stated that Mr. Trudeau knew the requirement that the Attorney General alone was responsible for making the decisions as to whether to issue a directive, and that his instructions to Mr. Bouchard and to the others in the Prime Minister's Office always respected this requirement. Mr. Bouchard testified that he understood from Mr. Trudeau that the Prime Minister's Office was not to cross any lines while seeking solutions.

September 18, 2018 Follow-Up Meeting Between Ms. Wilson-Raybould and Her Deputy Minister

[111] On September 18, 2018, Ms. Wilson-Raybould met with her senior staff and her Deputy Minister. She debriefed them on her discussion with Mr. Trudeau and told them that she undertook to speak again with her Deputy Minister and the Clerk of the Privy Council on the Director of Public Prosecutions' decision.

[112] According to notes of the meeting taken by Ms. Prince, Ms. Drouin asked Ms. Wilson-Raybould whether she had sufficient information to stand behind the Director's section 13 memorandum and advised that gathering information would not be considered to be interference. According to Ms. Prince's notes, Ms. Drouin said that she believed the impact of not negotiating a remediation agreement with the company might be greater than what the Prosecution Service had considered.

[113] According to Ms. Prince's notes of the meeting, they again discussed the option of informally reaching out to the Director of Public Prosecutions. However, Ms. Wilson-Raybould indicated being very uncomfortable with the idea.

[114] Ms. Drouin testified that Ms. Wilson-Raybould, as Attorney General, was ultimately accountable before Parliament on her decision making and that, consequently, she had the responsibility to ensure that she had all of the necessary information to make a determination on whether or not to intervene. Ms. Drouin believed that, in this case, given that the remediation agreement regime was new and given that the potential impacts could affect innocent victims such as pensioners, Ms. Wilson-Raybould could have benefited from receiving additional information.

September 19, 2018 Follow-Up Meeting Between Ms. Wilson-Raybould and the Clerk of the Privy Council

[115] After having met with her Deputy Minister, Ms. Wilson-Raybould met with Mr. Wernick on September 19, 2018.

[116] According to notes of her discussion with the Clerk of the Privy Council, Ms. Wilson-Raybould stated that Mr. Wernick brought up what had been raised during their September 17, 2018 discussion with Mr. Trudeau, specifically that there would be job losses should SNC-Lavalin not receive a remediation agreement. Mr. Wernick also sought to contextualize the earlier comments about the Quebec election and the Prime Minister being a Member of Parliament in the Montreal area. According to Ms. Wilson-Raybould's notes, Mr. Wernick stated that SNC-Lavalin was going back and forth with the Director of Public Prosecutions, and again referenced the company's upcoming shareholder meeting.

[117] Mr. Wernick testified that he sought to understand Ms. Wilson-Raybould's reasoning on the matter given that a remediation agreement was a legitimate option for the Attorney General to consider.

[118] Both Ms. Wilson-Raybould and Mr. Wernick recalled that Ms. Wilson-Raybould said that the only option available to the company would be for it to write her a letter setting out their public interest arguments, which she could in turn submit to the Director of Public Prosecutions.

[119] Following the meeting, Mr. Wernick briefed a Privy Council official and staff in the Prime Minister's Office stating that Ms. Wilson-Raybould said that she would not intervene and that her decision was final. However, Mr. Wernick testified that, according to his understanding of the law, her decision could not be final, as it was always possible for the Attorney General to receive new facts or considerations.

[120] Ms. Wilson-Raybould briefed her staff on her discussion with the Clerk of the Privy Council. According to Ms. Drouin's March 6, 2019 testimony before the House of Commons Standing Committee on Human rights and Justice, Ms. Wilson-Raybould informed Ms. Drouin at that meeting that it would be the last time they would speak about SNC-Lavalin.

September 19, 2018 Interaction Between Mr. Morneau and Ms. Wilson-Raybould

[121] After several interactions dating back to August 14, 2018, between her Chief of Staff and Mr. Morneau's senior staff concerning SNC-Lavalin, Ms. Wilson-Raybould contacted Mr. Morneau and asked to speak to him directly.

[122] On September 19, 2018, the two spoke briefly in a public area near the Commons Chamber before Question Period. According to both accounts of the discussion, Ms. Wilson-Raybould brought up her concerns about Mr. Morneau's staff repeatedly speaking to her staff about SNC-Lavalin and said that it was inappropriate. She told Mr. Morneau that his staff needed to stop contacting her office on the matter and that they were undermining the fundamental tenets of democracy and prosecutorial independence.

[123] Mr. Morneau testified that he responded by relaying the significant economic impact that could result from the Director of Public Prosecutions' decision to not pursue a remediation agreement with SNC-Lavalin and reiterated the appropriateness and importance of interdepartmental communications. Both parties indicated that because of their apparent differences over the fundamental issue, the conversation lasted only a few minutes.

[124] In his written submission, Mr. Chin stated that following Mr. Morneau's discussion with Ms. Wilson-Raybould, he did not have any other discussions about SNC-Lavalin with Ms. Wilson-Raybould's staff after September 20, 2018.

[125] Mr. Morneau testified that as Minister of Finance, it is his responsibility to consider the economic impacts of government decisions. He said he expected that as a Cabinet colleague, Ms. Wilson-Raybould would have requested information relating to the consequences for the company, its employees and its pensioners. Mr. Morneau testified that while it may or may not have been useful for Ms. Wilson-Raybould to have this information, she had, in his view, a responsibility to at least consider those economic impacts. As a result, Mr. Morneau did not believe Ms. Wilson-Raybould had conducted her due diligence in this matter.

[126] When asked if he, or his office, had undertaken a study or analysis of the economic impacts of the Director of Public Prosecutions' decision, Mr. Morneau testified that none had been conducted. As a former CEO of a business, Mr. Morneau said that he was very aware of the business context in which a project-based organization like SNC-Lavalin was operating, and that for a company that relies on government contracts, a criminal conviction would almost certainly lead to a loss of employment and jeopardize the funding of pension plans.

SNC-Lavalin Representatives Meet with Government Officials to Discuss Further Submissions to the Prosecution Service

[127] The *Criminal Code* stipulates that in relation to the remediation agreement regime, the Director of Public Prosecutions may enter negotiations if it is in the public interest and appropriate in the circumstances.

[128] According to documentary evidence, legal counsel for SNC-Lavalin were officially informed on October 9, 2018, that an invitation to negotiate a remediation agreement was not appropriate in this case. Documentary evidence also showed that the company believed the Director of Public Prosecutions had not considered the public interest in her September 4, 2018 decision.

[129] From mid-September to early October 2018, SNC-Lavalin representatives met with government officials in the Privy Council Office and the Department of Finance to discuss submitting to the Prosecution Service public-interest considerations in support of a remediation agreement.

[130] In a September 18, 2018 meeting with Mr. Wernick and another official with the Privy Council Office, Mr. Bruce and another SNC-Lavalin representative discussed the consequences of the Director of Public Prosecutions' decision not to enter into remediation agreement negotiations with the company, and the potential harm that decision could have on the public interest.

[131] Mr. Wernick recalled that SNC-Lavalin representatives told them that the company would have to contemplate drastic action if it were convicted and faced a 10-year ban on federal contracts. According to notes from the meeting, Mr. Wernick informed Mr. Bruce that there was room for the company to continue its dialogue with the Prosecution Service and to submit public-interest considerations. Mr. Wernick testified that before his meeting, his staff would have briefed him on this avenue. Mr. Wernick testified that he briefed Mr. Marques on his September 18, 2018 meeting with Mr. Bruce.

[132] Mr. Bruce and his staff held several discussions with the Deputy Minister of Finance, his Chief of Staff, and an Assistant Deputy Minister of Finance on public-interest considerations. According to SNC-Lavalin, the company presented a draft PowerPoint document it had prepared on public-interest considerations that would be submitted to the Prosecution Service. The parties reviewed the presentation and officials with the Department of Finance suggested possible additional factors relevant to the public interest.

[133] The PowerPoint presentation also outlined a “Plan B” as a potential result of not being invited to negotiate a remediation agreement, which involved the creation of two SNC-Lavalin sourced companies. One would consist of a trio of possibly convicted entities carrying on reduced business operations in Canada or heading towards an eventual wind-up. The other group would be made up of parts of the SNC-Lavalin Group that had no role in the wrongful behaviour and would be reconstituted and headquartered in another jurisdiction.

[134] During this time, Mr. Bruce also met with Mr. Morneau and Mr. Chin, at the minister’s request. Mr. Morneau testified that he did not recall whether Mr. Bruce asked that he or anyone in his office take any actions on SNC-Lavalin’s behalf. He said that his role during this period would have been to listen and understand Mr. Bruce’s concerns and the company’s interests.

[135] According to Mr. Chin, he believed that SNC-Lavalin had planned to seek legal advice on the Director of Public Prosecutions’ decision. Mr. Morneau also testified that, since SNC-Lavalin had not yet heard anything conclusive from the Director of Public Prosecutions, the company was in the process of making arrangements for its legal counsel to meet directly with the Director of Public Prosecutions.

SNC-Lavalin Issues a Press Release on the Director of Public Prosecutions’ Decision

[136] On October 10, 2018, as part of the disclosure requirements incumbent upon publicly traded companies, SNC-Lavalin issued a press release informing the public that the Director of Public Prosecutions had decided not to enter negotiations with the company. SNC-Lavalin also stated in its press release that the company disagreed with the decision and was reviewing its options to appeal. A copy of the press release was forwarded from SNC-Lavalin to a number of officials in the Prime Minister’s Office.

[137] On October 11, 2018, SNC-Lavalin forwarded to the Prime Minister’s Office a research piece entitled “SNC: Thanks for Nothing, DPPSC.” The document noted that the value of SNC-Lavalin’s share price had dropped 14% following the public disclosure the day before and included details on key financial metrics, as well as a recommendation for investors.

[138] On October 15, 2018, Mr. Wernick spoke to Mr. Kevin Lynch, Chairman of SNC-Lavalin. According to SNC-Lavalin, during this conversation, Mr. Lynch reiterated the key messages and concerns expressed in the October 10 press release, as well as the frustration of having been given no reasons as to why the company was not asked to enter into remediation agreement discussions, and asked Mr. Wernick for any advice. Mr. Wernick offered no views on ways forward other than through the judicial process. Mr. Wernick’s testimony corroborated SNC-Lavalin’s version of the conversation.

Mr. Brison Reaches Out to Ms. Wilson-Raybould

[139] On or around October 14, 2018, Mr. Scott Brison, President of the Treasury Board, was speaking with Mr. Lynch and Mr. Robert Prichard, legal counsel for SNC-Lavalin, on an unrelated matter. Mr. Brison recalled that during the conversation, Mr. Lynch and Mr. Prichard explained

SNC-Lavalin’s position with respect to remediation agreements. It was Mr. Brison’s understanding that in their efforts to secure a remediation agreement, SNC-Lavalin’s representatives were also approaching other Cabinet ministers at that time.

[140] Mr. Brison stated that he believed the company’s concerns appeared sensible. Following his discussion with Mr. Lynch and Mr. Prichard, he contacted Ms. Wilson-Raybould that same day to bring the company’s concerns to her attention. Mr. Brison stated that it was clear to him during his brief discussion with Ms. Wilson-Raybould that she had reached a conclusion on the matter. According to Mr. Brison, Ms. Wilson-Raybould stated that she could not interfere in the prosecution of SNC-Lavalin. As a result, Mr. Brison did not press the issue further with Ms. Wilson-Raybould and had no further discussions with her regarding SNC-Lavalin.

Seeking External Advice

[141] On October 12, 2018, Mr. Wernick received the opinion entitled “The power to issue directives and to assume the conduct of proceedings” prepared by the Department of Justice for Ms. Wilson-Raybould and given to her Chief of Staff on September 8, 2018.

[142] On October 18, 2018, Mr. Bouchard contacted Ms. Prince to discuss the opinion, which he received from the Privy Council Office. According to Ms. Prince, Mr. Bouchard asked that Ms. Wilson-Raybould look at the option of seeking external advice with respect to the exercise of her powers under the *Director of Public Prosecutions Act*.

[143] In their written submissions, both Mr. Marques and Mr. Bouchard indicated that since the remediation agreement regime was brand new, they felt that obtaining external advice would be of assistance to the Attorney General. Mr. Bouchard also testified that he believed that since the Deputy Minister of Justice had proposed the idea, they considered it to be a legitimate proposal.

[144] In his testimony, Mr. Bouchard acknowledged that while Ms. Prince had shown an openness to exploring the idea, neither Ms. Wilson-Raybould nor her staff had ever told him that she required external advice.

[145] In Mr. Marques’ written submission, he stated that since the government was dealing with a new regime, receiving external advice was thought at the time to be a prudent, legitimate and helpful way for the Attorney General to inform herself of the public-interest considerations at play, and about how she should approach the decision-making process. In his interview, Mr. Marques testified that there was no indication that Ms. Wilson-Raybould had not factored in public-interest considerations.

SNC-Lavalin Files a Notice of Application for Judicial Review

[146] On October 19, 2018, SNC-Lavalin filed an application for a judicial review of the Director of Public Prosecutions’ decision not to initiate negotiations for a remediation agreement with the

company. The request for a judicial review cited the consequences that criminal legal proceedings would have on its employees, suppliers, pensioners and stakeholders, in the absence of an invitation to negotiate.

[147] Ms. Prince received an email from the Department of Justice informing her of the company's application for a judicial review and forwarded the information to Mr. Bouchard. On October 23, 2018, Mr. Bouchard and Mr. Marques met with senior officials in the Privy Council Office to discuss the SNC-Lavalin matter. According to Mr. Bouchard's notes of the meeting, they discussed whether there was still a way to address the issue given the pending judicial review. It was a shared belief that SNC-Lavalin's application for judicial review made it difficult for the Attorney General to intervene. Mr. Marques' testimony also supported this narrative.

SNC-Lavalin and the Caisse de dépôt et placement du Québec

[148] Mr. Bouchard's notes from the same October 23, 2018 meeting with senior officials of the Privy Council Office show that they also discussed SNC-Lavalin's board of directors' potential plan to move the corporate headquarters but the Caisse de dépôt et placement du Québec (Caisse de dépôt) would not let that happen.

[149] According to an article published April 29, 2017, in *Le Devoir* entitled "La Caisse de dépôt avait ses exigences" ["The Caisse de dépôt had its own requirements"], SNC-Lavalin had acquired a British engineering firm with a loan from the Caisse de dépôt. As a condition for receiving the financing, it was reported that the Caisse de dépôt had required that SNC-Lavalin maintain its headquarters and strategic decision making in Montreal for the next seven years (i.e., until 2024) and that the President and CEO of the company reside in Quebec.

[150] In his sworn affidavit, Mr. Bouchard wrote that he had spoken with Mr. Michael Sabia, CEO of the Caisse de dépôt, about SNC-Lavalin on or around October 23, 2018. According to Mr. Bouchard, although he was not aware of the terms of the agreement between SNC-Lavalin and the Caisse de dépôt, he understood from his conversation with Mr. Sabia that the Caisse de dépôt was working to ensure that no relocation would occur.

[151] Mr. Bouchard attested that a relocation was one of many concerns the Prime Minister's Office had about SNC-Lavalin, including that it could be the subject of a hostile takeover, that other companies would start making offers on the most profitable divisions or projects of the company, or that the company would enter into a "butterfly transaction" to move only its most profitable assets into a new company. Mr. Bouchard also attested that he believed that SNC-Lavalin would take whatever measures it could to preserve its business.

[152] Mr. Bouchard attested that he did not brief Mr. Trudeau on his conversation with Mr. Sabia, nor did he or anyone in the Prime Minister's Office inform Ms. Wilson-Raybould.

[153] In his sworn affidavit, Mr. Trudeau wrote that he was not aware of SNC-Lavalin's prior acquisition of the British engineering firm, nor was he aware of the terms of the agreement between

SNC-Lavalin and the Caisse de dépôt. Mr. Trudeau attested that he believed SNC-Lavalin could take steps to reduce its business presence in Canada to anticipate or respond to the criminal proceedings or their consequences.

[154] According to a draft memorandum to the Prime Minister prepared by the Privy Council Office in March 2018, SNC-Lavalin had informed the government in February 2018 that it had a “Plan B” if the government failed to enact legislation to address corporate wrongdoing with the introduction of a remediation agreement regime. The memorandum also made note of SNC-Lavalin’s acquisition of the British engineering firm and the terms of the reported agreement with the Caisse de dépôt. The memorandum concluded that it remained unclear, therefore, what SNC-Lavalin’s “Plan B” entailed.

[155] In his sworn affidavit, Mr. Wernick stated that the memorandum was never finalized and therefore never provided to Mr. Trudeau.

Further Contact Between the Prime Minister’s Office and the Attorney General

[156] On October 26, 2018, Ms. Prince spoke with a senior official with the Department of Justice’s litigation unit. Ms. Prince was informed that a lawyer with the Privy Council Office had asked whether the Attorney General could intervene in the judicial review proceedings to ask the court for an expedited hearing. According to Ms. Prince, the Department of Justice official explained that, procedurally, this could not be done since the Prosecution Service is the delegated representative of the Attorney General.

[157] Later that day, Ms. Prince spoke to Mr. Bouchard about SNC-Lavalin. According to Ms. Prince’s summary of her conversation, she told Mr. Bouchard that she had expected that the judicial review would have put an end to discussions of a possible intervention by the Attorney General in the matter. In response to Mr. Bouchard’s inquiry of whether the Attorney General could intervene in the judicial review proceedings, Ms. Prince repeated the points presented to her in her earlier conversation with the official from the Department of Justice’s litigation unit. She also outlined her understanding of the procedural irregularity of the Attorney General’s standing to intervene in a matter involving the Prosecution Service. Mr. Bouchard’s notes of the meeting are consistent with this narrative.

[158] Ms. Prince’s notes mentioned Mr. Bouchard’s comment that it was fine if the Attorney General was uncomfortable intervening, but that the Prime Minister’s Office did not want to close any doors on the matter. Both accounts indicated that Ms. Wilson-Raybould was very uncomfortable intervening in the matter, and that Ms. Wilson-Raybould was concerned that an intervention in the Director of Public Prosecutions’ decision relating to SNC-Lavalin may set a precedent to intervene in another high-profile criminal matter that was before the courts at that time.

[159] Ms. Prince’s notes reflected the fact that Mr. Bouchard had nonetheless expressed an interest in revisiting the option of seeking external advice that was outlined in the Department of Justice’s September 8, 2018 opinion. Ms. Prince’s notes also indicated that Mr. Bouchard had raised

the possibility of SNC-Lavalin’s relocation in conjunction with the upcoming federal election. According to her notes, Mr. Bouchard stated that “we can have the best policy in the world, but we need to be re-elected.”

[160] In his written submission, Mr. Bouchard wrote that it would not have been unusual for him to have referenced the importance of SNC-Lavalin to the province of Quebec and the idea that if the government had not done everything it could legitimately do to prevent job losses, it would face public criticism. Mr. Bouchard’s responsibility, as Senior Advisor to the Prime Minister, was to provide political advice which took into account political consequences of government decisions, particularly those that would affect Quebec. Mr. Bouchard testified that he did not brief Mr. Trudeau about this conversation.

[161] Mr. Trudeau testified that layoffs have the potential to affect an election as there is a delicate intersection between policy and politics, and that if there are more layoffs than jobs created, it would have real consequences on a government’s ability to serve.

SNC-Lavalin’s Increased Communications with Government Officials and Staff in the Prime Minister’s Office

[162] The documentary evidence shows that beginning in November 2018, legal counsel for SNC-Lavalin and representatives of the company began to increase their communications with government officials and staff in the Prime Minister’s Office with a view to finding solutions to override the Director of Public Prosecutions’ decision.

[163] According to the documentary evidence, discussions centred on the company’s request for a judicial review and the future of the company in light of the denial of a remediation agreement. According to notes of the meetings and summaries from SNC-Lavalin, staff in the Prime Minister’s Office were told that the company’s board of directors was close to escalating measures in respect of their “Plan B.”

SNC-Lavalin Shares its Legal Opinions with Government Officials and Staff

[164] With a view to assisting the company with its desire for a remediation agreement, SNC-Lavalin’s legal counsel prepared two legal opinions which were subsequently shared with government officials, ministers, ministerial staff and staff in the Prime Minister’s Office.

[165] According to SNC-Lavalin, its legal counsel, former Supreme Court Justice Frank Iacobucci, prepared a legal opinion that was to be shared with the Minister of Justice and Attorney General. It outlined the legitimacy for her to intervene in criminal matters seized by the Prosecution Service.

[166] Mr. Iacobucci’s legal opinion was shared with Mr. Brison in a November 2, 2018 email from Mr. Prichard. In the email, Mr. Prichard wrote: “We are also considering other ways to make it easier for the Minister to engage and reverse the [Director of Public Prosecutions’] decision. In the end,

however, it will take a deliberate decision from the center [...].” Mr. Brison forwarded the email and attachments to senior advisors in the Prime Minister’s Office. Mr. Brison stated that a number of his Cabinet colleagues also received the legal analysis prepared by SNC-Lavalin’s legal counsel.

[167] On November 1, 2018, Mr. Iacobucci requested an opinion from former Supreme Court Justice John Major, on whether the failure of the Director of Public Prosecutions to provide reasons for her refusal to invite SNC-Lavalin was unlawful and whether the refusal itself was unlawful. Mr. Major’s opinion was submitted on November 13, 2018.

[168] According to documentary evidence, an SNC-Lavalin representative hand-delivered a copy of Mr. Major’s opinion to Mr. Morneau’s chief of staff and to senior advisors in the Prime Minister’s Office.

[169] Ms. Wilson-Raybould testified that she did not see Mr. Iacobucci’s or Mr. Major’s opinions, nor was she made aware of their content.

[170] When given a description of each opinion, Mr. Trudeau testified that, although he had not seen either opinion, the content sounded familiar, and that it was consistent with his general understanding of how the file progressed.

Mr. Morneau and Mr. Brison Meet with Mr. Lynch While in Beijing, China

[171] At the request of an SNC-Lavalin representative, Mr. Morneau and Mr. Brison each had a meeting with Mr. Lynch while they were in Beijing, China, attending a conference in mid-November 2018.

[172] According to both Mr. Morneau and Mr. Brison, it was a brief discussion during which Mr. Lynch described the company’s ongoing concerns about the Director of Public Prosecutions’ decision and their position that a remediation agreement would be appropriate.

[173] According to SNC-Lavalin, the discussion also focused on the idea of whether third-party legal experts could provide information to assist in understanding the appropriateness of remediation agreements. Mr. Morneau testified that, during their discussion, Mr. Lynch may have brought up the idea of having the Right Honourable Beverley McLachlin, former Chief Justice of the Supreme Court, act as a third-party expert.

SNC-Lavalin’s Request for a Meeting with Mr. Trudeau

[174] On October 15, 2018, Mr. Bruce wrote to Mr. Trudeau to request a meeting with him to discuss the Director of Public Prosecutions’ decision not to invite the company to negotiate a remediation agreement. On November 20, 2018, the Privy Council Office prepared a memorandum for Mr. Trudeau in response to that letter.

[175] In the memorandum, the Privy Council Office recommended that Mr. Trudeau not meet with Mr. Bruce or any other representative from SNC-Lavalin to discuss the case in order to avoid public perception of political interference in a matter that was, at that time, before the courts. It was recommended that Mr. Trudeau forward the letter to the Attorney General for reply.

[176] The memorandum also made note of legal opinions prepared by the Department of Justice and by the Privy Council Office which confirmed the authority of the Attorney General to issue directives in relation to a specific prosecution or assume control of a prosecution. The memorandum outlined that doing either in this instance would draw attention as these provisions had not been used since the *Director of Public Prosecutions Act* came into force in 2006.

[177] A proposed letter responding to Mr. Bruce was included with the memorandum. The letter advised Mr. Bruce that Mr. Trudeau would be bringing his letter to the attention of the Minister of Justice and Attorney General. Mr. Trudeau signed the memorandum and letter on December 6, 2018.

[178] On December 14, 2018, Ms. Wilson-Raybould responded to Mr. Trudeau's letter, which forwarded to her attention Mr. Bruce's October 15, 2018 letter. In her letter, Ms. Wilson-Raybould reminded Mr. Trudeau that as the matters raised in Mr. Bruce's letter were before the courts, it would be inappropriate for her to comment on the letter's content. Ms. Wilson-Raybould also reminded Mr. Trudeau that the Prosecution Service, which was responsible for making decisions relating to remediation agreements, was independent of her office.

November 22, 2018 Meeting Between Ms. Wilson-Raybould and Staff from the Prime Minister's Office

[179] According to documentary evidence, Mr. Bouchard met with Ms. Telford and Mr. Butts on November 18, 2018, to brief them on the SNC-Lavalin matter. Mr. Bouchard testified that they told him to accept Ms. Wilson-Raybould's invitation, which had been extended in September 2018, to discuss SNC-Lavalin directly with her.

[180] Ms. Wilson-Raybould met with Mr. Bouchard and Mr. Marques on November 22, 2018.

[181] According to Ms. Wilson-Raybould's notes of the meeting, she explained the relevant sections of the *Director of Public Prosecutions Act* and that prosecutorial independence was a constitutional principle. She also went through the section 13 memorandum and told Mr. Bouchard and Mr. Marques that they were politically interfering. Mr. Bouchard and Mr. Marques told her that if she was not sure in her decision that they could have an eminent person or panel, like Ms. McLachlin, advise her on possible options. Ms. Wilson-Raybould testified that she asked Mr. Bouchard and Mr. Marques what this person or panel could offer in terms of advice. According to Ms. Wilson-Raybould, she did not receive an answer to her question.

[182] In his written submission, Mr. Marques stated that the purpose of the meeting was to discuss the Department of Justice's September 8, 2018 opinion and for him and Mr. Bouchard to communicate their information about the concern around public interest considerations.

Mr. Marques testified that he viewed it as his responsibility to inform Ms. Wilson-Raybould of the potential consequences for the company of not negotiating a remediation agreement, in order for her to be informed in her decision making.

[183] Mr. Bouchard and Mr. Marques both testified that Ms. Wilson-Raybould was open to hearing options available to her and that at no time before or during the meeting, did she say that they were politically interfering, that she had made a decision or that they should not be discussing the matter with her.

[184] Mr. Bouchard testified that he was mindful during his discussion with Ms. Wilson-Raybould to communicate to her that, in suggesting an external person or panel, they were looking for a process that would allow a conversation to take place rather than for a particular outcome. Mr. Marques testified that Ms. Wilson-Raybould said that many people had raised different considerations with her. In light of that, Mr. Marques suggested that using external advice could be helpful to her.

[185] In his written submission, Mr. Bouchard recalled that early in the meeting, Ms. Wilson-Raybould indicated that she could speak to Ms. McLachlin. However, Mr. Bouchard wrote that at the end of the meeting, Ms. Wilson-Raybould was not inclined to seek an external advisor. She suggested the company write her a letter setting out their public-interest concerns, which she could provide to the Director of Public Prosecutions.

[186] Mr. Marques testified that it was his impression that while Ms. Wilson-Raybould was not inclined to receive external advice, she remained open to the idea.

[187] Following his meeting with Ms. Wilson-Raybould, Mr. Bouchard informed an SNC-Lavalin representative that the Attorney General would not intervene in the matter, but could receive a letter from the company and pass it on to the Director of Public Prosecutions.

[188] Mr. Marques testified that following the meeting, he briefed Mr. Butts and Ms. Telford on his discussion with Ms. Wilson-Raybould. In his written submission, Mr. Trudeau stated that he was not briefed on his staff's meeting with Ms. Wilson-Raybould.

Mr. Trudeau Meets with Mr. Iacobucci

[189] On November 26, 2018, Mr. Iacobucci met with Mr. Trudeau on a matter unrelated to SNC-Lavalin. A memorandum for the Prime Minister, drafted by the Privy Council Office in preparation for Mr. Trudeau's meeting, mentioned that if Mr. Iacobucci raised the SNC-Lavalin file with him during their meeting, "it [was] strongly recommended that [Mr. Trudeau] not discuss this issue with Justice Iacobucci as the matter [was] being actively prosecuted by the Public Prosecution Service of Canada before the Courts." There was no evidence that the SNC-Lavalin matter was discussed.

Discussions Between the Prime Minister’s Office and SNC-Lavalin Regarding Ms. McLachlin Assisting in the Matter

[190] According to SNC-Lavalin, on November 27, 2018, Mr. Bouchard and Mr. Marques met with Mr. Prichard to discuss, among other things, the two legal opinions prepared by Mr. Iacobucci and Mr. Major.

[191] According to SNC-Lavalin, Mr. Prichard proposed a settlement of the judicial review application by SNC-Lavalin, indicating that the company would settle the action in return for the government’s adoption of a process that would lead to an invitation to negotiate a remediation agreement. Various other settlement mechanisms, some of which were suggested by Mr. Bouchard, were discussed. Mr. Bouchard testified that he was merely sharing possible legal ideas he thought might be useful to the company.

[192] Mr. Trudeau testified that he was not made aware of the settlement strategies discussed between SNC-Lavalin and his senior advisors.

[193] Both SNC-Lavalin’s summary and Mr. Bouchard’s handwritten notes of the meeting indicated that the idea of engaging Ms. McLachlin to approach Ms. Wilson-Raybould had been revisited. Mr. Bouchard noted that Mr. Iacobucci had reached out to Ms. McLachlin and provided her with the file for review, and that Ms. McLachlin had responded that she would meet with Ms. Wilson-Raybould. Mr. Bouchard also noted a proposal suggested by SNC-Lavalin: Ms. McLachlin would be asked to preside over a settlement conference between the Director of Public Prosecutions and SNC-Lavalin over the ongoing legal matters, and the Government of Canada could appoint Ms. McLachlin to support the negotiation of the remediation agreement.

[194] Following their meeting, Mr. Bouchard informed Mr. Prichard by email that he and Mr. Marques had briefed Ms. Telford. Mr. Bouchard testified that they informed Ms. Telford of the idea of having a mediator. Mr. Trudeau testified that he had not heard of the idea of Ms. McLachlin acting as a mediator.

December 5, 2018 Pre-Brief Meeting Between Mr. Butts, Mr. Bouchard and Mr. Marques

[195] On December 5, 2018, Ms. Wilson-Raybould and Mr. Butts had a scheduled dinner meeting. According to Ms. Wilson-Raybould, she had requested the meeting to discuss several issues, one of them being SNC-Lavalin.

[196] In preparation for his meeting with Ms. Wilson-Raybould, Mr. Butts requested a briefing on SNC-Lavalin from Mr. Marques and Mr. Bouchard. Mr. Bouchard testified that they discussed the September 8, 2018 opinion produced by the Department of Justice, which outlined the independence of the Attorney General and possible solutions. Mr. Marques and Mr. Bouchard also told Mr. Butts about the idea of having Ms. McLachlin provide Ms. Wilson-Raybould with advice on the matter. According to Mr. Bouchard, Mr. Butts said that he would raise the idea with Ms. Wilson-Raybould during his dinner.

[197] According to Mr. Marques, Mr. Butts asked him to reach out to Ms. McLachlin to inquire whether she would be interested in that mandate.

Further Discussions Between PMO and SNC-Lavalin on Ms. McLachlin's Involvement

[198] Before Mr. Butts and Ms. Wilson-Raybould's dinner meeting later that evening, Mr. Prichard and Mr. Iacobucci requested a telephone conversation with Mr. Bouchard and Mr. Marques to obtain an update in preparation for the company's board of directors meeting the following day. According to SNC-Lavalin, Mr. Bouchard and Mr. Marques indicated that someone in the Prime Minister's Office intended to raise with Ms. Wilson-Raybould the notion of Ms. McLachlin's possible involvement as a mediator in the matter. Mr. Bouchard's testimony supported SNC-Lavalin's summary of the discussion.

[199] According to Mr. Bouchard's notes of that conversation, Ms. McLachlin had expressed to Mr. Iacobucci some reservations about her possible involvement. She was no longer a lawyer and could not offer legal advice. She would also require a proper briefing. Mr. Bouchard also noted that Ms. McLachlin would need to be invited by the Attorney General; Ms. McLachlin did not want to be retained by the Government of Canada.

December 5, 2018 Dinner Meeting Between Mr. Butts and Ms. Wilson-Raybould

[200] According to her notes of her discussion with Mr. Butts, Ms. Wilson-Raybould told Mr. Butts that discussions about SNC-Lavalin needed to stop as she had made up her mind in September, and that the engagements were inappropriate. Mr. Butts told her that they needed to find a solution. She referenced the preliminary inquiry and judicial review that were currently underway. She told Mr. Butts that she had given the Clerk of the Privy Council the only appropriate solution a few months prior, which was that the company write her a letter that she would forward to the Director of Public Prosecutions, an idea that was not taken up by the company.

[201] In his written submission, Mr. Butts stated that at no time did Ms. Wilson-Raybould suggest to him that the behaviour of any member of his staff was inappropriate. Mr. Butts raised the idea that was included in the September 8, 2018 opinion from the Department of Justice, that the Attorney General could consider receiving an independent opinion from "someone" like Ms. McLachlin.

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

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

[204] Mr. Trudeau testified that he was not briefed on Mr. Butts' discussion with Ms. Wilson-Raybould. Mr. Trudeau's understanding of seeking external legal advice was to work through what seemed to be an overly rigid perspective on prosecutorial independence. According to Mr. Trudeau, one of the sticking points was whether Ms. Wilson-Raybould was opposed, in principle and theoretically, to prosecution-specific directives. Having someone respected like Ms. McLachlin would help Ms. Wilson-Raybould understand that what she was being asked to do or what it was being suggested she do was not wrong for an Attorney General.

[205] 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.

December 18, 2018, Meeting Between Ms. Wilson-Raybould's Chief of Staff and Mr. Trudeau's Senior Staff

[206] On December 18, 2018, Ms. Prince received an email from a staff member with the Prime Minister's Office requesting an urgent meeting with Mr. Butts and Ms. Telford.

[207] According to Ms. Prince's notes of the meeting, Ms. Telford asked her why Ms. Wilson-Raybould had not done anything to advance the SNC-Lavalin matter. Ms. Prince explained what Ms. Wilson-Raybould had done thus far to ensure that due diligence was followed and that all options to intervene legitimately had been exhausted.

[208] Ms. Prince also wrote that she explained the legal parameters of the remediation agreement regime to Ms. Telford and Mr. Butts, who had expressed their position (based on Mr. Bouchard's and Mr. Marques' opinions) that options were still available for Ms. Wilson-Raybould. Mr. Butts explained to Ms. Prince that the government had set up the remediation agreement regime to allow SNC-Lavalin to benefit from this tool, which is used in many other countries. Ms. Prince recounted that Mr. Butts emphasized possible job losses if nothing happened, that the company was at risk of being taken over and that the headquarters, located in Montreal, could move out of Canada. He referenced a shareholder or board meeting which was to take place in February 2019, as well as the upcoming federal election.

[209] In her written submission, Ms. Telford stated the purpose of discussing SNC-Lavalin with Ms. Prince was to get a better understanding of the status of the matter and understand Ms. Wilson-Raybould's position and approach on the issue, which she had undertaken to review. They discussed the Attorney General's consideration of whether she would obtain advice about what next steps, if any, could be possible.

[210] Ms. Telford stated that they discussed the benefits of receiving independent, outside advice. According to Ms. Telford, the idea was to ensure that a decision made by the Attorney General was sufficiently supported and that it was defensible in Cabinet, in caucus, in the House of Commons and to Canadians, who would be affected by the decision, whichever way the decision went.

[211] In his written submission, Mr. Butts stated that in his role as Principal Secretary, he believed it was appropriate due diligence to seek external expert advice on the matter. Based on his dinner conversation with Ms. Wilson-Raybould, Mr. Butts stated that he did not feel he had a satisfactory understanding from her on the reason she did not want to seek outside, independent advice. It was Mr. Butts' understanding of the law that discussing the matter with Ms. Prince was normal and acceptable, and he thought that Ms. Prince believed the same.

[212] Mr. Butts stated that Ms. Prince repeated Ms. Wilson-Raybould's concerns about the *perception* of political interference and not actual interference. According to Mr. Butts, Ms. Prince did not indicate that the perception of political interference was enough to create any legal concern. It is his understanding that Ms. Prince had an obligation as a lawyer to inform him if she felt that the conversation was approaching or crossing the line, which she did not.

[213] Following the meeting, Ms. Prince recounted the details of her conversation to Ms. Wilson-Raybould in a series of text messages.

December 19, 2018 Meeting with Mr. Trudeau, His Senior Staff and the Clerk of the Privy Council

[214] On December 19, 2018, Mr. Trudeau met with Ms. Telford, Mr. Butts and Mr. Wernick for their weekly meeting during which the Prime Minister was briefed on ongoing matters. Mr. Wernick testified that they discussed issues that might arise in January 2019, and SNC-Lavalin was one of them.

[215] Mr. Trudeau said that one of the challenges they were facing with the SNC-Lavalin matter was the Attorney General's view of political interference, which, according to Mr. Trudeau, Ms. Wilson-Raybould viewed askance. Mr. Trudeau testified that since his staff had been unsuccessful in engaging with Ms. Wilson-Raybould, he asked Mr. Wernick to speak with her about the public interest concerns. Mr. Trudeau believed that having the engagement of the public service would remove any political considerations which Ms. Wilson-Raybould viewed as political interference. Mr. Trudeau testified that he trusted Mr. Wernick to present Ms. Wilson-Raybould with independent arguments based on the public good.

December 19, 2018 Telephone Call Between Ms. Wilson-Raybould and the Clerk of the Privy Council

[216] Mr. Wernick telephoned Ms. Wilson-Raybould that evening. According to the transcript of the discussion, which was made public, Mr. Wernick told Ms. Wilson-Raybould that "the Prime Minister wants to be able to say that he has tried everything he can within the legitimate toolbox, so

he is quite determined, quite firm, but he wants to know why the DPA route which Parliament provided for isn't being used. I think he's going to find a way to get it done, one way or another. So he's in that kind of a mood, and I want you to be aware of it.”

[217] When asked whether Mr. Wernick’s view of the situation was accurate, Mr. Trudeau testified that he does not know what led Mr. Wernick to communicate that message to Ms. Wilson-Raybould, nor does he recall ever making such stark statements to the Clerk of the Privy Council. In his written submission, Mr. Trudeau stated that he did not direct or ask Mr. Wernick to speak in those terms, and he certainly did not intend to threaten Ms. Wilson-Raybould.

[218] Having read the transcript, Mr. Trudeau said that it is his perspective that Mr. Wernick was trying to arrive at a solution with Ms. Wilson-Raybould. Mr. Trudeau said that whether it was from a resolution through the court case, an intervention from the Attorney General, or from having Ms. McLachlin convince the Attorney General that it would be acceptable for her to re-examine the matter, he was hopeful that the outcome would be the saving of jobs.

[219] Mr. Wernick testified that he did not recall Mr. Trudeau asking him to telephone Ms. Wilson-Raybould. He said that he decided himself to call her to discuss several issues, one of them being SNC-Lavalin. According to Mr. Wernick, the ongoing concern of Mr. Trudeau’s staff was that Ms. Wilson-Raybould had not taken into account all of the information when she made her decision in September. His recollection of the discussions was that her decision could not have been final at that time, as an intervention from the Attorney General could be possible until the company’s conviction or acquittal.

[220] According to Mr. Wernick, there had been an evolution of the facts since September 2018. It was his understanding that it was always appropriate to raise new facts that were relevant to public interest considerations. He said his purpose for speaking to Ms. Wilson-Raybould about SNC-Lavalin was to understand her decision-making process, her rationale, and whether she had done her due diligence. Mr. Wernick stated that he had no view of what the outcome should be.

[221] According to Mr. Wernick, Mr. Trudeau was concerned the government would be held accountable if SNC-Lavalin were criminally convicted and faced a 10-year ban on federal contracts, which could result in the sale or divestiture of the company. Mr. Wernick said that Mr. Trudeau wanted to have a good explanation or rationale for not proceeding with a remediation agreement when the regime had been added to the *Criminal Code*. He imparted to Ms. Wilson-Raybould Mr. Trudeau’s frustration with the matter. According to Mr. Wernick, Mr. Trudeau’s concern was, however, not for a particular outcome.

[222] Following his discussion with Ms. Wilson-Raybould, Mr. Wernick said that he briefed Mr. Butts and recalled that he would have told him that Ms. Wilson-Raybould was still adamant about her decision. In his sworn affidavit, Mr. Butts stated that Mr. Wernick briefly mentioned that his conversation with Ms. Wilson-Raybould did not go well.

[223] Mr. Trudeau testified that he was not briefed on the December 19, 2018 telephone call nor would he have expected to have been, unless there had been a change of direction in the matter.

End of December 2018 and Early 2019

[224] Ms. Wilson-Raybould testified that following her discussion with Mr. Wernick she did not have any discussions with Mr. Trudeau or anyone in the Prime Minister's Office until January 7, 2019.

[225] On January 14, 2019, the Honourable David Lametti, was appointed Minister of Justice and Attorney General of Canada.

[226] Mr. Trudeau testified that he did not have any discussions about SNC-Lavalin with Mr. Lametti before or following his appointment as Minister of Justice and Attorney General.

[227] Mr. Bouchard testified that while at a Cabinet retreat from January 16 to 18, 2019, he and Mr. Marques briefed Mr. Lametti and his chief of staff on a range of issues that were of immediate concern. SNC-Lavalin was one of those issues. According to Mr. Bouchard, Mr. Lametti told them that he had not yet been briefed on the matter. As a result, they did not get into any details of the file.

[228] Documentary evidence shows that senior staff in the Prime Minister's Office continued to have discussions with SNC-Lavalin's legal counsel on next steps and possible solutions until the allegations that Ms. Wilson-Raybould had been pressured on the matter were made public on February 7, 2019.

MR. TRUDEAU'S POSITION

Mr. Trudeau's Written Submission Received May 2, 2019

[229] Mr. Trudeau wrote, through his legal counsel, that he did not use his position as a public office holder to seek to influence the Attorney General's decision about the prosecution of SNC-Lavalin, and especially not to improperly further the private interests of SNC-Lavalin. Mr. Trudeau wrote that he was concerned that Ms. Wilson-Raybould seemed to have ruled out directing the Director of Public Prosecutions to enter into negotiations for a remediation agreement with SNC-Lavalin, something he regarded as potentially appropriate and in the public interest.

[230] Mr. Trudeau wrote that he did not understand Ms. Wilson-Raybould's perspective on the issue. He added that he was concerned about the consequences to Canadians of a conviction of SNC-Lavalin, especially on uninvolved stakeholders of the company such as its employees, shareholders, pensioners, customers and suppliers. He wrote that he was also concerned that whatever decision was made be one that could be explained and justified to the Canadians it would affect. Mr. Trudeau believed that these were entirely proper concerns for him as Prime Minister and as a Member of Parliament.

[231] Mr. Trudeau wrote that, at the same time, he always recognized and respected the fact that the decision about whether or not to issue a directive about the SNC-Lavalin prosecution was the Attorney General's to make. He added that he was not aware until the *Globe and Mail's* story on February 7, 2019, that there was any suggestion that the Attorney General regarded contacts between him or his staff and Ms. Wilson-Raybould as legally or constitutionally improper.

[232] Mr. Trudeau wrote that he had only one direct communication with Ms. Wilson-Raybould and very limited discussions with his staff about the matter. Mr. Trudeau explained in his response letter that his overall aim was to consult with the Attorney General to ensure that the option of negotiating a remediation agreement with SNC-Lavalin was properly considered. He stated that he did so not for any reason connected to the private interests of SNC-Lavalin, but to safeguard the public interest.

Written Submission Received from Mr. Trudeau's Legal Counsel on July 16, 2019

[233] After having been provided with the relevant evidence I had considered, Mr. Trudeau's legal counsel submitted a very detailed brief, which outlined their views on these materials. I will summarize their position, below.

[234] Mr. Trudeau's legal counsel stated that his relationship with Ms. Wilson-Raybould had become challenging and tense. Mr. Trudeau was concerned with the significant friction between Ms. Wilson-Raybould and the Prime Minister's Office, and the friction between her and her Cabinet colleagues. Mr. Trudeau's counsel cited a past example of Ms. Wilson-Raybould refusing to share

information with Cabinet as part of a recommendation to Cabinet. To them, this was an example of how Ms. Wilson-Raybould felt that cooperation or collaboration with Mr. Trudeau's office and the rest of Cabinet was not something that she was required to do or even should do.

[235] Mr. Trudeau's legal counsel submitted that SNC-Lavalin was not the driving force behind the introduction of remediation agreements. Canada's peer countries have remediation agreement regimes. The industry as a whole had an interest in adopting a remediation agreement regime, so that companies that did business internationally would operate under a single set of rules. The discussion about remediation agreements in Canada preceded his government. Finally, when the regime was being studied and introduced, the Prime Minister's Office did not lead the efforts. Rather, it was a collective endeavour by many ministries and departments.

[236] Mr. Trudeau's legal counsel also wrote that Ms. Wilson-Raybould's anger at being moved from the office of the Minister of Justice and Attorney General coloured her perception of prior events. Mr. Trudeau reiterated that, at no time during the relevant period under examination, did Ms. Wilson-Raybould express her view that the contact between his staff and her was improper. Even if she did object, her objections were never reported back to him. If Ms. Wilson-Raybould felt that a line had been crossed, she should have complained to Mr. Trudeau or, failing that, resigned.

[237] Mr. Trudeau's legal counsel further submitted that Ms. Wilson-Raybould failed in her duty, as Attorney General, to acquaint herself with all the relevant facts. Rather than making a meaningful independent decision of her own, Ms. Wilson-Raybould reflexively deferred to the Director of Public Prosecutions' decision. In that regard, Mr. Trudeau's legal counsel pointed to concerns expressed by Ms. Drouin that more time and reflection were required in order to assess the information at hand and to seek additional information to better inform Ms. Wilson-Raybould's view. Mr. Trudeau also pointed out that any consultations Ms. Wilson-Raybould had done were to confirm a decision she had already made.

[238] Mr. Trudeau's counsel submitted that, in sum, Ms. Wilson-Raybould's decision-making process was inadequate and infected by legal misunderstanding and political motivation.

[239] In addition to his views on the evidence gathered, Mr. Trudeau's legal counsel submitted several legal arguments in support of his position.

[240] First, Mr. Trudeau's counsel submitted that the Attorney General, as the superintendent of prosecutions, is responsible for considering the public interest in pursuing any prosecution. As a member of Cabinet, the Attorney General is able to receive input from Cabinet colleagues about their responsibilities, including on criminal prosecutions, provided that the Attorney General does not receive direction on a matter from Cabinet. In counsel's estimation, this is consistent with the constitutional convention of prosecutorial independence.

[241] Second, Mr. Trudeau's counsel argued that the exclusion under the *Criminal Code* for considerations of "national economic interest" is not intended to apply to non-culpable stakeholders,

including employees, pensioners and shareholders who did not participate in any of the alleged wrongdoing. Therefore, the concern about potential loss of jobs could be legitimately considered in the Attorney General's evaluation of public-interest considerations.

[242] Third, Mr. Trudeau's counsel argued that even if his ministerial staff and the Clerk of the Privy Council act on behalf of the Prime Minister when engaging with other ministers or their representatives, Mr. Trudeau cannot be vicariously liable for the actions of his staff since, according to counsel, liability under the Act is personal and based on subjective intent. Mr. Trudeau cannot be found to be in contravention of the Act where direction to his staff is not wrongful, but staff members implement it in a way that runs afoul of a substantive rule.

[243] Mr. Trudeau's legal counsel submitted that he did not contravene section 9 because he did not attempt to influence Ms. Wilson-Raybould's decision. He only sought to understand her decision and to ensure that her process was sound and that the public interest was properly taken into account. Counsel for Mr. Trudeau also submitted that he did not advance partisan or private considerations during his discussion with Ms. Wilson-Raybould. His reference to being a Member of Parliament for Papineau was anchored in his experiences with his constituents and his understanding of the negative consequences of layoffs for communities. This was an attempt to convey to the Attorney General that real people and real communities would be affected by her decision.

[244] Finally, Mr. Trudeau's legal counsel submitted that at no time was his action motivated to further SNC-Lavalin's private interests; his concern was, at all times, with the public interest, with the potential impact of a conviction of SNC-Lavalin on its employees, pensioners and suppliers, and that those interests be properly taken into account in prosecutorial decisions.

ANALYSIS AND CONCLUSION

Analysis

[245] Section 9 of the Act prohibits public office holders from using their position to seek to influence the decision of another person in order to further their own interests, those of their relatives or friends, or to improperly further the private interests of a third party.

[246] Section 9 reads as follows:

9. No public office holder shall use his or her position as a public office holder to seek to influence a decision of another person so as to further the public office holder's private interests or those of the public office holder's relatives or friends, or to improperly further another person's private interests.

[247] In order for there to be a contravention of section 9, there is no requirement that the alleged influence must lead to the desired result. Rather, the public office holder is prohibited from simply using his or her position to attempt to influence another person's decision.

[248] Even a single finding of improper influence would lead to a contravention of section 9.

Preliminary Observations

[249] Mr. Trudeau and his counsel raised several arguments to show that Ms. Wilson-Raybould's decision making was somehow inadequate or incorrect. I must state, from the outset, that I did not consider any arguments that have as their aim to revisit or reconsider either Ms. Wilson-Raybould's decision not to intervene or the Director of Public Prosecutions' reasons for not inviting SNC-Lavalin to enter into a remediation agreement. I believe their decisions to be firmly entrenched in the exercise of prosecutorial discretion.

[250] It is not for Mr. Trudeau, or for me, or for any other administrative body to judge whether an Attorney General has properly or sufficiently considered the public interest in matters of criminal prosecution or, for that matter, any other aspect of their decision-making process. Absent an abuse of process, even courts are reluctant to adjudicate on issues involving the exercise of prosecutorial discretion. As the Deputy Minister of Justice and Deputy Attorney General testified, the Attorney General must shoulder the responsibility for such decisions and is ultimately accountable before Parliament.

[251] Moreover, I did not consider the quality Ms. Wilson-Raybould's relationship with her Cabinet colleagues or her staff, the reasons for her appointment as Minister for Veterans Affairs in January 2019, her alleged political motivations or her temperament, since these arguments are immaterial to the matter under examination.

Seeking to Influence the Decision of Another Person

[252] The first step in my analysis is to determine whether Mr. Trudeau sought to influence the decision of the Attorney General of Canada as to whether she should intervene in a matter relating to the exercise of prosecutorial discretion by the Director of Public Prosecutions involving SNC-Lavalin. This first step is heavily dependent on the facts.

[253] Our Office has reviewed hundreds of pages of documentary evidence, which detail dozens of email exchanges, text messages, telephone conversations and in-person meetings involving SNC-Lavalin and their representatives, ministers and their staff and other government officials.

[254] A public consultation was struck in the fall of 2017 to examine whether remediation agreements were a viable alternative to prosecution. On February 2, 2018, before the results of the public consultation were announced, SNC-Lavalin presented to staff in the Minister of Finance's office the possibility of including the remediation agreement regime in the 2018 budget implementation bill as a means to expedite the process.

[255] Despite Ms. Wilson-Raybould's concerns expressed to her Cabinet colleagues that the remediation agreement regime was being rushed and despite her unwillingness to lead or to publicly endorse the initiative, measures to amend the *Criminal Code* were announced in Budget 2018 on February 27, five days after the results of the public consultation were published. The legislative amendments were drafted as part of Bill C-74 and presented to the House of Commons for first reading exactly one month later, on March 27. The amendments to the *Criminal Code* received Royal Assent, without scrutiny from the House of Commons Standing Committee on Justice and Human Rights, on June 21, 2018.

[256] This was the political and legislative context in which the remediation agreement regime was adopted in Canada.

[257] On September 4, 2018, the Director of Public Prosecutions prepared a memorandum in accordance with section 13 of the *Director of Public Prosecutions Act*, setting out the relevant considerations she had weighed in reaching her decision not to enter into negotiations towards a remediation agreement with SNC-Lavalin. The memorandum was sent to Ms. Wilson-Raybould's office which, in turn, forwarded it to the Prime Minister's Office and the Office of the Minister of Finance.

[258] The evidence showed that the Director of Public Prosecutions' decision to not negotiate a remediation agreement with SNC-Lavalin was a major surprise to Mr. Trudeau and the Minister of Finance. The theme that emerged in the evidence was the need to find a "solution" that would, according to Mr. Trudeau, protect the affected public from potential economic repercussions in the event of a successful criminal prosecution of the company. It is quite obvious that the preferred solution was for the appropriate public authorities to make use of the recently adopted legislative tool, as was previously done in other countries for alleged corporate wrongdoers, to defer or suspend prosecution in order to "safeguard the public interest."

[259] According to the evidence, before the Director of Public Prosecutions had issued her decision on possible negotiations towards a remediation agreement, ministerial staff in Ms. Wilson-Raybould's office had, on August 14, 2018, put their counterparts in the Minister of Finance's office on notice that merely requesting a status update on the SNC-Lavalin file from the Director of Public Prosecutions could be perceived as, and may indeed constitute, political interference.

[260] The evidence also showed there were several other instances between September and December 2018 where Ms. Wilson-Raybould and her staff articulated the Attorney General's concerns—to the Prime Minister, to senior officials in the Prime Minister's Office, to ministers and their ministerial staff, as well as to the Clerk of the Privy Council—that they were engaging in what the Attorney General believed to be inappropriate attempts to interfere politically in a criminal prosecution.

[261] On September 5, 2018, after having been informed of the Director of Public Prosecutions' decision to not enter into negotiations for a remediation agreement with SNC-Lavalin, ministerial staff in Ms. Wilson-Raybould's office outlined the potential political risks in intervening, and informed ministerial staff in the Prime Minister's Office.

[262] Upon being briefed by his advisors that the Director of Public Prosecution would not negotiate a remediation agreement with SNC-Lavalin, and despite the considerations militating against intervention by the Attorney General that were highlighted by Ms. Wilson-Raybould's office, Mr. Trudeau instructed his staff to seek a solution to prevent economic consequences that would result from a criminal prosecution of the company.

[263] The evidence showed that, in the days that followed the Director of Public Prosecutions' September 4, 2018 decision not to invite SNC-Lavalin to negotiate a remediation agreement, the Attorney General took additional steps in conducting a review of the section 13 memorandum before arriving at her decision to not intervene in the Director of Public Prosecutions' decision. Ms. Wilson-Raybould, through briefings and advice received from her Deputy Minister and her ministerial staff, evaluated several possible means of intervening in the matter and engaged in consultations, including with several former attorneys general, to obtain guidance and advice.

[264] Mr. Trudeau's direct interaction with Ms. Wilson-Raybould on the matter was limited to a single meeting on September 17, 2018. At that time, Mr. Trudeau had already been briefed that the Director of Public Prosecutions had decided to not invite SNC-Lavalin to enter into a remediation agreement, and that Ms. Wilson-Raybould was not inclined to disturb that decision.

[265] The evidence showed that the Attorney General was of the view that she had completed her review, made up her mind, and articulated her position before her September 17, 2018 meeting with Mr. Trudeau. However, Mr. Trudeau and members of his staff were of the view that the Attorney General's decision was subject to change up until the prosecution was completed and that she could receive new information for this purpose.

[266] The evidence showed that on September 17, 2018, Mr. Trudeau and Mr. Wernick impressed on Ms. Wilson-Raybould the need to find a solution. They cited SNC-Lavalin’s impending board meeting later that week, and the economic consequences (including job losses and relocation) that would arise. They then raised the upcoming provincial election in Quebec, and Mr. Trudeau’s status as a Member of Parliament for a Quebec riding in close proximity to SNC-Lavalin’s corporate headquarters. It was following these latter comments that the Attorney General asked Mr. Trudeau whether he was politically interfering in a criminal prosecution, to which Mr. Trudeau replied that he was not and that he was merely trying to find a solution.

[267] This was a first instance of Mr. Trudeau seeking to influence Ms. Wilson-Raybould’s decision in the matter.

[268] Despite Ms. Wilson-Raybould’s direct advice to Mr. Trudeau, the evidence showed that her warning was discounted and ignored, because her senior staff continued to receive unsolicited entreaties to reconsider her refusal to intervene in the matter. Several witnesses testified that the degree to which the company was serious about taking measures to protect its business interests constituted new information that could be presented to the Attorney General. According to the evidence, Ms. Wilson-Raybould had already considered the economic consequences and did not view this information as sufficient to revisit her original decision not to intervene.

[269] Following that September 17, 2018 meeting, the evidence showed that individuals under the direction of Mr. Trudeau continued to engage with representatives of SNC-Lavalin and with Ms. Wilson-Raybould’s ministerial staff to seek to influence Ms. Wilson-Raybould through alternative means. Although Mr. Trudeau was not briefed on each specific conversation on the matter, he testified that he was regularly kept informed of the file’s developments.

[270] On October 19, 2018, SNC-Lavalin filed an application for a judicial review of the Director of Public Prosecutions’ decision. During a judicial review, the Crown’s interests are represented in most cases by the Attorney General of Canada or, in this instance, their delegate, the Prosecution Service. Yet the evidence showed that at least two attempts were made, by an official in the Privy Council Office and by a senior advisor in the Prime Minister’s Office, to have the Attorney General intervene in the judicial review to try to expedite the hearing or to ask for a stay of proceedings pending a resolution of the discussions surrounding the remediation agreement. Both the Department of Justice and Ms. Prince were required to explain why the Attorney General could not intervene in a matter in which her delegated representative, the Prosecution Service, was respondent.

[271] This represented a second attempt to influence Ms. Wilson-Raybould’s decision whether to intervene in the matter.

[272] By the end of October 2018, senior advisors in the Prime Minister’s Office began to turn their minds to the possibility of seeking external advice to assist the Attorney General. The evidence showed that SNC-Lavalin’s legal counsel, a former Supreme Court justice, sought to provide advice on, among other things, the remediation agreement regime and how the Minister of Justice—not the Attorney General—could legitimately intervene without compromising prosecutorial independence.

A second former Supreme Court justice was retained indirectly to provide advice on whether the Director of Public Prosecutions' decision to not enter into a remediation agreement without reasons was lawful.

[273] By December 2018, both SNC-Lavalin (through its counsel) and a senior advisor in the Prime Minister's Office had personally reached out to the former Chief Justice of the Supreme Court of Canada, Ms. McLachlin, to explore the possibility of having her provide advice on the matter directly to the Attorney General or to act as a mediator, though it was unclear what, exactly, either mandate would be. Although Ms. Wilson-Raybould had been made aware of the possibility of obtaining advice from "someone like" Ms. McLachlin, she did not know until I mentioned it to her during her interview that preliminary discussions between the former Chief Justice and SNC-Lavalin's legal counsel and a senior advisor in the Prime Minister's Office had already taken place.

[274] The idea of seeking external advice to assist Ms. Wilson-Raybould had already been put forward by the Deputy Minister of Justice as an option in her September 8, 2018 opinion. The evidence showed that, at that time, Ms. Wilson-Raybould's office considered, but turned down, the possibility of seeking external advice due in large part to the impractical mechanics of how such an individual would obtain access to the Prosecution Service's confidential file and the implications of perceived political interference. Ms. Wilson-Raybould questioned what an independent third party could have offered that had not already been provided or considered by the independent Director of Public Prosecutions.

[275] The evidence showed that the legal opinions prepared by or for the benefit of SNC-Lavalin were shared with and reviewed by the Prime Minister's Office and other ministers and ministerial staff in November 2018, with the sole purpose of persuading Ms. Wilson-Raybould to reconsider her position.

[276] Senior staff in the Prime Minister's Office made at least three attempts—on November 22, December 5, and December 18, 2018—to persuade Ms. Wilson-Raybould, directly and through her Chief of Staff, to re-examine the idea of seeking external advice on the matter.

[277] It must be reiterated that these legal opinions were circulated, and their contents discussed, during ongoing legal proceedings involving the Prosecution Service before the Federal Court of Canada and unbeknownst to the Attorney General.

[278] The fact that senior staff in the Prime Minister's Office pressed Ms. Wilson-Raybould on the idea of seeking external advice on the matter—all the while knowing the advice that would be given and selectively withholding other material information from Ms. Wilson-Raybould—was, in my view, a third attempt to bend the will of the Attorney General.

[279] The final and most flagrant attempt to influence Ms. Wilson-Raybould occurred during her conversation with the Clerk of the Privy Council on December 19, 2018. It is evident from the audio recording that Mr. Wernick was making an appeal, on behalf of Mr. Trudeau, to have the Attorney

General reconsider her decision to not intervene in the criminal prosecution. Although the messenger had changed, the message remained the same: a solution was needed to prevent the economic consequences of SNC-Lavalin not entering into negotiations for a remediation agreement.

[280] Ms. Wilson-Raybould expressed in clear terms her view that the conversation amounted to political interference—because Mr. Wernick was speaking for the Prime Minister—and voiced her unwillingness to overrule the Director of Public Prosecutions’ original decision. Despite Mr. Trudeau’s testimony that he did not know what prompted Mr. Wernick to make “such stark statements” when engaging with Ms. Wilson-Raybould, it is difficult for me to imagine that Mr. Wernick would have acted without a full and clear appreciation of Mr. Trudeau’s position on the matter.

[281] I find all of these tactics troubling.

[282] As Prime Minister, Mr. Trudeau was the only public office holder who, by virtue of his position, could clearly exert influence over Ms. Wilson-Raybould. The authority of the Prime Minister and his office was used to circumvent, undermine and ultimately attempt to discredit the decision of the Director of Public Prosecutions as well as the authority of Ms. Wilson-Raybould as the Crown’s chief law officer.

[283] Mr. Trudeau argued that he could not be held vicariously liable for the actions of his senior advisors and other senior departmental officials. He pointed to this Office’s decision in *The Wright Report*, where Commissioner Dawson found that Mr. Nigel Wright, then Chief of Staff to former Prime Minister Stephen Harper, had used his position to influence another person’s decision so as to improperly further another person’s private interests. However, nothing in that report suggests that the former Prime Minister was involved in or even aware of the scheme.

[284] Here, in contrast, the evidence abundantly shows that Mr. Trudeau knowingly sought to influence Ms. Wilson-Raybould both directly and through the actions of his agents.

[285] In my view, the individuals who acted under the direction or authority of the Prime Minister in this matter, as well as those who were involved in this matter on behalf of other ministers, could not have influenced the Attorney General simply by virtue of their position. Consequently, I do not have reasonable grounds to pursue concurrent examinations of their conduct, nor do I have reason to believe that they may have breached another substantive rule under the Act. They acted in accordance with the general direction set by Mr. Trudeau in September 2018 and did not receive instruction to cease communications, even once related legal proceedings had commenced.

[286] I believe that all public office holders should be guided by the same principles that apply to ministers, parliamentary secretaries and all other parliamentarians—principles that are found in many government instruments, including the Prime Minister’s *Open and Accountable Government* guideline. Public office holders must perform their official duties and functions in a manner that bears the closest public scrutiny, an obligation that may not be fully discharged by simply acting within the law.

Improperly Furthering Private Interests

[287] Simply seeking to influence the decision of another person is insufficient for there to be a contravention of section 9. The second step of my analysis, and indeed the crux of this examination, is to determine whether Mr. Trudeau, through his actions and those of his agents, sought to improperly further the interests of SNC-Lavalin. Here I must explore several fundamental legal and constitutional principles that ultimately go to the heart of our system of government.

Public vs. private interests

[288] The Act specifies that a private interest does not include an interest in a decision or matter (a) that is of general application; (b) that affects a public office holder as one of a broad class of persons; or (c) that concerns the remuneration or benefits received by virtue of being a public office holder.

[289] Historically, our Office has adopted a narrow interpretation of what constitutes a private interest. Although it has not expressly excluded certain types of interests, it has confined private interests largely to those of a financial nature. In the 1973 green paper entitled *Members of Parliament and Conflict of Interest* issued by the federal government, the term “conflict of interest” was defined as “a situation in which a Member of Parliament has a personal or private pecuniary interest sufficient to influence, or appear to influence, the exercise of his public duties and responsibilities” (p. 1). This definition was also used in the Parker Commission report, involving allegations that the Honourable Sinclair Stevens was in a real or apparent conflict of interest (Parker Commission, 1987, p. 28). It must be noted that this early interpretation applied exclusively to Members of Parliament.

[290] Since then, the test to determine the existence of a conflict of interest has evolved. No mention was made of the narrower “private pecuniary interests” in subsequent iterations of the *Conflict of Interest and Post-Employment Code for Public Office Holders*, as well as in both the Act and the *Conflict of Interest Code for Members of the House of Commons*. An interpretation of the term “private interest” read contextually, in its grammatical and ordinary sense harmoniously with the scheme of the Act, the purpose of the Act and the intention of Parliament, leads me to believe that it may include all types of interests that are unique to the public office holder or shared with a narrow class of individuals.

[291] Private and public interests can take many forms, including financial, social or political. As described in a 1980 report prepared by Professor J. Ll. J. Edwards entitled *Ministerial responsibility for national security as it relates to the Offices of Prime Minister, Attorney General and Solicitor General of Canada*, public political interests include, for example, “the maintenance of harmonious international relations between states, the reduction of strife between ethnic groups, and the maintenance of industrial peace” (p. 70). These domestic and international political considerations should be seen to benefit the general public rather than a particular political faction, party or group. By contrast, private (or partisan) political interests, ones “designed to protect or advance the

retention of constitutional power by the incumbent government and its political supporters,” cannot be said to serve the general public and should bear close scrutiny when a public office holder is exercising his or her official duties, powers or functions (Edwards, 1980, p. 70).

[292] It is on this sliding scale of interests that I must situate the matter at hand.

The nature of SNC-Lavalin’s interests

[293] The evidence gathered showed that SNC-Lavalin had significant financial interests in deferring prosecution. The Privy Council Office compiled a list of some of the most important federal government contracts involving the company. The evidence showed that SNC-Lavalin is significantly invested in major federal government infrastructure projects, including the Samuel De Champlain Bridge and Montreal’s light rail system. An unfavourable judicial outcome would likely cause economic turmoil and uncertainty for SNC-Lavalin and its major shareholders.

[294] Throughout the public consultations and the ensuing legislative process to adopt the remediation agreement regime, SNC-Lavalin engaged in regular discussions with officials in the Prime Minister’s Office, the Privy Council Office and the Minister of Finance’s office. Moreover, SNC-Lavalin regularly kept the Prime Minister’s Office apprised of upcoming board meetings, of negative media coverage, and of the fluctuations in its share price. The evidence showed an increase in the frequency of communications before board meetings, as well as a heightened level of concern on the part of SNC-Lavalin as discussions continued without substantial progress being made.

[295] There is no doubt that SNC-Lavalin’s considerable financial interests would have been furthered had Mr. Trudeau successfully influenced Ms. Wilson-Raybould to issue a directive that SNC-Lavalin be invited to negotiate a remediation agreement.

Meaning of the word “improper”

[296] Every exercise of a public office holder’s official powers, duties or functions potentially furthers a private interest. The Act concerns itself only with the furthering of three specific holders of private interests: (1) the public office holder, (2) his or her relatives or friends, and (3) any other person whose interests were furthered improperly. In the first two cases, it is only necessary to determine whether their interests were furthered—the impropriety is inherent. An additional step is required to determine impropriety when another person’s private interests are furthered.

[297] In addition to section 9, the phrase “to improperly further another person’s private interests” is used in two other provisions of the Act dealing with substantive rules: section 4, which establishes the general test for conflicts of interest, and section 8, which deals with insider information.

[298] In its plain and ordinary meaning, the word “improper” is synonymous with incorrect, unsuitable or irregular. This is consistent with the French-language equivalent in the Act (“*favoriser de façon irrégulière*”). Other definitions provide that the term is synonymous with fraudulent or otherwise wrongful. As these definitions illustrate, improprieties lie on a spectrum, ranging from

irregularity through inadvertence to willful fraud. For the purposes of the Act, I am concerned with improprieties that fall short of criminal activity (see, for instance, the *Carson Report*).

[299] In *The Wright Report*, Commissioner Dawson found that the reimbursement scenario, devised by ministerial staff in the Prime Minister's Office and executed by Mr. Wright and Senator Duffy, appeared on its face to be contrary to a provision in the *Parliament of Canada Act* that prohibited Senators from receiving payment in exchange for a service. However, the RCMP had not proceeded with a criminal investigation against Mr. Wright. The Commissioner noted in her report that the act of providing Senator Duffy with money in exchange for his cooperation, although perhaps not illegal, was "undoubtedly improper."

[300] Another example of impropriety is found in *The Finley Report*. Here, Commissioner Dawson concluded that receiving preferential treatment is improper, in and of itself. In that report, Commissioner Dawson also found an impropriety in that the applicable Treasury Board policy instrument and the Prime Minister's *Open and Accountable Government* guidelines "were not top of mind" when the minister made her decision to approve funding for a local project.

[301] The common thread connecting the examples of impropriety in past examination reports and each use of the term "improper" in the Act is whether a public office holder used their office to commit a serious or fundamental error. Mere technical irregularities will likely not rise to the level of an improper furthering of private interests. In my view, an impropriety under the Act occurs when a public office holder exercises an official power, duty or function that goes against the public interest, either by acting outside the scope of his or her statutory authority, or contrary to a rule, a convention or an established process.

National economic interests

[302] Despite SNC-Lavalin's considerable financial interest in the matter, Mr. Trudeau claimed that the threat of job losses was of paramount concern in his discussions with Ms. Wilson-Raybould and that, consequently, his actions were done in the public interest.

[303] The Federal Prosecution Service Deskbook (Deskbook) sets out the guiding principles that all federal prosecutors must follow. In deciding whether or not to prosecute an offence, federal prosecutors must consider two issues: (i) a reasonable prospect of conviction based on evidence that is likely to be available at trial and (ii) the public interest.

[304] With respect to the criterion of public interest, chapter 2.3 of the Deskbook enumerates several factors that may be properly considered, such as the nature of the alleged offence; the nature of the harm caused by or the consequences of the alleged offence; the circumstances, consequences to and attitude of victims; the level of culpability and circumstances of the accused; the need to protect sources of information; and confidence in the administration of justice. A series of factors that are deemed irrelevant when considering whether to prosecute include "possible political advantage or disadvantage to the government or any political group or party" (Public Prosecution Service of Canada, 2014, p. 8). Thus, in applying the test, prosecutors "must make decisions without fear of political interference or improper or undue influence."

[305] When SNC-Lavalin was informed, on September 4, 2018, that the Director of Public Prosecutions was of the view that it was “not appropriate” to invite the company to negotiate a remediation agreement, the evidence suggested that counsel for SNC-Lavalin believed that she had not properly considered the public interest in negotiating a remediation agreement and viewed this as an opening salvo in a protracted negotiation. Thus, in the days following the September 4, 2018 decision, SNC-Lavalin crafted a public-interest argument that it could present to the Director of Public Prosecutions in the hopes that she would revisit her decision. Both the Department of Finance and the Privy Council Office actively assisted SNC-Lavalin in developing this argument.

[306] Because the Director of Public Prosecutions and the Attorney General must only prosecute when it is in the public interest, Mr. Trudeau submitted that his interactions with Ms. Wilson-Raybould in this matter, as well as those of his agents, were done precisely with that interest in mind.

[307] In his conversation with Ms. Wilson-Raybould on September 17, 2018, Mr. Trudeau testified that he asked her to look carefully at the option of directing the Director of Public Prosecutions to invite SNC-Lavalin to enter into a remediation agreement, on the grounds that he was protecting the approximately 9,000 jobs that were allegedly at risk of being lost if SNC-Lavalin did not secure a remediation agreement with the Prosecution Service. According to Mr. Trudeau, the immediate economic consequences of a successful criminal prosecution against SNC-Lavalin would also cascade onto other sectors of the economy.

[308] It must be reiterated that subsection 715.32(3) of the *Criminal Code* lists three factors that must not be considered by the prosecutor in their decision whether to enter into negotiations for a remediation agreement. 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.” These factors are excluded from consideration only when the organization in question is alleged to have committed an offence under section 3 or 4 of the *Corruption of Foreign Public Officials Act*, which is precisely one of the charges levelled against SNC-Lavalin.

[309] Subsection 715.32(3) of the *Criminal Code* was modelled on Article 5 of the Organisation for Economic Co-operation and Development’s (OECD) *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (Anti-Bribery Convention). This article provides:

Investigation and prosecution of the bribery of a foreign public official shall be subject to the applicable rules and principles of each Party. They shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved. (OECD, 2011, p. 9)

[310] Mr. Trudeau’s position is that the issue of potential job losses and the repercussions on SNC-Lavalin’s stakeholders and pensioners could be properly considered by the Attorney General since those interests were not viewed as national economic interests within the meaning of the above exclusion. This position was consistent with other witnesses’ understanding of the provision.

[311] In support of this position, witnesses pointed to a column printed in the *Financial Post* on March 22, 2019, by a former Secretary-General of the OECD when the Anti-Bribery Convention was adopted in 1997. In the article, the author argues that the phrase “national economic interest”:

was intended to prevent exporters in OECD countries from avoiding prosecution under the convention by arguing that exports were in the national economic interest—and that bribery was therefore required to protect their export markets. That is what the word “national” was put in there to mean. I do not recall jobs ever being discussed as relating to the national economic interest as defined in the convention, nor were DPAs ever considered in the convention. (para. 4)

[312] Two of the witnesses interviewed also pointed to the fact that the remediation agreement regime has, as one of its purposes, a reduction of harm for persons such as shareholders, pensioners and employees, who were not engaged in the wrongdoing.

[313] Counsel for Mr. Trudeau pointed out in their written submissions that only one witness who testified before the Standing Committee on Justice and Human Rights, Mr. Kenneth Jull, provided substantive testimony on the question of national economic interest. Mr. Jull acknowledged that the purpose of the regime and the exclusion of national economic interests create a “logical paradox.” Mr. Jull proposed that to resolve this apparent paradox, one must consider principles of corporate criminal liability, where national economic interests are excluded from consideration only when harm to culpable stakeholders was at issue.

[314] Despite the stated purpose of the remediation agreement regime, I am not persuaded that it necessarily follows that national economic interests benefit from a restrictive interpretation or can be considered by the prosecutor in certain circumstances.

[315] The official OECD commentary under Article 5 of the Anti-Bribery Convention reads as follows:

Article 5 recognizes the fundamental nature of national regimes of prosecutorial discretion. It recognizes as well that, in order to protect the independence of prosecution, such discretion is to be exercised on the basis of professional motives and is not to be subject to improper influence by concerns of a political nature. (OECD, 2011, p. 17)

[316] It may very well be that Article 5 of the Anti-Bribery Convention was drafted, as the former Secretary-General of the OECD posited, with a view to treating exports as a national economic interest. However, I see nothing in that convention, in the official commentary, or in any other scholarly publication that limits the types of national economic interests that may be excluded.

[317] Because of the lack of clarity on the matter in the Canadian remediation agreement regime, I considered case law from other jurisdictions. A 2017 judgment from the British Court of Queen’s Bench concerning a deferred prosecution agreement from the Serious Fraud Office involving Rolls-Royce casts further doubt on the position taken by Mr. Trudeau on this issue. Like SNC-Lavalin,

Rolls-Royce faced potential debarment from bidding on contracts in the event of a successful criminal prosecution. At paragraphs 56 and 57, the presiding judge, the Right Honourable Sir Brian Leveson, in considering a host of repercussions of possible debarment on third-party interests, observed:

56. These repercussions for Rolls-Royce risk additional repercussions to third party interests, including:

- i) adverse effect to the UK defence industry, where Rolls-Royce has a critical role in supplying engines for UK military and naval vessels, nuclear propulsion technology for nuclear submarines, and aftermarket services;
- ii) consequential financial effects on the supply chain;
- iii) impairment of competition in highly concentrated markets, where there are limited alternative sources of supply and significant barriers to entry;
- iv) a potentially significant fall in share price, which is likely to be made more dramatic by the debarment consequences of a conviction;
- v) possible group-wide redundancies and/or restructuring; and potential weakening of Rolls-Royce's financial covenant for pensions.

57. I have no difficulty in accepting that these features demonstrate that a criminal conviction against Rolls-Royce would have a very substantial impact on the company, which, in turn, would have wider effects for the UK defence industry and persons who were not connected to the criminal conduct, including Rolls-Royce employees, and pensioners, and those in its supply chain. None of these factors is determinative of my decision in relation to this DPA; indeed, the national economic interest is irrelevant. Neither is my decision founded on the proposition that a company in the position of Rolls-Royce is immune from prosecution: it is not. It is not because of who or what Rolls-Royce is that is relevant but, rather, the countervailing factors that I have to weigh in the balance when considering the public interest and the interests of justice. As I have made clear before, and repeat, a company that commits serious crimes must expect to be prosecuted and if convicted dealt with severely and, absent sufficient countervailing factors, cannot expect to have an application for approval of a DPA accepted. [Emphasis added]

[318] Counsel for Mr. Trudeau argued that the passage above illustrates that considering the impact of a conviction on an accused corporation, its stakeholders and other individuals is not prohibited by the “national economic interest” exclusion. Leveson J.’s discussion of those points, in their view, showed that (1) the economic impact on uninvolved individuals is relevant but not determinative of the approval application; and (2) the national economic interest, as distinct from the impact on individuals, is not relevant.

[319] In my view, it remains unclear whether these factors are truly national economic interests, which must be excluded from consideration, or are legitimate factors that must be weighed in deciding whether to negotiate a remediation agreement. Regardless of how such interests are classified, in this case, the larger public considerations are inextricably linked to SNC-Lavalin's private interests. Accordingly, Mr. Trudeau could not properly put forward *any* arguments involving public or private interests to the Attorney General. The remediation agreement regime makes it clear that only the prosecutor must weigh (or exclude) these interests.

Partisan political interests put to the Attorney General

[320] While SNC-Lavalin would have benefited from Ms. Wilson-Raybould's intervention in the matter, the evidence showed that the governing party also considered the partisan political consequences of not being able to secure a remediation agreement for the company. For the reasons that follow, any partisan political interest that was put to Ms. Wilson-Raybould in the context of her evaluation of the matter in question was improper.

[321] The reason why narrow political interests cannot be considered by an Attorney General in the context of a criminal prosecution was perhaps most famously articulated by Lord Hartley Shawcross, then Attorney General of England and Wales, to the House of Commons of the United Kingdom in 1951:

The true doctrine is that it is the duty of the Attorney General, in deciding whether or not to authorize the prosecution, to acquaint himself with all the relevant facts, including, for instance, the effect which the prosecution, successful or unsuccessful as the case may be, would have upon public morale and order, and with any other consideration affecting public policy. In order so to inform himself, he may, although I do not think he is obliged to, consult with any of his colleagues in the government, and indeed, as Lord Simon once said, he would in some cases be a fool if he did not. On the other hand, the assistance of his colleagues is confined to informing him of particular considerations which might affect his own decision, and does not consist, and must not consist, in telling him what that decision ought to be. The responsibility for the eventual decision rests with the Attorney General, and he is not to be put, and is not put, under pressure by his colleagues in the matter. Nor, of course, can the Attorney General shift his responsibility for making the decision on to the shoulders of his colleagues. If political considerations which in the broad sense that I have indicated affect government in the abstract arise it is the Attorney General, applying his judicial mind, who has to be the sole judge of those considerations. (U.K., H.C. Debates, vol. 483, cols. 683-84, [29 January 1951])

[322] Lord Shawcross also explained that the Attorney General and the Director of Public Prosecutions only intervene to direct a prosecution when they consider it to be in the public interest. Indeed, Professor Edwards stated in his book entitled *The Attorney-General, Politics and the Public Interest* that the Attorney General has been recognized historically, both in jurisprudence and in scholarly legal doctrine, as one of many constitutional "guardians of the public interest" and as

superintendent of the administration of justice (Edwards, 1984, pp. 138-144). In *The Law Officers of the Crown*, Professor Edwards added that the Attorney General must represent the public interest “with complete objectivity and detachment” and must discharge that duty even in circumstances where the public interest conflicts with the political interests of their Cabinet colleagues (Edwards, 1964, p. 298). In deciding whether to prosecute, Lord Shawcross also stated: “there is only one consideration which is altogether excluded, and that is the repercussion of a given decision upon my personal or my party’s or the government’s political fortunes; that is a consideration which never enters into account.” (U.K., H.C. Debates, vol. 483, col. 682 [29 January 1951])

[323] Lord Shawcross’ pronouncement is widely regarded as emblematic of the principle of prosecutorial independence, a constitutional convention that flows directly from the rule of law. The Supreme Court of Canada has stated that the rule of law “lie[s] at the root of our system of government” and is “a fundamental postulate of our constitutional structure.” Moreover, the rule of law “is supreme over officials of the government as well as private individuals, and thereby preclusive of the influence of arbitrary power.” Simply put, this fundamental principle “requires that all government action must comply with the law [...]” (*Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, paras. 70-72; *Roncarelli v. Duplessis*, [1959] S.C.R. 121, p. 142; *Reference re Manitoba Language Rights*, [1985] 1 S.C.R. 721, p. 748)

[324] In *Krieger v. Alberta Law Society*, 2002 SCC 65, the leading decision on the historical and constitutional role of the Attorney General, the Supreme Court of Canada devoted particular attention to the principle of prosecutorial discretion and the rule of law. The reasons for judgment, penned by Iacobucci and Major JJ., read in part as follows:

32. The court’s acknowledgement of the Attorney General’s independence from judicial review in the sphere of prosecutorial discretion has its strongest source in the fundamental principle of the rule of law under our Constitution. [...] The quasi-judicial function of the Attorney General cannot be subjected to interference from parties who are not as competent to consider the various factors involved in making a decision to prosecute. To subject such decisions to political interference, or to judicial supervision, could erode the integrity of our system of prosecution. Clearly drawn constitutional lines are necessary in areas subject to such grave potential conflict.

[...]

45. As discussed above, these powers [of prosecutorial discretion] emanate from the office holder’s role as legal advisor of and officer to the Crown. In our theory of government, it is the sovereign who holds the power to prosecute his or her subjects. A decision of the Attorney General, or of his or her agents, within the authority delegated to him or her by the sovereign is not subject to interference by other arms of government. An exercise of prosecutorial discretion will, therefore, be treated with deference by the courts and by other members of the executive, as well as statutory bodies like provincial law societies. [Emphasis added]

[325] Mr. Trudeau argued that his interactions with Ms. Wilson-Raybould were consistent with the Shawcross doctrine because he did not direct her to intervene; he merely sought an explanation on her decision making and assurances that she had considered every possible option. The fact that Ms. Wilson-Raybould was not directed to intervene likely prevented the occurrence of actual political interference in the matter but does little to assist Mr. Trudeau in this examination. The repeated interventions by the Prime Minister, his most senior ministerial staff and public officials to have the Attorney General find a solution, even in the face of her refusal to intervene in the matter, lead me to conclude that these actions were tantamount to political direction.

[326] Mr. Trudeau and several witnesses testified they believed that the Shawcross doctrine allowed for debate between the Attorney General and Cabinet colleagues. My reading of the doctrine and the governing jurisprudence have led me to a different conclusion. Although the Shawcross doctrine provides that the Attorney General may “consult” colleagues on a given matter, in order to minimize the possibility of conflicts of interest from arising, I believe that that consultation should be led, whenever possible, by the Attorney General.

[327] It would be exceedingly difficult, in my view, for an Attorney General to dissociate genuine public interests from partisan interests when those considerations are advanced by Cabinet colleagues and their staff. Members of the executive branch of government should therefore exercise an abundance of caution before providing unsolicited views to the Attorney General. Those views should be devoid of any semblance of partisan or private interests.

[328] In matters involving the exercise of prosecutorial discretion relating to remediation agreements, both the Shawcross doctrine and the recent amendments to the *Criminal Code* circumscribe the information that can properly form the basis of any consultation between the Attorney General and members of Cabinet. In my view, considerations of a narrow political nature, particularly those advanced by ministers or ministerial advisors relating to an individual’s or to a party’s political fortunes, cannot be used to guide the Attorney General in their role.

[329] In addition to the numerous instances where SNC-Lavalin’s private financial interests were raised, the evidence showed that private political interests were also put before Ms. Wilson-Raybould, directly or indirectly, on at least four separate occasions.

[330] The 2018 provincial election in Quebec was first raised by ministerial staff in the Prime Minister’s Office on September 16, 2018, in a conversation with Ms. Wilson-Raybould’s Chief of Staff.

[331] The following day, Mr. Trudeau and the Clerk of the Privy Council both raised the impact a decision from the federal government would have on the upcoming Quebec elections with Ms. Wilson-Raybould during their September 17, 2018 meeting. Mr. Trudeau stated that he was the Member of Parliament for Papineau. In my view, Mr. Trudeau made this statement to underscore the fact that his electoral riding was situated in the same province as SNC-Lavalin’s headquarters and that Ms. Wilson-Raybould’s decision not to intervene could have larger political repercussions in Quebec, both for the federal and provincial orders of government.

[332] Again, on October 26, 2018, in the course of discussions between the Prime Minister’s Office and the Minister of Justice’s office on the possibility of the relocation of SNC-Lavalin’s headquarters, staff in the Prime Minister’s Office commented that they could have “the best policy in the world” but needed to be re-elected. Mr. Trudeau attempted to justify this statement by testifying that negative job growth would have real consequences on his party’s ability to serve. This is yet another indication that Mr. Trudeau and the Prime Minister’s Office viewed the matter chiefly through a political lens to manage a legal issue.

[333] Finally, the upcoming 2019 federal election was raised, according to notes of a conversation between Ms. Wilson-Raybould’s Chief of Staff and senior staff in the Prime Minister’s Office, on December 18, 2018. Again, the fact that SNC-Lavalin was located in the Prime Minister’s home province was used to convey the importance of a resolution that was favourable for both the company and the governing party.

[334] Regardless of the stated reasons for raising these considerations, the acceptance of the Shawcross doctrine in Canadian law as the appropriate yardstick establishing the bounds between the political and judicial minds of the Attorney General cannot be ignored. It is improper, for the purposes of the Act, to use political interests to attempt to influence an Attorney General in the context of an ongoing criminal prosecution since it runs counter to the principle of prosecutorial independence and the rule of law.

Discussions during ongoing legal proceedings

[335] As was stated above, SNC-Lavalin’s October 19, 2018 notice of application for judicial review of the Director of Public Prosecutions’ decision should have put Mr. Trudeau and those acting under his direction on notice to cease all discussions with SNC-Lavalin on the matter.

[336] On October 26, 2018, a senior official in the Privy Council Office inquired whether it would be possible to have Ms. Wilson-Raybould intervene in the legal proceedings to expedite the hearing. It was explained that it would be procedurally impossible for a party to appear twice, in two separate roles, in the same matter.

[337] This message was also conveyed by Ms. Wilson-Raybould’s office to the Prime Minister’s Office, in response to the same question later that day.

[338] In addition, Mr. Trudeau received two briefings from the Privy Council Office, on November 20 and 26, 2018, to not meet with SNC-Lavalin’s CEO and not discuss the SNC-Lavalin matter with the company’s legal counsel because of the ongoing legal proceedings. As a result, Mr. Trudeau was well aware of the legal proceedings, but did not instruct his senior staff to stand down.

[339] To the contrary, the evidence indicated that discussions between the Prime Minister’s Office and SNC-Lavalin intensified in number and in tenor following the commencement of legal proceedings. Legal counsel for SNC-Lavalin became the primary points of contact in discussions with

the Prime Minister's Office in November and December 2018. During that time, various settlement mechanisms were discussed without regard to the Prosecution Service's role, as the delegated representative of the Attorney General, in the proceedings.

[340] The principles of prosecutorial independence and *sub judice* make it clearly improper for one branch of the Government of Canada to be communicating with applicants to a judicial review challenging a decision made by another branch of the Government of Canada, without the knowledge or involvement of the Attorney General or their delegated representative.

Prosecutorial Independence and the Role of the Attorney General

[341] The Attorney General benefits from a unique perspective: they are a member of Cabinet as Minister of Justice but, to avoid placing themselves and Cabinet colleagues in a conflict of interest, must remain independent of Cabinet when exercising their prosecutorial discretion.

[342] In my view, Mr. Trudeau misunderstood this important distinction—the dual role of Minister of Justice and Attorney General. Mr. Trudeau and several other witnesses testified that they viewed Ms. Wilson-Raybould, in her capacity as Attorney General, as a member of Cabinet on an equal footing with other ministers. One witness failed to see a distinction between engaging with Ms. Wilson-Raybould on matters of legal policy, as Minister of Justice, and on matters of criminal prosecution.

[343] Mr. Trudeau agreed that it would be clearly improper to intervene directly with the Director of Public Prosecutions. Some witnesses also acknowledged that it would be equally improper to communicate with a judge or a Crown prosecutor during an ongoing legal proceeding. Yet Mr. Trudeau saw no harm in engaging with the Attorney General or her officials, even while the matter was seized by the Federal Court.

[344] The issue of whether Cabinet can intervene to direct, pressure or influence the decision of an Attorney General is not new to Canadian politics. In the course of my examination, I researched prior incidents involving similar controversies since Lord Shawcross' pronouncement. Several of these were described in Professor Edwards' report on ministerial responsibility (Edwards, 1980). This report reproduces much of Professor Edwards' earlier works, in which he comprehensively studied the role of the Attorney General of the United Kingdom and other Commonwealth countries.

[345] Professor Edwards noted, for example, that when Prime Minister Lester Pearson was asked, in 1965, who had final authority to direct criminal prosecution in a high-profile case involving allegations of espionage, Mr. Pearson replied: “[i]n this situation, it will be the responsibility of the Government, on the advice of the Minister of Justice.” (Edwards, 1980, p. 66; Edwards, 1984, p. 361)

[346] As Professor Edwards noted, most ministers at that time would have justified their involvement in determining whether to prosecute such high-profile cases “as a natural application of the principle of collective responsibility for unpalatable political decisions.” Edwards added that Cabinet would not necessarily be motivated entirely by partisan political interests. However, “it would be unrealistic not to envisage situations in which, in the absence of any clearly understood

constitutional prohibition against referral by the Attorney General of prosecution matters for decision by the Cabinet or any group of ministers or by the Prime Minister, partisan influences would rise to the surface and prevail in whatever decision ultimately emerged.” (Edwards, 1980, p. 71; Edwards, 1984, p. 362)

[347] Indeed, both the government and the opposition at the time believed that criminal prosecution was a subject for partisan debate. In a separate case in 1965 involving the extradition of trade-union leader Hal Banks following the findings of the Norris Commission, the then Leader of the Official Opposition John Diefenbaker also defended his previous government’s discretion not to prosecute a criminal matter. Professor Edwards’ conclusion, in respect of both matters, was unequivocal: “Any claims by a Prime Minister [...] of the right of government to determine whether or not charges are to be brought in the criminal courts is nothing less than an abuse of power.” (Edwards, 1980, p. 67)

[348] Since the late 1970s, there appears to be a return, at least in Canadian politics, to the basic constitutional principle outlined in the Shawcross doctrine. Professor Edwards cited the example of then Minister of Justice and Attorney General of Canada, Mr. Ron Basford, who explained his decision on whether to prosecute charges under the *Official Secrets Act*. In a statement to the House of Commons in 1978, Mr. Basford declared:

The first principle, in my view, is that there must be excluded any consideration based upon narrow, partisan views, or based upon the political consequences to me or to others. In arriving at a decision on such a sensitive issue as this, the Attorney General is entitled to seek information and advice from others but in no way is he directed by his colleagues in the government or by Parliament itself. (H.C. Debates, vol. 121, pp. 3881-83, 17 March 1978)

[349] Successive federal and provincial attorneys general have publicly adopted the Shawcross doctrine, either in the context of parliamentary debates or in writing.

[350] In the final pages of Professor Edwards’ report to the Commission of Inquiry concerning certain activities of the RCMP, he decried the fact that “the traditional role of the Attorney General as guardian of the public interest is no longer uncritically accepted.” Professor Edwards examined alternative systems used in Commonwealth countries, where the Attorney General was either a public servant, a minister, a political appointee or variations thereof to examine whether such alternatives offered better protection against political interference in matters of prosecutorial discretion. Professor Edwards observed that these models “will prove to be an inadequate exercise” if prosecutorial decision makers cannot resist “improper political pressure.” For Professor Edwards, regardless of the model chosen to set out the role and functions of the Attorney General, two critical values were required: “no matter how entrenched constitutional safeguards may be, in the final analysis it is the strength of character and personal integrity of the holder of the offices of Attorney General (or Solicitor General in some countries) and that of the Director of Public Prosecutions which is of paramount importance.” (Edwards, 1980, pp. 120-121)

Conclusion

[351] 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.

[352] For these reasons, I find that Mr. Trudeau contravened section 9 of the Act.



Mario Dion

Conflict of Interest and Ethics Commissioner

August 14, 2019

SCHEDULE: LIST OF WITNESSES

The names of all witnesses are listed below according to the organizations to which they belonged at the time of the events that are the subject of this examination.

Interviews

- The Hon. Bill Morneau, Minister of Finance
- The Hon. Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada
- Mr. Mathieu Bouchard, Senior Advisor to the Prime Minister
- Ms. Nathalie G. Drouin, Deputy Minister of Justice and Deputy Attorney General of Canada
- Mr. Elder Marques, Senior Advisor to the Prime Minister
- Mr. Michael Wernick, Clerk of the Privy Council

Written Submissions and/or Documents Received

- The Hon. Scott Brison, President of the Treasury Board
- The Hon. Bill Morneau, Minister of Finance
- The Hon. Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada
- Mr. Mathieu Bouchard, Senior Advisor to the Prime Minister
- Mr. Neil Bruce, Chief Executive Officer, SNC-Lavalin
- Mr. Gerald Butts, Principal Secretary to the Prime Minister
- Mr. Ben Chin, Chief of Staff to the Minister of Finance
- Ms. Nathalie G. Drouin, Deputy Minister of Justice and Deputy Attorney General of Canada
- Mr. Elder Marques, Senior Advisor to the Prime Minister
- Ms. Jessica Prince, Chief of Staff to the Minister of Justice and Attorney General of Canada
- Mr. Paul Shuttle, Counsel to the Clerk of the Privy Council (for Michael Wernick)
- Ms. Katie Telford, Chief of Staff to the Prime Minister
- Mr. Justin To, Deputy Chief of Staff and Director of Policy to the Minister of Finance
- Mr. Michael Wernick, Clerk of the Privy Council