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Chair: Mr. John Brassard



Standing Committee on Access to Information, Privacy and Ethics

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• (1105)

[English]

The Chair (Mr. John Brassard (Barrie—Innisfil, CPC)):
Good morning, everyone.

[Translation]

I call this meeting to order.

Welcome to meeting number 105 of the House of Commons Standing Committee on Access to Information, Privacy and Ethics.

Pursuant to Standing Order 108(3)(h) and the motion adopted by the committee on Monday, October 30, 2023, the committee is commencing its study of the decision of the Royal Canadian Mounted Police to not pursue a criminal investigation in relation to the SNC-Lavalin affair.

Today's meeting is taking place in a hybrid format, pursuant to the Standing Orders. Members are attending in person in the room and remotely using the Zoom application.

[English]

I would like to remind everyone, as I always do, that the earpieces could cause feedback and potential injury to our interpreters, so please make sure they are away from the microphone.

I'd now like to welcome our witnesses for today. From the Royal Canadian Mounted Police, we have Michael Duheme, who is the commissioner. Sir, welcome to committee. We also have Frédéric Pincince, who is a staff sergeant, sensitive and international investigations, federal policing, Ontario division.

Before we start with your opening statement, Mr. Duheme, I just want to say that we have two hours of the Royal Canadian Mounted Police being here today. As is customary practice, I'm going to seek unanimous consent to reset the clock on the top of the hour to give the Bloc and the NDP the opportunity for another six minutes.

Do I have unanimous consent on the part of the committee to do that?

Some hon. members: Agreed.

The Chair: Thank you.

Mr. Duheme, you have up to five minutes to address the committee. Please start, sir.

Commissioner Michael Duheme (Commissioner, Royal Canadian Mounted Police): Thank you, Mr. Chair.

Good afternoon, honourable members of the committee. It's nice to be back. Thank you for the opportunity to speak to you today.

I'm joined here by acting officer in charge, Staff Sergeant Frédéric Pincince, from the RCMP federal policing, sensitive and international investigations.

[Translation]

First, I would like to take a moment to speak about the RCMP's Federal Policing role. Federal Policing has a multi-faceted mandate with authorities under more than 250 federal statutes and Acts of Parliament. We enforce federal laws, investigate criminal activity related to national security, transnational and serious organized crime, financial crime and corruption. Also, we secure Canada's borders, and ensure the safety of critical infrastructure, internationally protected persons, other designated persons, and democratic institutions.

Federal Policing's Sensitive and International Investigations Section (SII) has the mandate to investigate sensitive, high-risk matters that cause significant threats to Canada's political, economic and social integrity both across Canada and internationally. This includes allegations of fraud, financial crimes, corruption and breach of trust made against elected officials, senators or executives of the federal government.

[English]

Following media reporting of the allegations of political interference in February 2019, the RCMP began monitoring the matter to determine if a criminal investigation was warranted. As the committee is aware, the former attorney general made public statements about the alleged political interference before the House of Commons Standing Committee on Justice and Human Rights and was authorized to do so by an order in council.

[Translation]

As part of its assessment, the RCMP spoke with and collected information from a variety of sources and has examined the matter in a thorough, objective and professional manner. Furthermore, in its assessment, the RCMP reviewed and assessed the relevant testimonies before the House of Commons Standing Committee on Justice and Human Rights and reviewed publicly available documents providing additional context on the matter. This included the report from the Honourable Anne McLellan, entitled "Review of the Roles of the Minister of Justice and Attorney General of Canada" and the "Trudeau II Report" released by the Office of the Conflict of Interest and Ethics Commissioner.

This review was followed by interviews with key witnesses, some of which were from the Office of the Minister of Justice and Attorney General, including the former Attorney General, and a review of disclosed documents.

[English]

In order to conduct these interviews, the RCMP was subject to the same parameters that had applied to the former attorney general's testimony before the House of Commons—an order in council that waived solicitor-client privilege and any other relevant duty of confidentiality to the Government of Canada, relating to the exercise of the authority of the Attorney General respecting the prosecution of SNC-Lavalin.

Based on all of the information gathered and reviewed by the RCMP, it was determined that there was insufficient evidence to substantiate a criminal offence, and insufficient evidence to support taking further investigative steps. An additional consideration in the RCMP's decision was the impact of the continuing privileges and the limited scope of the waiver of these privileges. These would have a significant impact on the ability to gather evidence and prosecute charges. That said, notwithstanding the privilege barriers, the RCMP assessed there was insufficient evidence to proceed.

[Translation]

Thank you for the opportunity to appear before you today. I welcome any questions you might have.

The Chair: Thank you, Mr. Duheme.

We'll now begin the first round of questions.

[English]

Mr. Brock, you have six minutes.

Go ahead, please.

Mr. Larry Brock (Brantford—Brant, CPC): Thank you, Mr. Chair.

Good morning, Commissioner. Good morning, Sergeant.

Thank you for your attendance. I hope that your attendance today is fulsome and that we get through the full committee without receiving a notice of motion to adjourn.

At the heart of the SNC-Lavalin scandal, there were a number of players within the PMO, the PCO and the Ministry of Finance. However, the principal person of interest in the SNC scandal was, at all material times, the Prime Minister, Justin Trudeau.

Commissioner, the scandal is now over five years old. When did the RCMP interview Justin Trudeau?

• (1110)

Commr Michael Duheme: I'll let Mr. Pincince discuss the interviews.

It is five years old. The matter was brought to our attention in 2019 and officially concluded in January 2023. We notified Ms. Wilson-Raybould as well as Mr. Scheer, who had written a letter to Commissioner Lucki at the time.

Mr. Larry Brock: Thank you, Commissioner.

The question was very specific. How many times in the last five years did you interview Justin Trudeau?

Commr Michael Duheme: He was not interviewed, Mr. Chair.

Mr. Larry Brock: Why not?

Commr Michael Duheme: I'll ask Mr. Pincince, who was leading the investigation, to add a bit.

Staff Sergeant Frédéric Pincince (Staff Sergeant, Sensitive and International Investigations, Federal Policing, Ontario Division, Royal Canadian Mounted Police): Thank you.

Mr. Chair, in relation to this, what the RCMP conducted, as far as the objective for the review of the matter... We proceeded with a phased approach. Initially, we looked at the potential witnesses who could provide some information, as far as precision on the elements of the offence was concerned. We proceeded in this phased approach. As we proceeded, we determined whether there were any further investigative steps warranted, given the circumstances of the case.

Mr. Larry Brock: Sergeant, my time is very limited.

Why did you not interview the primary person of interest?

At the heart of this investigation was Justin Trudeau's political interference for his own personal gain and the gain of SNC-Lavalin. I can inform both of you gentlemen that, in my over 30 years of experience as a defence counsel and Crown attorney, I never heard of any investigation where there wasn't any attempt—whether they agreed to the interview or not—to interview the person of interest.

Was there at least an attempt to interview Justin Trudeau? Give me a yes or no.

Commr Michael Duheme: No.

Mr. Larry Brock: Did the RCMP obtain all relevant documents to further the investigation, including access to confidential cabinet information?

I'm simply seeking a yes-or-no response.

Commr Michael Duheme: We were limited by the information we had access to.

Mr. Larry Brock: Was that a yes or a no, sir?

Commr Michael Duheme: We still don't know, to this day, all the information that's out there, because some was protected.

Mr. Larry Brock: Thank you. I'll take that as a no.

Despite collecting reams of evidence, including evidence from the Ethics Commissioner and testimony by Jody Wilson-Raybould at committee, why didn't the RCMP exercise its absolute statutory right under the Criminal Code of Canada to obtain a production order or search warrant from a justice in order to obtain those cabinet documents?

Commr Michael Duheme: We weren't able to obtain enough information or evidence that would warrant us obtaining a production order.

Mr. Larry Brock: RCMP spokesperson Christy Veenstra is on record stating that, “to obtain production orders or search warrants, there must be reasonable grounds to believe that a criminal offence has been committed” and “the evidence at hand is insufficient to convince a trier of fact of the alleged offences.” Clearly, she is conflating the legal threshold of policing with the Crown prosecution service.

Both of you will agree that your sole responsibility is to determine whether there are reasonable and probable grounds to lay a charge. It is not your mandate to prove the charge beyond a reasonable doubt, which is for the independent prosecution service.

Would you agree with that?

Commr Michael Duheme: I agree with that, Mr. Chair.

Mr. Larry Brock: Thank you.

Was obstruction of justice involving Justin Trudeau the only offence you were contemplating in this regard?

Commr Michael Duheme: No. There was also intimidation of a justice participant.

Mr. Larry Brock: Thank you.

You would agree that the charge of obstruction is a straight indictable offence—meaning there is no limitation period—and punishable by 10 years in prison. It's a very serious offence. You would agree, sirs, that there is nothing precluding your service from reopening the investigation against Justin Trudeau should new evidence become available, including a release of confidential cabinet information.

Commr Michael Duheme: I would say, Mr. Chair, that with any investigation, when there's new information that arises, yes, we have a look at the investigation itself.

Mr. Larry Brock: To quell public concern, Justin Trudeau, despite his office, is subject to the full impact and consequences of the Criminal Code of Canada. He is not above the law. Is that correct?

• (1115)

Commr Michael Duheme: I do believe I said that the last time I was in front of the committee. No one is above the law.

Mr. Larry Brock: In my experience, sir, homicides have been investigated and prosecuted in less time than your service has invested in investigating Justin Trudeau. Is there an overall general reluctance in charging a sitting Prime Minister, yes or no?

Commr Michael Duheme: I would say to that, Mr. Chair, that we follow the evidence. If the evidence warrants charges, we charge.

Mr. Larry Brock: So there's no general reluctance in charging a sitting Prime Minister. Is that correct?

Commr Michael Duheme: If the appropriate evidence is available....

Mr. Larry Brock: Thank you.

You would agree that the purpose behind the offence of obstruction of justice is to maintain the integrity of the justice system and uphold the rule of law—all the principles that were articulated in

Jody Wilson-Raybould's testimony about warding off Justin Trudeau's relentless campaign of pressure and intimidation.

You'll agree with me, Commissioner, that the evidence is clear: This is not a one-off. Over the course of four months—

The Chair: I'm sorry, Mr. Brock. We're over time here.

Mr. Larry Brock: Thank you.

The Chair: We'll go to Mr. Housefather for six minutes.

Go ahead, please.

Mr. Anthony Housefather (Mount Royal, Lib.): Thank you very much, Mr. Chair.

Thank you to both of you for coming today.

Commissioner, I'll start by asking you this: Was the way in which you investigated these allegations any different from the way the RCMP would investigate other allegations? Were you holding yourselves to a different standard?

Commr Michael Duheme: No. I'd invite Mr. Pincince to add to this, but we approach every investigation in the same manner.

S/Sgt Frédéric Pincince: Exactly. I can confirm that we proceed by following where the evidence leads us.

Mr. Anthony Housefather: It's not for politicians to dictate to you how to do your jobs as the RCMP. You guys are the experts in terms of doing these investigations. That's correct, I would think.

Commr Michael Duheme: I can assure you that we have never been dictated to by a politician on how to do our job.

Mr. Anthony Housefather: You received no pressure, in this case, to close the investigation from the Prime Minister, his office or anyone else in government.

Commr Michael Duheme: Not at all.

Mr. Anthony Housefather: Thank you so much.

Let me ask another question. This was characterized by Mr. Brock as an investigation of Justin Trudeau. In my view, this wasn't an investigation particularly of Justin Trudeau. It was an investigation of all the circumstances. You would have taken yourselves in the direction that, if anyone you'd investigated had broken the law, you'd have recommended charges against them. Is that right?

Commr Michael Duheme: That's correct.

I might add that when the first article appeared in *The Globe and Mail*, I was the commanding officer of the national division. I actually reached out to sensitive and international investigations and said, let's monitor what's going on here because it might end up in our wheelhouse.

Mr. Anthony Housefather: You yourselves, as I understand it, in 2019, initiated a review based on the article in *The Globe and Mail*, and then followed the justice committee, which I have all too many memories of, at the time. Is that correct?

Commr Michael Duheme: That's correct.

Mr. Anthony Housefather: My understanding is that there was a look at this by the Ethics Commissioner. I want to make something clear, and perhaps you could also characterize it. When you breach the ethics code—and politicians have frequently breached this ethics code—it doesn't mean you're necessarily committing a criminal act. Is that correct?

Commr Michael Duheme: That's correct.

Mr. Anthony Housefather: Could you explain to us the difference between committing a criminal act versus a breach of the ethics code?

Commr Michael Duheme: If you look at the threshold for a criminal act, you need the right evidence to get the legal documents to allow you to do a production order or a search warrant to eventually lay the charges, if there are charges to be laid.

I must say that the Ethics Commissioner does have power with regard to his ethics review. If he does come across any criminal matters, he's to refer them to the RCMP. In this case, the Ethics Commissioner, who had access to more information than the RCMP, did not refer anything to us.

Mr. Anthony Housefather: That's correct. As I recall her testimony before the justice committee, Ms. Wilson-Raybould was asked this very question of whether a criminal act had been committed. It was her view that a criminal act had not been committed. Is that correct?

Commr Michael Duheme: She felt that it was inappropriate behaviour but not criminal.

Mr. Anthony Housefather: Thank you.

Paragraph 22 of this document, which I believe Mr. Pincince was one of the signatories to, states:

Notwithstanding the privilege barriers, it is believed that there is insufficient evidence to obtain production orders or search warrants for additional material based on the totality of the circumstances and the evidence gathered. When factoring the principles of a full, fair and frank disclosure of the matter, it is believed that the evidence at hand is insufficient to convince a trier of fact of the alleged offences.

This means not only that you believed the threshold had not been reached to criminally prosecute at this point, but you didn't even believe a threshold had been reached to ask for further production of materials. Could you explain that to me?

• (1120)

S/Sgt Frédéric Pincince: Mr. Chair, in relation to this, for us to obtain any form of judicial authorization, there are some preconditions within the Criminal Code that we have to follow, and that's exactly what we did in this case. These preconditions were not met. In this case, we had insufficient information to substantiate an offence, which was one of the preconditions. As such, this option, as allowed by the Criminal Code, was not available to us.

Mr. Anthony Housefather: That would be true of both charges that you were looking at. Is that correct?

Commr Michael Duheme: Yes, sir.

Mr. Anthony Housefather: I have one last question. My understanding, from reading the documents you provided, is that you did not feel that criminal intent, which is an important element of committing a criminal offence, was found in this case, or that you

couldn't substantiate that it was found to a level that would allow for prosecution. Is that also correct?

S/Sgt Frédéric Pincince: That's correct, Mr. Chair.

Mr. Anthony Housefather: I would also like to ask, is there anything else that you would like to clarify, based on the original questioning from Mr. Brock, that I have not allowed you at this point to clarify, in terms of when you were asked to answer yes or no?

Commr Michael Duheme: No, not at this time, Mr. Chair.

Mr. Anthony Housefather: As one last question, when the RCMP made a determination to interview or not to interview certain people in this case, including the Prime Minister, did you base that on your normal standard of policing, based on the way you would have handled other investigations as well?

S/Sgt Frédéric Pincince: That's correct, Mr. Chair.

Mr. Anthony Housefather: You did not accord him any undue deference because of the office he held.

Commr Michael Duheme: No.

The Chair: Thank you, Mr. Housefather.

[*Translation*]

Mr. Villemure, you have six minutes.

Mr. René Villemure (Trois-Rivières, BQ): Thank you very much, Mr. Chair.

I'd like to thank the witnesses for joining us again today.

Let me approach the question from another angle.

Over the years, the Prime Minister has been the focus of a number of allegations, in connection with his trip to the Aga Khan's, the "Trudeau Report" and the "Trudeau II Report," among other things.

It appears that these allegations are shaking the public's confidence in the Prime Minister to some extent, and this is an important aspect. We certainly rely on an organization like the RCMP to help us better understand the situation.

The Conflict of Interest and Ethics Commissioner did not feel it necessary to alert or, at least, to go any further in this matter. He decided not to refer the case to the RCMP. Whether that was a good or bad decision remains to be seen. We don't know at this point.

Commissioner Duheme, you said two things earlier that struck me. You said that the warrants were limited in scope and that you didn't have enough evidence to pursue it further.

In essence, was this a non-starter, or did this force the end of an investigation or, on the contrary, were there sufficient grounds to say that you didn't need to go any further?

Commr Michael Duheme: I thank the member for his question.

Much of the information that was available at the time was protected by attorney-client privilege. There were also confidential cabinet documents.

To apply for a search warrant, we need credible information, corroborated by other sources. That allows us to obtain a legal document for the purpose of conducting a search.

In this case, given the information we had, it was not possible to search for these documents.

Mr. René Villemure: All right.

Was the information you had insufficient or did it not warrant going further?

Commr Michael Duheme: I would say that the information we had didn't warrant going any further, that is, obtaining the legal documents required in order to pursue an investigation.

Mr. René Villemure: All right.

From your perspective, the right thing to do, given the impossibility of obtaining further information, for lack of supporting evidence to justify it, was to close the investigation.

Is that right?

Commr Michael Duheme: We will close an investigation unless additional information surfaces that would lead us to reopen that investigation.

Mr. René Villemure: All right.

I'm concerned about the trust we should inspire in the public. Some actions may be legally acceptable, but they're downright unethical. Such cases often leave the impression that no offence has been committed, whereas that may or may not be the case, ethically speaking. People still talk to us about it. Trust is broken. In a world that's so polarized, as it is these days, trust is something we need to protect.

You're at the helm of the RCMP as commissioner. I realize that public trust isn't something that's part of your job description, but what do you think?

What can you suggest to strengthen public trust?

• (1125)

Commr Michael Duheme: As RCMP commissioner, I consider it important to have the public's trust when the RCMP conducts investigations.

In this case, I won't comment on the ethical aspect of certain situations or the trust people may have in the government. However, I can state that our team used every means at its disposal to obtain all the necessary information that would have enabled it to pursue this investigation as far as possible. Unfortunately, we reached a point where we didn't have the requisite information to proceed with an investigation.

Mr. René Villemure: Therein lies the rub. We're told that it's impossible to move forward, and that's where this kind of breach of trust comes in.

The Prime Minister's habit of being rather lax when it comes to ethics doesn't necessarily mean he is guilty. That's not the case at all. However, it does leave room for doubt. That doubt is compounded by others that arise in public and parliamentary life. That's what I'm trying to understand.

What can the committee do to dispel the doubt, which, you know as well as I do, persists?

Can you give us any information or documents that would enable us to dispel this doubt?

Commr Michael Duheme: Mr. Chair, other than the report that was released under an access to information request, no documents come to mind.

Again, your question has more to do with ethics in relation to the government and the Prime Minister. If that's the case, it's not something I'm going to comment on.

Mr. René Villemure: No, my question is about the RCMP.

Commr Michael Duheme: As I mentioned earlier, it's important for us to have the public's trust in order to complete an investigation. If you look at the SNC-Lavalin file on its own, without considering its political aspect, and review the work of the team led by Mr. Pincince, you will see that the outcome of the charges speaks volumes about our members' professionalism in this area.

Mr. René Villemure: All right.

Earlier, you mentioned intimidation of a justice officer. Can you tell us a little more about that?

Commr Michael Duheme: It was at the beginning of the investigation, which is when we were gathering the available information. We were looking at two potential charges under the Criminal Code, obstruction and intimidation of a participant, an officer of the court.

Mr. René Villemure: I see.

With respect to the intimidation charge, there was no cause to pursue the investigation.

Is that correct?

Commr Michael Duheme: As with any charge that falls under the Criminal Code, there are always elements that must be met.

Mr. René Villemure: Yes, at the very least.

Commr Michael Duheme: In both cases, we didn't meet the necessary criteria to go down that road.

Mr. René Villemure: All right.

Thank you very much.

The Chair: Thank you, Mr. Villemure.

Thank you, Mr. Duheme.

[English]

Mr. Green, you have six minutes. Go ahead, please.

Mr. Matthew Green (Hamilton Centre, NDP): Thank you very much.

I just want to get a better understanding. I heard in your testimony today that you're approaching this using a phased approach. I think I had heard that there's a difference between an assessment and an investigation. Is that correct? Can you just explain the difference between an assessment and an investigation?

S/Sgt Frédéric Pincince: I can, absolutely, Mr. Chair.

When the matter first came to light from the media articles and the testimonies before the committees, we looked into this, and, of course, we followed all of this information to try to determine whether a criminal offence had taken place. Of course, we followed the testimony of the former attorney general, the Honourable Jody Wilson-Raybould, and we looked at the information that came from that.

Of course, as you well know from the testimony at this point, the question was posed about the criminal element in this whole situation, and of course we all know the answer that was provided at that time.

Of course now we're still reviewing it and assessing further information to try again to determine whether a criminal offence has taken place—hence the phased approach. We assess the information, and then we—

Mr. Matthew Green: Through your testimony, we've determined that you can't make that assessment because foundational information hasn't been made available to you.

In February 2019, the government issued Order in Council 2019-0105, which waved, in part, cabinet confidence and solicitor-client privilege in order to allow for then minister Wilson-Raybould to testify at the justice committee. Did you request an expansion of the OIC to allow you greater access to personal testimony and documentation?

S/Sgt Frédéric Pincince: We did, Mr. Chair.

Mr. Matthew Green: One of the frustrations I have—and I know the Honourable Jody Wilson-Raybould also suggested this—is that in her role she was both the client and the solicitor. In fact, that is one of the challenges we have—a government that consistently claims both client and solicitor privilege on all matters. It claims cabinet confidence on all matters.

That is my opinion, by the way. I'm not putting that onto you.

When dealing with a scenario in which the institution under investigation is both the client and the solicitor, by virtue of its nature, how do you navigate getting any kind of information from it?

• (1130)

Commr Michael Duheme: Those are the parameters we deal with. The team itself had requested additional information and it was refused. As I said, those are the parameters we operate in. I could say there's something similar when we navigate in the national security space with information that we can use and can't use.

Mr. Matthew Green: Is it still your assertion, in terms of applying for a court search warrant for the Trudeau cabinet documents and records of communication, that you didn't have sufficient evidence to even begin that?

Commr Michael Duheme: We didn't have sufficient information to even entertain to go to a production order or even a search warrant.

Mr. Matthew Green: Then why did you wait almost two years to end your examination of the situation without having the ability to do a full investigation?

Commr Michael Duheme: There are a couple of things there.

Sensitive and international investigations wrapped everything up in the spring of 2021. There was a change of management at several levels. That's on us. We looked into it and corrected that. There are probably 10 months there and it could have been done in a shorter time. It's just the change of management and the reporting that made it so that we informed Ms. Wilson-Raybould in January 2023 and subsequently Mr. Scheer by way of a letter.

Mr. Matthew Green: Where would you have been in that decision-making matrix?

Commr Michael Duheme: I was deputy commissioner of federal policing. There would be a program manager reporting to me, and then the team would be reporting into three different levels before it would get to me.

Mr. Matthew Green: Okay.

Would you have been involved in making the delay decision?

Commr Michael Duheme: It's not a delay decision. The change of resources within the organization made it so that when it got to me, I presented it to the commissioner and then forwarded it.

Mr. Matthew Green: Certainly you can appreciate that on the outside, having had two elections within the period when this was highly contentious, the timing for the general public, I think, leads to—whether necessarily so or unnecessarily so—theories of cover-up or theories of delay, theories of political interference and timing. Again, to the same effects as when you don't have access to information, it's my assertion that when the public doesn't have access to good information, they are led down these paths.

Was it also you who would have ultimately made the decision whether to prosecute or not?

Commr Michael Duheme: Ultimately, I rely on the subject matter experts from the unit.

I just wanted to go back to one comment, Mr. Chair. At no time did we brief the minister or the PM or any politically appointed individual on this file. To even suggest that this was delayed.... They didn't even know what stage we were at with the investigation delay because of elections. It was on us. I admit there was a mistake on us. It could have moved forward, and we corrected that.

Mr. Matthew Green: To get back to my question, would you ultimately have been the person to decide whether to prosecute or not to prosecute?

Commr Michael Duheme: Ultimately, we would sit down and have a discussion with the Crown prosecutor assigned to the file. Within the team here, I would be sitting down with our folks and be guided by our subject matter experts.

Mr. Matthew Green: Okay.

Just to be clear, you're the commissioner now.

Commr Michael Duheme: I am the commissioner now.

Mr. Matthew Green: Okay.

I'm just asking you to take some leadership now. Ultimately, on your end, would the decision have been yours or would you have reported to somebody else to make the decision?

Commr Michael Duheme: I wouldn't delegate it down, but every charge doesn't come up to me for approval.

Mr. Matthew Green: Certainly one involving the Prime Minister would likely have your approval.

Commr Michael Duheme: I would be informed and I would be supportive, but it's not every charge that makes its way up to the commissioner.

Mr. Matthew Green: But certainly.... Look, let's just be frank. You have a duty of candour. I'm going to extend that duty to this committee. I need you to be candid and take responsibility about whether you were the one to make the decision or whether you would have reported up to somebody to make the decision. Ultimately, there would have been somebody to sign off at some point in time. There's a chain of command in our paramilitary policing units. There's a chain of command that you would have been a part of.

Did you make the decision, yes or no?

Commr Michael Duheme: I would have been guided by my subject matter experts and supporting them. Obviously, if we were charging the Prime Minister, for sure, I would have been on board.

The Chair: Thank you.

I did give you a little bit of Mr. Housefather's time because he was short.

That completes our first six-minute round.

I just want to advise members of the committee that about an hour before the meeting commenced, we received correspondence from Democracy Watch. It did come in both official languages, but it wasn't distributed to the committee because, as per the routine motions that were adopted in December, I asked the clerk to conduct a linguistic review. It's being done now. Once it's confirmed by translation, the French version of it, I will distribute it to the committee as well. There were a series of questions that Mr. Conacher had submitted.

That being said, we're going to go to our second round, of five minutes.

We're going to start with Mr. Barrett.

Go ahead.

• (1135)

Mr. Michael Barrett (Leeds—Grenville—Thousand Islands and Rideau Lakes, CPC): I have questions for you that come from an access to information request. It's ATIP A-2021-02029. It deals with a decision tree from paragraph 121(1)(c) of the Criminal Code, under "Frauds on the government".

I provided it to you, Commissioner, and to the staff sergeant, just before the meeting started.

As we move through the document, this decision tree asks a series of questions. The first question is, was Mr. Trudeau a government official at the time that he took a vacation to Bells Cay—

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): I have a point of order, Chair.

The Chair: Go ahead on the point of order, Ms. Khalid.

Ms. Iqra Khalid: I realize that the witnesses and Mr. Barrett have the documents, but we would also like to follow along, if that's okay.

Can Mr. Barrett share them?

The Chair: Go ahead on the point, Mr. Barrett.

Mr. Michael Barrett: I'd be happy to provide them to the clerk. They'll go into translation and then they'll be furnished to other members of the committee.

It wasn't proactively disclosed by the government; it was made available by ATIP. I don't have any questions for other members of the committee, so they don't need a copy of it. If they would like to email me and ask for an English-only copy, I can furnish them with that, but I don't have it in French. I will provide it to the clerk and translation services can deal with it.

I'd like to continue with my questions, Chair. It's not required for me to provide other members of the committee with documents that are provided to witnesses. It's not in our standing orders.

The Chair: I'm going to ask that Mr. Barrett furnish that to the clerk so that we can have it translated and supplied.

If he's only referencing it for the purposes of asking questions, I don't see.... It's not a document that's submitted to the committee for that purpose. He's referring to—

Ms. Iqra Khalid: If that's the case—if the witnesses have it and Mr. Barrett has it—then we as members of the committee should be able to look at it, too, while these questions are going on.

I'm not sure if my colleagues agree, but I'm a little bit lost without having this document in front of me so I can follow along, too.

Mr. Michael Barrett: I'm not asking them any questions.

The Chair: I'm going to allow this to occur. Mr. Barrett will be referring to the documents, I assume, based on his first question.

Mr. Michael Barrett: I'd like to finish my first question.

The Chair: Right. You're going to complete your first question.

The point I'm making, Ms. Khalid, is that he can reference this, just as any other member has paper in front of them that's not shared with other members of the committee. This is an access to information document that he has in his possession. He'll be reading from that document, I assume, and that will be translated at a time. I don't really see the need for other members of the committee to have that.

Ms. Iqra Khalid: Thanks, Chair.

The difference is that we don't share our questions or our comments with the witnesses prior to asking them. In this instance, those documents have been shared with the witnesses.

I don't know if my colleagues want to jump in here.

The Chair: I'm going to go to Mr. Barrett first, and then Mr. Green on the point of order.

Mr. Michael Barrett: Chair, it was provided to the witnesses at the start of the committee meeting. It's an RCMP document. They provided it in the ATIP. If it makes other members of the committee uncomfortable that the RCMP is able to follow along—

Ms. Iqra Khalid: Chair, it's not discomfort.

Mr. Michael Barrett: —then I would just kindly ask for the clerk to collect the document from the witnesses and I'll continue with my questions.

The Chair: I just received this clarification. We cannot distribute those documents because, from what I understand, they are in one language, but if Mr. Barrett wants to distribute that to other members of the committee in that one language, then you can have that document in front of you if that's what the preference is on your side or on any other side.

Mr. Villemure says no.

Can we collect the documents from the witnesses, then, Mr. Barrett?

Mr. Matthew Green: I do believe I'm—

The Chair: You are.

Mr. Michael Barrett: If the Liberals don't want the RCMP to see the decision tree—

Ms. Iqra Khalid: I'm so sorry, Chair, but I can't allow those kinds of statements.

I raised a point of procedure. It is—

Mr. Michael Barrett: No. I have the floor.

The Chair: Okay, just hang on—

Mr. Michael Barrett: If the Liberals do not want the witnesses to have the documents, then I'll leave it to the chair to instruct the clerk to collect them, but I'd like to finish my questions.

The Chair: I'm going to instruct the clerk to collect the documents.

Mr. Matthew Green: Mr. Chair.

The Chair: Go ahead, Mr. Green, on the same point of order.

Mr. Matthew Green: Respectfully, before you make decisions on the point of order, respecting the standing orders, I'm duly accorded the time.

Just so we're not setting a dangerous precedent in terms of what the expectations are, I would suggest that we each have, through our own offices, the ability to do research in preparation for committee. While it might be a courtesy that could be extended from time to time, I would just go on the record to state that I surely would have no expectations of any party, either government or opposition side, to provide me with their homework in advance. I'll just state that.

I'm a bit uncomfortable that we're going to start to put constraints on this. I'm saying this objectively, because it could happen to any one of us down the line, if we've done the work and we've gone through ATIPs and done all the stuff. As New Democrats, we don't necessarily have the resources to have big research policy bureaus, so we're doing it on our own with our incredible team, which is behind me here.

I just want to make sure that we're recognizing that this would be a courtesy and not some kind of precedent in this committee where we're going to start having to share our homework. I have no interest in that.

Thank you.

• (1140)

The Chair: I appreciate that, Mr. Green. I guess if we want to broaden that a little bit, the challenge, the risk, is that there are other articles. This is an ATIP, but there are Globe and Mail articles and CBC articles that people refer to all the time and that are used in the line of questioning.

Mr. Brock, I saw your hand up on the same point of order. Before I make a decision on where we're going to go....

I think I've already made the decision, but go ahead, Mr. Brock.

Mr. Larry Brock: Very quickly, what my friend Mr. Barrett was referencing comes out of *Watt's Manual of Criminal Jury Instructions*, by David Watt. Any member can google that manual and find the tree that Mr. Barrett is referring to.

The Chair: Mr. Duheme, Mr. Barrett is going to reference the document in question. I'm going to ask the clerk to collect the document, if that's okay.

Mr. Barrett, you can continue on your line of questioning. I think you'll give the commissioner and Mr. Pincince a pretty good indication of what's in the document, so I'm going to ask you to go ahead. I've stopped your time.

You have four minutes.

Ms. Iqra Khalid: I'm sorry, Chair.

I don't need the witnesses to give their documents back. It's absolutely fine, but I did want to raise this as a point. When we are giving documents to witnesses, we should be very mindful as to how those documents are circulated to the rest of the committee.

In this instance, I'm fine if they can reference those documents at this time.

The Chair: Okay. I thought the original intent of your interjection was not to have those documents in the hands of the witnesses.

Ms. Iqra Khalid: My original interjection, Chair, was that we can't see the documents that the witnesses and Mr. Barrett were referring to. Having listened to the comments of my colleagues, I'm okay with it this time, but I'm hoping that this does not become a common occurrence.

The Chair: Okay. Thank you.

Keep the documents, Mr. Duheme and Mr. Pincince. Mr. Barrett is going to reference those documents.

Mr. Barrett, you have four minutes and 17 seconds. I'm starting your clock now. Go ahead.

Mr. Michael Barrett: Yes, I don't need the approval of Liberal members for the material that I'm going to ask questions on.

This one is very straightforward. It's a decision tree on paragraph 121(1)(c) of the Criminal Code, under "Frauds on the government". It's by the RCMP. They've populated information on the document. It asks a series of questions with respect to Justin Trudeau's visit to the Aga Khan's island Bells Cay: "Was Mr. Trudeau a government official? Yes." "Did Mr. Trudeau accept a benefit from the Aga Khan? Yes." "Did the Aga Khan have dealings with the government? Yes." Then it says, "Did Mr. Trudeau have the consent in writing of the head of the branch of government for whom he worked? Unknown." At that point, it says, if yes, then the final verdict would be "not guilty". It goes on to say, if no, "Did Mr. Trudeau know that what he accepted was a benefit from a person who had dealings with the government? Yes." If yes, it says, "Final Verdict: Guilty of Fraud on the Government".

Now, we know that in fact Mr. Trudeau did not have a consent in writing from the head of the branch of the government for which he worked, because that question was put to him in the House of Commons. In the House, it was asked, "Did the Prime Minister give himself permission to take that free holiday in 2016?", to which Justin Trudeau replied, "Mr. Speaker, no." He was asked again on April 26, 2020. Again the answer was no.

Conservatives put the question to the Prime Minister to answer the only open question on whether or not the RCMP should lay a charge of fraud on government against Prime Minister Justin Trudeau in the case of his illegal vacation to Bells Cay. It was certainly law-breaking in that it broke the Conflict of Interest Act. The question is, did it break paragraph 121(1)(c) of the Criminal Code?

Commissioner, did the RCMP call Mr. Trudeau and ask him the question?

• (1145)

Commr Michael Duheme: I would have to ask Mr. Pincince.

I wasn't getting ready for the Aga Khan file. I'm not as familiar with the Aga Khan file as I am with the Jody Wilson-Raybould file.

Mr. Michael Barrett: Sure.

Staff Sergeant.

S/Sgt Frédéric Pincince: Mr. Chair, all I should have to point to in relation to this specific decision tree is of course that this is one part of a multi-page document. Of course, this is only an excised part of this.

Now, to answer the question about whether we contacted the Prime Minister in relation to this one, the answer is no.

Mr. Michael Barrett: He wasn't asked, and it was left in the document as "unknown". It's the only open question on whether or not it met the standard of fraud on government.

I want to refer to that same ATIP. A Sergeant Arbour, who was the team lead for SII Team 3, said, "If further information of evidentiary value was to be received, SII will review and determine the appropriate course of action."

Mr. Francesco Sorbara (Vaughan—Woodbridge, Lib.): I have a point of order, Chair.

The Chair: Go ahead, Mr. Sorbara.

Mr. Francesco Sorbara: Thank you, Chair.

In terms of MP Barrett's commentary right now, is this pertaining to the actual subject matter we're studying today or not? I'm just looking for relevance.

The Chair: I know you've been on this committee a couple of times. I've been on this committee for 17 months as chair, and in every circumstance, I allow members to utilize their time in the manner in which they want. I expect that Mr. Barrett is going to bring it back, as I expect every other member will do the same thing.

On the issue of relevance, I've dealt with this many times. I don't want to hear another issue of relevance, if we can. If we can avoid that, to save time, I would appreciate that.

Mr. Barrett, go ahead. You have a minute and 21 seconds.

Mr. Michael Barrett: It's part of a pattern, Chair, from the Liberals—Ms. Khalid, Mr. Sorbara—to interrupt the line of questioning to try to cover up for the Prime Minister, and she's going to do it again right now.

On the key question of whether Justin Trudeau had consent to engage in the activity, the only question was on whether Prime Minister Justin Trudeau committed fraud on government. The RCMP didn't pick up the phone, but Conservatives asked him the question and we got the answer. That answer is publicly available. It was not protected—it's like transcripts from a committee—so it could be used and has evidentiary value.

Knowing that, and based on that decision tree, wouldn't that affect the decision of the RCMP to lay a charge of fraud on government against the Prime Minister, if all the criteria set out in the decision tree from *Watt's Manual of Criminal Jury Instructions* were satisfied? Wouldn't that new evidence satisfy your investigation?

Commr Michael Duheme: Again, Mr. Chair, I'm not in a position to speak to all the evidence we had or didn't have. It would warrant a follow-up on that file and coming back to this committee to explain what we had in the file and the reasons we didn't lay any charges. However, I'm not in a position right now to say what evidence we had that came to the point that we didn't lay any charges.

Mr. Michael Barrett: With due respect, Commissioner, the only outstanding question on the decision tree provided in the ATIP was whether or not the Prime Minister had consent. The RCMP said it was unknown. We satisfied an answer to that question in that he did not. Based on this document, it says that the final verdict is guilty of fraud on government.

The Chair: Thank you, Mr. Barrett.

That concludes your 14-minute round.

Ms. Khalid, you have five minutes. Go ahead.

Ms. Iqra Khalid: Thank you very much, Chair.

Thank you to the witnesses for coming in.

I'm just going to bring this to your attention, Commissioner. As my colleague across the way was asking questions, he tweeted out his opinions of how the questions went. He says, "Breaking News. The RCMP admits they never attempted to interview Justin Trudeau, the primary person of interest in the SNC-Lavalin Affair, concerning potential criminal wrongdoing. The RCMP has the power to reopen the SNC-Lavalin file and interview Trudeau at any time."

Is that the message you were trying to convey during the questioning by Mr. Brock?

Commr Michael Duheme: I didn't catch the last part of the tweet.

Ms. Iqra Khalid: It says, "The RCMP has the power to reopen the SNC-Lavalin file and interview Trudeau at any time." There are two photos as well: one of yourself and one of Mr. Brock.

I'm just looking for your opinion as to whether that is an accurate portrayal of what you are trying to convey here today.

Commr Michael Duheme: I mentioned earlier that, as with any criminal investigations we have, we sometimes close files and if there's information that comes up a year, two years or three years down the road and we're still within that limitation period, then yes, we reopen the file and look at the evidence or the information that's given to us.

• (1150)

Ms. Iqra Khalid: How do you feel partisan politics impacts the work you do and your independence?

Commr Michael Duheme: I would say that notwithstanding the parties, we're independent in what we do.

As I said, since I've been in senior positions, I think I have briefed the Minister of Public Safety maybe three or four times throughout the last five years, and the PM maybe once or twice, so I don't update them on a regular basis on any of our criminal files, even less if it's a file that involves the Prime Minister or even the minister.

Ms. Iqra Khalid: When politicians direct you or tell you that you should be investigating one thing or another, how do you handle that?

Commr Michael Duheme: Again, for every investigation, we follow the evidence. If there's evidence that is given to us, or leads, we'll follow up on those, but everything that's given to us, we have to be able to use it in a court of law.

Ms. Iqra Khalid: Thank you.

With that, then, Sergeant Pincince, I'll ask you this. Can you please tell the committee about the process undertaken by the RCMP in terms of how many interviews were conducted and the extensive nature of this whole investigation?

S/Sgt Frédéric Pincince: Of course, Mr. Chair.

The first step that we took was to review the information that was publicly available. Again, this was part of the testimony before the justice committee. We also reviewed the information that was publicly in the media.

Following this, of course, because of the limitation that the order in council did not apply to the RCMP, we made a request to obtain a waiver that would allow us to continue further investigative steps, which is what we did later on, once we obtained a waiver and authorization back in August 2019.

We then proceeded to interview key witnesses who could provide further information as to the nature of the political pressure that took place at that time.

These were the steps that we took from there.

Ms. Iqra Khalid: Thank you.

Can you share with the committee what piece of evidence, if any, led the RCMP to decide that no criminal investigation was required in the SNC-Lavalin affair?

S/Sgt Frédéric Pincince: Mr. Chair, when we looked at this, we followed the elements of the offence. We looked at each of the two offences that were before us. We looked at these, and then we tried to determine if each of these elements was met. As we proceeded through this, one of the critical elements in the offence of obstruction of justice is, of course, intent to obstruct the course of justice. Of course, we conducted interviews in order to really assess the information in that regard.

Ms. Iqra Khalid: You found that there was no intention of obstruction. Is that correct?

S/Sgt Frédéric Pincince: I had to base this assessment on the totality of the information we obtained—again, from the review of documentary evidence that we obtained from these witnesses and from the testimony that they provided to the RCMP, and of course these were supplemented by all the publicly available information that was provided out there.

Ms. Iqra Khalid: Thank you.

Commissioner, you stated that you were very comfortable with the RCMP's decision not to pursue criminal charges in the SNC-Lavalin affair, while confirming that you did not have access to cabinet confidences that you'd requested. Can you explain why you were very comfortable?

The Chair: Could you provide a very quick response, please?

Commr Michael Duheme: It was based on the final report that I received, and knowing the professionalism of our folks at sensitive and international investigations. I'm comfortable to say that we did everything we could to gain access to as much information as possible within the confines of the regulations.

The Chair: Thank you, Mr. Duheme.

Thank you, Ms. Khalid.

[Translation]

Mr. Villemure, you have two and half minutes.

Mr. René Villemure: Thank you very much, Mr. Chair.

Mr. Duheme, is there something you would have liked to obtain in order to allow you to pursue the investigation?

Commr Michael Duheme: As Mr. Pincince said earlier, after targeting the two potential charges, we needed to find certain elements of information before charges could be laid. In any investigation, we want to obtain information that will enable us to establish that the conditions defining the offence have been met. If we don't have all the necessary information for charges to be laid, we at least want to have enough information to obtain legal documents, such as a search warrant, to obtain the required information.

• (1155)

Mr. René Villemure: We often heard about cabinet confidentiality at the Standing Committee on Access to Information, Privacy and Ethics.

Do you believe that, for the purposes of a police investigation, we should improve access to a minister's confidential cabinet documents? At present, you have absolutely no access to them.

Commr Michael Duheme: That is indeed the case, but that decision is not up to me.

Even if we had submitted a request that was accepted, I don't know what information we would have obtained.

Mr. René Villemure: However, our committee has the power to make recommendations.

Do you think the committee should recommend greater access to confidential cabinet documents?

Commr Michael Duheme: Greater transparency, if information about what's going on can be disclosed, would certainly be an improvement. It goes back to what we said earlier about public trust and ethics.

Mr. René Villemure: In fact, in several other cases, we saw preventive redaction that was fairly extensive. Obviously, public trust is damaged as a result.

So you would agree that we should recommend greater access to confidential cabinet documents.

Is that so?

Commr Michael Duheme: I have no issue with you making that recommendation in the interest of transparency.

Mr. René Villemure: In hindsight, when you look at everything that happened around SNC-Lavalin and the allegations surrounding Mr. Trudeau, are there things you would have done differently?

Commr Michael Duheme: I will refer the question to Mr. Pincince.

S/Sgt Frédéric Pincince: Mr. Chair, in this case, we proceeded step by step, according to the information we had at the time. So it would be purely speculative on my part to determine anything else based on the available information.

Mr. René Villemure: So you would do the same thing.

S/Sgt Frédéric Pincince: I'd like to emphasize that in every investigation, we proceed in the same manner. We rely on the available evidence.

Mr. René Villemure: All right.

The Chair: Thank you, Mr. Villemure.

[English]

Mr. Green, you have two and a half minutes.

Mr. Matthew Green: Thank you very much.

I'm going to try to go through this.

In 2019, you applied for an order in council disclosure that started an interview process with key witnesses. Of the key witnesses, did you directly interview the Honourable Jody Wilson-Raybould?

S/Sgt Frédéric Pincince: Yes, we did, Mr. Chair.

Mr. Matthew Green: In the course of your questioning, was Jody Wilson-Raybould able to provide you with all the information you were asking of her in those interviews?

S/Sgt Frédéric Pincince: Again, we had to follow the parameters of the waiver and authorization we obtained.

Mr. Matthew Green: In other words, is it safe to say that, in that interview with the former AG and Minister of Justice, she was unable to disclose information pertinent to the foundation of an investigation for potential charges, or perhaps documents that would be attained through the courts?

S/Sgt Frédéric Pincince: That's correct, Mr. Chair.

Mr. Matthew Green: It's logical to say that, when the Honourable Jody Wilson-Raybould states, based on the parameters of the OIC, that there aren't grounds for criminality, it's within those tight parameters from which you would have drawn the same conclusions.

S/Sgt Frédéric Pincince: We came to this conclusion based on the parameters within which we operated.

Mr. Matthew Green: Was there frustration in not being able to get to the heart of the matter?

S/Sgt Frédéric Pincince: I would not call it frustration, Mr. Chair.

Of course, we always endeavour to obtain as much information as possible so the information is as complete as possible.

Mr. Matthew Green: Was there an opinion in that interview that, had the Honourable Jody Wilson-Raybould been able to say more, she could have said more, had those parameters not been put on it?

S/Sgt Frédéric Pincince: Again, Mr. Chair, I would not be in a position to speculate about what information could have been provided and whether that information would have led to the establishment of the elements of the offence.

Mr. Matthew Green: Was there anything in that interview that would have given you any kind of credence for requesting an expansion of the OIC to allow you greater access to personal testimony and documentation?

S/Sgt Frédéric Pincince: Mr. Chair, I would have to say that, of course, we sought an expansion to the original order in council.

Mr. Matthew Green: Was it denied?

S/Sgt Frédéric Pincince: We made the request and we obtained a waiver and an authorization, which were the same parameters as the ones in the order in council of 2019—

Mr. Matthew Green: You made a request for an expansion. It was approved, and they gave you the exact information as in the original OIC.

• (1200)

S/Sgt Frédéric Pincince: I should specify, Mr. Chair, that we did receive a waiver and an authorization—not to the parameters that were requested, but we did receive one.

Mr. Matthew Green: That was the same as the original.

I share your frustration.

The Chair: Thank you, Mr. Green.

We're going to go five and five, and then reset.

[Translation]

Mr. Berthold, you have five minutes.

Mr. Villemure, could you please take over as chair for a few minutes?

Mr. René Villemure: Yes, of course.

Mr. Luc Berthold (Mégantic—L'Érable, CPC): Thank you very much, Mr. Duheme and Mr. Pincince, for joining us.

Mr. Duheme, when you last appeared before the committee, the meeting was interrupted before your testimony even began, because the Liberals didn't want us to shed light on why the criminal investigation into SNC-Lavalin was halted. It was a cover-up. We see that it continues to this day.

From what has been said so far, Mr. Duheme, it is clear that the RCMP put far less effort into its investigation, unlike the Conflict of Interest and Ethics Commissioner. The latter found the Prime Minister guilty of violating section 9 of the Conflict of Interest Act.

Will you acknowledge that you put less effort than the Conflict of Interest and Ethics Commissioner into determining whether or not Mr. Justin Trudeau had violated the Criminal Code?

Commr Michael Duheme: Mr. Chair, I do not agree that we made less of an effort. The parameters of an investigation by the Conflict of Interest and Ethics Commissioner and those of a criminal investigation are completely different.

Mr. Luc Berthold: Then I will ask you other questions, Mr. Duheme, which might allow you to shed some light on the subject.

How many hours did the RCMP spend on the investigation?

Commr Michael Duheme: I will refer the question to Mr. Pincince.

S/Sgt Frédéric Pincince: Mr. Chair, I don't have the information as to the number of hours, but we're talking about a considerable number—

Mr. Luc Berthold: All right, you don't have an answer.

How many investigators were assigned to the investigation?

S/Sgt Frédéric Pincince: I can't give you an exact number, but it was fewer than ten investigators.

Mr. Luc Berthold: How many people were questioned by those investigators?

S/Sgt Frédéric Pincince: We spoke to four witnesses over the course of five interviews. So there were two interviews with the same witness.

Mr. Luc Berthold: So you reviewed the list of witnesses questioned by the Conflict of Interest and Ethics Commissioner.

Mr. Luc Berthold: Mr. Pincince, I just want to ask you a few questions.

The Conflict of Interest and Ethics Commissioner questioned Mr. Ben Chin, former chief of staff to the Minister of Finance; Mr. Elder Marques, former senior adviser to the Prime Minister; Mr. Mathieu Bouchard, former senior adviser to the Prime Minister on Quebec; Mr. Michael Wernick, former clerk of the Privy Council; Mr. Bill Morneau, former minister of finance; Mr. Justin To, former deputy chief of staff to the Minister of Finance; Mr. Scott Brison, former president of the Treasury Board; Ms. Katie Telford, chief of staff to the Prime Minister; Mr. Gerald Butts, former principal secretary to the Prime Minister; Mr. Neil Bruce, former chief executive officer of SNC-Lavalin, and Mr. Justin Trudeau.

Did you question one or more of these individuals?

S/Sgt Frédéric Pincince: I must—

S/Sgt Frédéric Pincince: No, we did not question the people whose names are on that list.

Mr. Luc Berthold: How then can you tell us that you dedicated as much time and energy to this investigation as the Conflict of Interest and Ethics Commissioner before determining there were no grounds to lay criminal charges against Mr. Trudeau, if you did not take the time to validate that information?

S/Sgt Frédéric Pincince: We conducted our interviews according to certain parameters. Basically, we sought out witnesses that could give us information to help us establish the facts and determine if an offence was committed.

Mr. Luc Berthold: Then let's continue along those lines, Mr. Pincince.

Did you request access to any documents whatsoever?

S/Sgt Frédéric Pincince: We did indeed obtain documents from some witnesses.

Mr. Luc Berthold: Were documents denied to you throughout your investigation?

S/Sgt Frédéric Pincince: I must say that we were unable to examine certain documents, given the parameters—

Mr. Luc Berthold: Did people tell you that you could not access certain information during your investigation?

S/Sgt Frédéric Pincince: Due to established parameters, some information was indeed redacted.

Mr. Luc Berthold: Who denied you information?

S/Sgt Frédéric Pincince: It was Ms. Prince, who was chief of staff to the Honourable Jody Wilson-Raybould.

Mr. Luc Berthold: She refused to provide information to you about the investigation.

Is that right?

S/Sgt Frédéric Pincince: I would not say she refused to provide information. I think there was information she could not disclose, according to established parameters.

Mr. Luc Berthold: During a trial, when it's a matter of fraud, the intention to commit fraud is what's important. How did you come to the conclusion that the Prime Minister did not intend to commit a crime, if you did not even take the time to just ask him the question?

S/Sgt Frédéric Pincince: As part of the interviews conducted by the RCMP, we reviewed all the information provided through various testimonies, including the report of the Conflict of Interest and Ethics Commissioner. Again, our strategy was to establish the facts to determine if a Criminal Code offence was committed. That is how we directed our investigation.

• (1205)

Mr. Luc Berthold: Mr. Pincince, you know that when the RCMP investigates a matter involving the Prime Minister, its work is closely scrutinized by reporters, Democracy Watch, by all Canadians, by politicians—

Mr. René Villemure: Mr. Berthold, your time is up.

Do you have a brief answer, Mr. Pincince?

Mr. Luc Berthold: Mr. Pincince, why botch the investigation in this case?

S/Sgt Frédéric Pincince: Mr. Chair, we have a different mandate from that of the Conflict of Interest and Ethics Commissioner. We examine evidence to determine if there was a Criminal Code offence.

Mr. René Villemure: Thank you very much.

Mr. Sorbara, you have the floor for five minutes.

[English]

Mr. Francesco Sorbara: Thank you, Chair.

Welcome, Commissioner. It's good to have you here with us today. I am new to the ethics committee and working with my colleagues here. I'm trying to get up to speed on everything that's happened.

First off, just on a different tangent, I think it's worth pointing out that I was born and raised in northern British Columbia, in a place called Prince Rupert, where there is an RCMP detachment. I want to give a shout-out to all the officers who are sent there, to northern British Columbia, from all parts of Canada to provide public safety. I want to get that on the record, because the town I was born and raised in shaped many of my views today.

I'm not a lawyer like some of my colleagues, and I don't profess to be, but one question that is of very high importance to me has to do with the operational independence of the Royal Canadian Mounted Police. How important is that operational independence? Specifically, the responsibility of being a member of Parliament obviously involves studying legislation, but also acting responsibly in terms of our statements, our tweets and our comments about what our public security organizations do and don't do. Whether we're talking about the CBSA, the RCMP, the York Regional Police

where I live, the Vancouver Police Department or any other police department, how important is that operational independence to you?

Commr Michael Duheme: Mr. Chair, operational independence is highly important, of course. I shared earlier that I've been in senior positions since 2016, and I can probably count on one hand the number of times I've briefed the Prime Minister or the minister for ongoing.... We don't brief them on a regular basis on the files that we're doing, even less if a file involves an elected official.

Mr. Francesco Sorbara: There's something we learn as members of Parliament: You shouldn't try to do indirectly what you can't do directly. When you put out a tweet and say that the RCMP, or some other public security organization, has interviewed or not interviewed an elected official, you're basically trying to do something indirectly that you cannot do directly, in trying to direct the police to do something. I find that really scary, frightening. I find that almost Trumpesque, in terms of what the other side likes to do and how they like to tweet and comment.

We must hold the bar so high on the operational independence of the RCMP, because we do live in a democracy, and it is a foundational principle of our democracy. Wouldn't you agree on the operational independence side?

Commr Michael Duheme: I agree, Mr. Chair.

Mr. Francesco Sorbara: Second, sir, your members obviously investigate, and reinvestigate if they need to, if there is new information that is provided to your organization on any file, be it organized crime, terrorist crime, cross-border crime, anything like that. Is that correct?

Commr Michael Duheme: That's correct. I mentioned that earlier, Mr. Chair.

Mr. Francesco Sorbara: How much time do I have, Chair?

The Chair: You have one minute and 42 seconds.

Mr. Francesco Sorbara: With regard to the issue at hand, the laying or not laying of charges, I understand that on October 23, 2023, you mentioned to reporters that you were "very comfortable" with the RCMP's decision not to pursue any further investigation or criminal charges into the SNC-Lavalin affair.

I take it, Commissioner, that you would make that statement publicly with a high degree of comfort.

Commr Michael Duheme: Yes, I did make that statement, as I made the statement here in front of the committee members.

• (1210)

Mr. Francesco Sorbara: In addition, Commissioner, in terms of the resources that you have at your disposal, would you say those resources are robust to pursue investigations so that you or the folks who report to you are able to do so? Do you feel you have sufficient resources to conduct investigations, whether it's an investigation looking at public officials or at organized crime, terrorism and so forth?

Commr Michael Duheme: As with any file, sometimes a file takes a different direction where it requires additional resources, so we prioritize the work that needs to be done and assign, on occasion, additional resources to a specific file.

Mr. Francesco Sorbara: My final comment along this tangent is this. As an elected public official, you have certain responsibilities, and one is to be responsible in your comments, especially when it comes to matters where there may be ongoing investigations. To play this sort of Monday-morning quarterback.... I think it's actually a lot worse than that. I think when you are questioning the independence, and I would even say the integrity, of our police forces and the brave men and women who put on the RCMP uniform and go to the depot in Saskatchewan—in Regina, if I'm not mistaken—where they get the training and go for—

The Chair: Mr. Sorbara—

Mr. Francesco Sorbara: It's very important that we maintain that operational independence.

The Chair: You're 30 seconds over.

Mr. Francesco Sorbara: With that, sir, again I'd like to stress the importance of operational independence.

Thank you.

The Chair: I'm sorry, Mr. Sorbara, but one minute and 42 seconds turned into over two minutes.

That concludes our first round. We're going to reset the clock.

I'm going to ask our witnesses today, Mr. Duheme and Mr. Pincince, whether they are good to continue, or if they'd like a break for a couple of minutes.

Commr Michael Duheme: We're good.

The Chair: Are members of the committee fine with continuing?

Some hon. members: Agreed.

The Chair: We're going to start our second six-minute rounds with Mr. Cooper.

Go ahead.

Mr. Michael Cooper (St. Albert—Edmonton, CPC): Thank you, Mr. Chair, and thank you to the witnesses.

Part of the RCMP's examination was to determine whether the Prime Minister violated subsection 139(2) of the Criminal Code by committing obstruction of justice. Is that correct? That was part of the RCMP's examination.

S/Sgt Frédéric Pincince: That's correct, Mr. Chair.

Mr. Michael Cooper: Paragraph 19 of the RCMP investigation report states that “the strongest theory towards an offence of obstructing justice” was that the Prime Minister shuffled Jody Wilson-Raybould out of the position of Attorney General so that a new attorney general would make a different decision regarding the prosecution of SNC-Lavalin. Is that correct?

S/Sgt Frédéric Pincince: That's correct, Mr. Chair.

Mr. Michael Cooper: It's fair to say that the RCMP did not have access to all material evidence surrounding Ms. Wilson-Raybould's being shuffled out as Attorney General. Is that correct?

S/Sgt Frédéric Pincince: That's correct, Mr. Chair.

Mr. Michael Cooper: I'll just clarify or emphasize that: The RCMP did not have access to all material evidence on the strongest theory surrounding the Prime Minister's potential criminality involving obstruction of justice. Is that correct?

S/Sgt Frédéric Pincince: That's correct, Mr. Chair.

Mr. Michael Cooper: The RCMP did not have access to that material evidence on what was central to determining whether the Prime Minister broke the law, because of the parameters of the scope of the order in council with respect to the waiver of cabinet confidentiality. Is that correct?

S/Sgt Frédéric Pincince: That's correct, Mr. Chair. The parameters did not allow us to fully look into this one. However, I should just add—

Mr. Michael Cooper: Thank you for that. You answered that the parameters did not allow you to get that evidence.

Now, there is one person who had the authority to expand the parameters of that order in council, and that was the Prime Minister himself. Is that correct?

S/Sgt Frédéric Pincince: I would have to say, Mr. Chair, that I'm not exactly sure of the exact process of where the Prime Minister would be involved in such a decision. However, I do believe that the decision has to be made somewhere within the government.

Mr. Michael Cooper: I would submit that the decision would have to be made by the Prime Minister.

The RCMP requested an expansion of the scope to obtain that evidence, to follow that evidence. Is that correct?

S/Sgt Frédéric Pincince: Before we proceeded with the assessment, yes, we did make a request for an expansion of the parameters.

Commr Michael Duheme: I would add, Mr. Chair, that it was not to follow the evidence. It was to glean additional information that could be evidence.

• (1215)

Mr. Michael Cooper: That's correct.

That request was turned down on August 30, 2019.

S/Sgt Frédéric Pincince: I would have to say, Mr. Chair, that the request for the expansion was not allowed.

Mr. Michael Cooper: It was turned down, and it was turned down by the PCO, the Prime Minister's department. Is that correct?

S/Sgt Frédéric Pincince: Mr. Chair, we did receive a letter from the Department of Justice. I cannot remember exactly if this specifically came from the—

Mr. Michael Cooper: Well, it was from the PCO. That's in the RCMP's investigation report.

Would it be fair to say that the refusal by the Prime Minister's personal department, the PCO, to expand the scope of the order in council significantly impeded the full investigation into the Prime Minister's potential obstruction of justice?

Commr Michael Duheme: It limited our capability to pursue a full investigation.

Mr. Michael Cooper: It would have limited it in a fairly significant way because, after all, we're talking about going to the heart of the matter of obstruction.

Commr Michael Duheme: Again, not knowing what additional information is out there, it's hard for me to speculate that there's a Pandora's box out there full of information. It's hard for us without speculating.

Mr. Michael Cooper: Well, let the record show that the Prime Minister's department, the PCO, obstructed the RCMP investigation into the Prime Minister's potential obstruction of justice.

Are you aware of any other Canadian who can single-handedly block the RCMP from investigating his own criminality in such an effective way as the Prime Minister can?

Commr Michael Duheme: I wouldn't use the term "block", Mr. Chair. When the RCMP runs an investigation, it operates within the parameters and the regulations that it's allowed to. We see in a national security investigation, as well, that there's some information that we don't have access to and that we can't use in an investigation. It's the parameters that we are—

Mr. Michael Cooper: I need the answer. I think the answer to that question is that there is no one who has such powers.

Was any explanation provided by the Prime Minister's personal department for why there was this refusal to expand the scope of the order in council?

S/Sgt Frédéric Pincince: Again, Mr. Chair, as for a response on this one, what was indicated was the importance of these privileges that do exist. They are there for a reason. Again, as the commissioner mentioned—

Mr. Michael Cooper: Well—

Mr. Michael Cooper: It would seem, to me, to be part of a pattern of cover-up. That's what it would seem, to me, to be.

How can the Prime Minister be subject to the rule of law, like every other Canadian, if his personal department can shield him from an RCMP criminal investigation?

S/Sgt Frédéric Pincince: —we do have to operate within these parameters.

Commr Michael Duheme: Mr. Chair, I'll let individuals draw their own conclusion. What I come back to is that we operate within a set of regulations and parameters. Unfortunately, we made the effort to get additional information, and it was refused.

Mr. Michael Cooper: It's a two-tiered system of justice, I would say.

The Chair: Thank you, Commissioner.

Thank you, Mr. Cooper.

Mr. Bains, you have six minutes. Go ahead, please.

Mr. Parm Bains (Steveston—Richmond East, Lib.): Thank you, Mr. Chair.

Thank you, Commissioner and Sergeant Pincince, for joining us today.

Like Mr. Sorbara, I also have RCMP in my city—Richmond, British Columbia—so I want to give them a shout-out as well. Thank you for your service and the work you do.

I think you mentioned earlier the Ethics Commissioner. You said that nobody is above the law, that the threshold wasn't met, that the production order wasn't warranted to go forward, and that the Ethics Commissioner had access to more information than the RCMP.

We heard from my colleague across who talked about all of the different interviews that the Ethics Commissioner went through, so, clearly, the Ethics Commissioner's office had more information. Is it the duty of the Ethics Commissioner to provide documents if they find something of a criminal nature taking place?

S/Sgt Frédéric Pincince: So, yes—

Mr. Parm Bains: What's your understanding of that? Can you talk a little bit about that, and what your relationship is with the Ethics Commissioner?

S/Sgt Frédéric Pincince: Yes, Mr. Chair. Of course, I'm not going to call myself an expert on the matters of the Conflict of Interest Act. The commissioner of that department is doing an exemplary job to try to pursue these examinations.

As far as my understanding of the situation in relation to the Ethics Commissioner goes, pursuant to the Conflict of Interest Act, there are some compulsory powers that are available to the Ethics Commissioner to really conduct a very fulsome examination of the matter.

Of course, with these compulsory powers, which are to summon witnesses or to obtain documentary evidence that can be summoned, at the same time, with these additional powers does come a confidentiality clause that's set in place to allow the Ethics Commissioner to conduct an examination and come to a conclusion on the balance of probabilities in relation to the conduct of an elected official or a public office holder.

• (1220)

Commr Michael Duheme: If I may, Mr. Chair, just to add, the commissioner has a duty to suspend his examination if he comes across any criminal wrongdoing, which was not the case in this case.

Mr. Parm Bains: He would suspend his role and then pass it along.

Commr Michael Duheme: According to my understanding of the Conflict of Interest Act, and it's in the investigative report that's been provided, there's a duty there that, if there's any criminal wrongdoing, he's to suspend his activities, and it normally then gets reported to us for follow-up.

Mr. Parm Bains: So it's safe to say that the Ethics Commissioner, in this case, interviewed all of those people Mr. Berthold listed and came to a conclusion. If there was some wrongdoing or criminality there, he would have to suspend, at that point, and then pass along that information to the RCMP. Is that safe to say?

Commr Michael Duheme: From my understanding, that is correct, yes.

Mr. Parm Bains: I just want to clarify one more thing. I'm not sure if we got the answer. The only reason that the final letters to Ms. Wilson-Raybould and Mr. Scheer about your investigation concluding.... It was an administrative reason, just because there was a turnover and information that needed to get out just didn't get out earlier.

Commr Michael Duheme: Yes, and that's what I said. It's internal in the sense that there were several key players who moved along. The report was completed in the spring of 2021, and that's on us. We put measures in place to make sure that there's a monthly reporting on sensitive files of this nature.

Mr. Parm Bains: How much time do I have, Chair?

The Chair: You have one minute and 20 seconds.

Mr. Parm Bains: You talked about the number of interviews you concluded throughout the investigation, and we know that you've indicated that you're very comfortable at this point. Would you still say that after reviewing all of the documents that you got from the Ethics Commissioner? What did the Ethics Commissioner pass along?

S/Sgt Frédéric Pincince: Mr. Chair, we reviewed the report from the Ethics Commissioner. Again, because of confidential clauses that are within the Conflict of Interest Act, we were not privy to the extent of the material evidence that the Ethics Commissioner reviewed. Of course, we have to rely on the excerpt of his report.

Mr. Parm Bains: I just have a hypothetical. Again, the RCMP is independent. If I were to say I need you to look into this investigation, to please investigate this matter, some matter, you don't just take it at somebody's word. You don't take orders from politicians. Nobody is above the law. You would have to look at the evidence and then you would move forward with any case. Is that correct?

The Chair: Give a very short response, please.

Commr Michael Duheme: I would say you're correct, in the sense that most of the time we need someone to lay a complaint that we can investigate. Just a sidebar saying "Investigate this" doesn't cut it.

Mr. Parm Bains: Thank you.

The Chair: Thank you, Mr. Bains.

[*Translation*]

Mr. Villemure, you have the floor for six minutes.

Mr. René Villemure: Thank you, Mr. Chair.

Mr. Pincince, I have a few questions for you, but I would like to come back to what was said previously for a moment. I found my colleague's question a little startling. He mentioned the list of people questioned by the Conflict of Interest and Ethics Commissioner. You met with four of them. That piqued my curiosity.

Since when does the RCMP consult other organizations' investigations to determine whether it should conduct an investigation?

• (1225)

S/Sgt Frédéric Pincince: Mr. Chair, we use the information available and examine it to determine its value for a potential investigation.

Mr. René Villemure: You did not question the Prime Minister. You said you looked at the information available. In your opinion, it was enough to decide not to go any further. I am not a police officer, but in the end, among the four people you questioned, the key people you should have met with were not included.

S/Sgt Frédéric Pincince: Mr. Chair, I would say that on the contrary, the people we questioned were key witnesses to determine the elements of the offence. That is what dictated the direction we took.

Mr. René Villemure: Throughout the entire investigation, while following your usual protocols, were there problems that undermined the flow of the investigation? Without saying the word "frustration," I get the impression that something, without naming it, did not go as you would have liked.

In any investigation, no matter what it is, it seems to me that the person at the heart of the investigation must be questioned.

S/Sgt Frédéric Pincince: Mr. Chair, we try to determine if the elements of the offence were established. We then proceed step by step with key witnesses and assess the importance of the information, taking into account the elements we are looking for.

Mr. René Villemure: Isn't the Prime Minister a key witness?

S/Sgt Frédéric Pincince: We must examine the situation based on the information we have. The Conflict of Interest and Ethics Commissioner has a specific task, which is to look at the situation on an ethical level. As for us, we look at the situation on a criminal level. If a criminal offence was not committed, we do not move on to the next steps.

Mr. René Villemure: The Conflict of Interest and Ethics Commissioner often said here that he validates compliance with a code. He has to say if an act is compliant or not. Moreover, whether it is compliant or not on a criminal level, it is one indicator among others. It cannot be the only indicator.

Right?

S/Sgt Frédéric Pincince: Basically, ethical issues can sometimes be an indicator of criminal behaviour, but not necessarily in every situation.

Mr. René Villemure: I completely agree with that. What the Conflict of Interest and Ethics Commissioner assessed is not what you assessed. You looked at two different things. He looked at compliance with a code, and he found that the acts were not in compliance with that code. That does not mean it was criminal. In your case, lack of compliance with the code does not guarantee the results of an RCMP investigation.

In the investigations the RCMP usually conducts, for example in a case of theft, do you talk to the suspect, or do you only collect the information you deem sufficient?

Commr Michael Duheme: Every investigation starts with a complaint filed by a complainant. We then follow established procedure. We collect the information and evidence required to determine whether we can lay charges or obtain documents required by the court to get a warrant.

Mr. René Villemure: Did the investigation by the Conflict of Interest and Ethics Commissioner cause you problems?

Commr Michael Duheme: At first glance, I would say no. Keep in mind that there are two distinct mandates in this case. You said it yourself, Mr. Villemure, there is the ethical aspect and the criminal aspect, and the thresholds are different.

Mr. René Villemure: Very well.

As legislators, what could we do to help you gain or maintain the public's trust in the RCMP?

Commr Michael Duheme: According to the most recent national surveys I read, the public's trust in the organization is better than it was in the past. Like anything else, when conducting an investigation, especially one of this nature, we must stay within certain parameters. If there is a desire to broaden them for the sake of transparency, it is not up to me to debate it.

Mr. René Villemure: I understand that.

We often discuss cabinet confidences here. Ultimately, we are all uncomfortable with the subject. We sometimes get the impression it's used for purposes other than what cabinet confidence should cover. In other words, when it comes to cabinet confidences, it's a broad brush. That is what undermines trust. It is not the fact that these confidences exist, but how they are used.

It often seems to us that, when it comes to the current government, its usage is more liberal than less. There is a lot of debate about the relevance of assessing the current state of cabinet confidences. You answered earlier that more transparency would help you.

• (1230)

Commr Michael Duheme: The interpretation people have of cabinet confidence is what differs.

Mr. René Villemure: What is your interpretation?

Commr Michael Duheme: I will reserve my comments, Mr. Chair.

Mr. René Villemure: Very well, thank you very much.

[English]

The Chair: Thank you.

Mr. Green, go ahead for six minutes, please.

Mr. Matthew Green: Thank you very much.

In a tangential way, I'm going to pick up where my good friend from the Bloc left off.

I refer to the duty of candour jurisprudence in parliamentary proceedings, which suggests that standing committees constituted by the House of Commons are the grand inquest of the nation and have

the power to send for documents, people and any information pertaining to their studies.

I want to get back to the timelines, because it is an important thing for me—discovery—to assure the public there was nothing nefarious happening with the allegations being bandied about, both at this committee and out in the public.

I want to get very clear, Commissioner. I need for you to provide me with a clear answer. The decision was made not to pursue charges. When precisely was that?

Commr Michael Duheme: There were no further investigation activities as of spring 2021. As to the exact time and date when I read the report as deputy commissioner... I don't recall the exact time it was submitted and when I read it.

Mr. Matthew Green: When you read that, would you have reported it up to your superior—the commissioner at the time, Brenda Lucki?

Commr Michael Duheme: I would have gone through it and had a discussion with whoever was directly responsible for the program, and then discussed it with the commissioner.

Mr. Matthew Green: Would all of the decisions along the way have been reported up to the commissioner of the time?

Commr Michael Duheme: There would have been a fulsome decision if we had to lay charges or not lay charges. There would have been a fulsome briefing with the commissioner as to the reasons why.

Mr. Matthew Green: In terms of specificity... We talked about phases. I want to get crystal clear for a moment and suggest to you that this committee, in my opinion, would have powers to send for documents, including primary documents that would be within the RCMP related to this particular case.

Rather than us having to move a motion to demand documents, I hope you can put on the record today when exactly it was made public that the investigation had ceased. You said spring 2021.

Commr Michael Duheme: The Honourable Jody Wilson-Raybould was informed in January 2023. I am not quite sure if we went out publicly for that. Following the discussion we had with Ms. Wilson-Raybould, we did inform Mr. Scheer, who had written a complaint to the commissioner, and we responded to that letter. I'm not sure about the exact date it went public.

Mr. Matthew Green: I would suggest to you that, given that there's a two-year span or at least a year and a half between when the decision was made and when it was ultimately made public, it's highly problematic, given the timing and the politics at that time. The question I put to you is, why did it take a year and a half from the decision to end the investigation to the time it was made public?

Commr Michael Duheme: I have said it earlier, Mr. Chair. It's an internal matter, which has been addressed. It's hard to think that this would be suspended when no one in government was briefed on this file until the... I didn't even brief the Prime Minister or the minister, even after we informed Ms. Wilson-Raybould. It's entirely on us, the delay of a year and a half. It has nothing to do with—

Mr. Matthew Green: Who made that decision?

Commr Michael Duheme: It was a combination of a change in reporting structure.... The reports were not getting up and proper follow-ups were not made, so it was done inadvertently.

Mr. Matthew Green: I would put to you, sir, given the seriousness of this at the highest level of leadership in our country, that an inadvertent omission for a year and a half—with these allegations floating out there about the Prime Minister and the kind of cynicism and lack of trust that the hyper partisanship would bring in this environment—warrants more than a response of an inadvertent change in command.

I go back to you because, ultimately, now you are the leader, the commissioner of the RCMP. How do you take responsibility for this? Given the highly politically explosive nature of this—it was literally a campaign question, I believe, in 2019, and it certainly continues to be a political question to this day, so many years later—how does that happen?

• (1235)

Commr Michael Duheme: I don't have an explanation of how this happened. Honestly, there is a combination of factors, but as I said, we've put measures in place. For a sensitive file of this nature, from now on there's monthly reporting provided to the commissioner to ensure that we don't miss anything.

Mr. Matthew Green: I want to be very clear, because this committee has the power to send for documents. I just need this to be on the record. This is not a personal accusation to you or your character. If I were to move a motion today asking for the timelines and the internal documents related to the decision-making, and it came back to the committee, is it your testimony that it would be 100% congruent that, somehow, it just fell off somebody's desk somewhere and there was no internal communication, based on the timing of the decision to ultimately go public on this?

Commr Michael Duheme: I'm more than happy to provide the committee here any information on the timelines. As I said, to the best of my recollection as the deputy commissioner, there was some change at the senior level staff just underneath, who were reporting to me, so that we incurred delays, and I'm sure there are other factors as to why we had delays.

Mr. Matthew Green: With that, and giving him the courtesy and the respect accorded to a commissioner of the RCMP, I will not move a motion for that. However, I do want to go on the record, Mr. Chair, that there has been an offer to submit internal emails and communications regarding the timelines of the gap between when the decision was made to end the investigation and when it was made public.

I just want to make sure that's what we understand collectively as a committee here, without having to move a motion.

The Chair: That is my understanding.

Mr. Matthew Green: Is that yours?

Commr Michael Duheme: Yes.

The Chair: Thank you, Mr. Green.

Thank you, Mr. Duheme.

That concludes our first round of the second hour. We go to five-minute rounds, and we start with Mr. Brock.

Mr. Brock, go ahead for five minutes.

Mr. Larry Brock: Thank you, Chair.

Gentlemen, pursuant to the ATIP received by Democracy Watch, I understand that, literally within hours of Jody Wilson-Raybould's testimony at the justice committee, you were engaging in discussions with a local Crown attorney. Is that correct?

S/Sgt Frédéric Pincince: I would say, Mr. Chair, following the review of the testimony, yes, there was some consultation made.

Mr. Larry Brock: There was a telephone call. There was actually a meeting with the Crown attorney the very next day. Is that your recollection?

S/Sgt Frédéric Pincince: It was shortly after. I'm sorry, Mr. Chair, that I cannot remember exactly the day, but shortly after, yes, that's correct.

Mr. Larry Brock: Did you get any sense from the Crown attorney during those initial discussions, those initial days, that there was a reluctance from the Crown prosecution service to give you advice with respect to charging Justin Trudeau?

S/Sgt Frédéric Pincince: I will not go into the full details of the discussion that took place between us and the Crown in regard to this, but yes, there was some discussion that took place shortly after. That's correct.

Mr. Larry Brock: We know that every charge under the Criminal Code carries with it two elements, the *actus reus* and the *mens rea*—the act itself and the intent. Is that correct?

S/Sgt Frédéric Pincince: That's correct.

Mr. Larry Brock: Are you familiar with the leading authority on obstruction of justice, *Regina v. Beaudry* from the Supreme Court of Canada?

S/Sgt Frédéric Pincince: I would say that right now I wouldn't know the details.

Mr. Larry Brock: Okay. I'll read out a couple of components. The *actus reus* of the offence of obstructing justice is that the act has the tendency "to defeat or obstruct the course of justice." The *mens rea* is a specific, deliberate intent to do the act that would result in the obstruction of justice. Success is not necessary. "The offence is made out even if the accused fails to succeed or fails to complete the attempt to commit the offence." Pursuant to another decision, *Regina v. Watson* from the Ontario Superior Court, it is no defence that the actions were an error in judgment or a mistake.

With the evidence that you did receive, which largely consisted of the ethics committee report and the testimony of Jody Wilson-Raybould, was there an impediment of the *actus reus* or the *mens rea* to obstruction of justice?

• (1240)

S/Sgt Frédéric Pincince: I would have to say that when we conducted the review, the *mens rea* portion of it was part of the main focus of our review.

Mr. Larry Brock: Okay. Thank you.

I left off my first round essentially talking about the evidence we heard from Jody Wilson-Raybould that this wasn't a one-off and that over the course of four months, no fewer than 11 different officials, from the Prime Minister on down, in a series of meetings, memos and telephone conversations, attempted by means of varying degrees of subtlety to change the AG's mind. Explicit political considerations were raised, as well as the impact of SNC-Lavalin's conviction in job loss and company relocation, which was later proved to be a lie, and upcoming elections, both provincially and federally. This, at all times, was Justin Trudeau's problem.

We also have recorded evidence—not just a he-said-she-said but recorded evidence—between Jody Wilson-Raybould and the Clerk of the Privy Council. I am quoting here from Michael Wernick, that the Prime Minister is “quite determined, quite firm” on this—he said that four times—and “wants to know why the DPA route...isn't being used”; he's going to “find a way to get it done one way or another”; “he is in that kinda mood”; and “this is really important to him.”

If that doesn't cry out for a specific intent, I don't know what does. What do you say about that?

S/Sgt Frédéric Pincince: What I have to say is that when we looked at the specifics, and I'm referring to the quotes that were just mentioned here, of course in the assessment we did assess these comments that were made, but again, we had to take a more global approach when we looked at all the comments that were made. Of course, our determination vis-à-vis the *mens rea* portion is based not only on some of the comments but also on the totality of the evidence and the totality of the statements that were made.

Mr. Larry Brock: The totality is that the Prime Minister made it his personal mission to interfere in the criminal prosecution for his own political needs and the needs of SNC-Lavalin. Do you agree or disagree with that statement?

S/Sgt Frédéric Pincince: From the assessment that we conducted, again, our conclusions were that there was insufficient evidence to substantiate an offence.

Mr. Larry Brock: Do you understand why Canadians feel that there's two-tiered justice here in Canada? The Prime Minister is immune to prosecution because he can hide behind cabinet confidences. He can commit a litany of criminal offences and just say, sorry, cabinet confidence; I'm not going to allow the RCMP to investigate.

Do you understand their concerns, sir? Do you understand Canadians' concerns?

The Chair: Please make it a quick response.

S/Sgt Frédéric Pincince: Yes, Mr. Chair.

With regard to this, we're talking about ethics and criminality here, which sometimes seem to be intertwined. Again, as I indicated earlier, we have to follow the parameters as laid out in the Criminal Code.

The Chair: Thank you, Mr. Pincince and Mr. Brock.

Mr. Housefather, you have five minutes. Go ahead.

Mr. Anthony Housefather: Thank you, Mr. Chair.

My colleagues Mr. Cooper and Mr. Brock are both excellent attorneys, and they covered some matters that I would like to revisit.

Mr. Cooper was trying to make the point that the Prime Minister himself was somehow involved in the decision by the Privy Council Office not to allow the RCMP request for certain documents that you had asked for from witnesses.

I refer back to the assessment report, which stated in section 211:

On June 13, 2019, Mr. Shugart declined the Commissioner's request for access to all Cabinet confidences in respect of his examination. As reported by Mr. Trudeau's legal counsel, the decision on whether to expand the waiver was made by the PCO without the involvement of the Prime Minister or his office. Beside this limitation, the Commissioner felt that there was sufficient information available to reach a conclusion on the matter.

Do you have any reason to dispute what you declared in section 211, that the decision was made by the Privy Council Office without the involvement of the Prime Minister or his office?

S/Sgt Frédéric Pincince: We have no information as to who had partaken in the decision-making process.

Mr. Anthony Housefather: Perfect. So nobody else would have that knowledge, other than the people involved. To your best knowledge, when they're saying this, would that be correct?

S/Sgt Frédéric Pincince: That would be correct.

Mr. Anthony Housefather: We're talking now about this double standard. Here, you were not asking a court to require the production of documents. You were asking for a voluntary disclosure of documents. Is that correct?

S/Sgt Frédéric Pincince: That's correct.

Mr. Anthony Housefather: While we're talking about double standards, is it that every investigation that you do has witnesses who offer documents without a requirement for a production order—you ask them to deliver, and they always do it—and this is different?

● (1245)

S/Sgt Frédéric Pincince: There are situations where witnesses do provide information, but it varies.

Mr. Anthony Housefather: It's not always happening. There are many times when people decline to provide documents. Is that right?

S/Sgt Frédéric Pincince: That's correct.

Mr. Anthony Housefather: In the event that the RCMP had determined that it wished to proceed down the road of an investigation and you did have enough evidence to substantiate the disclosure of further documents, you could have gone to court to seek the production of these additional documents, as well. Is that correct?

S/Sgt Frédéric Pincince: That's correct.

Mr. Anthony Housefather: I'm now coming to Mr. Brock's comments related to the analysis. In section 240 and following in the assessment report, you've done a very detailed assessment of all the evidence, holistically, and come to the conclusion that there was insufficient evidence to go forward with further attempts to produce documents or a criminal prosecution. Is that correct?

S/Sgt Frédéric Pincince: That's correct.

Mr. Anthony Housefather: You also took into account other elements besides the one Mr. Brock offered: for example, that nobody ever told Ms. Wilson-Raybould that it was anything other than her decision as to whether or not to do the deferred prosecution agreement or, as we call it, the remediation agreement. Is that correct?

S/Sgt Frédéric Pincince: From my recollection, that's correct.

Mr. Anthony Housefather: Again, to tie this up, my colleague Mr. Green also made some interesting and very excellent points. Normally, the RCMP would not disclose that it was doing an investigation of someone, nor would it then confirm that it closed that investigation if the decision was not to lay a charge. Is that correct?

Commr Michael Duheme: We don't normally go out, after an investigation, to say that there are charges or no charges. When the documents are presented in court and are in the public domain, that is when we'll comment.

Mr. Anthony Housefather: Right. Normally, you would not disclose to the Canadian public that this person is being investigated, or that you closed the investigation and are not proceeding with it. Is that correct?

Commr Michael Duheme: That's correct.

Mr. Anthony Housefather: This was outside of your normal procedures. You wouldn't normally have these issues, because normally you wouldn't be doing any of that. Is that correct?

Commr Michael Duheme: That's correct.

Mr. Anthony Housefather: I look forward to seeing the documents you're going to provide, based on Mr. Green's questions.

Finally, there have been many allegations. Can we confirm that the Prime Minister was not necessarily the one person of interest in this investigation?

Commr Michael Duheme: When you look at the report, you'll see that there were people from the PMO, the justice department, and others who were interviewed.

Mr. Anthony Housefather: The idea that this one person was the centre of everything, that he was the person you were looking at and that you decided, through political pressure, to close that investigation is false. Is that correct?

Commr Michael Duheme: We had no political pressure on this file.

Mr. Anthony Housefather: Thank you.

I imagine my time is up.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Housefather.

While it's top of mind, because Mr. Housefather brought it up, as well as Mr. Green, are you able to provide those timelines by Friday, Commissioner, or do you need a little more time?

Commr Michael Duheme: I would need more time.

Rough timelines, yes, but then we're referring to emails and correspondence. Let me go back to my team and then I'll be more than happy to follow up and say how long it's going to take us. This is

like a mini ATIP request where I have to ask our team how much information is there.

The Chair: Thank you, Commissioner.

We do want to make sure that we have that information as soon as reasonably practical.

[Translation]

Mr. Villemure, I give you the floor for two and a half minutes.

Mr. René Villemure: Thank you, Mr. Chair.

Commissioner Duheme, what is your understanding of the Conflict of Interest and Ethics Commissioner's mandate?

Commr Michael Duheme: The Commissioner is responsible for everything to do not only with ethics, but also with the behaviour of all elected officials, I think. However, I am not familiar with his exact mandate.

Mr. René Villemure: Could there be some confusion between the mandate of one and that of the other if one isn't familiar with them?

Commr Michael Duheme: Are you referring to the RCMP Commissioner's mandate regarding criminal investigations and that of the Conflict of Interest and Ethics Commissioner?

Mr. René Villemure: Yes, exactly.

Commr Michael Duheme: I think the investigative parameters are different. As for investigations, we show an offence occurred by basing ourselves on the Criminal Code, which is not the case when it comes to ethical matters.

Mr. René Villemure: Mr. Chair, I would like to table a motion inviting the former Conflict of Interest and Ethics Commissioner to come and testify. I do not want to waste the committee members' time by doing it right now. I will do it at the end of the meeting instead. I give you notice right now that we will ask Mr. Mario Dion to come and shed light on the grey area between these two mandates.

Do you agree?

The Chair: Yes, I do.

Thank you, Mr. Villemure.

● (1250)

Mr. René Villemure: Thank you very much, Mr. Chair.

I have little time left, so I will conclude by coming back to the question I asked Mr. Pincince earlier.

This situation attracted a lot of news coverage everywhere. I will not ask you if you would have acted differently, because the answer will be no. In retrospect, did you learn something from it all?

Commr Michael Duheme: In all honesty, I would say we learned that investigating within very tight parameters without having all the information required is a challenge. It brings us to the issue of transparency or the government's influence regarding RCMP investigations, which is not—

Mr. René Villemure: If we don't have all the information, it's hard to say that justice was done.

Right?

Commr Michael Duheme: I would not disagree with what you said. However, we don't know what other information we could have obtained. There may have been a great deal more, or maybe less. We cannot speculate on it.

Mr. René Villemure: What is interesting is that, in theory, it could exonerate as much as it could indict. It's just that we don't know.

Commr Michael Duheme: I agree with what you said.

Mr. René Villemure: As a member of the committee and a legislator, I prefer us being able to make statements. However, I understand that's not your job. That's our mandate, to look at these things.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Villemure.

[English]

Mr. Green, you have two and a half minutes.

Go ahead.

Mr. Matthew Green: Thank you very much.

I want to give you the opportunity, with the ability to have hindsight, given your participation and now your ascension to the position of commissioner of the RCMP... Are there any lessons that could be drawn or recommendations that you'd like to provide to this committee regarding the SNC-Lavalin affair? For instance, if the same situation were to come up again, would you take the same approach? If so, why? If not, what would you do differently?

Commr Michael Duheme: I'll let Mr. Pincince talk about the approach, but I will go back to Monsieur Villemure's question with regard to transparency. That's something that is not in my ballpark, but, again, the parameters we had to work with were challenging, but we understood that those were the parameters we had to work with. If there's a common agreement where we have to expand that—

Mr. Matthew Green: I want to go to that.

Do you believe the RCMP should have unrestricted access to cabinet confidence as a part of its investigations?

Commr Michael Duheme: It could facilitate some of the investigations, but I'm not familiar with—

Mr. Matthew Green: I'll put it another way.

You mentioned that nobody is above the law.

Commr Michael Duheme: I did say that.

Mr. Matthew Green: Does cabinet confidence put a shield between the cabinet, the PMO and the law when you're dealing with investigations?

Commr Michael Duheme: It does, because we don't have access to all the information.

Mr. Matthew Green: Do you believe the RCMP should have access to the cabinet information when investigations are happening to ensure that nobody is above the law in Canada?

Commr Michael Duheme: I'll go back. Cabinet confidence is there for a reason. I think the interpretation of cabinet confidence, which we had a discussion on earlier, sometimes differs from one person to another.

I think there's a reason for that being there, and I'm not an expert to explain what the reason is.

Mr. Matthew Green: Sure.

Often it's national security. It would be my opinion that, to your point, when the client is both the solicitor and the client, it becomes very murky. I think those need to be separated, as per the Hon-ourable Jody Wilson-Raybould's recommendations, and many other legal recommendations of the same.

I digress.

In light of the "Trudeau II Report", do you believe that amendments to the Conflict of Interest Act or other legislation or policies governing the conduct of public office holders are needed to prevent the alleged actions by Prime Minister Trudeau in the report going forward?

Commr Michael Duheme: I'm not aware of the whole Conflict of Interest Act, so it would be inappropriate for me to comment on whether any changes are needed, or whatnot.

Mr. Matthew Green: Do you believe the Ethics Commissioner has the ability to determine what is criminality, in order to make referrals to the RCMP for investigation?

The Chair: Give a quick response, please.

Commr Michael Duheme: I would assume that, because it's in the act that he's to stop his investigation if there's criminal wrongdoing. I would imagine the person who is the commissioner has an understanding of what's criminal in order to refer it.

Mr. Matthew Green: Thank you.

The Chair: Thank you, Mr. Green.

Before we go to Mr. Barrett, we're doing five and five. I am going to extend the meeting by about 15 minutes. We have the resources to do an additional five and five, and then two and a half and two and a half past that point.

Mr. Barrett, go ahead, please, for five minutes. Then Ms. Khalid follows next.

Mr. Michael Barrett: An official inquiry of the ministry, in Order Paper question Q-1649, concerning communications and pressure by government regarding the SNC-Lavalin affair on June 19, 2023 revealed a call from a Trudeau minister who was not then the public safety minister—but is now—to the RCMP. The RCMP described the call as "seeking to speak to the Deputy before Question Period regarding a media story about an RCMP investigation that was ATIP'd."

Do all ministers have a hotline to the deputy of specialized policing services for updates on criminal investigations into their government?

• (1255)

Commr Michael Duheme: I'm not aware of the incident you're referring to.

As I said, this is the deputy of specialized policing services, so I'm not aware of that call. I brief up. Sometimes there might be clarity if there's an article in the media that comes out with regard to one of our investigations. Sometimes a minister will reach out asking for clarity.

Mr. Michael Barrett: Sure.

Someone who is not the Minister of Public Safety reaching out seems highly suspicious. I don't have the number for the deputy of specialized policing services, and I don't think they'd be interested in taking my call. I wonder why the Prime Minister's fixer and childhood babysitter is able to get that kind of access.

Are you investigating any contractors or subcontractors who worked on the ArriveCAN app?

Commr Michael Duheme: We received a complaint referring to inappropriate....

S/Sgt Frédéric Pincince: They were allegations of misconduct.

Commr Michael Duheme: It was not related to ArriveCAN. Now, with ArriveCAN, we've blended them both into one investigation.

Mr. Michael Barrett: You're investigating ArriveCAN.

Commr Michael Duheme: We're investigating the totality, not ArriveCan itself.

Mr. Michael Barrett: It's the totality. Okay.

Last week at committee, government officials said they're sufficiently suspicious of wrongdoing in the case and they're gathering documents. The RCMP is doing the same. It's sufficiently suspicious and is investigating. I just need to be clear on this.

S/Sgt Frédéric Pincince: Mr. Chair, to be clear, which investigation are we talking about?

Mr. Michael Barrett: I'd love a list, but it's specifically ArriveCAN.

S/Sgt Frédéric Pincince: On the matter of ArriveCAN, of course we received information. We are reviewing the Auditor General's report. Of course, we'll take action as required.

Mr. Michael Barrett: The AG said that a production order would be needed to get her full files.

Are you in receipt of all the AG's files on ArriveCAN?

S/Sgt Frédéric Pincince: Again, as far as the information the Auditor General mentioned goes, and as far as the RCMP requiring a form of judicial authorization to obtain the documentation goes, of course this is a step we'll need to assess in order to determine—

Mr. Michael Barrett: Have you taken that step? Have you undertaken that process?

S/Sgt Frédéric Pincince: I would have to say, Mr. Chair, that right now, because we're in the process of obtaining that information, I would be reluctant to speak about whatever steps the RCMP is taking in relation to this matter or any other matter.

Mr. Michael Barrett: You're not able to say, because it's a developing situation.

S/Sgt Frédéric Pincince: Again, Mr. Chair, I would have to say yes. In each of these cases, we proceed step by step. We conduct

the same level of assessment and determine.... Again, our goal is not to replace the role of the Auditor General or any other body. Our role is to focus on criminal activities. That's exactly what we're doing in this and other cases.

Mr. Michael Barrett: The procurement ombudsman reported that 70% of resources were bait-and-switched in the ArriveCAN contracting. We heard the testimony of Kristian Firth from GC Strategies about forging documents, specifically résumés, in order to win government bids. These are very serious things. We've heard this now in the reports of independent officers of Parliament. Allegations of fraud, forgery, threats, intimidation, destruction of evidence, bribery and extortion, all of these things have been brought to light in this ArriveCAN scandal.

On the question of what's in the public interest, we've heard today concerns about Canadians having confidence in their institutions. With my questions about the Aga Khan issue, it seemed like it stopped short of investigating the Prime Minister. With the SNC-Lavalin scandal, it stopped short of investigating the Prime Minister. My questions today are just to make sure that we're not stopping short of getting all the answers that Canadians need.

I wonder if you have anything more to say about the totality of what you've heard on "arrive scam". Is there an investigation?

Commr Michael Duheme: Mr. Chair, I confirm that there is an investigation, and we're not going to comment because it's ongoing.

• (1300)

Mr. Michael Barrett: Thank you.

The Chair: Thank you, sir.

Ms. Khalid, you have five minutes. Go ahead.

Ms. Iqra Khalid: Thank you very much, Chair.

Thank you again to the witnesses.

I had the opportunity to serve on NSICOP for a bit, and I really got to have those candid conversations about how the RCMP operates. I appreciated the candid nature of those conversations we were able to have to come to constructive conclusions, recommendations and findings as to how we can improve the system.

I really appreciate, Commissioner, what you had to say about cabinet confidences. Can you expand on how those cabinet confidences and that ability to make decisions impact the work that you do as an independent organization?

Commr Michael Duheme: The example, Mr. Chair, is what we're living right now. There is no doubt that there is a reason for cabinet confidence, but the question is to what extent. We talked about full transparency when we're running investigations, but we also talked about the parameters within which we can operate. The regulations are made in such a way that we are given the information that's available. There's a process in place to request additional information, which was refused.

Ms. Iqra Khalid: Thank you.

I realize that we're trying to get to better ways forward, which is why I really appreciated Mr. Green's questions about what's next and how we can prevent issues like this from arising.

My colleagues have brought up ArriveCAN. I'll give you an example. The leader of the Conservative Party sent you a letter demanding that you investigate ArriveCAN. How does that impact your independence? Are you going to be responding to that letter?

Commr Michael Duheme: I will be responding to the letter. It's a complaint that we received and that we're investigating. Apart from the position of the individual, it's a complaint that we received. We were already looking at the initial complaint that came in and will be investigating.

Ms. Iqra Khalid: Given the nature of what's been happening in the media and the questions that have been asked today, does either of you feel that it's appropriate for the Leader of the Opposition or for other political officials to attempt to interfere with the RCMP's independent work in investigations like this?

S/Sgt Frédéric Pincince: Mr. Chair, we always welcome any type of information from anyone in relation to a matter. Of course, we'll assess that information, and we'll take whatever steps are necessary based on our assessment or investigation of the matter.

Ms. Iqra Khalid: I've seen allegations of the RCMP being at the beck and call of Prime Minister Justin Trudeau. Is that true?

Commr Michael Duheme: As I said, I have briefed the Prime Minister on maybe a couple of files since I've been in a senior position. The RCMP is not politically driven. We're independent. The fact is that the Leader of the Opposition can write a letter to ask for an investigation, and the fact that we're doing it demonstrates that. We're not politically driven.

Ms. Iqra Khalid: Thank you.

I'll take this last opportunity to thank you for all of your work and to thank all the women and men in the RCMP for the excellent work they do in our communities.

The Chair: Thank you, Ms. Khalid.

[*Translation*]

Mr. Villemure, you have the floor for two and a half minutes.

Mr. René Villemure: Thank you, Mr. Chair. I will try to make good use of my time.

Mr. Duheme, my colleague Mr. Green talked earlier about cabinet confidences, which greatly intrigues me. He said there was a kind of shield between the Prime Minister and the RCMP in the current case. Or at least, he said it was like a shield.

If we want to make changes to the rules regarding cabinet confidences, we certainly cannot do it through regulation, because it is a constitutional matter, unless I am mistaken. Neither one of us is a lawyer. Nonetheless, I would like to know what you think about one thing.

There needs to be a balance between changes to the rules for cabinet confidences, which is very important, and the RCMP's needs. Do you think that's the direction to head in? Is the juice worth the squeeze or, on the contrary, are we just going to get stuck?

Commr Michael Duheme: Mr. Chair, basically, we have to understand why cabinet confidence rules are in place. After that, we have to extrapolate and see how it could be applied or changed. As you know, that falls within your purview.

• (1305)

Mr. René Villemure: All right.

You've worked at the RCMP for quite some time. Did you often have access to cabinet confidences? If yes, was the same parameter applied, was it broader, or was it narrower?

Commr Michael Duheme: Do you mean within the context of an investigation?

Mr. René Villemure: Yes, that's right.

Commr Michael Duheme: In my experience, no.

Mr. Pincince, do you want to add anything?

S/Sgt Frédéric Pincince: For some investigations, we did indeed obtain exemptions to cabinet confidences.

Mr. René Villemure: In some cases, there was an exemption, and in others, there wasn't.

S/Sgt Frédéric Pincince: Indeed, Mr. Chair.

Mr. René Villemure: Can you tell us why there wasn't one in that case?

S/Sgt Frédéric Pincince: Again, I cannot speculate on the situation at that time.

Mr. René Villemure: Did you ask for an exemption?

S/Sgt Frédéric Pincince: No, we did not in that case. The information was provided.

Mr. René Villemure: Okay.

Obviously, no warrant was received, in any case.

Thank you very much for your comments. They will help us reflect further on the matter.

The Chair: Thank you, Mr. Villemure.

[*English*]

Mr. Green, go ahead for two and a half minutes.

Mr. Matthew Green: Thank you very much.

I'm going to do something that maybe I don't do often enough, which is to provide the benefit of the doubt to police institutions and to you and the RCMP. It's pretty clear that under these circumstances, there are allegations of political interference. Under other circumstances, there could be the potential—I'm just playing this out as a hypothetical—where there could be allegations of the RCMP initiating investigations on politicians. That could also be considered political interference from the other side, from an oppositional side.

What I want to offer you today is the opportunity to just reflect on the fact that, as you've testified, the Ethics Commissioner had access to more information than you had. I think that's a hard thing—I'll just put it on the record—for Canadians to be able to digest and to look at and for our journalists to be able to digest, the fact that the Ethics Commissioner has more access than the RCMP on this matter. You may or may not recall, but it was our party, the NDP, that called for the federal government to launch a public inquiry. I know there are lots of conversations around the cost of inquiries and the powers. Certainly, we've come off the Rouleau commission with the Emergencies Act, and there are lots of people with opinions on that.

With what you have experienced and with what you have contemplated here today, would you agree that an inquiry that was granted unfettered access, including not just having the kind of constitutional direction from the House, but also having the powers for documents, for evidence and, ultimately, for judicial oversight, would be a good, non-partisan, non-political, unobstructed opportunity for us to deal with these matters of national importance when it comes to piercing the veil of cabinet confidence and the ability to pursue any types of allegations of wrongdoing?

Would a public inquiry have provided the remedy for what seems to have frustrated you in your ability to have a full investigation?

Commr Michael Duheme: Mr. Chair, I would say that even with a public inquiry, I think cabinet confidence still applies. That's something you have to work out, but that's my understanding.

Again, I think cabinet confidence was set in place for a reason. I'm far from being an expert on that. I think it has to be reviewed as to why it was put in place, along with the interpretation of cabinet confidence, as I discussed with the honourable Monsieur Villemure.

Mr. Matthew Green: That's very helpful.

Thank you.

The Chair: Thank you, Commissioner.

Thank you, Mr. Green.

With the final two-minute rounds, we're going to start with Mr. Brock, and I understand that he will be sharing his time with Mr. Cooper.

Go ahead, Mr. Brock.

Mr. Larry Brock: Thank you, Chair.

In the RCMP assessment report from February 2021, I've identified two items that partially explain the RCMP's reluctance to continue the investigation.

You referenced this earlier, and this article says, "Ms. Wilson-Raybould herself did not think a crime was committed." She stated that the Prime Minister's actions were inappropriate and unethical but not criminal.

Did the fact that she was still a member of Justin Trudeau's cabinet factor in that analysis?

S/Sgt Frédéric Pincince: To be honest, Mr. Chair, I'm not exact-ly sure if this was a factor in our determination.

Mr. Larry Brock: After Dion's report, she told the RCMP that the information she read gave her cause for concern. Are you aware of that?

S/Sgt Frédéric Pincince: That's correct, yes, Mr. Chair.

Mr. Larry Brock: Is the RCMP in the habit of outsourcing investigatory decisions to non-investigators?

S/Sgt Frédéric Pincince: I'm not exactly sure about the question, Mr. Chair.

Mr. Larry Brock: You seem to be relying upon the fact that she used these words and said she didn't believe Justin Trudeau's actions were criminal. That seemed to be a factor in your analysis. Are you saying that wasn't a factor?

S/Sgt Frédéric Pincince: Yes, of course it was a factor, Mr. Chair.

Mr. Larry Brock: The question is very specific: Do you generally outsource to a citizen—a non-police citizen—to make that type of an opinion of a legal matter?

• (1310)

S/Sgt Frédéric Pincince: Do you mean from the former attorney general?

Mr. Larry Brock: Yes.

S/Sgt Frédéric Pincince: I would have to say that her testimony is important in the assessment of the overall situation.

Mr. Larry Brock: She was a member of the Liberal Party of Canada; of course she's going to say it's not criminal. She was hanging on to her job. Can't you see that as an issue here? She paid the price because of her refusal to follow Justin Trudeau's lead in offering the DPA.

I'll move on.

Dion's terms of reference required him to shut down the inquiry if he discovered evidence of a crime being committed. Did that weigh in your decision as well?

S/Sgt Frédéric Pincince: Again, I would have to say, Mr. Chair, that this was not a determining factor. Again, it was based on the overall.... This is one element among a myriad.

Mr. Larry Brock: Thank you.

The justice committee, before it was shut down by the Liberal government, interviewed five witnesses. The Ethics Commissioner interviewed 14 witnesses, yet you interviewed four witnesses. You did not interview the Prime Minister. You didn't interview anyone in his office, in the PMO or the PCO.

My last question for you is, you had the opportunity to interview Justin Trudeau and you declined, yes or no?

S/Sgt Frédéric Pincince: What I have to say, Mr. Chair, is that this is not a yes-or-no question. What I have to say is that when we look at this, of course our purpose is to look for criminality. We need to meet that threshold before we can proceed to further steps. Again, our role—

Mr. Larry Brock: Everyone else had an interest in those witnesses except the RCMP.

Thank you.

I'm moving on to Mr. Cooper.

The Chair: You have two minutes, Mr. Cooper.

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

Just to clarify for the record, the RCMP could not rule out criminal wrongdoing on the part of the Prime Minister. Is that correct?

S/Sgt Frédéric Pincince: Of course, Mr. Chair, I would have to say that until we had a chance to look at everything—

Mr. Michael Cooper: It's in paragraph 23 under “Conclusion and recommendation” in the investigation report, so you can confirm that.

S/Sgt Frédéric Pincince: That's correct, Mr. Chair.

Mr. Michael Cooper: Okay. Was the RCMP hindered in its investigation when it drew the conclusion that there was insufficient evidence to further pursue the Prime Minister, including because of the refusal of the Prime Minister's personal department, the PCO, to expand the order in council?

Commr Michael Duheme: Again, Mr. Chair, we worked within the parameters that were given to us and the regs that were given to us, and we did—

Mr. Michael Cooper: The parameters were inadequate.

Commr Michael Duheme: We did apply to open it through an order in council to have additional information and it was refused.

Mr. Michael Cooper: It was refused by PCO.

Paragraph 24 of the investigation report states, “However, should additional evidence be uncovered corroborating a criminal intent to obstruct justice, it would be recommended that the occurrence be reopened for further investigation.”

I have a really tough time understanding, in the face of the obstruction that the RCMP was facing by the Prime Minister and the consequent lack of evidence to further pursue getting to the heart of the issue—that being obstruction—why the RCMP didn't see fit to even pick up the phone and contact the Prime Minister and schedule an interview with him.

The Chair: Give a quick response, if you will.

S/Sgt Frédéric Pincince: I would have to simply say, Mr. Chair, that in this situation, of course, again, we have to operate within the parameters of what we have. It's not for me to—

Mr. Michael Cooper: There's nothing within the parameters that you had that would have precluded you from picking up the phone to contact the Prime Minister.

S/Sgt Frédéric Pincince: Again, we have to assess if a criminal offence has taken place.

The Chair: Thank you.

Ms. Khalid, you have five minutes. Go ahead.

Ms. Iqra Khalid: Thank you very much, Mr. Chair.

I'll just recap what we've heard today: You investigated, and you did not find any criminality or any wrongdoing. Is that correct?

Commr Michael Duheme: Based on the information that was given to us, that's correct, Mr. Chair.

Ms. Iqra Khalid: We've talked about cabinet confidences and how there should be parameters around those cabinet confidences in balancing out transparency.

Commr Michael Duheme: With regard to that, Mr. Chair, I'll leave it up to this table to determine what is appropriate.

Ms. Iqra Khalid: Absolutely.

We also confirmed that you have acted independently, not on the behest of any political party or any organization, in all of the work that you do.

Commr Michael Duheme: As I said today, Mr. Chair, we did not once brief anyone on this file at the political level.

Ms. Iqra Khalid: Thank you.

I just want to clarify something that my colleague Mr. Cooper said. He said that the PCO is the Prime Minister's personal department. Is that true?

• (1315)

Commr Michael Duheme: That's an opinion. I'll keep my opinion to myself.

Voices: Oh, oh!

Ms. Iqra Khalid: Thank you.

I really appreciate the time that you've taken.

I'm going to pass it on to Mr. Housefather.

Thank you, Mr. Chair.

The Chair: Go ahead, Mr. Housefather.

Mr. Anthony Housefather: Thank you.

I just have a couple of brief questions.

Thank you both for coming in.

Do you always interview the targets of your investigation, or do you wait until there's a reason for that based on the analysis that you've done?

Commr Michael Duheme: Before you sit down with someone, obviously there's an analysis that's been done of everything that you've collected on that person as to what they have seen, whether they're involved and whatnot. Our investigators have a game plan when they go in and sit down with someone—if there's a need to sit down with someone.

Mr. Anthony Housefather: Okay.

So, when you started this investigation, there was no predetermined decision that you would or would not sit down with the Prime Minister or anybody else. Is that correct?

Commr Michael Duheme: What I would say to that, Mr. Chair, is that we followed the evidence.

Mr. Anthony Housefather: That's correct. However, there seems to be an attempt to make this an investigation about the Prime Minister. This is all about the Prime Minister.

You were investigating a factual situation that involved a myriad of different instances and different people, and you came to the conclusion about whom you wanted to interview or not internally, without political pressure. Is that correct?

Commr Michael Duheme: That's correct.

Mr. Anthony Housefather: Thank you so much.

I'm done, Mr. Chair.

The Chair: Thank you, Mr. Housefather.

Thank you to our witnesses today, Commissioner Duheme and Staff Sergeant Pincince.

I will tell you, Commissioner, that the clerk will be following up with the secretariat to make sure that we get the information requested in an appropriate timeline.

I want to thank you on behalf of not just the committee but also Canadians for being here today.

[*Translation*]

Mr. Villemure, according to the motion passed in October of last year, the committee decided to devote two meetings to the study, and we still have to hear from the following witnesses: Mr. Mario Dion, the former Conflict of Interest and Ethics Commissioner; Mr. von Finckenstein, the acting Conflict of Interest and Ethics Commissioner; and Mr. Michael Wernick, the former clerk of the Privy Council.

I propose that the committee hold the second meeting to hear from these witnesses later in April, because we will start to work on the committee's report on Thursday.

Mr. René Villemure: Thank you very much for the clarification, Mr. Chair.

I would like us to give priority to the former Conflict of Interest and Ethics Commissioner, because we heard today that there was some overlap between mandates, and we would like to shed light on it.

Of course both commissioners can help us, but one was present at the time, whereas the other succeeded him. If we can establish an order of priority, I would like to give priority to the former commissioner, Mr. Dion.

The Chair: I could grant priority to all witnesses invited to the committee. The problem is we only have one meeting on Thursday before we go back to our ridings for two weeks. There is another work week in March, so we could hear from witnesses at that time. The problem has to do with the calendar for the House and the committee.

Mr. René Villemure: Thank you very much.

The Chair: Thank you.

I thank the witnesses who were with us today.

[*English*]

Thank you, everyone.

The meeting is adjourned.

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