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Chair

Mr. Anthony Housefather

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• (1050)

[English]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)): Good morning, everyone, and welcome to the Standing Committee on Justice and Human Rights, as we move forward with our meetings on remediation agreements, the Shawcross doctrine, and the discussions between the Office of the Attorney General and government colleagues relating to SNC-Lavalin. This is an important meeting where Canadians will be able to hear answers to questions that are swirling around.

I want to set out some rules for these meetings. Because we want to give people the opportunity to pose questions fairly and because the time limits are set, I want to make sure that people's questions are answered. Witnesses have the right to answer the question, but witnesses need to be succinct in their answers so as not to take away the time from people on their questions. I will strictly monitor the time limits. As a chair, I'm usually very flexible on time, but here we're going to stick with six minutes, six minutes and six minutes so that we give everybody a fair shot to get through the rounds, and so everybody gets their questions in.

[Translation]

I'd like to ask all of the witnesses to provide rather brief answers.

Mr. Fortin, we are pleased to have you here with us today.

[English]

Today, in our first meeting on the subject, we're joined by the honourable David Lametti, Minister of Justice and Attorney General of Canada.

[Translation]

We also welcome Ms. Nathalie G. Drouin, Deputy Minister of Justice and Deputy Attorney General of Canada.

We will now hear presentations by witnesses, and we will begin with Mr. Lametti.

Hon. David Lametti (Minister of Justice and Attorney General of Canada): Thank you, Mr. Chair. Good morning, colleagues.

I thank the committee for giving me this unique opportunity to speak to you today.

Over the past two weeks, following the initial publication of allegations in *The Globe and Mail* concerning the nature of conversations held between former minister Jody Wilson-Raybould

and the Prime Minister's Office, events have moved forward very quickly.

[English]

While many details remain uncertain, and based at least in part on anonymous accounts, it has become clear that Canadians deserve and require a public and transparent review of the events at issue. That is why I support the process initiated by this committee.

[Translation]

After all, one of the pillars of our democracy is that Canadians trust that our justice system is properly administered and monitored. I know that this committee can help to preserve that trust.

There is no question that the Attorney General of Canada plays an important role in upholding the rule of law in this country, and we should never doubt the government's commitment to the role the Attorney General must play.

That said, I would like to take a minute to say a few words about what I can and cannot discuss here today. Although the facts remain uncertain, those that have been mentioned so far raise serious questions about the way in which the decision to initiate a prosecution is made.

[English]

We must provide Canadians with the transparency they deserve but in such a way that preserves rather than undermines the following: the right to a fair hearing in cases that are currently active, the integrity of the position of the director of public prosecutions, and the rule of law in our country more generally.

Furthermore, any responsible review must account for the fact that SNC-Lavalin is currently engaged in two legal proceedings involving matters related to the subjects under consideration today.

In other words, we must recognize that transparency can only happen if we approach conversations like today's and the ones that will follow in a considered and responsible manner.

Here is what I can talk about. There are three areas that I will be able to speak to today. The three areas reflect the three topics identified in the motion that this committee passed last week: first, the Shawcross doctrine, as well as its general implications to the matter at issue; second, discussions between the Office of the Attorney General and government colleagues; third, remediation agreements.

First, I want to be clear with the committee that while I had a general knowledge of this matter as a Montreal MP, I did not speak with the Prime Minister or any member of his office about it prior to my appointment as Attorney General.

Second, I am ready to discuss legal parameters concerning the role of the Attorney General in Canada and how those of us who are granted the honour and responsibility of the position must interact in cabinet. My view is that while the Attorney General must be able to make decisions independent of partisan considerations or direction, the Attorney General is also not an island. These are not easy decisions that face any Attorney General, and his or her ability to get the answer right on behalf of all Canadians is only improved through discussion and debate with the rest of cabinet and the experiences and views that they reflect.

For the purposes of this committee, it is important to understand what this relationship means in terms of what may or may not be protected by legal privilege. Privileged conversations will only occur between a lawyer and a client when the purpose of the conversation is to seek or give legal advice and the communication is intended to be confidential.

In my view, there will be many instances where a conversation between an Attorney General and his or her cabinet colleagues will not necessarily be in the framework of a solicitor-client relationship and therefore not be protected by this privilege. In particular, the Shawcross doctrine contemplates that where the Attorney General and not cabinet is the final decision-maker, he or she may consult his cabinet colleagues. Conversations of this nature are not inherently privileged by solicitor-client privilege. There are a range of opinions in both case law and academic commentary as to what aspects of these conversations might be covered by solicitor-client privilege.

Let me be very clear. I am not saying that there should be a rush to a comprehensive waiver of privilege without the benefit of details and regardless of any impact on ongoing legal proceedings, as some on the opposition benches have suggested should be the case. What I am saying, however, is that a policy debate between an Attorney General and a colleague at cabinet concerning a decision that the Attorney General must make is not inherently covered by solicitor-client privilege, whatever other protections may apply, depending on the facts of the case.

Finally, if it remains helpful to this committee, I believe we can discuss remediation agreements in general. It may be helpful for Canadians to understand some of the reasons that Canada has the mechanism in place, why other countries such as the United States and the United Kingdom also use them, and how they work in practice. I can also speak to the kinds of circumstances where a remediation agreement might be available.

On a related point, I can speak to the legal mechanism that allows the Attorney General, rather than the director of public prosecutions, to assume responsibility for a specific decision on a specific prosecution. On this point, I think it's important to note that the statutory regime is designed to protect the rule of law and shield prosecutorial decision-making, by ensuring that any decision on the part of the Attorney General to follow this course of action must be transparent to the Canadian public and include publication in the *Canada Gazette*.

Here is what I cannot talk about. I believe a discussion of those three areas will constitute a full response to last week's motion, in addition to an effort to assist the committee in its review of the allegations at issue. However, as I mentioned before, I wish to make clear in advance that there are also certain areas where I believe it would be irresponsible of me to speculate, express an opinion, or otherwise speak to matters that could undermine the conduct of ongoing prosecutions or the institution of the Attorney General.

• (1055)

[*Translation*]

Allow me to be more specific. First, I will not be able today to speculate on conversations I was not a party to. I think it is relevant to mention the fact that the former Attorney General issued no directives on the SNC-Lavalin case nor on any other prosecution, as nothing was published in the *Canada Gazette*. However, I am not aware of any of the details of the conversations that took place between Ms. Wilson-Raybould and the Prime Minister or his office, other than what the Prime Minister has made public.

Secondly, as I said before, I will not be able to discuss anything that is protected by solicitor-client privilege. Like any attorney, the Attorney General has the legal and ethical obligation to protect the confidentiality of solicitor-client communications. For any attorney general, those obligations are all the more crucial in that they involve the public interest. I will also not address matters protected by litigation privilege. These are matters that, were they disclosed, would compromise the ability of the government or Director of Public Prosecutions to pursue any legal proceedings currently underway or being considered.

Thirdly, I cannot speak of matters discussed in cabinet or with my cabinet colleagues. Canada has a long tradition of preserving the confidentiality of those discussions.

Fourth, I cannot discuss any matter that is currently before the courts. This restriction, commonly known as the *sub judice* convention, is essential to the protection of the constitutional independence of the judicial process. Consequently, I cannot answer any questions on ongoing legal proceedings. This includes any discussion in my capacity as Attorney General on the legal merits of granting a remediation agreement to SNC-Lavalin.

• (1100)

[*English*]

Finally, in addition to serving as Minister of Justice and Attorney General, I remain a lawyer, which is a profession that I have done my very best to honour for the past 25 years, first as a clerk at the Supreme Court of Canada, and then as a professor of law in the law faculty at McGill University.

I continue to take these obligations very seriously. As such, I will do my best to ensure that my answers today are as transparent and candid as they can be while still making clear to you any obligations of confidentiality that I owe to my client, Canada, that I understand myself to owe.

Thank you.

I now turn the floor over to my deputy minister.

[*Translation*]

The Chair: Ms. Drouin, you have the floor.

Ms. Nathalie Drouin (Deputy Minister of Justice and Deputy Attorney General of Canada, Department of Justice): Thank you, Minister.

Good morning, Mr. Chair and members of the committee.

[*English*]

Before answering your questions, like my minister, Minister Lametti, said, it is my goal this morning to be candid and transparent with you and to respond to your questions with as much relevant information as I can.

On logistics, please ask me your questions in the official language of your choice, and I will do my best to answer in the same language. However, you may notice that I am more comfortable in my first language, so if I feel that I will be more precise, I will speak in French.

[*Translation*]

I would like to begin by describing my dual role as the Deputy Minister of Justice and Deputy Attorney General of Canada. I have been in this position since June 2017. In both of these roles, I support the Minister of Justice and Attorney General of Canada in fulfilling his or her responsibilities. My duties include giving legal advice and coordinating the legal advice given by the Department of Justice, supporting the development of legislation and policy that fall within the Justice portfolio, as well as acting as the formal representative of the Crown in all civil litigation involving the Government of Canada. These duties involve a number of principles that Minister Lametti set out for you today and that have been the subject of public commentary.

[*English*]

On any given day, in my role as deputy minister and deputy attorney general, I am involved in communications that are solicitor-client privileged where I also have the duty of confidentiality and where it may be a matter considered to be protected by cabinet confidence. Sometimes one, sometimes two, sometimes all three principles will apply to these communications. Sometimes none of the principles will apply. Whether the principles apply in a given situation is highly fact dependent.

I would like now to talk about the role of the Public Prosecution Service of Canada, which is separate and distinct from the Department of Justice.

The Attorney General is supported by the DPP, the director of public prosecutions. Please note that the DPP is also a deputy attorney general of Canada. The DPP is responsible for initiating and conducting federal criminal prosecutions on behalf of the Crown. The DPP's role is separate and distinct from mine.

● (1105)

[*Translation*]

While the Director of Public Prosecutions, the DPP, is responsible for conducting federal criminal prosecutions, I can support and provide legal advice to the Attorney General of Canada in exercising

his powers under the Director of Public Prosecutions Act. One recent example is the support the department gave to the Attorney General in regard to the directive related to prosecutions of HIV non-disclosure cases.

I have no involvement or role in any prosecution. And, in fact, I am not privy to any evidence with regard to prosecutions. That is entirely the DPP's role. In my role as both a public servant and a lawyer, with the support of my department, I strive to provide government decision-makers with all of the professional and non-partisan advice they need to carry out their duties.

[*English*]

Keeping in mind my role as deputy minister and deputy attorney general and all the duties and obligations that I just described, I would ask for the committee's understanding with respect to the information that I will be able to share.

Having said that, I am prepared to respond to your questions. I will give you the best answer I can in light of my obligations.

Thank you.

The Chair: Thank you so much to both of you for your comments.

The committee's first round is six minutes per questioner. We're going to start with Mr. Cooper.

Mr. Michael Cooper (St. Albert—Edmonton, CPC): Thank you, Mr. Chair.

Prior to posing my substantive questions, I would ask that the witnesses be sworn in pursuant to subsection 10(3) of the Parliament of Canada Act.

The Chair: Mr. Cooper, that would require the committee to concur. We have not done that at this committee. We looked back, and we haven't done it for 25 years, but I have asked the clerk to explain.

We'll stop the time.

We'll ask the clerk to explain the difference between a witness being sworn in and not sworn in, because a witness is still bound to tell the truth.

Mr. Girard.

[*Translation*]

The Clerk of the Committee (Mr. Marc-Olivier Girard): Indeed, Mr. Chair, you are quite correct.

It does not matter whether a witness is sworn in before a parliamentary committee or makes a solemn affirmation. In either case, the witness is bound to tell the truth when appearing before the committee. The only thing that may affect the swearing in is this: if a committee has proof that a witness lied, it could refer the case to the House, which could then decide to waive the protection granted the witness under parliamentary privilege. The removal of that protection could then open the way to a perjury charge being laid against the witness. That being said, this has never happened in 150 years.

In summary, Mr. Chair, a witness must tell the truth, whether he is sworn in or not. If he is sworn in, however, committing perjury could have serious legal consequences.

[English]

The Chair: Just so we understand, you can be in contempt of Parliament either sworn in or not. The only difference is the charge of perjury if Parliament...

The Clerk: That's true.

The Chair: The committee is aware. I think in order for Mr. Cooper to not... Unless you want a long debate, can the committee just vote? Would that be okay?

Mr. Michael Cooper: That's fine.

The Chair: Perfect.

The motion by Mr. Cooper—

Mr. Michael Cooper: I'd like a recorded vote.

The Chair: Of course.

The motion by Mr. Cooper is for the witnesses to be sworn in. I will ask the clerk to do a recorded vote. If you are voting yes, you are in favour of the motion for the witnesses to be sworn in. If you are voting no, you are voting against the witnesses being sworn in.

(Motion negatived: nays 5; yeas 4)

The Chair: Mr. Cooper, you're back to your questions. You are 20 seconds in.

Mr. Michael Cooper: Thank you.

I guess the fact that Liberal members voted against having the witnesses sworn in, to be here under oath, speaks for itself.

I'll start with Mr. Lametti.

Thank you for being here. First off, did you discuss your testimony with anyone prior to coming to today's meeting?

Hon. David Lametti: I discussed it with my team. Other discussions that I have had would be covered by solicitor-client privilege.

Mr. Michael Cooper: Thank you.

I believe I heard you say in your opening statement that, prior to being appointed to cabinet, you did not discuss the SNC-Lavalin prosecution with the Prime Minister or anyone in the PMO. Is that correct?

• (1110)

Hon. David Lametti: That's correct.

Mr. Michael Cooper: You did not discuss it with Gerald Butts, nor with Mathieu Bouchard, nor with Katie Telford.

Hon. David Lametti: That's correct.

Mr. Michael Cooper: Okay. Thank you.

Prior to being appointed to cabinet, during your time as a member of Parliament and as a parliamentary secretary, did you meet with SNC-Lavalin at any time?

Hon. David Lametti: I believe the lobbying record shows that I did meet with SNC-Lavalin in May of 2017. I must admit that I have

no strong recollection of that meeting. As you know, as parliamentary secretary to the Minister of Innovation I had to interact with people across Canada. I met with people in my office. I met with people across the country. I believe the precise lobbying record shows that the topics they listed were all ISED files, and justice issues were not part of the specific lobby record on my name.

Mr. Michael Cooper: Okay. Thank you, Minister.

Let me refresh your memory, if I may. The meeting was indeed in May of 2017—May 30, 2017. According to the lobbyist registry, the topics included government procurement, industry and infrastructure. Do you recall who you met with?

Hon. David Lametti: I don't...I believe I met with Neil Bruce, but again, I don't have a strong recollection of that meeting.

Mr. Michael Cooper: So—

Hon. David Lametti: As I said, I was one of the most heavily lobbied members of Parliament in 2017. As a result of being part of that, I was lobbied by big businesses, small businesses and universities across Canada.

Mr. Michael Cooper: I understand that, Mr. Lametti, but you did meet, in fact, with Neil Bruce, and Neil Bruce, of course, is who? He's the CEO of SNC-Lavalin. Is that correct?

Hon. David Lametti: That's correct.

Mr. Michael Cooper: So, he's a pretty big deal. It must jog your memory quite a bit to have—

Hon. David Lametti: Actually, it doesn't jog my memory. As I said, I believe the Hill Times reported that I was the most lobbied MP in 2017, ahead of my minister, Minister Bains, at the time. Again, it was part of the role of the innovation minister to meet with stakeholders—

Mr. Michael Cooper: Government [Inaudible—Editor]

Well, anyhow, I understand that—

Hon. David Lametti: —across Canada, and it is up to the lobbyist to list, as the lobbyist has done, the topics that we covered.

Hon. Lisa Raitt (Milton, CPC): Point of order.

The Chair: There's a point of order.

Hon. Lisa Raitt: Mr. Chair, is it not the convention that the length of the answer matches the length of the question?

The Chair: That hasn't yet occurred before this committee, but I've asked the witnesses to be considerate to give the members their time, and I will keep trying to do that, and Mr. Cooper will be sure to get his time.

Mr. Michael Cooper: Okay. Thank you.

Mr. Lametti, it was noted that one of the topics was government procurement. Of course, that directly concerns the issue at hand in terms of the prosecution of SNC-Lavalin and the impact that will have on its ability to bid on government contracts.

Let me put it to you simply. Did you discuss the fraud and bribery charges involving SNC-Lavalin with Mr. Bruce?

Hon. David Lametti: Again, I have no strong recollection of the meeting. As I said, it is up to the lobbyist to report—

Mr. Michael Cooper: Mr. Lametti, I understand your answer. You say you can't remember. Okay. But I presume you had a staff member with you.

Hon. David Lametti: It was my practice to have either my parliamentary secretary assistant or a member of my Hill staff at the meeting. We have been unable yet to ascertain with ISED who the person was staffing me at the meeting. We can get back to you on that. But I can tell you that—

Mr. Michael Cooper: I presume, Mr. Lametti—

Hon. David Lametti: I can tell you—

Mr. Michael Cooper: Yes.

Hon. David Lametti: —Mr. Cooper, that there wasn't, I recall, any strong action item as a result of that meeting, either.

Mr. Michael Cooper: Mr. Lametti, I presume your staff take notes.

Hon. David Lametti: It's either the parliamentary secretary assistant or the staff.

Mr. Michael Cooper: Will you undertake to identify who accompanied you to that meeting and to table with this committee any notes taken in respect to that meeting?

Hon. David Lametti: I will undertake to find out who staffed me at that meeting or, indeed, if the meeting actually existed, because oftentimes, as you know, on the lobbying record, lobbyists throw in....

Mr. Michael Cooper: Fair enough. Thank you.

Hon. David Lametti: But I won't undertake—

Mr. Michael Cooper: You answered my question. You're going to undertake those two things.

Hon. David Lametti: No, I didn't undertake those two things. I'm going to take on advisement whether I can produce those notes.

Mr. Michael Cooper: Thank you.

Mr. Lametti, immediately following The Globe and Mail's revelations of these very serious allegations, you were quoted on CTV as saying, "But certainly from what I have seen, and what the prime minister has said, I can reassure Canadians that there has been nothing inappropriate that has happened."

Who told you to say that?

Hon. David Lametti: That quote was recorded on the 8th of February, I believe, the day after the revelations broke. At that point in time, we had only unsubstantiated, anonymous sources in The Globe and Mail, and we had the Prime Minister's unequivocal denial that any wrongdoing had happened.

• (1115)

Mr. Michael Cooper: But you said, "from what I have seen".

Hon. David Lametti: That is precisely the answer, from what I had seen.

The Chair: Thank you very much.

The next questioner is Mr. Fraser.

Mr. Colin Fraser (West Nova, Lib.): Thank you very much, Mr. Chair.

Minister, thank you for being here.

Madam Drouin, thanks for joining us today.

Minister Lametti, is it appropriate for the Prime Minister and officials to talk to the Minister of Justice and Attorney General about active cases and prosecutions, and is that an ordinary thing you would do in your role?

Hon. David Lametti: Absolutely. As I said in my opening remarks, the Attorney General can't be an island. The whole point of the Shawcross doctrine is that an attorney general can speak with cabinet colleagues about a variety of different considerations that might be pertinent to his or her decision in any particular case.

What is clear in the Shawcross doctrine is that, subsequent to those discussions, when an attorney general puts on his or her hat as attorney general, only the appropriate considerations that the attorney general himself or herself has in mind will be the basis for that decision.

Mr. Colin Fraser: Is there any timeline on when it would be inappropriate to have discussions with the Prime Minister or other officials or cabinet colleagues in the course of a prosecution?

Hon. David Lametti: It depends on the timeline of the discussion and the prosecution, but I can't say without any further context what would be appropriate or inappropriate.

Mr. Colin Fraser: Let me ask you this: If the director of public prosecutions makes a decision to proceed in a case, and the Attorney General may still have an option to instruct the prosecutor, for example, to enter into negotiations or a remediation agreement, but to do so would require public notice be made in the Canada Gazette, would it be appropriate for the Prime Minister and officials to discuss the matter with the Attorney General in contemplating such an instruction to a prosecutor?

Hon. David Lametti: I think, once again, the Shawcross doctrine would apply.

Those kinds of conversations would be appropriate to the Attorney General contemplating a decision on whether or not to direct a remediation agreement, but it is up to the Attorney General to make that decision himself or herself.

Mr. Colin Fraser: Minister, have you ever experienced inappropriate pressure being applied by the Prime Minister or anyone in the PMO on the issue of remediation agreements or any other legal issue?

Hon. David Lametti: I have not.

Mr. Colin Fraser: In terms of the types of conversations that would occur between the Prime Minister, the Prime Minister's staff, or cabinet colleagues, would your expectation be that those would be robust conversations in contemplation of the application of both policy and law?

Hon. David Lametti: I have stated generally what my understanding of the Shawcross doctrine is, that there would be conversation that would be possible. I'm going to say that if I elaborate too much on that answer, it could put me into a territory where I'm speculating on what other people might do under similar circumstances. As a matter of prudence, I think it would be unwise for me to speculate on the kinds of conversations or perceptions that other people might have.

I can only speak to what I might do, which is certainly, if I felt that I was being directed, I would take a number of different actions under the circumstances, but I won't and shouldn't speculate on what other people might do.

Mr. Colin Fraser: Fair enough.

Madam Drouin, could I ask you a question.

With regard to the role of the director of public prosecutions and your role as deputy minister, you had talked about the fact that there was definitely a distinction between the two roles and the two hats you wear. Can you explain how those roles may interact with regard to any prosecution?

Ms. Nathalie Drouin: So, it's really the DPP who has the discretion and the responsibility to take any decision on a specific investigation to decide to lay charges or not. As I said in my opening remarks, I don't have any access...or I'm not aware of any evidence related to a specific investigation.

My role is to provide legal advice on any acts, and I can provide legal advice to the Attorney General to make sure that he understands how the DPP operates and also give him advice if he decides to exercise one of those rights.

• (1120)

Mr. Colin Fraser: Thank you.

Minister Lametti, going back to the appropriateness of conversations with cabinet colleagues, I assume that so far in your role as the Minister of Justice and Attorney General, you have had some of those conversations and that would be an ordinary thing that you would do in your role.

Hon. David Lametti: Absolutely. It is part of the familiarization, if you will, with the dossiers that I have to work with in my time as Attorney General.

Mr. Colin Fraser: Thank you very much.

Those were my questions.

The Chair: Thank you very much, Mr. Fraser.

Mr. Rankin.

Mr. Murray Rankin (Victoria, NDP): Thank you.

Welcome, Madam Deputy and Mr. Attorney General.

My first question is for you, Mr. Attorney General.

Yesterday, in an unprecedented event, the former attorney general rose in the House of Commons and asked if she could speak her truth.

In light of the fact that in her resignation letter she alluded to the importance of an independent attorney general in the prosecutorial

function, and she also alluded to that in another context, I'm going to ask whether she will be allowed to speak her truth.

Hon. David Lametti: We are doing our best.

I am doing my best as Attorney General to find a way for that to happen, which of course provides transparency to Canadians and fairness to the former attorney general, but also does not compromise any of those other matters that I mentioned at the outset—litigation, privilege, in particular—because there is ongoing litigation between the director of public prosecutions and the company in question.

As she has stated, the question of solicitor-client privilege in particular is complex and layered.

Mr. Murray Rankin: Okay. Well let me—

Hon. David Lametti: We're trying to sort through that as best we can.

Mr. Murray Rankin: Let me ask you about that. Let me come to that very issue.

A prominent lawyer from Toronto, Andrew Roman, has written in an influential blog the following, and I want to ask if you agree:

No one in government was permitted to give the Attorney General any instructions when she or the DPP were involved in a prosecution. As she could not have been under instructions from any client there cannot have been any solicitor-client relationship. And, obviously, as there was no solicitor-client relationship, there can be no solicitor-client privilege.

There was no valid reason for either the Prime Minister or his senior staff to have initiated such a conversation with Jody Wilson-Raybould. The only reason for either of them to discuss her prosecutorial decision would be to encourage her to change it, without being seen to do so. This is damaging to the rule of law.

Do you agree?

Hon. David Lametti: The question of solicitor-client privilege and the question of whether it applies in any given set of facts, or the question of whether it has been waived in any particular set circumstances, are part of the general questions that I have to answer as Attorney General. I can't pronounce on any of that, as you will well know as a lawyer, without compromising solicitor-client privilege myself.

Mr. Murray Rankin: You are a lawyer. I am a lawyer. But it may be that the Attorney General was not a lawyer at the time of the incident. That is to say, we have now learned that she was not a lawyer in the eyes of the legal profession when the decision was made to continue with the prosecution of SNC-Lavalin on charges of fraud and corruption.

The dean of law at the University of Ottawa, Adam Dodek, who wrote a book called *Solicitor-Client Privilege*, has argued as follows:

Under existing doctrine, it is difficult to reach any other conclusion other than legal advice from a non-lawyer Attorney General is not encompassed by Solicitor-Client Privilege because a non-lawyer Attorney General does not qualify as a 'professional legal adviser'.

What are your thoughts on that?

Hon. David Lametti: I am going to decline out of prudence to give an opinion on that, because once again, it may be part of an opinion that I have to render.

Mr. Murray Rankin: Who is the client?

You mentioned that you owe it to your client, Canada, as Attorney General. I want to know that if there is solicitor-client privilege, a matter which many lawyers think does not exist in these circumstances, who is the client?

The late Justice Rosenberg of the Ontario Court of Appeal said that the client ultimately of the Attorney General is the Queen, and that is because she represents the rule of law.

Do you agree with that, and therefore, who gets to waive the privilege in these circumstances if such privilege does exist?

Hon. David Lametti: The client is Canada. The question of waiving privilege, as you well know as a lawyer, is a very complex question in these cases, and once again, it falls under my responsibility to maintain that solicitor—

• (1125)

Mr. Murray Rankin: So is it you who decides? Is it you who decides the waiver?

Hon. David Lametti: I am saying that it is part of solicitor-client privilege on my part not to be able to answer that question.

Mr. Murray Rankin: So who does?

Hon. David Lametti: Again, for the reasons discussed, it's a question that I cannot answer here.

Mr. Murray Rankin: So we may not have anybody who can waive privilege.

Hon. David Lametti: You can invite Professor Dodek, as I believe you have, for his opinion. You can invite other experts. You can invite former Justice Rosenberg.

Mr. Murray Rankin: He's deceased.

Hon. David Lametti: Oh, that is problematic.

You can invite other experts. I am currently the Attorney General of Canada. I am currently, as the Prime Minister has said, advising the Prime Minister on these matters, so I am covered by solicitor-client privilege. I simply cannot answer that.

Mr. Murray Rankin: I accept that, but when we keep hearing about waiver of privilege, if that exists, we never get to know who gets to waive it. Is it the Prime Minister? Who is it?

Hon. David Lametti: Again, that is a very complex and layered question.

Mr. Murray Rankin: A layered question, but it seems to go fundamentally to this.

Can I ask you a final question?

Hon. David Lametti: You will see in the academic literature that there is a dispute—

Mr. Murray Rankin: Yes.

Hon. David Lametti: —and so I cannot pronounce on that.

Mr. Murray Rankin: Can I ask you this final question?

The Chair: You have 45 seconds. It's your last question.

Mr. Murray Rankin: You mentioned cabinet confidentiality as well. Can it be invoked with respect to conversations between an attorney general and Prime Minister's Office officials such as Mr. Butts or others? Does it exist in that context?

Hon. David Lametti: Once again, you will know as a lawyer that I have been asked to give a legal opinion. That is an ongoing continuum, as other legal writers have described solicitor-client privilege, and that is part of the continuum. I simply cannot answer that question.

The Chair: Thank you.

Mr. Boissonnault.

Mr. Randy Boissonnault (Edmonton Centre, Lib.): Thank you very much, Mr. Chair.

Minister, thank you for being with us today.

You mentioned in your opening remarks the importance of remediation agreements and that we have this framework here in Canada. Could you share with us why a framework of remediation agreements is necessary in Canada and why it was put into law?

Hon. David Lametti: Certainly, I can do that.

A remediation agreement is another way that serious criminal behaviour can be prosecuted. It is another tool in the tool kit of our director of public prosecutions to go out and punish serious criminal behaviour without endangering innocent third parties, such as employees, such as pensioners, such as third party contractors and subcontractors who may be working on these various projects. It doesn't put the viability of the company itself into question but rather allows those who are to be prosecuted to be prosecuted, for the company to pay very serious penalties, and for supervision to be imposed on the company so that any corporate criminality as part of its culture can be changed.

It's a very important thing. Our allies have it—the United States, the U.K. Australia's contemplating it. It is an important element in the arsenal for combatting serious fraud internationally.

Mr. Randy Boissonnault: I think it's very interesting that you mention the third parties. I appreciate that.

[*Translation*]

I'd simply like some clarification about your opening remarks.

Before you were appointed Attorney General, did the Prime Minister's Office or anyone acting on behalf of the Prime Minister's Office ever speak to you about the SNC-Lavalin affair?

Hon. David Lametti: No, not before I was appointed. I had a general awareness of the situation, since I am a Montreal MP and this was discussed in the papers. As has already been said, I took part in a meeting with lobbyists in May 2017, but there was nothing aside from that.

Mr. Randy Boissonnault: And in the exercise of your duties as Attorney General, no undue pressure was ever applied to you with respect to this file?

Hon. David Lametti: Never.

Mr. Randy Boissonnault: Thank you.

During Question Period in the House last Wednesday, our Conservative colleague Ms. Lisa Raitt put the following question to you, which I will quote from Hansard:

I would like to ask the member, conveniently from Montreal, whether or not he has made a decision on the SNC-Lavalin issue.

What do you think Ms. Raitt meant by that comment?

Hon. David Lametti: Honestly, I have no idea. I am proud to be a Montrealer, and I am one by choice. I chose Montreal. It was in Montreal, at McGill University, that I received bilingual and bijural training, of which I am very proud. I settled in Montreal about thirty years ago. My children were born and educated there. It's completely mad to suggest that a Montreal MP cannot act as Attorney General, no matter what the situation, but especially in this case. I find it shocking. I am proud to be a Montrealer, a Quebecker and a Canadian, and proud to be living in French in a very dynamic city like Montreal.

• (1130)

Mr. Randy Boissonnault: I congratulate you. I am a Franco-Albertan, and I was only able to begin to speak French when I arrived at Campus Saint-Jean. I am proud that a francophile from Quebec is in this position.

Minister, did you know that in the entire history of Canada and the Conservative Party, that party has only appointed three Justice ministers from Quebec? I think it's important to put that on the record.

[English]

Hon. Lisa Raitt: On a point of order, Chair, what is the relevance?

The Chair: Let's get back to the pointed questions on this topic.

Mr. Randy Boissonnault: On remediation agreements, could you expound on the kinds of third parties that could be affected if remediation agreements were not in place in Canada?

Hon. David Lametti: Depending on the nature of the company, certainly employees could be. Let's say, in any scenario, the company ceases to exist. Employees lose their job. The funds of pensioners become jeopardized. That's certainly a policy issue that needs to be taken into account. There are the third party suppliers, innocent third party suppliers, who may be selling materials or services to a company. There are subcontractors, depending on the context of the industry.

All of those people are innocent. All of those people did not partake in any kind of criminal behaviour. Oftentimes other people in the company.... Companies can be large entities in which only a very few people are participating in the kinds of criminal activity that would be targeted by a remediation agreement.

It makes sense, as our partners, the U.K. and the United States, have shown us, and it was perceived to be a gap. We had consultations for this particular bill, widespread consultations, including with Transparency International and other organizations, that came in and said that this is the way to go. This provides a very important tool in the tool kit to punish corporate criminality without jeopardizing innocent third parties.

[Translation]

Mr. Randy Boissonnault: Thank you.

[English]

The Chair: Thank you. You're at six minutes.

Now we're going to a second round of questions.

In the second round of questions, there are six minutes for Liberal, six minutes for Conservative, six minutes for Liberal, five minutes for Conservative and three minutes for NDP.

Mr. Ehsassi.

Mr. Rhéal Fortin (Rivière-du-Nord, BQ): Briefly, Mr. Chair—
[Translation]

The Chair: Mr. Fortin?

Mr. Rhéal Fortin: You knew that I would have...

The Chair: When we have finished our question period, I will ask the members if they agree. Is that suitable, Mr. Fortin?

[English]

Mr. Ehsassi, the floor is yours.

Mr. Ali Ehsassi (Willowdale, Lib.): Thank you, Mr. Chair.

Minister, first I'd like to thank you for coming here. I think it's imperative that there be greater clarity with respect to many of the issues that Canadians are concerned about.

I will start off by asking you about remediation agreements.

You have stated today that when it comes to remediation agreements, there is punishment; there are heavy fines. What would you say to those people who say that remediation agreements do not hold corporations accountable for their wrongdoing?

Hon. David Lametti: I think that's patently false.

There is a joint admission of guilt in a remediation agreement, a joint statement of facts, in which the guilt is admitted and guilty behaviour is admitted. There is a stay of proceedings, but if the company departs from that, the criminal proceedings can start again.

It is another way of punishing. It is by no means a sweetheart deal or anything like that.

Perhaps the deputy would like to add something if I've missed anything.

Ms. Nathalie Drouin: No, I think you had it right.

Maybe I will just add that the other goal is really to bring compliance to a specific corporation and to save innocent victims and third parties.

I would also like to say it's not only employees and pensioners but also small shareholders.

• (1135)

Mr. Ali Ehsassi: Thank you for confirming that.

Another thing you alluded to is the fact that remediation agreements are legal tools. Why do you call them legal tools? Is it correct that courts would be very much involved in ratifying such agreements?

Ms. Nathalie Drouin: Yes, you're right.

The agreement has to be accepted by the judge. The agreement has to be public too. This is an important aspect. And before a remediation agreement is concluded, victims must be consulted.

Mr. Ali Ehsassi: Would you care to add anything to that?

Hon. David Lametti: That answers it perfectly.

Mr. Ali Ehsassi: Thank you for that, and thank you for confirming that the courts would be involved.

Another issue that is of concern to many, given what we have heard, is an issue to which you have alluded. I'm speaking about the Shawcross doctrine. Next week, we will have the opportunity to hear from experts. As you know, the Shawcross doctrine fuses together various principles. Can you unpack those principles, the ones which, in your opinion, are relevant?

Hon. David Lametti: As I said in my opening remarks, the Shawcross principle protects the unique role of the Attorney General to make decisions which are his or her responsibility. It also recognizes that the Attorney General is not an island, and that there are various kinds of considerations that an Attorney General would be wise to take into account. Lord Simon said in the famous quote on Shawcross that an Attorney General might be a fool not to take those into account. It recognizes that there will be conversations that need to happen on a variety of different issues. Once you take that into account, it is a question that will always have to be answered on the facts. Speculating further on what is appropriate or inappropriate would be impossible for me to do.

Mr. Ali Ehsassi: As I understand it, can there be many discussions, but ultimately or eventually, the decision is the Attorney General's?

Hon. David Lametti: That's right. As Lord Shawcross said, it's his to make, and I would say it's his or hers to make.

Mr. Ali Ehsassi: You have said that you will refrain from speculating, but in your opinion, is the Shawcross doctrine and the principles objective or subjective?

Hon. David Lametti: The answer is somewhere in between, because the facts will always be, in a sense, subjective in the eyes of the beholder. There's no clear answer to that question. Any good lawyer will be able to spin objectivity into subjectivity and vice versa, so I'm not going to do that. I'm going to say that it's a difficult question in each and every case and must be resolved on various facts by the parties who are involved in it.

Mr. Ali Ehsassi: On several occasions today you said that the Attorney General is not an island. This is something that I understand you brought up with the Canadian Bar Association last week, as well.

We know there are complex issues involved, but there are also various responsibilities that you have. Could you tell us what those distinct obligations are?

Hon. David Lametti: What I said to the Canadian Bar Association is quite in line with what I'm saying here today. I am open to conversations as Attorney General and a member of cabinet. When I put on my hat as Attorney General to make a decision, as Attorney General that decision is mine alone.

The Chair: Thank you very much.

Ms. Raitt.

Hon. Lisa Raitt: Thank you very much.

Ms. Drouin, I have a very quick question.

I want you to confirm for me that the directive you spoke about that would be published in the Canada Gazette does not need to be published until after the matter is concluded, meaning after the court has agreed to the remediation agreement and everything is final. Is that correct? That's section 11 of the act. Is it not?

Ms. Nathalie Drouin: I just want to make sure. Are you talking about the directive that was—

Hon. Lisa Raitt: A directive from the Attorney General to reverse the decision of the director of public prosecutions that's supposed to be published in the Canada Gazette does not need to be published until after the court proceeding has concluded, meaning the court has accepted the remediation agreement. Is that not true?

• (1140)

Ms. Nathalie Drouin: You have many kinds of possibilities. It depends on the nature of the—

Hon. Lisa Raitt: Is it true what I stated, that it doesn't have to be published until after—

Ms. Nathalie Drouin: It depends on the nature of the directive. The first thing is, when an Attorney General decides to issue a directive, he has to consult with the DPP.

Hon. Lisa Raitt: I understand the process, Madam. What I want to know, is it not possible that a directive would not be published in the Canada Gazette until after the court had concluded the matter? Is that not possible according to the act?

Ms. Nathalie Drouin: I don't provide legal advice to the committee.

Hon. Lisa Raitt: Sure, okay.

Ms. Nathalie Drouin: It's so fact dependent, but I think what is important is to understand the steps and also to understand that any directive has to be published in the Canada Gazette.

Hon. Lisa Raitt: I understand, and what I'm trying to tell you, Madam, is the fact that this notice does not have to be published until well after a federal election in 2019.

Ms. Nathalie Drouin: I'm not sure you can conclude that, because it's really fact dependent—

Hon. Lisa Raitt: I'm just putting that on the record—

Ms. Nathalie Drouin: —on the nature of the directive.

Hon. Lisa Raitt: —for my purpose.

May I ask as well, when the Attorney General makes a decision to order or direct the director of public prosecutions to do something, he or she is not doing it as the Minister of Justice. Is that true?

It's the Attorney General who only has the power to be able to ask the director of public prosecutions or direct her to proceed with one of these remediation agreements.

Hon. David Lametti: That's certainly my understanding.

Ms. Nathalie Drouin: Yes.

Hon. Lisa Raitt: That is correct. So for the entire period of time post September 4 when the director of public prosecutions made her decision, you could only have conversations with the hat of the Attorney General on your head. You were not the Minister of Justice, or one would not be the Minister of Justice on that topic.

Hon. David Lametti: I can't speculate because I wasn't party to any of those conversations.

Hon. Lisa Raitt: I think it's appropriate, and I also think that it's also appropriate that we look at the Shawcross principle as you've pointed out. The Shawcross principle says very clearly that it's not necessarily to be pressure from the Prime Minister—it doesn't have to be subtle; it doesn't have to be heavy—any communication from the Prime Minister to the Attorney General could be perceived as an attempt to influence her decision, as improper interference, because she's only the Attorney General.

Is that not true?

Hon. David Lametti: That is not how I would interpret the Shawcross principle. Attempting to influence is something that you do as an MP, that I do as an MP, that our constituents do to us as MPs. It's part of what we do around the cabinet table. Attempting to influence is something that is part of our—

Hon. Lisa Raitt: Let me break it down for you.

Hon. David Lametti: No, let me answer the question, please.

Hon. Lisa Raitt: You have answered it, sir.

Hon. David Lametti: It's part of the DNA of our political process.

Hon. Lisa Raitt: It's not your opinion.

Hon. David Lametti: The question in Shawcross in the quote that you raised is pressure and that is a subjective determination. We can't talk about that without knowing the facts.

Hon. Lisa Raitt: With respect, when acting as the Attorney General and choosing not to direct the director of public prosecutions, SNC-Lavalin, in going to lobby the Prime Minister's Office or other cabinet ministers or indeed the Clerk of the Privy Council, is going to those places in order to try to convince the Prime Minister to ask the Attorney General to change her mind. Is that not the case?

Hon. David Lametti: I can't speculate on that. I'm not privy to those conversations.

You should know that as a lawyer.

Hon. Lisa Raitt: That's not a conversation. That's how power... I think that's a fair assumption that one can draw. Don't you think that's a fair assumption one could draw?

Hon. David Lametti: I'm not willing to draw any assumptions about conversations.

Hon. Lisa Raitt: Only the Attorney General can make the decision.

SNC-Lavalin decides that they're going to lobby at the highest level in the country. Presumably it's because they want the Prime Minister to change her mind. Can we not draw that assumption from the September 17th meeting?

Hon. David Lametti: I think I was not privy...I know I was not privy to those conversations and I think it would be unwise—

Hon. Lisa Raitt: One conversation you were privy to—

Hon. David Lametti: —to draw any kind of assumption.

Hon. Lisa Raitt: —Mr. Lametti, was.... I remember the first time the prime minister asked me to be in cabinet. I'm sure you remember that. It would be a momentous occasion. In that conversation with the Prime Minister, did he mention the issues with respect to SNC-Lavalin and the difficulties that he was facing?

Hon. David Lametti: He did not.

Hon. Lisa Raitt: Can you tell me, Mr. Lametti, whether or not that issue had been shared with you prior to becoming the Minister of Justice and Attorney General?

• (1145)

Hon. David Lametti: I've already said that.

Hon. Lisa Raitt: Can you answer it again for me, please?

Hon. David Lametti: I did not. I had a general knowledge. I believe you asked me this in the House of Commons. I had a general knowledge of the issue, as a Montreal MP.

The Chair: This is the last question for you.

Hon. Lisa Raitt: Mr. Lametti, the Globe and Mail is reporting that there's a cabinet meeting. I'm not going to ask you about the contents of the cabinet meeting. It's more of a hypothetical question. Pretend you're the Attorney General, as you are. You're sitting in a cabinet meeting where a former attorney general alleges that there was improper influence on her at that time.

As the current Attorney General, do you have an obligation to resign?

Hon. David Lametti: I am going to rely on cabinet confidence—

Hon. Lisa Raitt: I'm not asking about what happened, but in order to uphold the justice in the country, do you not have an obligation to resign?

The Chair: The time is up, Ms. Raitt.

I'll give Mr. Lametti a chance to answer the question and then we'll move to the next questioner.

Hon. David Lametti: I can't answer that question on the basis of cabinet confidentiality.

The Chair: Thank you very much.

Ms. Khalid.

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): Thank you, Chair.

Thank you to our witnesses.

[Translation]

Thank you for your participation, Ms. Drouin.

[English]

I know we've talked a lot about the Shawcross doctrine. I am hoping we can, at the very least, help Canadians understand in layman's terms what the Shawcross standard is. Is it a complicated one?

When we talk about the interactions, and specifically about pressure, are we talking about an objective standard or are we talking about a subjective standard?

Madam Drouin, can you answer that for me, please?

[Translation]

Ms. Nathalie Drouin: As the minister said, it is a relatively difficult question.

[English]

I would like to draw the attention of this committee to a case that happened in 2006 and 2008 in the U.K. It was a very serious case where the director of a serious fraud case was responsible for both the investigation and the prosecution. It was about military procurement. During the investigation, the director was contacted by a country and also by the Prime Minister, saying that if the Attorney General continued the investigation and the prosecution, blood could be on the street. Finally, the director decided to stop the investigation and not to lay charges.

That case created a judicial review and it went up to the House of Lords. The House of Lords did say that this very difficult conversation didn't break the rule of law.

That, I think, really illustrates how serious the conversation can be.

Ms. Iqra Khalid: Just to clarify, it did not break the rule of law.

Ms. Nathalie Drouin: It did not.

Ms. Iqra Khalid: Thank you very much for that clarification, Madam.

Thank you, Mr. Lametti, for being here today. It's really great.

I understand that you've actually taught some of our colleagues in the field of law.

We've had a lot of conversations about ethics, about character and about the nature of our conduct as members of Parliament, as cabinet ministers, and even as prime minister.

Can you explain to us and to Canadians what education or training you have that qualifies you to uphold the ethical obligations of the Minister of Justice and Attorney General of Canada?

Hon. David Lametti: Thank you for that question.

I have had good fortune. My parents came to this country with no formal education and all they wanted for their children to get was a formal education. It enabled me to get the highest quality legal education in Canada and abroad, through scholarships and bursaries. I have lived my life in a law faculty.

Mr. Michael Cooper: How is this relevant, Mr. Chair?

Hon. David Lametti: I have had mentors such as Justice Peter Cory of the Supreme Court of Canada and Professor

Rod Macdonald, who had the highest ethical standards. We lived and taught professional ethics. We lived and taught ethics as lawyers on a day-to-day basis.

I am a member of two bars: Ontario and Quebec. I have maintained my ethical obligations in those bars, so I think I am highly qualified to perform this role.

[Translation]

Mr. Rhéal Fortin: Mr. Chair, if we had Mr. Lametti's CV, we could move on to a more relevant topic, could we not?

The Chair: All of the members of the committee have the right to ask questions during their allotted time. This is related to the witness's background; if they want to ask those questions, they can do so.

• (1150)

[English]

Monsieur Lametti, try to wrap that one up as soon as you can, please.

Hon. David Lametti: I actually had finished, Mr. Chair.

The Chair: Thank you very much.

Ms. Khalid, you have two minutes and 20 seconds.

Ms. Iqra Khalid: Thank you.

I will reiterate that the relevance of my question is that we've had a lot of conversations in our Parliament and among Canadians about what ethics and standards we govern ourselves with as Canadians. How do we govern ourselves and to what standards do we hold ourselves?

I would like to hear from the minister what qualifications and training he has that qualify him to be in such a high position and to make these very important decisions that Canadians expect him to make in the right manner.

Mr. Lametti, can you please answer the question?

Hon. David Lametti: Let me answer this another way.

As a teacher, as a mentor and as a scholar, I have conducted my life to the highest ethical standards. I have studied the law. I have lived the law, if you will. I have debated the law. I have debated what is right and wrong in the context of one of Canada's and the world's greatest law faculties. That is a privilege that I undertook quite seriously.

Let me add that one of the reasons I got into politics is that the previous government's attacks on the Supreme Court—

Some hon. members: Oh, oh!

Hon. David Lametti: —attacks on the criminal justice system prompted me to say that the particular life I was participating in was insufficient to give back to Canada.

Ms. Iqra Khalid: Thank you.

Mr. Chair, could we please have some decorum?

The Chair: Guys, I'm asking everybody, when somebody has a question, to try to be respectful. If you have a point of order, you make the point of order.

Ms. Khalid, you have 45 more seconds.

Ms. Iqra Khalid: Thank you, Chair.

I have a very short question.

Mr. Lametti, since being appointed as the Attorney General, what conversations, if any, have you had with the former attorney general?

Hon. David Lametti: I had initial conversations, but not substantive. They were the kinds of pleasantries that one would exchange on the exchange of the position.

When the story broke in the Globe and Mail, it was my view that, as Attorney General, I should maintain a position that would not compromise me or the office of Attorney General in any way, shape or form. In light of the fact that there would be already, very quickly afterwards, this contemplation of committee proceedings, contemplation of an ethics committee investigation, I felt it necessary to not engage in any conversations on this matter with my predecessor.

Ms. Iqra Khalid: Thank you.

[Translation]

The Chair: Thank you.

We will now hear from Mr. Paul-Hus.

Mr. Paul-Hus, when you've reached four minutes, I'll let you know so that we can let Mr. Barrett speak. You have the floor.

Mr. Pierre Paul-Hus (Charlesbourg—Haute-Saint-Charles, CPC): Thank you, Mr. Chair.

Ms. Drouin, as Deputy Minister of Justice and Deputy Director of Public Prosecutions, you should be able to answer me.

On September 4, when the decision was made to continue criminal proceedings against SNC-Lavalin, the company was informed of that fact. At what point was the Prime Minister's Office informed of that fact; on the same day, before, or after?

Ms. Nathalie Drouin: I want to clarify that I am not the Director of Public Prosecutions...

Mr. Pierre Paul-Hus: ... but the Deputy Director.

Ms. Nathalie Drouin: No, I am the Deputy Minister of Justice and Deputy Attorney General.

I have no information at all on specific files. So on September 4, the date you mentioned, I was not informed of that decision, and I know no more today than I did then.

What I know to be in the public domain is that sometime around October, I believe, SNC announced publicly that the Director of Public Prosecutions had denied the request. Those are the facts I am aware of.

Mr. Pierre Paul-Hus: But in your role of legal advisor to the Attorney General, the role you referred to at the outset, you must surely have some interaction with the Public Prosecution Service, correct?

Ms. Nathalie Drouin: Yes. I should perhaps tell you that it is the responsibility of the Director of Public Prosecutions to keep the Attorney General abreast of important files. On a few occasions, depending on the files...

Mr. Pierre Paul-Hus: So, on September 4, when the Public Prosecution Service informed SNC...

Ms. Nathalie Drouin: I know nothing about that. This kind of information is not provided to the department.

Mr. Pierre Paul-Hus: So the Attorney General is not informed about the situation.

Ms. Nathalie Drouin: I can't answer that question, Mr. Paul-Hus. These are conversations about particular files that may or may not occur between the Director of Public Prosecutions and the Attorney General.

Mr. Pierre Paul-Hus: Fine.

When the Prime Minister's Office asked to meet with Ms. Wilson-Raybould on September 17, did she ask you for legal advice before that meeting, since this is part of your work?

● (1155)

Ms. Nathalie Drouin: In the exercise of my duties, I may have several conversations with a minister, and I will support that minister and the Attorney General as part of my duties.

My confidentiality obligations have been explained. I thus cannot tell you if I was or was not informed of these discussions, nor when, nor tell you about the advice I may or may not have given under those circumstances.

Mr. Pierre Paul-Hus: Since you must respect your duty of confidentiality, you cannot tell us today if Ms. Wilson-Raybould asked you for legal advice before her meeting with the Prime Minister on September 17. Is that correct?

Ms. Nathalie Drouin: That is my answer.

Mr. Pierre Paul-Hus: Fine.

Is that the case also for the December 5 meeting with Mr. Butts at the Château Laurier?

Ms. Nathalie Drouin: I can't even confirm if I was or not aware of the discussions that may have taken place. We have regular conversations, and it is my responsibility to provide to the minister and Attorney General the tools he or she needs to fulfil their obligations. In doing so, however, I must respect my duty of confidentiality as well as my duty to...

Mr. Pierre Paul-Hus: Thank you, Ms. Drouin.

Mr. Lametti, you became minister on January 14. Before you were sworn in, did Prime Minister Trudeau speak to you about the SNC-Lavalin file?

Hon. David Lametti: I already answered that question and the answer is no.

Mr. Pierre Paul-Hus: You never had any discussions on that topic before, is that correct?

Hon. David Lametti: Yes.

Mr. Pierre Paul-Hus: Fine. Thank you.

[English]

The Chair: There is one minute and 30 seconds left.

Mr. Michael Barrett (Leeds—Grenville—Thousand Islands and Rideau Lakes, CPC): Ms. Drouin, when did the director of public prosecutions inform the Privy Council Office, the PMO and the Minister of Justice about the outcome of the deferred prosecution agreement? When did the Prime Minister know?

Ms. Nathalie Drouin: First, there is no direct communication, in any specific case, between the PMO and the DPP. The obligation of the DPP to report on specific cases and to provide information to the Attorney General is to provide information to the Attorney General as the Attorney General and not the Minister of Justice. The DPP does that on a regular basis on high-profile cases.

Mr. Michael Barrett: Okay.

Mr. Attorney General, both you and the Prime Minister have said that you're preparing a legal opinion on solicitor-client privilege in relation to the former attorney general, Ms. Wilson-Raybould. Lawyers I've consulted with say that solicitor-client privilege is far more limited than your government appears to understand: It applies only to communication between a lawyer and client for the purpose of giving or obtaining legal advice, not every single utterance.

You have the benefit of more than 5,000 employees at the Department of Justice and they're at your disposal. It's our understanding that the former attorney general, Ms. Wilson-Raybould, will appear here on Tuesday. Will your legal opinion be prepared in advance of that meeting?

Hon. David Lametti: As the former attorney general has stated, the question of solicitor-client privilege is complex and layered.

Mr. Michael Barrett: Will it be ready for Tuesday?

Hon. David Lametti: There is substantial debate on the extent.

Mr. Michael Barrett: Minister, is that a no?

Hon. David Lametti: It is a continuum, and I can't answer the question because the answer to the question is covered by solicitor-client privilege.

The Chair: Thank you.

We're now going to Mr. Rankin for three minutes.

Mr. Murray Rankin: I want to start by saying that I know you, sir, to be a highly competent and ethical lawyer whom I hold in very high regard.

In response to my colleague Ms. Raitt, you said you won't make any assumptions about a particular matter. Yet on February 10, to CTV, you said, "The prime minister has said that these allegations are false. We haven't had any corroborating evidence there. There hasn't been anything to my mind that justifies a committee investigation."

You, sir, are the arbiter of justice in this country. It seems to a reasonable person that you had already made up your mind that there's nothing here, drive on. In having taken the word of the Prime Minister that there was no wrongdoing, how can you now discharge your responsibilities in this matter as an independent arbiter of justice having, it would appear to Canadians, made up your mind? Is that a reasonable inference?

Hon. David Lametti: I disagree with the inference. I disagree with the premise of your question.

First of all, unlike in other jurisdictions, the Attorney General does not have an investigative role. We delegate that to other kinds of institutions.

Second, at the time that interview was taped, February 8—it aired February 10—all we had were anonymous allegations in *The Globe and Mail* and an unequivocal denial by the Prime Minister. At that point, on February 8, I stand by what I say.

I also said in an earlier interview that day with *The House*, which was taped prior to the CTV interview but was played before...I also stated in good faith that this committee was the master of its own docket, and that I would appear if it called me to appear—

• (1200)

Mr. Murray Rankin: Right. Okay.

Hon. David Lametti: —and, Mr. Rankin, I am here.

Mr. Murray Rankin: I hear you, sir, but whether you're answering is another question.

I want to put these facts to you. On September 4, the DPP, director of public prosecutions, tells SNC-Lavalin it's a done deal, that we're going to go forward with criminal prosecution. On September 17 the Prime Minister meets with Jody Wilson-Raybould; on September 5, Gerry Butts meets with Jody Wilson-Raybould at the Chateau Laurier, in each case about SNC-Lavalin.

If that final decision of the DPP was made on September 4, after the final decision, what properly could have been discussed with the Prime Minister or with Gerry Butts in these circumstances? How can we not reasonably infer that there was an attempt to politically interfere with her role as the independent Attorney General?

Hon. David Lametti: I can't confirm that any of those meetings took—

Mr. Murray Rankin: They're all on the public record.

Hon. David Lametti: I can't confirm that any of those meetings took place, let alone speculate about what the content of those meetings might have been.

Mr. Murray Rankin: All right. Thank you.

The Chair: Thank you very much.

Colleagues, that concludes the second round of questions, but we have a request from Mr. Fortin.

The Bloc Québécois is not a recognized party, so the Bloc Québécois does not normally have the right to ask questions at committee. However, Monsieur Fortin has asked, on an exceptional basis, to be allowed that for this meeting. I don't want to create a precedent, but for the purpose of this meeting, I'd be willing to accord him three minutes. Do colleagues agree?

Some hon. members: Agreed.

The Chair: Okay.

[Translation]

Mr. Fortin, you have the floor for three minutes.

Mr. Rhéal Fortin: Thank you, Mr. Chair.

Mr. Lametti, in your opinion does the Attorney General of Canada have the right to demand that the Director of Public Prosecutions undertake negotiations with SNC-Lavalin to conclude a remediation agreement? Does he have that power?

Hon. David Lametti: He has the powers that are set out in the act. The correct answer is that the powers are set out in the act.

Mr. Rhéal Fortin: So the answer is yes.

Hon. David Lametti: There are interpretations of the act. I am not going to comment on the interpretations of the act, because this may lessen litigation privilege and have consequences on the actual litigation between SNC-Lavalin and the...

Mr. Rhéal Fortin: I understand that this may not be timely. I don't have much time and I don't want to go on at length about that. I just want to know whether in your opinion that power exists.

Hon. David Lametti: I am not going to give an opinion. I will say that the act exists.

Mr. Rhéal Fortin: So the act exists and it allows the Attorney General to require that the Director of Public Prosecutions undertake such negotiations.

Hon. David Lametti: I cannot give an opinion or interpret the act. I just want to point out that such a law exists.

Mr. Rhéal Fortin: Fine.

Since it exists, can you tell me why, to date, this has not been done? Why has the Attorney General not issued such a directive to the Director of Public Prosecutions?

Hon. David Lametti: I can't speculate...

Mr. Rhéal Fortin: I am not asking you to speculate; you are the Attorney General.

Hon. David Lametti: Yes. In that capacity, I cannot answer your question because of litigation privilege. If I provide an interpretation that could have repercussions on the current litigation between SNC-Lavalin and the Director of Public Prosecutions.

Mr. Rhéal Fortin: Without providing an opinion, why have you not yet issued such a directive? Why did you not require that the Director of Public Prosecutions undertake negotiations?

Hon. David Lametti: The lawyers in the room will understand that I cannot give you an answer because it would impact that file. I would like to answer you but it would contravene the principle of litigation privilege.

Mr. Rhéal Fortin: And do you know why the Attorney General who preceded you did not issue such directives to the Director of Public Prosecutions? Do you know why?

The Chair: Mr. Fortin, at this point, I must advise you that you are getting very close to the *sub judice* convention and this could have an impact on the SNC-Lavalin appeal.

Mr. Rhéal Fortin: Our witness is very much aware of the rules. He knows, and he will stop me.

The Chair: I am giving you this advice so that you may word your questions in consequence.

Hon. David Lametti: The answer is the same.

Mr. Rhéal Fortin: Fine, it's the same answer.

You had...

The Chair: Your speaking time has elapsed, Mr. Fortin. Thank you.

I would like to thank the witnesses.

● (1205)

[English]

We very much appreciated having you here to start down our path on this study.

We will suspend for about five minutes while we get Mr. Wernick up to the microphone.

● (1205)

_____ (Pause) _____

● (1215)

The Chair: We will now reconvene with our second witness group of the day.

We are very lucky to be joined by Mr. Michael Wernick, the Clerk of the Privy Council and secretary to the cabinet.

Mr. Wernick, it's a pleasure to have you with us. We'll ask you to make your opening statement now.

Mr. Michael Wernick (Clerk of the Privy Council and Secretary to the Cabinet, Privy Council Office): Thank you, Mr. Chair.

I want to make it clear that I came at the very first opportunity the committee invited me and that I have always made myself available to parliamentary committees. I've done over 25 appearances, and they're all on the record. I'm happy to try to assist the committee in its important deliberations.

I have a couple of things that maybe I could make as opening comments, and then I'm willing to take any questions. I'm willing to stay as long as the committee wishes. I have done committee appearances that went into four and five hours at a time until the committee was satisfied. It's entirely in the hands of the committee.

If I can speak to Canadians through you, Mr. Chair, I'd like to say a couple of things because a lot has been said and written in the last few weeks, and I think there are a couple of things that need to be clarified.

I worry about my country right now. I'm deeply concerned about my country right now, its politics and where it's headed. I worry about foreign interference in the upcoming election, and we're working hard on that. I worry about the rising tide of incitements to violence when people use terms like "treason" and "traitor" in open discourse. Those are the words that lead to assassination. I'm worried that somebody is going to be shot in this country this year during the political campaign.

I think it's totally unacceptable that a member of the Parliament of Canada would incite people to drive trucks over people after what happened in Toronto last summer. It's totally unacceptable, and I hope that you, as parliamentarians, are going to condemn that.

I worry about the reputations of honourable people who have served their country being besmirched and dragged through the market square. I worry about the trolling from the vomitorium of social media entering the open media arena. Most of all, I worry about people losing faith in the institutions of governance of this country, and that's why these proceedings are so important.

There are a couple of things from my perspective.

Should Canadians be concerned about the rule of law in this country? No. In the matter of SNC-Lavalin, it is now seven years since the first police raid on the company and four years since charges were laid by the RCMP, and during that entire time and up to today, the independence of the investigative and prosecutorial function has never been compromised. The matter is proceeding to trial.

The director of public prosecutions issued a statement on February 12, which you can find on her website, in the context of the Norman matter, in which she said, "I am confident that our prosecutors, in this and every case, exercise their discretion independently and free from any political or partisan consideration." That is from the DPP. The only communications with the director of public prosecutions about the potential use of a deferred prosecution agreement, an instrument provided for by legislation, were conducted by the minister, as is appropriate.

In this matter, the laws that you as parliamentarians created around ethics in government are demonstrably working. The prosecutor is independent. The Lobbying Act worked as intended. The Ethics Commissioner self-initiated his own process. In other words, the shields held. The software that is supposed to protect our democracy is working.

Is there two-tier justice in Canada? No. Demonstrably not. Despite the most extensive government relations effort in modern times, including meetings with officials, political staff, the opposition leaders and hate advertising and advocacy by two consecutive premiers of Quebec, the company did not get what it wanted, demonstrably because they're seeking judicial review.

Are we soft on corporate crime? No. As you are discussing, deferred prosecution agreements are an attempt to balance public policy interests. It's a legitimate concern for governments and indeed for everyone that the workers, suppliers, pensioners and communities in which a company operates suffer for the misdeeds of the corporate officers. A deferred prosecution agreement is not an acquittal, an amnesty, an exoneration, a get out of jail free card or a slap on the wrist. It is what it says: It's an agreement to defer prosecution. It is subject to compliance, and it can be revoked.

DPA's were not slipped into Canadian law. There were consultations leading up to the bill that drew 370 participants and 75 written submissions before the December 2017 deadline. I'm sure those submissions would be available to this committee. There was extensive review of the bill provisions at a Senate committee, and that's all on the record.

•(1220)

I'm open to answering questions about any matter the committee wants to ask about. I think I'm pleased to disclose or discuss my contacts with the company and meetings that took place over the

course of the last little while, which have come up in media speculation. I'm here to say to you that the Globe and Mail article contains errors and unfounded speculation, and in some cases it's simply defamatory.

With that, Mr. Chairman...

The Chair: Thank you very much.

We will now go to our first round of questions, of six minutes each.

We will start with Ms. Raitt.

Hon. Lisa Raitt: Thank you very much, Mr. Chair.

Thank you for being here, Clerk. I appreciate it.

Were you informed of the September 4 decision by the director of public prosecutions to not proceed with a deferred prosecution agreement?

Mr. Michael Wernick: No.

Hon. Lisa Raitt: How did it become known to you?

Mr. Michael Wernick: National newspaper advertising.

Hon. Lisa Raitt: On what date?

Mr. Michael Wernick: I think the company placed ads in mid-October. I can verify the timeline for you.

Hon. Lisa Raitt: On September 17...mid-October...national news.... I just want to make sure—

Mr. Michael Wernick: Actually, if I could correct that, I think that in.... I met the company on September 18—

Hon. Lisa Raitt: Yes, you did.

Mr. Michael Wernick: —and I don't recall the specific details of whether that decision by the prosecutor had been conveyed to them or not.

Hon. Lisa Raitt: Then it's possible that you did know.... Mr. Clerk, I'm going to assume that you knew on September 18 that the director of public prosecutions had said to SNC-Lavalin that it was not going to get a deferred prosecution agreement.

•(1225)

Mr. Michael Wernick: I don't know whether that was part of the conversation or not. They came to make the pitch, which they made to so many people, that they were not the company that had committed the crimes and was being charged, that there had been a change in the board and in management of the company. They were concerned about the impact on their workers and suppliers, and they did make a pitch for why they were a good candidate for a deferred prosecution agreement.

Hon. Lisa Raitt: You don't remember if they disclosed to you that they had been turned down by your own director of public prosecutions.

Mr. Michael Wernick: We have no dealings with the DPP—

Hon. Lisa Raitt: SNC-Lavalin never made it known to you that they had been turned down and that's what prompted their visit to you on September 18.

Mr. Michael Wernick: They were making the rounds with everybody in town during that month.

Hon. Lisa Raitt: They were making the rounds. I think we have to assume that everybody who was being visited knew why, because that would make sense for why they were setting up these appointments. Knowing that they were coming to ask you to overturn the decision of the director of public prosecutions, at that point in time, you would have known that this would have been an extraordinary move by the Attorney General, which can only be accomplished by the Prime Minister.

Mr. Michael Wernick: I remember the conversation being their basic pitch, which they made to everybody, that it was not the company that had committed the crimes, that there was going to be a serious impact on suppliers and workers and communities, and that it was a good candidate for a deferred prosecution agreement.

I remember telling them in the firmest possible terms, very bluntly and very directly, that this was a decision for the DPP, and there were powers for the Minister of Justice related to this and that they should go and make their representations to the DPP through the court process.

Hon. Lisa Raitt: Did anybody take notes of that meeting, Mr. Clerk?

Mr. Michael Wernick: I don't know.

Hon. Lisa Raitt: Did you have anybody else in the meeting with you?

Mr. Michael Wernick: Yes. The meeting was with Neil Bruce, Erik Ryan and Sam Boutziouvis from SNC-Lavalin, and I was accompanied by my deputy secretary of operations, Catrina Tapley.

Hon. Lisa Raitt: Is it possible that the deputy secretary of operations took notes?

Mr. Michael Wernick: It's possible.

Hon. Lisa Raitt: Would you be willing to have those tabled here?

Mr. Michael Wernick: If they exist.

Hon. Lisa Raitt: Would you be willing to undertake to go back and ask for these?

Mr. Michael Wernick: Yes.

Hon. Lisa Raitt: At the time of September 17, Mr. Clerk, the Prime Minister had met with Ms. Wilson-Raybould already, and in that meeting he had indicated to her that it was her decision. Why would the Attorney General be in a position of having to make a decision at that point?

Mr. Michael Wernick: It was always going to be her decision, and the decision was open through September, October and November, and it's still open to the DPP to change her mind and to the minister to exercise the powers on the law.

Hon. Lisa Raitt: Then we're clearly in agreement that the request or the comment that it's hers and hers alone to decide isn't about deciding whether to give a deferred prosecution agreement, but it's to overturn the director of public prosecutions.

Mr. Michael Wernick: "Overturn" would not be the word I'd choose—

Hon. Lisa Raitt: Issue a directive....

Mr. Michael Wernick: There is a provision in the statute passed by this Parliament that gives some authorities to the Minister of Justice as ultimately the chief prosecutor of Canada to take over the prosecution or to seek the reasons from the prosecutor.

I am not privy to any of the conversations between the DPP and the Minister of Justice.

Hon. Lisa Raitt: You are privy to the conversation with SNC-Lavalin. I have to submit that I find it very strange and indeed odd that SNC-Lavalin, knowing as they had known at that point in time for approximately 13 days, that they were not receiving a deferred prosecution agreement, would not mention it to the Clerk of the Privy Council, who is the deputy minister to the Prime Minister of Canada, and gives advice to the Prime Minister on matters of great importance.

Indeed, Mr. Clerk, I would submit that it is highly unusual that you would be taking such a meeting with an individual company. You're a very busy executive in the country. I find it surprising that you would, so quickly after they were turned down, have a meeting with SNC-Lavalin and yet not have them tell you that they were rejected by the director of public prosecutions.

Is that your testimony: that they did not tell you?

Mr. Michael Wernick: I don't know whether they did or not. I can tell you that the company asked for meetings with me several times. I make it a practice to meet with a lot of people who ask for meetings—union leaders, NGO leaders, indigenous leaders, provincial officials. I meet with a lot of people and I meet with a lot of companies as well.

The company is not a pariah. It has not been convicted. It is going to trial.

● (1230)

Hon. Lisa Raitt: I'm not saying it was.

The Chair: Ms. Raitt, you are at six minutes.

Hon. Lisa Raitt: I do not want that impression to be on the record—that I think there is anything wrong with meeting with SNC-Lavalin, and I don't appreciate the Clerk indicating that he thinks I'm trying to do so, because I am not. What I am saying, Mr. Chair, is that there was a bad inference just left there.

The Chair: Okay, you clarified the inference—

Hon. Lisa Raitt: Well—

The Chair:—and we all understand that it was not your intention....

Hon. Lisa Raitt: It's not even what I said. That is a complete misconstruction of exactly what I said, which was that I am surprised they didn't tell him.

The Chair: That's fine. We're not eating into anybody's time.

Now we're going to Mr. Boissonnault, for six minutes.

Mr. Randy Boissonnault: Thank you very much, Mr. Chair.

Clerk, thank you very much for joining us today.

I would like to start by acknowledging, and correct me if I'm wrong on the numbers, that you have 37 years of dedication to the federal public service, which span numerous Conservative and Liberal governments. You and I have had occasion to work together on my LGBTQ responsibilities.

My first question for you today, Mr. Wernick, is related to conversations that take place between the Prime Minister, or officials in the PMO, and ministers. Specifically, I would like to know, is it appropriate for the Prime Minister and officials in the PMO to talk to the Minister of Justice and Attorney General about an active case?

Mr. Michael Wernick: The appropriate boundaries of those conversations are exactly the issue of the Shawcross doctrine, and I would point everybody on the committee to "Open and Accountable Government", which is the Prime Minister's playbook. There was one from Prime Minister Harper with similar language, and there is one that was issued by the Prime Minister in November 2015. It specifically refers in detail to the Prime Minister's view of what is appropriate and not appropriate in terms of dealing with legal matters.

Mr. Randy Boissonnault: Thank you very much.

I appreciate that according to the book and according to what you have said, it is appropriate for such conversations to take place, and there are parameters. In your role as Clerk, have you ever witnessed inappropriate pressure being applied by the Prime Minister, or officials in the Prime Minister's office, to the former minister of justice and attorney general on the issue of remediation agreements or any other issue?

Mr. Michael Wernick: No. At every opportunity verbally and in writing in December, the Prime Minister made it clear that this was the decision for the Minister of Justice to take. She was the decision-maker.

[Translation]

Mr. Randy Boissonnault: I think it's important to ask the question in French.

Mr. Michael Wernick: Yes.

Mr. Randy Boissonnault: In your role as clerk, have you ever witnessed inappropriate pressure being exerted by the Prime Minister or anyone acting on behalf of the Prime Minister's Office on the former Minister of Justice and Attorney General concerning remediation agreements or any other matter?

Mr. Michael Wernick: No.

The Prime Minister's policy regarding conversations on legal matters and legal issues is very well set out in the document *Open and Accountable Government*, which he completed just after the elections. It describes the government's policies in this regard.

[English]

Mr. Randy Boissonnault: I think it—

[Translation]

Mr. Michael Wernick: On every occasion, the Prime Minister said, verbally and in a letter to the Minister of Justice, that the decision was and remained her prerogative.

Mr. Randy Boissonnault: Thank you, Mr. Clerk.

Would it be possible for us to obtain a copy of that letter? Could it be sent to the clerk?

[English]

The Chair: It will be deposited and copies shared with members of the committee.

Mr. Randy Boissonnault: Thank you very much for clarifying that no inappropriate pressure was applied to the former minister of justice and attorney general by the Prime Minister or officials in the Prime Minister's Office.

I think it would help Canadians who haven't seen the book that you reference, the important playbook, to use your words. When you're in a conversation, when you're in a room, how do you know where that line is in terms of robust and detailed conversations that do not then cross the Shawcross doctrine, do not go into direction and pressure?

Mr. Michael Wernick: I think that the minister tried to describe the two hats that he wears, and I think the committee will hear from witnesses more expert than I am.

When you are the Prime Minister and the chair of cabinet and answerable before Parliament and go to question period, everything that happens in the government apparatus is of some concern to you or of some interest to you to know what's going on and to follow it. That said, each minister has very specific roles given to them by statute to take decisions. They're regulatory decisions on all sorts of things, permits, licences, that are held by the minister.

The role of the Minister of Justice in the case of prosecutions is incredibly clear in Canada. There is a statutory, legal force field around the prosecution function in Canada that doesn't exist in the United Kingdom, by the way. We have the strongest protection of independent prosecution that I can think of.

•(1235)

Mr. Randy Boissonnault: You said something in your opening remarks that struck a chord with me. You said that the rule of law in this country is intact and it's a fundamental principle of our country.

Could you give us other examples in your current experience and across your 37 years of experience as to how you make that statement here today?

Mr. Michael Wernick: I have spent time in and around ministers and prime ministers. It's a great honour of my career.

I worked very closely with three active prime ministers, former active ministers, a dozen ministers. I've seen cabinet meetings of the Chrétien cabinet, the Mulroney cabinet, the Martin cabinet, the Harper cabinet and the Trudeau cabinet. I can tell you that they are always guided by trying to do the right thing the right way. The exceptions to that in Canada are extremely rare and are detected, corrected and punished.

[Translation]

Mr. Randy Boissonnault: In the 20 seconds I have left, I would just like to ask you this: how can you say that the rule of law is paramount in Canada?

[English]

Mr. Michael Wernick: As I said, Parliament created all kinds of laws to protect ethics in government and they have been built by successive governments. This is not a partisan comment. Some of them come from different prime ministers in different periods. I'm a big fan of the accountability act of Prime Minister Harper. I'm a big fan of other things that have been done by other governments in terms of adding transparency and being vigilant about ethics of government.

As I said, we have an independent prosecutor. The Lobbying Act, which was in the interest of transparency, is working. All of the contacts by the company were disclosed and registered. The Ethics Commissioner, who is an officer of Parliament created by Parliament to serve and advise parliamentarians, initiated his own process. My view is that this is the appropriate forum to deal with this.

I am willing, and have made it very clear, as has everybody in this matter, to be interviewed and to deal with the Ethics Commissioner and submit to his investigation. He has the powers of a superior court judge to compel production of documents and to get people to act as witnesses.

I commend you to the officer of Parliament that you created.

Mr. Randy Boissonnault: Thank you, sir.

The Chair: Thank you very much.

Mr. Rankin.

Mr. Murray Rankin: Thank you.

I'd like to say at the outset, Mr. Wernick, that with 37 years working in all political stripes—you are currently Clerk of the Privy Council and secretary to the cabinet—you are a servant of the people of Canada, and I thank you, sir, for your service.

I have to ask you this. There was earlier reference to a letter of December 5, a copy of which I think has been alluded to, which is a letter from SNC-Lavalin—

The Chair: From the Prime Minister to SNC-Lavalin....

Mr. Murray Rankin: —from the Prime Minister to SNC-Lavalin denying a request for a meeting but asking that they go to see the Minister of Justice.

Does it not strike you as a little odd that this would be the case given the context?

Mr. Michael Wernick: If you read the text into the record, I don't think it said to go and see—

Mr. Murray Rankin: I mean, obviously it says—

Mr. Michael Wernick: It says it's a matter before the courts and therefore you should deal with the Minister of Justice, which means deal with the legal system through the legal process.

The Chair: We're waiting for copies to be distributed.

Mr. Murray Rankin: Maybe I'll have time to come back to that.

I want to ask you this. I'm not asking you for legal advice, but I'm asking you, given your vast experience, about the nature of solicitor-client privilege in circumstances such as this. I'd like you to tell us a little bit more about your observations.

Mr. Michael Wernick: I've spent a lot of time reading material on the topic of this, the Shawcross convention and all of these issues and legal doctrines. I am not a lawyer, but I use them a lot. I am in no position to give this committee legal advice. You have excellent law clerks and people who can come and appear.

My conclusion, as somebody who spends a lot of time in governance, is I do not see where the former attorney general was a solicitor. The matter was never discussed at cabinet, never. So she was not giving advice to cabinet. She was not advising the Prime Minister. The Prime Minister said at every occasion, verbally and in writing, she was the decider. So she was not giving legal advice to the Prime Minister. She was the decider, the full and final decider. She can't be the fettered solicitor and the battered decider—in that horrible, vile cartoon—at the same time. It's one or the other.

• (1240)

Mr. Murray Rankin: Therefore, solicitor-client privilege couldn't apply.

Mr. Michael Wernick: That is my conclusion, not my advice.

Mr. Murray Rankin: I'm not asking for legal advice. You have 37 years, a lot of experience. That is fascinating and very helpful.

On another related matter, cabinet confidentiality, is it your view that if a person—let's say the principal secretary to the Prime Minister, Mr. Butts—meets with the Attorney General at a hotel and talks about a particular matter, that somehow that can be subject to cabinet confidentiality?

Mr. Michael Wernick: There's material on cabinet confidence on the website. I would commend you to that. It is—and I know this sounds evasive—a bit murky. It generally applies to conversations among ministers, and conversations among ministers about matters before cabinet or about to go to cabinet. But there is law that says that intermediaries and representatives of ministers may be caught in that.

I have a statutory role—

Mr. Murray Rankin: Yes, you do.

Mr. Michael Wernick: —as the guardian of the confidences of previous governments and generally as the umpire on cabinet confidence issues.

Mr. Murray Rankin: Can you conceive of how a political staffer could be somehow cloaked with cabinet confidentiality in conversations with an attorney general?

Mr. Michael Wernick: It certainly could be advice to ministers and it could potentially be covered by cabinet confidence, because those staffers would be representatives of the minister. For these purposes, the Prime Minister is a minister. That's as far as I think I can go before I'm giving legal advice, which I shouldn't.

Mr. Murray Rankin: You talked in your opening statement, Mr. Wernick, about the director of public prosecutions in this case saying that she wrote that she had freely and independently exercised her prosecutorial discretion. She didn't budge when asked perhaps to do so...50 meetings, etc. It appears that the former attorney general didn't budge either. Then you concluded that the system worked.

In fact, Mr. Clerk, is it not possible that we could infer that meetings subsequent to that with the Prime Minister perhaps applying improper pressure and crossing that red line of the Shawcross convention, or his chief of staff doing so in a hotel off Parliament Hill, talking about this case after the decision had been made to, as you say, fully exercise independent discretion of the DPP, doesn't that strike you that the system may not have worked, that there might have been continuing political pressure that Canadians might reasonably infer out of those circumstances?

Mr. Michael Wernick: If you boil it down for Canadians as to what is going on here with the facts that we have and all of the facts that I know from my participation in meetings and conversations, we are discussing lawful advocacy and whether the minister took a lawful decision, which in the end, she did not take.

Mr. Murray Rankin: Yes, and there continued political pressure thereafter to change the tune.

Mr. Michael Wernick: The question is for the committee and, I would argue, for the Ethics Commissioner as a trained legal professional who is not in any way potentially besmirched as doing it for partisan reasons in an election year, before by-elections or in running for the leadership of a party. The Ethics Commissioner was created by Parliament precisely for these ethics in government issues. If this is not the kind of issue an ethics commissioner is there for, why do we have one?

Mr. Murray Rankin: Well, we do. It's a matter before the Ethics Commissioner, as you well know.

Mr. Michael Wernick: Yes.

Mr. Murray Rankin: It may be that we have a separate responsibility in this justice committee to see whether the chief law officer of the Crown, namely the former attorney general, was somehow improperly interfered with in her constitutionally required independent role in deciding whether prosecutions proceed or not.

In other words, we can have different investigations and hearings in respect of different matters. It seems to me to be completely appropriate. Indeed, we could have a judicial inquiry to determine whether or not, with full cross examination and the like—

The Chair: Mr. Rankin, it's your last question.

Mr. Murray Rankin: I'm just putting it back to the witness that it doesn't mean we can't have this—

The Chair: I understand.

I'll let the witness briefly answer, and then we'll move to the next questioner.

Mr. Michael Wernick: I do not see, as a matter of governance, how a separate inquiry overlapping and in parallel with the work of an officer of Parliament with all of those powers would shed any additional light on the matter.

The Chair: Thank you very much.

We will now go to Mr. Ehsassi.

Mr. Ali Ehsassi: Thank you, Mr. Chair.

First of all, allow me to thank the Clerk for appearing before our committee.

After having heard your remarks, I think we should all be concerned. One of the things you highlighted was that you're very much concerned about media speculation. Speaking of media speculation, I'd like to draw your attention to a Globe and Mail article of February 7 which, as everyone is well aware, is based solely on an anonymous source.

In that specific article, it is reported that the Honourable Jody Wilson-Raybould's speeches earned her "a private rebuke from Privy Council Clerk Michael Wernick".

Is that correct?

• (1245)

Mr. Michael Wernick: Thank you for the opportunity to put this on the record. That never happened.

I can elaborate on that answer, if you wish, but that never happened. I have known the former attorney general for almost 15 years. I was the deputy minister at what was then called Indian and Northern Affairs for eight. We walked the path together for many years through many episodes in the journey towards indigenous reconciliation. I considered her a partner, an ally and a friend, and I would have too much respect for a minister of the Crown to rebuke someone.

That is from an anonymous source about a conversation that would have been between me and the minister, and I'm telling you it did not happen.

Mr. Ali Ehsassi: Thank you.

You kindly presented us with a letter from the Office of the Prime Minister to the Office of the Attorney General. I think some of the members here were implying that there was something wrong with this letter.

In your opinion, looking at this letter and reading it, did anything improper happen there?

Mr. Michael Wernick: There was an incoming letter from the company asking for a meeting with the Prime Minister. The Prime Minister declined—

Hon. Lisa Raitt: Point of order, Mr. Chair.

The Chair: Stop the time.

Yes, on a point of order.

Hon. Lisa Raitt: I'm sorry, the member just indicated that members here implicitly indicated that this letter was.... I don't know what your word was, but nobody—

Mr. Ali Ehsassi: I think it was implied that there was something—

Hon. Lisa Raitt: Nobody on our side, Mr. Chair, has gone on the record saying anything about this letter. Indeed, we only just received it or even just learned about it.

The Chair: Exactly.

I think what he was referring to was that Mr. Rankin, before he had a copy of the letter, asked about something that wasn't in the letter, because Mr. Rankin had no copy of it. That's probably—

Hon. Lisa Raitt: That's correct. It's an innocent mistake, but I really don't like the partisan nature of the comment that was made by the honourable member.

The Chair: I appreciate that.

Mr. Ali Ehsassi: I think you've just admitted that a mistake was made, and I simply said it was implied.

The Chair: I'm going to put Mr. Ehsassi's time back on, and again, we're all trying to get answers out of the witness. That's what Canadians want to hear today.

Let's get back on to Mr. Ehsassi's time.

Mr. Ehsassi.

Mr. Ali Ehsassi: As everyone here knows, you essentially sit on top of the machinery of government.

One of the things you did say is that, first of all, there are many safeguards in our system, but you also indicated that, if something improper does take place, it is both detected and corrected.

What did you mean by that?

Mr. Michael Wernick: I was alluding to many mechanisms that were created by Parliament to safeguard governance in Canada. I could go through a whole bunch of them. The Public Service Commission is a safeguard of merit-based hiring and staffing in the public service that frees us from patronage. There's the existence of the Parliamentary Budget Officer and the existence of the Auditor General.

There are nearly 14 officers and agents of Parliament holding the executive to account. There are transparency laws and access to information. There are open government policies. I could go on and on, but when you compare Canadian governance to that of any other country, I think Canadians should feel assured that they work in a democracy under the rule of law.

Mr. Ali Ehsassi: Thank you for that. So, mechanisms do exist.

At some point in your remarks, you did suggest that looking at the structures around the director of public prosecutions, you think, in relevant terms, compared to other jurisdictions, that we have a really good system in place.

Could you elaborate on that? I think it's an important point, and it would be good for all of us to hear your observations.

Mr. Michael Wernick: Anybody who is following American politics these days, if you can stand it, will be seeing vigorous debates about the role of prosecutors, grand juries, law enforcement agencies and so on—it gets pretty complicated in the American system—and whether pressure was put on prosecutors, whether attorney generals were fired, who's doing what in the American system.

I think Canadians need to be assured that their police and investigators, with the powers of the state, operate independently, and that the prosecution service, the state charging people with offences, is completely independent. There is a legislative and

statutory shield around that, which demonstrably is working in the issue that this committee is looking at.

The director of public prosecutions said in writing last week that there is not, in this case or any case, partisan or political interference in the prosecutorial function.

Given that three Canadians are languishing in Chinese jails because of arbitrary detention, it's really important to project to the world that Canada operates under the rule of law.

• (1250)

Mr. Ali Ehsassi: Thank you.

The Chair: There are 35 seconds left, Mr. Ehsassi.

Mr. Ali Ehsassi: That's fine.

The Chair: Now we're going to the second round of questions.

This is six minutes to the Liberals, six to the Conservatives, six back to the Liberals, five to the Conservatives and three to the NDP.

We will start with Ms. Khalid.

Ms. Iqra Khalid: Thank you, Chair.

Thank you, Mr. Wernick. Your testimony today was very compelling. We appreciate your public service to this country.

You mentioned that you've been in public service for over 37 years. As a clerk, you must have seen—and I think you mentioned this as well—multiple governments come and go. You would have been privy to the way they conduct business amongst each other, as colleagues, as cabinet ministers, as prime ministers and PMO officials.

Can you please elaborate on whether it would be normal practice to have robust discussions both inside cabinet and amongst the prime minister, ministers, the prime minister's officials about the application of both policy and the law in situations that impact Canadians?

Mr. Michael Wernick: I think governments of any stripe are always concerned about the well-being of Canadians and what's going on. The potential loss of jobs and the impact on families and communities is always of interest. Those could be oil workers in Calgary, to take a topic from this week. It could be auto workers in Oshawa.

It could be anywhere in Canada. No government is indifferent to the economic progress of communities in the country. Job loss is something that all governments I've ever worked with worry about and pay attention to and monitor.

There is clearly, in the SNC-Lavalin matter, potential job loss and economic impact on workers, suppliers, pensioners and communities. This isn't a secret. It's in national newspaper advertising from the company. It is in the statements of two premiers of Quebec.

There are consequences for the decision to prosecute or not prosecute, to go to a remediation agreement or not. Every decision that a minister makes has consequences for other people. That's the point. The Attorney General is a particularly powerful position in the country, because you're the chief law officer and because you have these very specific powers with regard to the role of the state and how it deals with Canadians and Canadian businesses.

Ms. Iqra Khalid: To reiterate, you said that no matter what these discussions are, ultimately the decision is up to the prosecutor and to the Attorney General to make.

Mr. Michael Wernick: Certainly, in the case of the prosecutorial function....

I'll take a few seconds to say that I've worked very, very closely for three years, on almost a daily basis, with the current government, the current cabinet and the current Prime Minister's Office. In my observation and my experience, they have always, always conducted themselves to the highest standards of integrity. You may not like their politics or their policies or their tweets, but they have always been guided by trying to do the right thing, in their own view, the right way.

Ms. Iqra Khalid: Thank you.

Earlier, you spoke about remediation agreements as tools.

I'm hoping you can help us understand a little. There's a misconception out there that remediation agreements may be a way to get off scot-free. Can you clarify for us what exactly they are? How are they a tool?

I'll ask a follow-up question after that.

Mr. Michael Wernick: I think you had better witnesses just before me to explain the details.

My understanding of it is that a deferred prosecution agreement is exactly what it says, that the prosecutor defers going through to trial and conviction in exchange for an agreement. The agreement is binding. It has compliance tools. It is court supervised and it can be revoked. It's essentially an alternative sentence or an alternative punishment deal. Much like when individuals are charged with crimes, there are restorative justice options.

• (1255)

Ms. Iqra Khalid: Thank you.

Is it normal for the Prime Minister, for ministers, for the Attorney General to discuss the use of these types of tools in how they conduct their business?

Mr. Michael Wernick: The statute that created them only came into existence last year. It was debated in Parliament, and came into force in September 2018.

Ms. Iqra Khalid: Are there other standards in other countries?

Mr. Michael Wernick: Its potential use, which was advocated by this particular company, would be the first time. There was a lively discussion about whether this instrument should come to Canada or not. You'll hear from other witnesses on that. It is a real dilemma for governments: should the workers, pensioners, suppliers and communities pay the price for corporate crime?

In communicating with Canadians in the election campaign, I think each of your parties can be very clear with Canadians whether you think that tool should stay in the box, be repealed, be amended or be improved. It is an attempt to solve that dilemma that innocent people should not pay for the offences of corporate officers.

Ms. Iqra Khalid: Thank you.

Very briefly, I had asked Madam Drouin about the Shawcross standard and how far it goes in exerting pressure. Can I have your input on that as well? Is it a subjective or objective standard, and how far does it go?

Mr. Michael Wernick: I think that any communication or conversation, whether it's verbal, text message, email, can be subject to interpretation as to its purpose, its intent, whether there was subtext, whatever. I'm not sure it's ever entirely objective. You can read the same transcript and attribute motive or intent or purpose or whatever.

I predict that the former attorney general will express concern to this committee about three events. The first is the meeting with the Prime Minister, which I am happy to describe in detail because I was there for the entire meeting. The second is a conversation between the Prime Minister's Office staff and her former chief of staff on December 18 when she was Minister of Justice. The third is a conversation I had with her in the afternoon of December 19.

How she interprets or perceives those conversations, she can tell you next week. I can tell you my view very firmly is that they were entirely appropriate, lawful, legal. I'm prepared to submit to the judgment of the Ethics Commissioner on that.

Ms. Iqra Khalid: Thank you very much.

The Chair: Thank you very much.

That brings me to Mr. Cooper. I'm sure he has some questions.

Mr. Michael Cooper: Thank you, Mr. Chair.

Thank you, Mr. Wernick.

We have the letter of December 6, 2018, where the Prime Minister replied to Mr. Bruce, the CEO of SNC-Lavalin.

Would you also be able to table the letter of October 15, 2018, from Mr. Bruce to the Prime Minister?

Mr. Michael Wernick: I am pretty sure I can retrieve it from the correspondence.

Mr. Michael Cooper: Thank you very much.

I want to ask about the meeting with the Prime Minister. Can you elaborate on that?

Mr. Michael Wernick: Can I take the committee back to September. The meeting was on September 17.

I'll let you in on a secret. I'm trying not to be facetious here. The priorities of the government and the Prime Minister in September were NAFTA, NAFTA, NAFTA and NAFTA. It was an all-consuming issue for the Prime Minister and his senior staff. Mr. Butts and Ms. Telford were completely consumed in NAFTA negotiations, which concluded successfully on September 30, and were not available for a lot of the normal business.

I took it upon myself with other people in the Prime Minister's Office to keep the rest of government files moving so in the end the government would not seize up. One of those files was reconciliation with indigenous people.

Mr. Michael Cooper: No. I just want to get to the September 17th meeting between Jody Wilson-Raybould and the Prime Minister.

Mr. Michael Wernick: Yes, and I will. The purpose of the meeting, and 90% plus of the conversation, was the recognition of rights framework.

Mr. Michael Cooper: No. I want it in respect to the SNC-Lavalin matter. I don't care about the rest of it. I want to know about the SNC-Lavalin matter.

Mr. Michael Wernick: Yes, and the Prime Minister's characterization of that conversation is entirely the one that I recall.

• (1300)

Mr. Michael Cooper: What is that? That it was her choice to make?

Mr. Michael Wernick: He indicated that it was entirely her call to make, that she was the decider. That is a message—

Mr. Michael Cooper: Okay, thank you.

Mr. Michael Wernick: That is a message that the Prime Minister conveyed to the minister in every situation that I am aware of when it came up,.

Mr. Michael Cooper: Even though, Mr. Wernick, the decision had already been made.

Then you met again with SNC-Lavalin officials the next day. Is that right?

Mr. Michael Wernick: I told them that—

Mr. Michael Cooper: —on September 18—

Mr. Michael Wernick: —I told them that the only—

Mr. Michael Cooper: —and at the meeting—

Mr. Michael Wernick: If you would let me finish...

I told the company the only route they had was through their lawyers and the court process.

Mr. Michael Cooper: Bill Morneau was at the meeting. Is that right?

Mr. Michael Wernick: At my meeting with the company? No.

Mr. Michael Cooper: On September 18, Bill Morneau was not present?

Mr. Michael Wernick: No. As I think I stated in answer to a previous question, I was there with one Privy Council officer, my deputy secretary of operations, and there were three people from the company.

Mr. Michael Cooper: Okay. Thank you for that.

You also said that you had many requests from SNC-Lavalin, that you met with them before in relation to this. You had?

Mr. Michael Wernick: I can go through the entire chronology of my contact with SNC, if you wish.

Mr. Michael Cooper: Go ahead.

Mr. Michael Wernick: I'm happy to table it.

Mr. Michael Cooper: Table it.

Mr. Michael Wernick: There were emails—

Mr. Michael Cooper: No, I've asked you to table it.

Mr. Michael Wernick: No, I want to get this on the record, if you don't mind.

The Chair: Please go ahead.

Mr. Michael Wernick: There were email requests for a meeting in May 2017, and I didn't take the meeting. There were email requests for a meeting in August 2017, and I didn't take the meeting. There were email requests for a meeting on September 18. That's the meeting I took, which is registered.

I ran into SNC executives at the NAC gala. I do remember the evening. Diana Ross was there. They had bought a table at the gala. As soon as I saw that they were there, my wife and I left the event, went home and missed a good dinner.

I had a request from—

Mr. Michael Cooper: No. My time is just going to be consumed—

Mr. Michael Wernick: No, I think it's important to get this on the record.

Mr. Michael Cooper: No. I think we can table it.

The Chair: Mr. Wernick, at the end of the meeting, I will give you a chance to put that into the record. Okay? We'll make sure that it's there.

Mr. Cooper, continue with your time.

Mr. Michael Cooper: At the meeting on September 17 between the Prime Minister and the former attorney general, did the former attorney general advise the Prime Minister of the director of public prosecution's September 4th decision not to enter into negotiations with SNC-Lavalin?

Mr. Michael Wernick: I think she advised the Prime Minister of her view that a deferred prosecution agreement was not a good course and she had no intention of intervening. And indeed, she never has intervened.

Mr. Michael Cooper: I asked you specifically if she raised the issue of that September 4th decision.

Mr. Michael Wernick: I don't recall that that came up. It was not that specific. This was a couple of minutes in a long meeting about the recognition of rights framework and an attempt to keep that agenda moving forward. You'll recall that the Prime Minister made a speech in Parliament on Valentine's Day last year stating that he wanted a rights recognition framework announced.

Mr. Michael Cooper: Okay.

Mr. Michael Wernick: We were in September. It was not moving forward. The meeting was called to move forward the rights recognition framework—

Mr. Michael Cooper: At what point—

Mr. Michael Wernick: —which was a matter before cabinet at the time.

Mr. Michael Cooper: Thank you. I understand that, Mr. Wernick.

At what point did you learn that the Prime Minister was going to fire Jody Wilson-Raybould, demote her—

Mr. Michael Wernick: The minister—

Mr. Michael Cooper: —remove her, take her out of the Attorney General....

Mr. Michael Wernick: The minister resigned.

The Chair: When did you know she would be shuffled?

That's the question from Mr. Cooper.

Mr. Michael Wernick: In January.

I met the minister on December 19. I also had lunch with the Prime Minister and a senior staff member on December 19, which was an end-of-session wrap-up. Oh my goodness, that was a heavy session. We had a long conversation about planning for January, and the Sherbrooke cabinet retreat, which took place around the 16th and 17th of January.

At that time, on December 19, there was no thought, talk or any intent to move any minister before the election. It was Minister Brison's walk in the snow that triggered the cabinet shuffle. It was Minister Brison's leaving, and wanting to leave quickly, that created the following problem for the Prime Minister. "I need a new President of the Treasury Board. I need a Nova Scotia minister. I need to maintain gender balance in my cabinet, and solve that problem with the fewest moves possible." Those discussions took place in the first week of January, when everybody returned to work.

The Chair: Thank you very much.

We'll now go to Mr. Fraser.

Mr. Colin Fraser: Thank you, Mr. Chair.

Mr. Wernick, thanks for being here today.

I want to go over the three meetings that you alluded to earlier in your comments. I want to be clear on the three meetings we're talking about, the nature of those meetings, and who was there and what was discussed.

The first meeting you mentioned was a meeting you were present at with the Prime Minister regarding discussions that are relevant to today's appearance. I'm wondering if you could tell us who was at that meeting.

• (1305)

Mr. Michael Wernick: The meeting was attended by the Prime Minister, the minister and me. It was called on the issue of the rights recognition framework and a very serious policy difference between Minister Wilson-Raybould, Minister Bennett and other colleagues about how to move forward. The Prime Minister was quite determined to unblock the file and get it going and he spoke to the minister about that issue. That was almost the entire conversation.

The matter did end up going to the new cabinet committee on reconciliation not long afterward. It went to full cabinet. There was a decision not to proceed with the rights recognition framework and to focus instead on the languages legislation and the child and family services legislation.

Mr. Colin Fraser: The second meeting you mentioned involved PMO staff. When did that meeting happen?

Mr. Michael Wernick: I believe the minister will tell you that there were some conversations between PMO staff and her chief of staff on December 18. I was not there and I'm not aware of the contents of that meeting.

Mr. Colin Fraser: The third meeting was the December 19 conversation that you had with Ms. Wilson-Raybould, I take it.

Mr. Michael Wernick: Yes. I initiated a call with her in the afternoon of December 19 to check in on the SNC-Lavalin file and other things in getting ready for January. I was calling her as the Minister of Justice.

I remember, in thinking about January and what issues were going to come back, we'd have to move out of the gate quickly because of the return of the House, and so on. There were a number of legal files and issues that were coming up. So I checked in with the Minister of Justice on the issue and where it was likely to go, and whether a deferred prosecution agreement was still an option.

I conveyed to her that a lot of her colleagues and the Prime Minister were quite anxious about what they were hearing and reading in the business press about the future of the company, the options that were being openly discussed in the business press about the company moving or closing.

I can tell you with complete assurance that my view of those conversations is that they were within the boundaries of what's lawful and appropriate. I was informing the minister of context. She may have another view of the conversation, but that's something the Ethics Commissioner could sort out.

Mr. Colin Fraser: In that conversation, were you assured, or did you have any reason to believe that any inappropriate pressure or direction had been given to Ms. Wilson-Raybould involving this case?

Mr. Michael Wernick: There was no inappropriate pressure put on the minister at any time.

Mr. Colin Fraser: And she never had indicated any concern about that to you?

Mr. Michael Wernick: This gives me the opportunity to point out two things.

If she felt, back in September, or October, or November, or December, or at any point that there was inappropriate pressure on her, she had recourse. She could have called the Ethics Commissioner at any time, any day. She could have contacted the Prime Minister at any time, any day.

The Prime Minister is available through the switchboard seven days a week, 24 hours a day, and is working seven days a week. The Prime Minister is interrupted all the time for calls with foreign leaders, security matters, heads-up.

All ministers have the option of reaching the Prime Minister. Give or take a little bit of scheduling and where he might be in private time, and so on, every minister of the cabinet can reach the Prime Minister. There are also several cabinet meetings where people are in the same room and have the opportunity to ask for a pull-aside or a conversation, or to ask, "Can we step out and talk about this?"

There were multiple, multiple, multiple occasions where the minister could have expressed concern to the Prime Minister, and every single day could have picked up the phone and called the Ethics Commissioner.

Mr. Colin Fraser: Is it your understanding that the Ethics Commissioner's current investigation into this matter will examine the discussions between the former attorney general and the Prime Minister and PMO staff?

Mr. Michael Wernick: That is the way his request for document production is framed. It's a request to the Prime Minister, which captures the Prime Minister's Office and the Prime Minister's department.

We immediately, as soon as that was initiated by the Ethics Commissioner, started the process of securing documents and ensuring that all the records would be available when the commissioner got around to asking for them or interviewing people.

• (1310)

Mr. Colin Fraser: Do you know where that stands right now?

Mr. Michael Wernick: I have not heard personally from the Ethics Commissioner. The last thing I'm going to do is interfere in the process. The process is set by the Ethics Commissioner at his own pace and of his own volition, and he will exercise it as he sees fit.

Mr. Colin Fraser: Okay. Thank you. Those are my questions.

The Chair: Thank you very much.

We will now go to Mr. Paul-Hus.

[*Translation*]

Mr. Pierre Paul-Hus: Thank you, Mr. Chair.

Good afternoon, Mr. Wernick.

As the Clerk of the Privy Council, you must know that on September 4, when the Public Prosecution Service advised SNC-Lavalin that they would not be granted a remediation agreement, was the Office of the Prime Minister informed?

[*English*]

Mr. Michael Wernick: I don't know.

[*Translation*]

Mr. Pierre Paul-Hus: Fine.

You don't know at what point the PMO was informed?

Mr. Michael Wernick: No. I don't know about all the communications with the Prime Minister's Office, but I can check with my department.

Mr. Pierre Paul-Hus: Mr. Chair, I would like to find out when the Prime Minister's Office was informed of the director of public prosecutions' decision.

Mr. Wernick, you are saying that, on September 17, the Prime Minister's Office summoned Ms. Wilson-Raybould to a meeting. You were present, and Ms. Wilson-Raybould was not pressured with regard to the SNC-Lavalin file. Is that indeed what you told us?

[*English*]

Mr. Michael Wernick: If she felt there was pressure in that conversation, she would have said something in the intervening three months.

[*Translation*]

Mr. Pierre Paul-Hus: On October 10, SNC-Lavalin issued a press release for shareholders saying that, for the time being, it had not been invited to have a remediation agreement. You are saying that, five days later, SNC-Lavalin wrote a letter to Prime Minister Trudeau.

I would like to get a copy of that letter, Mr. Chair.

Let's move on. Between the October 15 letter and December 5, no news came. On December 5, Mr. Butts met with Ms. Wilson-Raybould at Château Laurier. We don't know what was said at that meeting, of course.

Today, you are providing us with two letters dated December 6, the day after the meeting with Mr. Butts. In one of those letters, SNC-Lavalin is informed, in response to its letter of October 15, that it must work with Ms. Wilson-Raybould, who is the Attorney General.

So there was no communication between October 15 and December 6. Following the meeting of December 5 with Mr. Butts, a letter was sent to SNC-Lavalin and, at the same time, Prime Minister Trudeau wrote to Ms. Wilson-Raybould that he had received a letter on October 15 informing him that he must take care of the situation. All the correspondence was a follow-up to the meeting with Mr. Butts because, between October 15 and December 5, nothing happened. A meeting took place on December 5, and the next day, two letters were sent.

Can you confirm that, Mr. Wernick?

Mr. Michael Wernick: There is no connection between the two.

Mr. Pierre Paul-Hus: Okay. It's just chance.

Mr. Michael Wernick: Yes. My department's correspondence directorate received a letter from the company asking for a meeting. It took a long time to draft a response and get it signed. That's completely normal. That was in no way communication involving the PMO. It was routine correspondence.

Mr. Pierre Paul-Hus: In your opening remarks, you were very direct about your designed state of law. That is why the committee is meeting and the opposition is working hard here to shed light on what happened or may have happened.

You sometimes attend meetings with the Prime Minister, and sometimes you don't. You are not always at Prime Minister's meetings with his ministers.

Mr. Michael Wernick: Okay.

Mr. Pierre Paul-Hus: Is it possible that there was interference and you were not aware of it?

Mr. Michael Wernick: That's completely hypothetical.

Mr. Pierre Paul-Hus: Is it possible that there were discussions and interference and that you were unaware? You are not aware of everything that goes on in the offices at those meetings.

Mr. Michael Wernick: If there was another meeting or a conversation between the Prime Minister and the minister, the minister will be able to confirm it next week.

Mr. Pierre Paul-Hus: Great.

The Chair: Thank you very much.

Mr. Barrett, go ahead.

[*English*]

Mr. Michael Barrett: Mr. Clerk, you said that in your view, there's no solicitor-client privilege engaged. Who advised the Prime Minister that there was?

Mr. Michael Wernick: There wouldn't have been a formal legal opinion from the Privy Council Office. I don't know the answer to that.

Mr. Michael Barrett: Okay, so neither the PCO nor the Attorney General has given him any advice on it.

• (1315)

Mr. Michael Wernick: I think it was actually the former minister who was the first to say that there were matters of solicitor-client privilege, if you check the chronology.

Mr. Michael Barrett: Okay.

At any point has a memorandum to cabinet or a ministerial recommendation been brought forward to direct, instruct, encourage or otherwise influence the Attorney General to create the conditions under which SNC-Lavalin would receive a deferred prosecution agreement?

Mr. Michael Wernick: No.

Mr. Michael Barrett: As you may be aware, Mr. Cooper at this committee did request the production of documents, and that was not approved by the committee. What I would like to ask you now is whether you would be prepared to commit to provide all records in your possession on both personal and government devices.

The Chair: Mr. Barrett, I just need to advise you that, with matters discussed in camera, only matters that are adopted are public.

Mr. Randy Boissonnault: Was that not in camera?

The Chair: That's why.... I am the chair, and I am advising.

Mr. Michael Cooper: The motion was public.

The Chair: Again, you could have said that Mr. Cooper put a notice of motion saying that.

In any case, I'll let you finish your question and I'll let the witness answer, but just to point out for the future, that's—

Mr. Michael Barrett: Thank you, Mr. Chair.

Would you be prepared to commit to provide all records in your possession on both personal and government devices relating to the prosecution of SNC-Lavalin, any communication between the office of the Minister of Justice and Attorney General, Department of Justice, the Public Prosecution Service of Canada, the Prime Minister's Office and the Privy Council Office?

Mr. Michael Wernick: I would have to respectfully decline. Those requests have been made by the officer of Parliament who works for you, and I will comply fully with the request for production of documents from the Ethics Commissioner.

The Chair: Thank you very much.

Mr. Michael Barrett: Can committee members not request papers?

The Chair: Again, you can request them. He has declined that. The committee can have votes to ask for those documents if a motion is properly put. Again, we're now—

Mr. Michael Barrett: I think that response speaks for itself.

The Chair: We've now exhausted those questions, and we're going to move to Mr. Rankin.

[*Translation*]

Mr. Murray Rankin: Can you confirm that Mr. Fortin will have an opportunity—

The Chair: We will ask that after you have used up your time because I don't want you to lose it. That is a question that should be answered by the committee, and not by me.

Mr. Murray Rankin: If it is necessary to do so, I am against it.

[*English*]

The Chair: Stop Mr. Rankin's time.

Is the committee in agreement to give Mr. Fortin three minutes again for this witness?

Some hon. members: Agreed.

The Chair: Mr. Rankin, you have three minutes.

[*Translation*]

Mr. Murray Rankin: Thank you.

[*English*]

Mr. Clerk, you said—and I quote you in answer to a question from a Liberal—that there was “no inappropriate pressure put on the minister at any time”. However, you did acknowledge that her experience might not have been what you experienced in a particular meeting or others.

As well, you surely must acknowledge that she could have had meetings with ministers out of your earshot at a different time and a different place, and indeed with the Prime Minister, and perhaps with people in the Prime Minister's Office, who she might have felt inappropriately pressured her. Therefore, to say that she had no inappropriate pressure at any time is really a conclusion you're not able to draw.

Mr. Michael Wernick: It is my conclusion and my assertion, based on all the information I have, that there was no inappropriate pressure on the Minister of Justice in this matter.

Mr. Murray Rankin: You just acknowledged, though, that you can't speak to her experience. She is anxious to speak her truth. She's told us, as Canadians, that she wants to do so. As well, doctrines like solicitor-client privilege have been invoked, which, with great respect, you have indicated may not even apply here. I think we need to hear from her, rather than, with great respect, you telling her what you think she experienced.

Mr. Michael Wernick: Well, I think the matter may come down to the Ethics Commissioner's view on a conversation between two people and between what was sent and what was received. I think the Ethics Commissioner is the appropriate person to decide what was undue and what was inappropriate.

Mr. Murray Rankin: If she never got directed, she certainly got fired. Those are the facts.

Oh, I'm sorry. I mean she got removed.

Those are the facts, so how can you not acknowledge that she might have felt a tad of pressure in those circumstances?

Mr. Michael Wernick: During the time she was minister of justice, she did not exercise the option of a deferred prosecution agreement. And she was not fired. She was offered another position in cabinet, because the shuffle came up in early January, and she accepted it. There were conversations between the Prime Minister and the minister over the course of that week. I believe the dates would be something like January 6 and 7. I'm not party to those. Those are between the Prime Minister and the former minister.

She had every opportunity in those conversations to indicate that she had felt any pressure. She could have at any time after my conversation of December 19 picked up the phone and called the Ethics Commissioner or the Prime Minister. She had conversations with the Prime Minister about accepting a new responsibility in cabinet, which I frankly don't see as a demotion. It was another—

• (1320)

Mr. Murray Rankin: I didn't use that word. I said "removed". She was fired from her role as attorney general—

Mr. Michael Wernick: She was offered another—

Mr. Murray Rankin: She was removed from that role, and then she took another position and then she quit the cabinet. Those are the facts.

Mr. Michael Wernick: Well, my view on it is.... The fact is that she was offered another seat at the table in cabinet, which is a privilege that 1% of 1% of 1% of Canadians have.

Mr. Murray Rankin: Maybe she didn't feel that way.

Mr. Michael Wernick: Then she could have declined the offer of the seat.

Mr. Murray Rankin: And she did, subsequently.

The Chair: We're at three minutes.

Monsieur Fortin.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Mr. Chair.

Mr. Wernick, can you tell me whether, prior to your testimony this morning, you discussed with one of the members of this committee the content of your testimony?

Mr. Michael Wernick: No.

Mr. Rhéal Fortin: None of us, ever, had discussed your testimony with you before you sat down in this chair?

Mr. Michael Wernick: No, aside from a joke at the café, absolutely not.

Mr. Rhéal Fortin: Okay.

Mr. Michael Wernick: I have not discussed my testimony with anyone, with the exception of a lawyer from the Department of Justice.

Mr. Rhéal Fortin: Okay.

Do you know why the former Minister of Justice was transferred to the Department of Veterans Affairs?

[*English*]

Mr. Michael Wernick: That will get into the logic of a cabinet shuffle.

I don't think this is a big secret. The resignation of Scott Brison created a vacancy at Treasury Board. The problem that was presented to the Prime Minister was to replace the President of the Treasury Board, maintain a Nova Scotia person in cabinet and maintain gender balance. Those were the deliberations that took place in the first week of January.

[*Translation*]

Mr. Rhéal Fortin: Thank you.

Have you had discussions with Ms. Wilson-Raybould after she was transferred to the Department of Veterans Affairs? Have you talked to her about her transfer?

Mr. Michael Wernick: I was at the swearing-in ceremony. I am in the swearing-in photograph. That was not raised then. She attended the ministerial retreat in Sherbrooke for three days. She did not raise the issue with me or with the Prime Minister.

Mr. Rhéal Fortin: That has not been done in any circumstances following her transfer?

Mr. Michael Wernick: She participated in other meetings of the cabinet and did not raise the issue with me or—

Mr. Rhéal Fortin: So you have had no conversations with her on the issue?

Mr. Michael Wernick: No.

Mr. Rhéal Fortin: You are very close to her. Earlier, you told us that you held a position for eight years where you were close to her, before she became Minister of Justice. I don't remember which position exactly you held then.

Mr. Michael Wernick: Yes, I have known her for about 13 years.

Mr. Rhéal Fortin: And under no circumstances, after her transfer, has she talked to you about it?

Mr. Michael Wernick: Talked about what?

Mr. Rhéal Fortin: About her transfer from the position of Attorney General and Minister of Justice to that of Minister of Veterans Affairs.

Mr. Michael Wernick: No. I think the only communication she has had was the letter she sent to her former employees from the Department of Justice.

Mr. Rhéal Fortin: Okay.

I have one last question, Mr. Wernick.

Were you aware of any discussions between the Prime Minister's Office and the Government of Quebec concerning potential remediation agreements that could interfere in the SNC-Lavalin file?

Mr. Michael Wernick: No, I have had no knowledge of such.

Mr. Rhéal Fortin: To your knowledge, there have never been any discussions between the Prime Minister's Office and the Premier of Quebec's representatives on that issue.

Mr. Michael Wernick: I don't know. I have no knowledge of conversations between federal political advisors and those of other governments.

The Chair: Your time is up, Mr. Fortin. Thank you very much.
[*English*]

Mr. Wernick, thank you very much again for your 37 years of service to Canadians.

Hon. Lisa Raitt: I have a point of order.

Thank you very much, Mr. Chair.

I know that at the beginning Mr. Wernick was very generous in indicating that he'd be happy to stay here as long as we needed in order to get to the bottom of matters. Obviously, we have more questions on the opposition side, and I'd like to move that we invite Mr. Wernick to stay for another hour with us.

Mr. Murray Rankin: I second the motion.

The Chair: One second please.

It's 1:25 p.m.

Hon. Lisa Raitt: Perhaps we could have an hour so that we can all get our rounds in again. That was the time that I picked.

The Chair: It's just that we'll be going into question period.

Is the motion debatable?

The Clerk: Yes.

The Chair: This is a debatable motion.

Hon. Lisa Raitt: Okay.

The Chair: I just want to know if it's your intention to go to 2:25 p.m. It's 1:25 now.

Hon. Lisa Raitt: Let's see how the conversation goes. If there's a negotiation on going to 2:15, I'd be willing to talk about 2:15.

• (1325)

The Chair: I understand.

Mr. Fraser.

Mr. Colin Fraser: Obviously, a motion was passed for the witness list that included a motion regarding how the witness testimony would go. It was to be for one hour. It's been understood that it would be with two rounds of questions. That time has been exhausted. I believe that's consistent with other motions that have been brought forward, and so I think that is the end of the meeting.

Thank you.

The Chair: There is a motion, so you have to defeat the motion.

Is there any other discussion on that motion?

Hon. Lisa Raitt: Call the question.

Mr. Michael Barrett: Mr. Chair, can we have a recorded vote?

The Chair: Of course.

Mr. Randy Boissonnault: On a point of order, is it possible to call a vote on a point of order?

The Chair: Is it possible to call a point of order—

Mr. Randy Boissonnault: The motion was moved on a point of order. Is that possible?

The Chair: I agree. You cannot normally move a motion on a point of order, but she did have the floor, and she could have put forward the motion without saying "point of order" when I recognized her.

Either way, it's fine to have the motion, because it would have come forward at any point. If she hadn't said "point of order", I still would have recognized Ms. Raitt out of courtesy.

That being said, let's call the vote.

Mr. Randy Boissonnault: Could we suspend, Mr. Chair, for five minutes?

The Chair: Sure, of course. If there's a conversation to be had, let's suspend before the vote.

• (1325)

(Pause)

• (1325)

The Chair: Folks, I'm sorry, I didn't give you your one minute this time.

[*Translation*]

We will start over. There is an agreement between the parties to start another 24-minute round divided as follows: six minutes for the Conservatives, six minutes for the Liberals, six minutes for the New Democrats and six minutes for the Liberals.

[*English*]

We're going to go back and do a normal first round of six minutes on each side four times, and I think that's an agreement, so we'll just agree that the motion is amended for that, and that there's unanimous consent to do that.

Thank you, everybody, for your co-operation.

This is, for you folks, the normal collegiality we have at the justice committee on most matters.

This is a six-minute round. The Conservatives start, so who is going?

Ms. Raitt.

Hon. Lisa Raitt: Mr. Wernick, at the beginning in one of our segments of questioning, you indicated that you had a chronology. I'd be very interested in hearing your chronology and having it in the record. I know we said we would give you an opportunity to do so.

For me, the most interesting pieces you've given us information on today are those three meetings that my friend from across the way asked you about earlier, but you can put it in context for us starting from around the middle of the summer of 2018, either conversations you had with the Prime Minister, Ms. Wilson-Raybould or conversations you had with SNC-Lavalin. Could you give us a chronology in the best way you can? That would be extremely helpful.

•(1330)

Mr. Michael Wernick: One piece that might be relevant to you is where deferred prosecution agreements came from. They don't come into Canadian law through immaculate conception. They come as government bills, because there was a cabinet discussion—

Hon. Lisa Raitt: Yes, we got that.

Mr. Michael Wernick: There was a cabinet discussion in the spring. I would have the dates. Amendments aren't made to the Criminal Code by any minister other than the Minister of Justice, so the former minister of Justice and the minister responsible for procurement obviously were the ones who proposed the DPAs and sponsored the legislation, and that is a conversation in which SNC would have come up as background and context for the kind of companies and offences for which DPAs were relevant.

Hon. Lisa Raitt: Okay.

Mr. Michael Wernick: There was never, never, never a cabinet conversation about the prosecution.

Hon. Lisa Raitt: Right.

Mr. Michael Wernick: Is that okay? I hope that's helpful.

Hon. Lisa Raitt: Yes.

Mr. Michael Wernick: I do want to clarify, because I'm worried about reputations. I'm going to be very clear, at the risk of opening the cloak a little bit, that when the former minister addressed cabinet earlier this week, the current Attorney General left the room, saw right away the need to recuse, left the room, and was not present for that discussion.

Hon. Lisa Raitt: That's very helpful.

Mr. Michael Wernick: That doesn't mean I'm going to tell you the whole conversation inside the room. I just think it's important to know.

Hon. Lisa Raitt: No, I don't want to know. Actually, that is important to me to know.

Mr. Michael Wernick: Canadians need to know that the current Attorney General left the room for that conversation to relieve himself of any responsibility of what to do with that information.

Hon. Lisa Raitt: Right.

Mr. Michael Wernick: I'm trying to reconstruct....

The summer was all NAFTA, NAFTA, NAFTA. There was a cabinet retreat at the end of the summer in Nanaimo. I remember the smoke from the fires, as I'm sure you do—and I'm not trying to be facetious. There was a lot being prepared for the fall session and a lot of balls in the air. I did not discuss the SNC matter with anyone that I can recall, frankly. It was in the hands of the prosecution service and the Department of Justice.

Once there was a parliamentary process under way, by that time I think the budget implementation bill had passed the House—rather rapidly if you remember—but it was before the Senate, and there were Senate hearings. I probably have transcripts or summaries of the discussion of the bill because I get them for most bills. I track the progress, as does my office, of legislation that moves through the two chambers of Parliament.

The preoccupation where I would have had any interaction with the former minister was around the rights recognition framework, the indigenous agenda. There's a different story arc there that I'll try to reconstruct. The Prime Minister is unwavering and relentless in his commitment to moving forward indigenous reconciliation, and very impatient, as prime ministers are, to get things done and get things moving. He was concerned that we were losing momentum and traction heading into the last year of the mandate on the rights recognition framework. He was aware, because he'd been briefed, both by the Privy Council Office and his political staff, that there was something of a policy standoff among his ministers. There were different views on a very significant thing, and we were trying to find a way.... Essentially, I'd call it a form of conciliation or mediation to bring people together. You have some experience in the matter. Ministers can have very different views, quite legitimately, about how best to proceed, and cabinet's there to sort these out.

Given that there was so much time being sucked into the NAFTA thing, I was asked to step in and play a bit of a role in bringing together the different views. I do want to say on the record for Canadians that I am deeply hurt on behalf of Minister Bennett that her reputation had been trolled over the last little while. There are vile things being said in social media about her in the wake of Minister Wilson-Raybould's resignation. I worked in the area for most of my career. I want to say on the record there is no Canadian who has worked harder on indigenous reconciliation than the Honourable Carolyn Bennett, and she deserves better from the social media trolls.

There was a legitimate argument within cabinet about how to move forward on the rights recognition framework, and there were discussions that would have taken place on the right approach to child and family services legislation, which I truly hope you're going to see soon in Parliament, the languages legislation and other indigenous matters. Minister Wilson-Raybould played a very particular role in cabinet. She did not ever want to be one of the indigenous affairs ministers. She made that very clear. She did not want to be the indigenous services minister, or the CIRNA minister and be seen as the Indian agent for her own people. She's made that clear in public.

As Minister of Justice—

•(1335)

The Chair: I need to say that we're at six minutes already. I will give you another minute to try to wrap up your answer to Ms. Raitt's question.

Mr. Michael Wernick: I will wrap it up quickly.

She was deeply involved as minister of Justice, because these were matters of law on how the rights framework and all of the indigenous things.... And, of course, she had enormous power and influence because of her background and where she came from.

We had a—

Hon. Lisa Raitt: That's the meeting on the 17th.

Mr. Michael Wernick: The purpose of the meeting, why it was called, was the Prime Minister wanted to get momentum and traction back on the indigenous agenda.

The Chair: Thank you very much.

Mr. Boissonnault.

Mr. Randy Boissonnault: Thank you very much, Chair.

Thank you, Mr. Wernick, for your offer to spend more time with us today.

I know you to be a direct man, and I was struck by your opening remarks. I share some of your fears about interference in the political process and about the state of democracy. I'm wondering if you could elaborate a little more on how strong governance can help mitigate against some of the fears you mentioned in your opening statement.

Mr. Michael Wernick: That's a big topic and I don't want to run out the clock on it. I have spoken about matters of Canadian governance probably 20, 30 or 40 times, and all of those speeches are on my website. For those watching, it's clerk.gc.ca. I've talked a lot about governance in Canada.

I do think it's important that Canadians—the 36 million Canadians—understand that this is a precious thing, and I've said this publicly. When we see what's happening in London, in Washington, in Paris, in Rome, in other democracies, never mind other countries that I will not name that are clearly more authoritarian, we should take comfort that we have independent police and prosecutorial services, that we have courts, that we have officers of Parliament assisting the people who are elected in free and fair elections to guide the country. It's a precious gift and it is under threat around the world. I don't take it for granted in Canada.

There are many ways we could pursue that conversation. The one that's relevant to this committee, and I know that you want to be on the justice committee because you share these concerns about the rule of law in Canada, is the independence of the prosecution service as one of the cornerstones of that.

Mr. Randy Boissonnault: I'm glad you mentioned that.

One thing you mentioned in one of your responses was the safeguards we have in place. You mentioned the Public Service Commission of Canada, the Parliamentary Budget Officer, access to information, open government. Could you share with us, with Canadians, some of the other safeguards? You mentioned a list of some 14 or 16. What are some other examples?

Mr. Michael Wernick: Without watchdogs and transparency and a vigorous Parliament holding the executive to account, you're at risk.... I'll try to keep this short.

I occupy a position that has existed for almost 800 years: the King's councillors and advisers. That is exactly what the Privy Council oath is, to be a true and faithful adviser to Her Majesty. Some of you got to take that oath and some of you aspire to. It's important. Those are the 30 to 40 men and women who get to take decisions as a group in cabinet. It's everything that's wrapped around that, and their accountability to the legislature, that's the basic Westminster software of the country. It's not a book club thing. It's not theory. It's fundamental to how we govern ourselves as a free and democratic people. There are very many topics in there.

I think it's important when you get these episodes of high-octane politics—and they do happen and they're legitimate. I want to be

very clear, partisan politics in a democracy is entirely appropriate; you should go at each other, hammer and tongs, to convince Canadians to send you back here. But when that debate starts to cause Canadians to lose faith in their institutions, I worry that we're on the slippery slope to what we see south of the border.

Mr. Randy Boissonnault: You mentioned the United Kingdom. If I have time later, maybe I'll ask you the question about the safeguards we have that the United Kingdom doesn't have, and how that may be causing things to play out there.

You mentioned the King's council, you mentioned the 800 years of history, you mentioned the impartial nature of the Privy Council Office. Can you share with us and with Canadians what structures, governance, safeguards are in place to make sure that the Privy Council Office is impartial and independent?

• (1340)

Mr. Michael Wernick: I commend anybody who's really interested in the topic to “Open and Accountable Government”, which is on the website, by the way. This is an old, analog paper copy of it, digital document. I just like to have it with me.

I wear three hats. Minister Lametti wears two; I wear three.

Mr. Randy Boissonnault: And they are?

Mr. Michael Wernick: One is I am the deputy minister to the Prime Minister. I run a department of 900 souls who support the functions of the Prime Minister, and you're familiar with many of them, to make sure that all the jobs the Prime Minister has, and he probably has six or seven hats, are well supported. I'm a deputy minister, like any deputy minister.

I also am the secretary to cabinet, and that's the role you would have seen in any Tudor-era movie of somebody taking notes while the King's council met. Part of that is to support and record the business of cabinet and to protect the confidence of those conversations. Cabinet only works when those conversations are kept confidential. Cabinet confidence is a really important thing. Otherwise, those men and women would not feel free to express themselves, to argue, to disagree, and you would not get the best possible outcomes for Canadians. I am, institutionally, the guardian of cabinet confidence. I get to rule on disclosure of documents. I protect the confidences of all previous governments, so that you don't demand, with your majority on the committee, the discussions that took place in the Harper government, and the Harper government didn't demand all the discussions of the Martin government, and so on.

Mr. Randy Boissonnault: Right.

Mr. Michael Wernick: You know you can speak freely in the cabinet room because it goes in the vault—literally, in the vault—of confidences.

There are situations where they should be disclosed. I know that some of you followed the Norman trial very closely. I made a decision, of my own volition, with my own authority, that the easiest way to deal with the Norman matter was to let the judge decide what was relevant. I did that last October. That is an exception and an anomaly, but that's an example of our role.

I have a very statutory role under the Evidence Act with regard to cabinet confidence.

Mr. Randy Boissonnault: Thank you very much. I suspect you'll see the website traffic tick up today.

The Chair: More people are interested in PCO than ever before.

Mr. Rankin.

Mr. Murray Rankin: Thank you, Mr. Wernick, for referring to what you called, I think properly, the “precious gift” of an independent prosecutorial service.

We had a final decision by that prosecutorial service. That was on September 4, and then, on September 17, at a meeting that you told us was primarily about indigenous issues, the Prime Minister and the minister talked about SNC-Lavalin. On December 5, there was a meeting with Gerry Butts and the former attorney general as well. That we know.

Now, during that period, there were literally dozens of meetings—you've told us about some of them—that SNC-Lavalin had with people in the Prime Minister's Office and the like. My question is this. With all of that repeated lobbying of the Prime Minister's senior staff, its only purpose could have been to go over the Attorney General's head and influence the decision that she previously refused to make, that the company had asked her to make.

This is what Andrew Roman, a prominent Toronto lawyer, concluded:

There was no valid reason for either the Prime Minister or his senior staff to have initiated such a conversation with Jody Wilson-Raybould. The only reason for either of them to discuss her prosecutorial decision would be to encourage her to change it, without being seen to do so. This is damaging to the rule of law.

What do you say?

Mr. Michael Wernick: I don't agree with that. I don't agree with the premise or the conclusion.

Mr. Murray Rankin: Can you elaborate why?

Mr. Michael Wernick: Because there are appropriate conversations to have with the Attorney General in this kind of matter, and that is exactly the Shawcross line, and I think you will have to come to a view as to whether the Shawcross line was crossed or not.

Mr. Murray Rankin: I personally agree entirely with your conclusion; that is, there is a line and it's inappropriate to direct, we've heard, and that's why we first had the Prime Minister using that very careful lawyer's language.

It's also inappropriate to pressure. You've said that you didn't think there was any pressure. It would appear to most people that our former attorney general certainly felt that pressure coming from someone, and it may not have been the Prime Minister but it could have been.... Often people get others to do that, and that could properly have been people in the PMO with whom SNC-Lavalin met dozens of times. Don't the dots connect or at least can't we reasonably infer that they connect in that fashion?

• (1345)

Mr. Michael Wernick: The question that I think you're going to have to come to a view with, as will the Ethics Commissioner, is inappropriate pressure.

Mr. Murray Rankin: Right.

Mr. Michael Wernick: There's pressure to get it right on every decision: to approve, to not approve, to act, to not act. I am quite sure

the minister felt pressure to get it right. Part of my conversation with her on December 19 was conveying context that there were a lot of people worried about what would happen—the consequences not for her, the consequences for the workers and the communities and the suppliers.

Mr. Murray Rankin: Why would she have said in her letter to Canadians, this unprecedented letter when she was removed as Attorney General, that there's a need to have an independent Attorney General function and then make similar comments in just this last couple of days? How can I but infer that she must have felt that pressure, inappropriate pressure, over-the-line Shawcross principle pressure? How can we infer anything else from that?

Mr. Michael Wernick: I think you should ask her directly.

Mr. Murray Rankin: We intend to if we're allowed to have her speak her truth, and after hearing the Attorney General today, we're not yet confident that's going to be allowed.

Mr. Michael Wernick: It will be up to the minister how she chooses to respond to your questions.

Mr. Murray Rankin: Subject, she says, to solicitor-client privilege, which you've said may not even apply.

Mr. Michael Wernick: As she sees it.

Mr. Murray Rankin: As she sees it.

Mr. Michael Wernick: Yes.

Mr. Murray Rankin: If she's allowed to speak.

Mr. Michael Wernick: It's not a question of being allowed to speak or waiving any confidences. She can come here next week and answer your questions with her sense of where to draw the line on the answers.

The Chair: Thank you, Mr. Rankin.

Mr. Fraser.

Mr. Colin Fraser: Thank you, Mr. Chair.

Earlier—I believe it was in your opening statement, or it may have been in an answer to one of the questions—you talked about the positive and I believe you used the word “ethical” dealings that you've had with the current government, Prime Minister and officials. How did you come to that conclusion and could you tell us how it may relate to why we're here today?

Mr. Michael Wernick: Close observation—and I've spent a lot of time with them every day for three years—and a lot of interactions. I run the Prime Minister's department. I deal with the Prime Minister's political staff virtually every day, and I have done for three years. I know a lot of them. I spend a lot of time with them. I've travelled with them. I've met with them. They've become the environment.

I'm not making a partisan comment, because I worked with the Harper PMO, the Martin PMO and the Chrétien PMO. I think Canadians should feel comforted that the people that come in and make enormous sacrifices to be political staffers and enter political offices are always trying to do the right thing, the right way. There are exceptions. We all know the exceptions. But they get caught. They get caught in Canada.

Mr. Colin Fraser: Just switching gears a little bit, earlier in your testimony you indicated that the work of the Ethics Commissioner and his ongoing investigation should be respected and, obviously, allowed to get its work done. Some have come to the conclusion that only a public inquiry in this matter would actually get to the facts of what happened. I'm wondering what your comment about a public inquiry would be.

Mr. Michael Wernick: That's ultimately for other people to decide. My advice would be, I don't see how it's an upgrade. You have an officer of Parliament with superior court powers. You have a methodology. You have a track record. You have the training. There's not the slightest possibility of partiality or bias. It's the instrument you chose to create, as an officer of Parliament, to deal with ethics issues. In its simplest version, why do you need another instrument?

Mr. Colin Fraser: In your view, will it get to the essential questions that are being asked in this matter?

Mr. Michael Wernick: I've watched public inquiries. We all have over the last while. They have the utility. They absolutely have the utility. But they, well, Gomery.... There are many, right? PCO actually provides the funding and the administrative support for inquiries. They have a particular character. They get lawyered up. They're adversarial. They're not always the right way to get to the bottom of something.

This is a relatively simple matter in its essence. If you strip away all of the hyperbole and the rhetoric, it's about whether a minister felt inappropriate pressure, and that can be traced to the specific conversations and meetings, and I think the Ethics Commissioner could get to the bottom of this fairly quickly.

Mr. Colin Fraser: Thanks, Mr. Wernick.

The Chair: Mr. McKinnon, there are three minutes left. Do you want them?

• (1350)

Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.): Yes. I have just a quick question.

My opposition colleagues across the way have expressed considerable concern that once the DPP decision was made on September 4, any further address to the AG in that matter was in and of itself inappropriate. I'd like your comments on that. In the context, as I understand it, the DPP act itself provides for that kind of follow-up and that kind of override.

My second question pertains to lobbying efforts by SNC-Lavalin, which you indicated earlier were perfectly lawful and not untoward at all. I'm wondering if you could further address that as well.

Mr. Michael Wernick: Maybe the second point. I think that it's not a small thing, but all the contexts between the company and various people were disclosed. It means that the basic structures of the Lobbying Act, which were brought in in response to other issues years ago, seem to be working. You can reach your own conclusions about that, and laws can always be improved, but the basic structures of the Lobbying Act in terms of transparency seem to be working.

I'm going to get somebody in the company in trouble, but what Canadians need to know is that despite a massive government relations effort—meetings with MPs, staffers, leaders of the opposition, repeat advertising, pressure put through two premiers of Quebec—they didn't get what they wanted. If it's a movie, it's a flop.

The Chair: Mr. Wernick, we still have one minute left for Mr. McKinnon's first question on whether it was inappropriate to have any discussions following that first date of September 4 or when the PMO became aware.

Mr. Michael Wernick: That's a question that I think probably requires legal advice from the clerk, the law clerks, or from experts. My interpretation of it, and the basis on which I have conducted all of the conversations, is that it wouldn't be. The same basic principles and rules would apply even after that point, because the minister always had and even still has the option of invoking those powers. It's the same Shawcross frame whether you're early in the process, late in the process or even today.

The Chair: Thank you so much.

Colleagues, that exhausts the round of questions.

I want to thank you, Mr. Wernick, for your service to Canadians and thank you for all you did. I think your testimony helped us a great deal.

The meeting is adjourned.

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