



HONOURABLE JODY WILSON-RAYBOULD
MEMBER OF PARLIAMENT *for* VANCOUVER GRANVILLE

March 26, 2019

Mr. Anthony Housefather, M.P.
Chair, Standing Committee on Justice and Human Rights
Sixth Floor, 131 Queen Street
House of Commons
Ottawa, ON K1A 0A6

Dear Mr. Housefather and Committee Members:

RE: Hon. Jody Wilson-Raybould, MP – Submission to the House of Commons Standing Committee on Justice and Human Rights

Gilakas'la. Thank you to the Chair and Members of the House of Commons Standing Committee on Justice and Human Rights for the opportunity to provide a written submission to supplement my testimony of February 27, 2019 in relation to your study on "Remediation Agreements, the Shawcross Doctrine and the Discussions Between the Office of the Attorney General and Government Colleagues."

The majority of this submission is in the form of texts and emails – which is in response to Mr. Rankin's request during my testimony to provide the Committee, "with a copy of all the text messages and emails that [I] referred to in [my] testimony." (1740). I took that request under advisement during my testimony. I am now making information that is in my possession available to the Committee, as requested, supplemented where necessary by additional context to assist understanding of the records. I have attached these documents in *Appendices A-E*.

In responding to this request, I, of course, continue to do so in accordance to Order in Council number 2019-0105, which addresses my time as Attorney General of Canada in relation to the

exercise of the authority of the Attorney General of Canada under the *Director of Public Prosecutions Act*.

In my view, the context for your Study and all of your deliberations is the core principle of prosecutorial independence – a principle that at times appears to have been obscured by layers of commentary, hyperbole, and spin. The real issues engaged by this matter – the issues that will inform what type of Canada we want to live in and pass on to the next generations – are not, ultimately, about how things are ‘experienced’, caucus dynamics, political ambitions, poll numbers, ‘erosion of trust’ or the role of social media.

Rather, the substantive issues raised by this matter are about prosecutorial independence, the rule of the law, and certain processes and institutions of our system of democracy. There are two aspects of these matters that I wish to emphasize, and which broadly respond to aspects of testimony provided before the Committee.

1. Non-Partisanship and Prosecutorial Independence

Prosecutorial decisions must be made in a non-partisan and objective manner that is “independent from the political pressures of the government” and “protected from the influence of improper political and other vitiating factors.”¹ This independence is required in relation to every prosecutorial decision, including decisions to commence, continue, or terminate criminal proceedings. The legal powers of the Attorney General with respect to deferred prosecution agreements – the powers I was charged to uphold when Attorney General – were designed to preserve these essential non-partisan and objective values.

Under section 3(3) of the *Director of Public Prosecutions Act* (2006), the Attorney General has the power to assume the conduct of prosecutions (s. 15). As well, the Attorney General is empowered to issue directives to the Director of Public Prosecutions (DPP) in respect of prosecutions generally or in respect of specific prosecutions (s. 10).

With respect to the s. 15 power of the Attorney General to take over a prosecution from the DPP, the Act provides that the Attorney General must first consult the DPP regarding his or her decision to assume conduct of a prosecution and must publish notice in the *Canada Gazette* “without delay”, unless either the Attorney General or the DPP considers a delay in notice to be justified “in the interests of the administration of justice.” In substituting herself for the DPP in taking over a prosecution, the Attorney General must act with a “judicial mind”, maintaining the firm constitutional principle that criminal prosecutions are to be independent of political considerations and managed in the public interest.

¹ *Krieger v. Law Society of Alberta* 2002 SCC 65 at para. 29 and 43

All of these elements are designed to preserve the non-partisan and objective character of prosecutorial discretion. To date, as I mentioned in my testimony, no Attorney General has ever assumed conduct of a prosecution under s. 15.

Regarding the s. 10 power of the Attorney General to issue directives with respect to specific cases [s. 10(1) or to cases generally (s. 10(2))], such directives must also be published in the *Canada Gazette*. Section 10 should not be taken as authorizing an Attorney General to issue any directive she wishes to prosecutors – because prosecutorial independence is a constitutional principle, any directive must be the result of objective, independent, and non-partisan considerations, and respect the Shawcross principle. By necessity, any directive issued under s. 10(1) must and will be heavily scrutinized on the question of whether it is politically motivated, as the issuance of a directive would be highly unusual. To date, no Attorney General has ever issued any directives in respect of specific cases under s. 10(1). There have been two ‘general’ directives issued under s. 10(2), which deal with terrorism and HIV non-disclosure.

2. *The ‘decision’ of the Attorney General*

The fact that no decision as to how prosecutorial discretion is exercised is “final” until the prosecution is concluded provides no justification to pressure the Attorney General to interfere with the independent exercise of prosecutorial discretion by the Director of Public Prosecutions. The main point of the *Director of Public Prosecutions Act* is to place discretionary decisions about the initiation and conduct of prosecutions in the hands of an independent, non-political, Director of Public Prosecutions. Interference with his or her independent exercise of discretion by the Attorney General is exceptional and to this point unprecedented and risks calling into question prosecutorial independence and the rule of law. The Attorney General’s role is not to minutely monitor and assess all of the myriad decisions that the DPP and her prosecutors make on a daily basis in the course of particular prosecutions. The Attorney General’s authority with respect to particular prosecutions is limited and to be exercised only in highly exceptional circumstances, circumstances which, as I have mentioned, no previous Attorney General has found to have arisen.

The issue raised in the matters before the Committee is the propriety of the conduct of others in trying in their interactions with the Attorney General of Canada and her staff to influence and/or interfere with her decision-making.

In terms of the specific case of SNC-Lavalin, as I have previously testified, I received a section 13 notice from the DPP regarding their intention not to invite SNC-Lavalin to negotiate a DPA. As you know, a section 13 notice under the Act provides updates on prosecutions that are in the general interest. The information is provided to the Attorney General of Canada to act on or not as he or

she deems appropriate. A section 13 notice is just that – a notice – and it does not require the Attorney General to make a ‘decision’ or take any action.

While I cannot discuss the merits of the section 13 notice in respect of SNC-Lavalin as the matter is sub judice, what I can say is that after due diligence and consideration of the matter, I accepted the conclusions of the DPP’s section 13 notice and determined that I would not take any further action in the matter. When considering this section 13 notice, and of course as necessary in my role, I respected the role of the DPP, her discretion, and the constitutional principles of prosecutorial independence and the rule of law. Further, I made this decision having a thorough understanding of the DPA regime given my previous knowledge and involvement with the regime. For example, in September 2017, in conjunction with Public Services and Procurement Canada, my Department conducted a public consultation on “Expanding Canada’s Toolkit to address corporate wrongdoing”. This was followed by a number of Cabinet discussions on Deferred Prosecution Agreements. Eventually this led – through the *Budget Implementation Act 2018* – to an amendment to the *Criminal Code* to include this new tool – changes that came into force in September 2018. As stated in my previous testimony, I had made this determination – this ‘decision’ – prior to my meeting with the Prime Minister and the Clerk on September 17, 2018.

I would also add that my review of the section 13 notice did not require me to communicate a decision to the Prime Minister’s office which has no responsibility or authority in relation to the exercise of prosecutorial discretion. Further, and by way of background, when I was the Attorney General I regularly received section 13 notices and in no case did I write a note to anyone about my stance in relation to the notice.

As Deputy Minister Drouin stated in her testimony, “It’s the role of any public prosecutor to continuously assess the public interest on whether or not to continue a specific case. Of course, this continuum, if I may say obligation, depends on new facts or evidence that can be submitted to the prosecutor.”

It is always open to the DPP to send an additional section 13 notice if there are new facts – new information – that the DPP believes the Attorney General should be aware of. The Attorney General may also be made aware of new facts or information at any time. Neither of these situations happened while I was the Attorney General. There was no new section 13 notice provided to me by the DPP and there were no new and relevant facts or context presented to me after my meeting with the Prime Minister on September 17, 2018. There was no reason to reconsider what I would do in relation to the DPP’s section 13 notice. As was always the case, I had confidence that the DPP and the PPSC were doing their job and I did not have any reason to closely monitor their actions.

Further, as the evidence before the Committee reveals the efforts to pressure me to act and to use my authority to interfere with the prosecutorial discretion of the DPP raised matters and

considerations that are not appropriate. Certainly any attempt to normalize such efforts is very dangerous to the institutions of our democracy. Again, this is the heart of the issue.

The remainder of this submission supplements the timeline and detail of events I provided in my testimony. Again, my evidence is based on contemporaneous and detailed notes, in addition to my clear memory, which I am relying on among other documentation such as texts and emails. In many instances I provide copies of a text or email, as was requested by the Committee. In other instances I provide detail of a meeting or event which was raised in testimony subsequent to mine, and which I did not have the opportunity to fully address in my previous testimony. To be clear, I have not repeated all of my previous testimony below. As such, for Committee members, and the general public, to fully know the facts of this matter, they must revisit my earlier testimony in conjunction with the below.

1. On **September 18 / 2018**, we had a Minister/Deputy Minister meeting in the afternoon where one of the important agenda items was for me to debrief my DM, Department of Justice (DOJ) officials, and staff on my meeting with the Prime Minister the day before. I relayed that I had undertaken to the Prime Minister that I would speak to my Deputy Minister and to the Clerk of the Privy Council. In this meeting, my Deputy asked whether I had everything I needed to stand behind the PPSC's decision as communicated to me in the section 13 notice. I indicated that I had what I needed and I reiterated that I was not going to intervene. I further stated that I would speak to the Clerk and asked my team to set this meeting up as soon as possible. Finally, I provided clear direction to my Deputy, officials, and staff that no one but me was to speak to the Clerk about this matter given my discomfort with the conversation I had with the Prime Minister and the Clerk the day before. [As such, a meeting with the Clerk was subsequently set up for the following day.]
2. I indicated in my previous testimony, Ms. Jessica Prince, my Chief of Staff (COS), had phone calls with Mr. Ben Chin and Mr. Justin To of Minister Morneau's office on **September 20 / 2018**. As I only referenced these calls in my previous testimony, I will now provide more detail as to the nature of these phone calls.

With respect to Mr. Chin, my COS was having a conversation with him on another matter when Mr. Chin segued the conversation to SNC and DPAs, and said "your boss spoke to Bill [Morneau] yesterday, and said that me and Elder were 'mucking around' on this file. Be careful when using my name, Jess." Mr. Chin referenced my Deputy Minister's idea of someone calling the Director of the PPSC, and said that it seems like I had shut this idea down. He said "there has to be some middle ground here, because we are headed towards losing these guys [SNC]." My COS said that, when it came to prosecutorial independence, there really is no middle ground and that the role for the Attorney General here is clear.

Later that same day, my COS spoke to Justin To. Again, the call was supposed to be about another matter, but he – like Mr. Chin – steered the conversation to SNC and DPAs. Mr. To said "why can't SNC just go through the process?" My COS explained to him that we do not control who goes through the DPA process; that is up to the PPSC; and, that we do not and cannot control them in this decision. He said "it's just a bit ironic that she wants an alternative justice process [a reference to restorative justice] to be available in one sense, but not for SNC." He kept saying to my COS that "they just want to go through the process." He further said that there is a sense that "you don't want this to happen at all." My COS asked him what on earth he meant by that. Mr. To said "that your boss has a philosophical problem with it. That she hated it the whole time and wouldn't even use it if we could." My COS said "that is absolutely not true." She told him that there was no philosophical opposition on my part.

Mr. To followed up with my COS by email later that day to apologize, and said that he was sorry if there was any misunderstanding on the call. My COS responded to him and said "no hard feelings" and then she laid out all the things that I had done to support the DPA regime to happen in the first place, and reiterated that the decision to enter into a DPA or not was for the PPSC [*see email exchange at Appendix A*].

3. On **October 10 / 2018**, SNC issued a media release indicating they had been advised by the PPSC that there will be no negotiations for a DPA. In the media release, SNC stated that it strongly disagreed with this decision and were "reviewing its options to appeal this decision."

Amy Archer at PMO contacted my COS about a story in the *Globe & Mail* that pinned the decision on the government. My communications team reached out to the *Globe*, at PMO's request, to have the story clarified to reflect the fact that the decision was taken by the PPSC, which is independent of government [*see Appendix B*].

4. On **October 19 / 2018**, SNC filed a Federal Court application seeking to quash the DPP's decision to not enter into a remediation agreement with them. On **October 22 / 2018**, I had a meeting with my Deputy, officials, and staff in which we discussed SNC. Specifically, we discussed SNC's application to Federal Court and the nature of the DPP's legal representation in this matter. We discussed whether there was any precedent of DOJ acting for the DPP. After our discussion, I directed my Associate Deputy Minister to have someone speak to the Director and advise that the PPSC should hire a civil legal agent to represent them on this matter and that the DOJ would not be providing counsel. I further instructed my ministerial staff and the Deputy Minister's Office that no one was to contact the DPP on SNC other than to provide the PPSC with names of counsel for their consideration and that this was to be done by the end of the week.

5. On **November 13 / 2018**, my Deputy hand-delivered to my COS a paper copy of a memorandum the Clerk had asked the Department to prepare entitled 'SNC-Lavalin' two weeks earlier. The

memo addressed the question of SNC's criminal prosecution and what would happen if the process results in a conviction. It also stated that there was no information to provide on the possible impact on the Quebec or Canadian economy of a possible conviction of SNC-Lavalin. I was provided this note later the same day by my COS.

I note that Deputy Minister Nathalie Drouin in her testimony to the Justice Committee of March 6, 2019, stated that the Privy Council Office asked the department for an opinion on the potential impacts on the SNC-Lavalin issue if the prosecution were to lead to a criminal conviction. In answer to a question, the Deputy Minister stated that she did not provide this report to the PCO because "I was instructed [by the Attorney General] not to send it"(1540). I have no recollection nor do I have any notes of having given this instruction to my Deputy Minister. It was my general practice when instructing my Department to make a written note of it. I do, however, remember giving instructions on September 18, 2018 to my Deputy, officials and staff about communications with the Clerk (as mentioned above) – instructions for which I do have a note. As an aside, given that this request for an opinion came directly from the Clerk, it does not make sense to me that I would have instructed not to share it. Further, I am not clear why the Clerk would be asking for such an opinion in the first place having known I had already considered the matter and had decided not to intervene.

6. On **December 7 / 2018**, my office received a letter from the Prime Minister, dated December 6, 2018, which attached a letter from the CEO of SNC-Lavalin dated October 15, 2018. This letter has been tabled with the Committee. On **December 14 / 2018**, I responded to the Prime Minister by way of letter as follows (I do not have access to the official letter any longer, but I have an email record as to what the letter said):

Dear Prime Minister Trudeau,

Thank you for your letter dated December 6, 2018, enclosing a letter to you from Mr. Neil Bruce, Chief Executive Officer of SNC-Lavalin, dated October 15, 2018. I have read your letter closely, as well as his.

As you note, the matters raised in Mr. Bruce's letter are currently before the courts. As such, it would be inappropriate for me to comment on their substance.

As you know, the Public Prosecution Service of Canada (PPSC), which is solely responsible for making decisions with respect to remediation agreements and their applicability in a given case, operates at arms-length and is independent of my Department and my office.

I appreciate having had this matter brought to my attention.

Respectfully,
Jody Wilson-Raybould...

7. As I mentioned in my previous testimony, my COS, Ms. Jessica Prince, on **December 18 / 2018** was summoned to an "URGENT: Chat w/ Katie & Gerry" [see email request at Appendix C]. Gerald Butts and Katie Telford wanted to discuss SNC and wanted to find a solution. I have provided copies of a text message conversation between myself and my COS shortly after this meeting [see photographs of the text messages at Appendix D]. The following is our complete text conversation (I have only redacted parts in which we discussed extraneous matters):

Jessica Prince (JP): Hey boss – you free to chat? G+K summoned me to their office just now "urgently" to discuss the DPA/RA matter. For context, they are speaking to the Clerk now, but asked if – and they haven't finally decided this yet – you might be free to speak to the PM and the Clerk tmrw, should they decide later tonight that is a good idea.

JWR: What? What did they say?

JP: Basically, they want a solution. Nothing new. They want external counsel retained to give you an opinion on whether you can review the DPP's decision here and whether you should in this case. Someone like Bev McLachlan. I told them that would be interference. Gerry said "Jess, there is no solution here that doesn't involve some interference." At least they are finally being honest about what they are asking you to do! Don't care about the PPSC's independence. Katie was like "we don't want to debate legalities anymore." They want to save peoples jobs. Same as what they were saying before. Gerry told some story about how Mulroney met with David Milgaard's mom, walked into the Cab room, and told Kim Campbell she had to fix it. She gave him all these AG reasons why she couldn't interfere, but then she ultimately did what Mulroney wanted and was right. He kept saying "this is economic policy. We have to save jobs."

JWR: OMG. I do not even know what to say to that.

JP: I made the point about how this is about the protecting the AG role, and how if you interfere here, then you will be expected to all over the place ([REDACTED]). They didn't seem to get or even care. Yup, I was floored. They kept being like "we aren't lawyers but there has to be some solution here."

JWR: So where were things left? Lol

JP: So unclear. I said I would of course let you know about the convo (check) and they said they were going to "kick the tires" with a few more people on this tonight. The Clerk was waiting outside when I left. But they said they may want to set up a call between you and the PM and the Clerk tmrw. I said that of course you would be happy to speak to your boss! They seem quite keen on the idea of

you retaining an ex SCC judge like the former Chief to get advice on this. KT thinks it gives us cover in the business community and the legal community, and that it would allow the PM to say we are doing something. She was like "if Jody is nervous, we would of course line up all kinds of people to write op eds saying that what she is doing is proper". PS I hate that they call you Jody.

JWR: [REDACTED]
[REDACTED]

JP: [REDACTED]

JWR: [REDACTED]
[REDACTED]

JP: [REDACTED]

JWR: [REDACTED]
[REDACTED]
[REDACTED]

JP: [REDACTED]

JWR: Do you know what the story re: Milgaard is?

JP: All Gerry said was that Mulroney met David Milgaard's mom and I think she was asking for a review of his case. Campbell as AG said she could not interfere in an independent process. But then I think she ultimately ordered the SCC to look at his case. By Gerry's telling, it was because Mulroney told her that she had to find a solution.

JWR: Can you send Kim Campbell's cell number again – if you still have it? Pls and thx.

JP: Of course. And great idea.

JWR: Thx. Good grief – this is absurd.

JP: It is.

JWR: [REDACTED]
[REDACTED]

JP: They clearly do not care about the PPSC's. Gerry kept talking about how it was created by Harper. I was like "sure but it is what we have and we have to respect the statute." No scruples.

JWR: So crazy. Gerry said the same thing to me.

JP: Like, he obviously doesn't like their institutional independence. But the solution is not to interfere but to properly reform their structure, if you think that is required. [REDACTED]

A little later that evening I spoke to my COS by phone. I wanted to get a fuller understanding of the meeting she had with Mr. Butts and Ms. Telford given the nature of the conversation and how important it was. My COS relayed three additional points about the meeting. The first was with respect to the idea of a letter that I raised with the Clerk back on September 19, 2018. My COS told Mr. Butts and Ms. Telford that she and I had never heard anything further from anyone on the idea of a letter. Mr. Butts dismissed the idea saying, "that won't do anything." Second, on the idea of bringing in external counsel to get advice, my COS asked Mr. Butts specifically what question or questions would be asked of the external counsel. He replied, "Whether the AG can review the DPP's decision here" and, "Whether she should in this case?" My COS asked what if the opinion comes saying, "She can review it, but she shouldn't" or simply, "She can't review it" end of story? Mr. Butts stated, "it wouldn't say that." My COS informed me that she remembered this very clearly because this response made her nervous. Third, and towards the end of the meeting, Mr. Butts, looked at my COS, and said that he could not underscore enough how important this is. There was, according to my COS, lots of eye contact and to use her words, it "freaked" her out. I recall my COS sounding upset and emotional when talking to her on this phone call.

On the morning of **December 19 / 2018**, my text conversation with my COS continued at 10:55 am PST, as follows:

JWR: Going to meet PMKC [former Prime Minister Kim Campbell] in about an hour. [REDACTED]

JP: [REDACTED]

JWR: [REDACTED]

JP: [REDACTED]

JWR: Thx. Also do we have any updates as to what happened in court? And do you remember day I met with Clerk?

JP: No update re court. Just at Dr office. Will ask FG [Francois Giroux]. I will check re Clerk date. Sept 19 is when you met the Clerk.

JWR: [REDACTED]

JP: [REDACTED]

JWR: [REDACTED]

JP: Sent you the materials. hope the meeting goes well!!

JP: Hey boss – we just heard that the Clerk would like to speak with you today. Let me know if you want to make this happen or if we can bump this to tomorrow. I think we know what it is about

JWR: He texted me. I will follow up. Just in meeting right now

JP: Of course. Danke

JWR: Call you.

JWR: Calling you now I mean.

JWR: Not answering will try again in a bit.

JP: Gotcha. Thx

My text conversation with my COS continued after my phone conversation with the Clerk (later that day) as follows:

JWR: Call me please. [REDACTED]

JWR: Just talked to the clerk

JP: Just on the bus. Can you give me 10 mins?

On December 19, 2019, I did meet with former Prime Minister Kim Campbell [PMKC] who, of course, remains a member of the Privy Council, at Granville Island in Vancouver to discuss what Gerry Butts had said to my COS the day before regarding her, former Prime Minister Mulroney and the David Milgaard case.

In our coffee meeting we talked about the David Milgaard case. PMKC had a vivid memory of the case and reflected on it in a manner that reflected to me that it was still quite top of mind for her. Needless to say, she categorically denied what Mr. Butts had said and was quite offended and outraged by the comments. She adamantly denied the characterization not only of her as the Attorney General but of her former boss, Prime Minister Mulroney.

She further reflected – as she did in her Memoirs (1996) – that Brian Mulroney “was much too good a lawyer to intervene improperly in the matter. He never breathed a word about the Milgaard case to his AG, nor did anyone in his office ever attempt to influence her handling of the case.”

8. As discussed in my previous testimony, I had a telephone call with the Clerk, Michael Wernick, on **December 19, 2018**. This call lasted 17.24 minutes. Normally, when I take an important call like this, I would often have a staff member with me to take notes, but in this case, I was alone in our condo in Vancouver. I was anxious to ensure that I had an exact record of what was discussed as I had reason to believe that it was likely to be an inappropriate conversation. So while I typed out notes during the phone call, I took the extraordinary and otherwise inappropriate step of making an audio recording of the conversation without so advising the Clerk. This is something that I have never done before this phone call and have not done since. I did this simply to ensure that my notes were accurate and given the ongoing pressure and attempts to interfere in this case, the nature of conversations that had occurred on December 18, 2018 between my COS and the PMO, and my strong suspicion that this matter would continue to escalate in even more inappropriate ways.

While this recording was made simply as a personal aide memoire because I had no staff present to make notes, I am releasing the recording now given the Clerk’s repeated assertions that he made no threats to me veiled or otherwise, or that he had no recollection of the specifics of the call, or otherwise called into my question my previous testimony. The recording allows the members of the Committee and the public to decide for themselves.

The following is a transcript of our conversation [*see Appendix E. In addition, I have provided with this submission an audio recording of the conversation*].

Clerk: Hello.

JWR: Hello Michael, it is Jody.

C: Hi, sorry about the phone tag.

JWR: That's ok.

C: Um...I am not calling you about litigation directive. I am calling about the other important one – the Deferred Prosecution thing / SNC and so one – I wanted to pass on where the PM is at... so our intelligence from various sources is that company is getting to serious point now... the board has asked consulting firms for options for the board for their next which could be selling out to somebody else, moving...you know, various things.

JWR: yep.

C: So it seems to be real and not a bluff. Um, there is another rising anxiety as you can imagine about a signature firm and job loss and all that coming after the Oshawa thing and what is going on in Calgary and what not. So the PM wants to be able to say that he has tried everything he can within legitimate toolbox to try to head that off. So he is quite determined, quite firm but he wants to know why the DPA route which Parliament provided for isn't being used. And I think he is gonna find a way to get it done one way or another. So, he is in that kinda mood and I wanted you to be aware of that.

JWR: ok

C: So, um, I don't know if he is going to call you directly – he might – um and he is willing – I think he is thinking about getting somebody else to give him some advice...you know he does not want to do anything outside the box of what is legal or proper – um...but his understanding is – you know – the DPA tool is there and you have options that we talked about before to ask for reason from the DPP or even take over the prosecution. He just wants to understand more at this point of why the DPA route is not taken up on this route. So he is thinking on bringing someone in like Bev McLachlin to give him advice on this or to give you advice on this if you want to feel more uncomfortable you are not doing anything inappropriate or outside the frame of...

JWR: I am 100 percent confident that I am doing nothing inappropriate.

C: Ya, no but would not be if you decided to use some of these tools under the law...cause I think he feels that the government has to have done everything that I can before we lose 9000 jobs...and a signature Canadian firm.

JWR: Right so – um – I again am confident in where I am at on my views on SNC and the DPA haven't changed – this is a constitutional principle of prosecutorial independence that Michael – I have to say including this conversation and previous conversations that I have had with Prime Minister and many other people around it – it is entirely inappropriate and it is political interference. And I...the Prime Minister obviously can talk to whomever he wants – but what I am trying to do is to protect him. I could have a conversation with Beverley McLachlin...I can call her right now...um...I am just – um – issuing the strongest warning I can possibly issue that decisions that are made by the independent prosecutor are their decisions. We gave her, and them, the tools – the additional tools – I made it very clear at the cabinet table and other places that these tools are at the discretion of

the prosecutor – and everybody agreed to that and that there was no guarantee that there would be a DPA in this or any other case. So we are treading on dangerous ground here – and I am going to issue my stern warning – um – because I cannot act in a manner and the prosecution cannot act in a manner that is not objective, that isn't independent, I cannot act in a partisan way and I cannot be politically motivated. All of this screams of that. So I am actually uncomfortable having this conversation but I am happy to talk to you. I will call Beverley McLachlin...I cannot even imagine her feeling in any way, shape or form comfortable interfering with the independent prosecutor.

C: Ok but I think that is where people are talking past each other. I mean I think the view that he has formed – I share – I am not the lawyer in any of these conversations – and Elder and others is – um – it is not interference – the statute specifically has these other provisions in it that allow you to ask questions of the DPP and that is provided for and that is not interference...

JWR: But I would have to issue a Directive, I would have to Gazette this...

C: Yes.

JWR: the Prosecutor – the director – whom I know and understand after having several conversations with her about another directive on HIV that I issued – she is a by the book person. If this is gazette – this will be – and I hear you on the jobs and wanting to save jobs – I mean we all want to do that – this goes far beyond saving jobs – this is about the integrity of the Prime Minister and interference – there is no way that anybody would interpret this other than interference – if I was to step in. It does not matter how I would look in doing that – I would be a mockery – and that is not the problem – the bigger problem is what it would look like down the road for the government. It is not about jobs – and I know that jobs are important so I do not want anybody to misinterpret that I don't care about those jobs – this is about the integrity of the government and recognizing that there is the ability to issue a directive under the act...um...it is still irrespective of the ability that I have to do that – 1. it has never been done before but 2. this is going to look like nothing but political interference by the Prime Minister, by you, by everybody else that has been involved in this politically pressuring me to do this.

C: Well...um...

JWR: I actually really feel uncomfortable having this conversation because it is wrong and I hear the Prime Minister obviously can call me...like I said to you I will have a conversation...I am going to call Beverley McLachlin and have a conversation with her about his.

C: Well...of course it has not been done before because parliament only created the instrument barely a year ago...

JWR: No no no...this instrument was... you mean the directive – the directive on a specific prosecution has never occurred... And this happened... cause Harper brought this law in as you probably know 10 years ago. The Directive – or the DPA has never been it just entered the Criminal

Code back in September so I understand that this is the first case. The prosecutor sent me what is called a Section 13 – you told me that you hadn't seen it before – but I read it and I have reread it – and the Prime Minister's Office has a copy of it. She explains in it why she is not doing it in this case – we have to, I have to be – unless it is something outrageous – comfortable with the decision – recognizing it is the first one likely and obviously I am confident wasn't entered into lightly – made the decision not to enter into a DPA with respect to this case. And she explained why.

C: So when did she convey that to you?

JWR: She issued the Section 13 back in September when I was down in Australia for that...five eyes – and then all this transpired...I mean I have a timeline of every single conversation and everything that everybody has said to me on this so...um... So like...anyway...again – I am surprised that you and I are having this conversation but I am just saying that I really feel uncomfortable about the appropriateness of this conversation.

C: Ok I understand that – but I mean I think his view is that his is not asking you to do anything inappropriate or interfere. He is asking you to use all the tools that you lawfully have at your disposal...um.

JWR: I know I have a tool under the prosecution Act that I can use. I do not believe it is appropriate to use tool in this case.

C: ok alright ... that is clear – um – well his is in a very firm mood about this so um...

JWR: Does he understand the gravity of what this potentially could mean – this is not about saving jobs – this is about interfering with one of our fundamental institutions – this is like breaching a constitutional principle of prosecutorial independence.

C: Well I don't think he sees it as that...

JWR: No one is explaining that to him Michael. Like this is...we can stand up in the House of Commons on Norman on – totally appropriately on Norman – on extradition and we can talk about the rule of law – um.... The cases are not dissimilar – the principle or the integrity of how we act and respond to the tools we have available and what we should and shouldn't do – again...I just...I don't know...

C: Ok, then I am – I respect where you are coming from...I just think...

JWR: You know what – I hope that you do because I do not think anybody respects this... The conversation that Gerry and Katie had with my Chief of Staff and I have it – like she wrote down what was said – saying that they do not want to hear anymore about the legalities – but want to talk about jobs is entirely inappropriate.

C: Ok well I was not

JWR: Ok I have it...I have it all.

C: Ok but you are not just the Attorney General, you are the Minister of Justice in a cabinet and ... context in which you exercise your roles and responsibilities ... I am not seeing anything inappropriate here but...um... I mean ... you are right ... and the PM ... people are talking past each other...I think the way he sees it and the advice he is getting is that you still have things you can do that are not interference and are still very much lawful...

JWR: It is not that they are not lawful...the perception and what will happen is that it will be deemed political interference from day one when people were talking about why we are entering into a DPA or putting in a DPA regime in place ... Everybody knows that it was because of SNC whether that is true or not that is what people will think.

C: It is a tool used in lots of other countries though...

JWR: Fair

C: ...for these kinds of purposes and especially if there has been a change of ownership or management of the company that is being prosecuted ... it is a public policy tool.

JWR: Fair, but in our MCs all the way up and in the law that we changed we gave the Director of Public Prosecutions the discretion to enter into the DPAs and the judge to oversee the regime. There is no guarantee in any particular case – this one or the ones that will come – that they will enter into the DPAs or think it is appropriate to do so. And that is what we consciously made the decision on when we decided as a cabinet to enter into this process and I amending the law.

C: Is there anybody that can talk to Kathleen then about the context around this or to get her to explain why she is ... or I guess the company has talked to her directly ...

JWR: The company has... but Michael there was a preliminary inquiry – I am still trying to get an update on what happened at the PI. Like the suggestion that I made ages ago which Gerry talked to you about in Montreal was ... no body from the company ever contacted me or sent me a letter expressing concern – had that happened I would have done what I believed to have been appropriate was to forward that letter on to the DPP.

C: I think they have made direct representations to the prosecutor though...and they tried to make the public interest argument and so on and so on. But they gave the impression that they are not being listened to so...

JWR: ya...

C: Alright...um...well I am going to have to report back before he leaves...he is in a pretty firm frame of mind about this so...I am a bit worried...

JWR: Bit worried about what?

C: Well...it is not a good idea for the Prime Minister and his Attorney General to be at loggerheads.

JWR: Well I feel that I am giving him my best advice and if he does not accept that advice then it is his prerogative to do what he wants... But I am trying to protect the Prime Minister from political interference or perceived political interference or otherwise.

C: Alright, I understand that... but he does not have the power to do what he wants... all the tools are in your hands so...

JWR: ... Ok so then...so I am having thoughts of the Saturday Night Massacre here Michael to be honest with you and this is not a great place for me to be in – I do not relish this place – but what I am confident of is that I have given the Prime Minister my best advice to protect him and to protect the constitutional principle of prosecutorial independence.

C: Ok...alright but...I am worried about a collision then because he is pretty firm about this...I just saw him a few hours ago and this is really important to him... Ok...um...there is not much more we can cover for now them... um...I understand where you are coming from ... Um...The section 13 response from Kathleen...you are saying Elder has that or had a version of that?

JWR: The Prime Minister's Office has had it since September since I have had it.

C: Since September...ok that is important. That is new to me so ... ok. Alright...um...

JWR: They will tell you that they have not received a copy of it... Elder and Mathieu said it to me when they came to my office...um...but we have documented evidence in terms of emails etcetera where that has been provided...so they do have it...maybe they have misplaced it. I can send it back over to them but I know that Jessica asked the other day when she was over at the PMO office...

C: And what did they tell her...that they didn't have it or that they never seen it...?

JWR: I have to ask and I will tell you exactly what they said. I will have to ask her.

C: My advice is that Jessica should send it to Elder then just to make it 'triple' sure they have it.

JWR: Ok, I will get her to do that right now.

C: Alright thanks for calling me.

JWR: Thanks.

C: Thanks for calling back so quickly.

JWR: No problem.

C: OK, he is still around tomorrow so....(inaudible)

JWR: I am waiting for big...the other shoe to drop...so I am not under any illusion how the Prime Minister has and gets things that he wants...I am just stuck doing the best job that I can...

C: Ok alright.

JWR: Ok.

The next time I heard from the Prime Minister or anyone in the PMO was on **January 7 / 2019**, when the Prime Minister informed me that I was being shuffled out of my role as Minister of Justice and Attorney General of Canada. In my previous testimony I only briefly recounted this conversation, as well as subsequent ones with Prime Minister and Mr. Butts regarding the Cabinet shuffle. Given that both the Prime Minister and Mr. Butts have spoken publicly about these conversations, I provide more detail and reflections below.

I note at the outset it is correct that I was offered the job of Minister of Indigenous Services and turned it down. However, based on long-standing conversations with the Prime Minister and Mr. Butts I was shocked and did not understand why they offered me this position. Since prior to being appointed to Cabinet I made it clear to the transition team and others that I could not and would not in good conscience ever be able to take on the Ministerial role of delivering services to “Indians” and *Indian Act* bands under the *Indian Act*. Historically this role was played by the Minister of Indian Affairs, and currently by the Minister of Indigenous Services. Of course, in the language of many First Nations people, this role is understood as that of the “Indian Agent” (for those who may be wondering, that term typically is used in a derogatory fashion).

While this work is very important, and certainly I respect other Indigenous people who may wish to assume such a role, I would not and could not ever assume it myself. I understand (and have experienced) the *Indian Act* as a colonial instrument that has oppressed generations of Indigenous peoples, including my family. One of my cardinal life goals is to help transform the legal relationship between Indigenous peoples and the Crown, and move beyond the *Indian Act*.

On multiple occasions, over many years, the Prime Minister and Mr. Butts had heard this from me, and demonstrated an understanding of my views.

As such, I was very taken aback, and surprised, that they would ever propose that I assume such a role.

I also note that while I loved being the Minister of Justice and Attorney General of Canada, I have no recollection of referring to it as my “dream job”. It is my recollection that Mr. Butts referred to it as my “dream job” – and not the other way around. I am not sure I would refer to any job as a ‘dream job’.

I also expressed to both the Prime Minister and Mr. Butts numerous times that I did not understand the rationale for me being included in this Cabinet shuffle, and that the Cabinet shuffle would likely be very confusing for Canadians as well.

As part of these conversations I did state to both of them that I believed that this shift was being made because of a decision I would not take in the SNC-Lavalin DPA matter, which they denied.

After much reflection, I decided to take the Prime Minister at his word that this was not the case, and accept a post I was honoured to have as the Minister of Veterans Affairs and Associate Minister of National Defence.

However, I did make another decision at this time – that I would immediately resign if the new Attorney General decided to issue a directive in the SNC-Lavalin matter as this would confirm my suspicions as to the reason for the shuffle of me in particular.

The above, combined with my previous testimony, provides a comprehensive account of the material information that I have to provide about the period of time that I was Minister of Justice and Attorney-General of Canada and the issue of a potential DPA for SNC-Lavalin was a subject of conversation.

Finally, while not covered by the Order in Council 2019-0105, I want to confirm as has been publicly reported that I did have a series of meetings with the Prime Minister in Vancouver post January 14, 2019, meetings which led to my resignation from cabinet. The Prime Minister stated publicly when issues about the propriety of the government’s conduct in relation to the SNC matter arose that my ongoing presence in Cabinet spoke for itself. I resigned the next day and I trust my resignation also speaks for itself.

As such, for my part, I do not believe I have anything further to offer a formal process regarding this specific matter – though, of course, if compelled or asked to participate in a judicial, investigative, or parliamentary process I would do so. What processes, opportunities, or requirements there may

be for other individuals to speak who have material information regarding this matter must be determined by others.

In closing, however, I wish to offer three personal observations.

First, there is much to be learned from this matter. Certainly, I have learned a lot about the relative strength or weakness of standards and institutions of our democracy, as well as the challenges and cynicism that pervade our politics. Ultimately Canadians will judge the importance and meaning of what has transpired, and changes and reforms may flow from that. I do think there are clear lessons that have to be considered around the role of the Attorney General, the principles underpinning our democracy, and the appropriate role of political considerations in decision-making, particularly regarding legal questions. Further, based on how matters have unfolded since the media reported on this matter, I also think there is significant dialogue to be had about accountability and transparency, including the foundations for advice that is given to government on how to deal with matters of public focus, the veracity of evidence in support of that advice, how these matters are reported on by the media, and decisions that are made about how to best address matters promptly, responsibly, and openly.

Second, apart from the substantive issues regarding prosecutorial independence and the rule of law, in my view this episode has also revealed some fissures and weaknesses in our governing institutions that we should be working together, across party lines, to fix. There is, at the very least, a legitimate perception that we need more robust public processes for oversight, accountability, investigation, and truth-seeking, regarding the functioning of our institutions and that ensure the public interest and public good is upheld. The fact that basic elements of due process, the principles of natural justice, and procedural fairness are not a greater influence and factor in how we go about identifying the facts and relevant evidence of matters related to the operation of democratic institutions is a concern.

Part of this, is the longstanding issue and necessity of supporting greater roles, authorities, and responsibilities for all Members of Parliament, regardless of party or title within government. In election after election strengthening the roles of individual Members of Parliament is highlighted, including the importance of them having a degree of independence and autonomy from purely partisan considerations or directions to do important work on behalf of their constituents and all Canadians. More concrete reforms in this regard are needed.

We can, and must do better – and I hope we can do that together.

Third, a significant part of the public dialogue about this matter has touched on issues of race and gender, and, in particular, there have been undeniable elements of misogyny, much of it aimed at myself. While this is unfortunate, and unpleasant, I also see the benefits this entire episode can

bring to building a stronger Canada, and strengthening our civil society. In particular, over the past seven weeks, the thing that I have heard most from Canadians is their true belief and desire to see fundamental and transformative, and not merely ephemeral, change in our modes of public discourse, the health of our institutions, civic engagement, and the standards we uphold. For each cynical commentator and commentary, I estimate I have encountered ten Canadians thinking and acting about what these events mean for the future they are helping to build. So I take the opportunity to thank those Canadians from coast-to-coast-to-coast who give me hope, and look forward to acting alongside them into the future – a future where we truly do politics differently.

Thank you again to the Committee for receiving this submission.

Respectfully,

A handwritten signature in black ink, appearing to read "Jody Wilson-Raybould". The signature is fluid and cursive, with a large loop at the end.

Jody Wilson-Raybould, P.C., Q.C., M.P.
Member of Parliament for Vancouver Granville

: Attachments

Prince, Jessica (VAC/ACC)

From: To, Justin (FIN) <justin.to@canada.ca>
Sent: September 20, 2018 4:52 PM
To: Prince, Jessica
Subject: Re: can you call me?

Ok great thx

On Sep 20, 2018, at 4:43 PM, Prince, Jessica <Jessica.Prince@justice.gc.ca> wrote:

Hi Justin,

Thanks and no hard feelings. My boss presented the MC on this and she amended the Criminal Code to allow for DPAs. As I now understand it, she'll be bringing a second MC to get some amendments made in the Senate. I don't think she has a particular opinion on DPAs, because, as discussed, their use falls within the discretion of the PPSC.

[REDACTED]

Happy to chat further if it's helpful.

Jess

From: To, Justin (FIN) [mailto:justin.to@canada.ca]
Sent: September-20-18 3:54 PM
To: Prince, Jessica <Jessica.Prince@justice.gc.ca>
Subject: RE: can you call me?

Hey, thanks for that and apologies for thinking anything else.

[REDACTED]

From: To, Justin (FIN)
Sent: Thursday, September 20, 2018 3:20 PM
To: Prince, Jessica <Jessica.Prince@justice.gc.ca>
Subject: can you call me?

[REDACTED]

Prince, Jessica (VAC/ACC)

From: Taylor, David
Sent: October 10, 2018 3:03 PM
To: Wilson-Raybould, Jody; 'Wilson-Raybould, Jody - Personal'
Cc: Prince, Jessica
Subject: Re: Media and RAs

Roger that.

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Wilson-Raybould, Jody
Sent: Wednesday, October 10, 2018 3:02 PM
To: Taylor, David; 'Wilson-Raybould, Jody - Personal'
Cc: Prince, Jessica
Subject: Re: Media and RAs

Ok this is fine - please do not say anything more than this. Thx

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Taylor, David
Sent: Wednesday, October 10, 2018 10:53 AM
To: 'Wilson-Raybould, Jody - Personal'; Wilson-Raybould, Jody
Cc: Prince, Jessica
Subject: Media and RAs

Hi MOJAG:

PMO has asked us to reach out to media who are writing erroneous stories about the DPP's decision not to seek an RA with SNC Lavalin.

Here is the story. I have highlighted the incorrect portion. PMO wants us to correct to make it clear that it was the DPP and not the GOC. We'd do it by phone. It would be a simple "The Director of Public Prosecutions made the decision. It is independent of the Government of Canada. Could you please have your first sentence reflect that fact."

SNC-Lavalin says Ottawa shut door on remediation deal

The Globe and Mail | Nicolas Van Praet

SNC-Lavalin Group Inc. says the Canadian government declined to enter into negotiations on a deal that would settle corruption and fraud charges against the company, a surprising development that further clouds the engineering firm's attempts to put its ethics scandals behind it.

The shares fell nearly 13 per cent in Wednesday morning trading on the Toronto Stock Exchange, to \$45.22.

Montreal-based SNC-Lavalin, Canada's biggest engineering company, said in a statement Wednesday that it has been advised by the Director of the Public Prosecution Service of Canada (DPPSC) that at this time, the prosecution service will not invite the company to negotiate a remediation agreement. The company said it "strongly disagrees" with the DPPSC's current position and remains open to striking a deal.

It said it is reviewing its options to appeal the decision.

The development is a blow to SNC-Lavalin Chief Executive Neil Bruce's efforts to shut the door on a series of legacy issues that have soaked up resources and hampered the company's competitive position against global rivals over the past six years. This past May, the company struck a \$110-million agreement to settle class-action lawsuits related to allegations the engineering firm misled investors about its activities in Libya.

More to come...

David Taylor
Director of Communications / Directeur des communications
Office of the Minister of Justice and Attorney General of Canada/
Bureau de la ministre de la Justice et procureur général du Canada
Office / Bureau : 613-992-6537
Mobile : 613-790-4940

Prince, Jessica (VAC/ACC)

From: Malinoski, Brooke <Brooke.Malinoski@pmo-cpm.gc.ca>
Sent: December 18, 2018 4:16 PM
To: Prince, Jessica
Cc: Doyle, Melissa; Kechacha, Nour
Subject: URGENT: Chat w/ Katie & Gerry

Hello Jessica,

Katie and Gerry would like to speak to you ASAP – before 5 PM today.

Would it be possible for you to come over to Centre Block for a meeting?

Warm regards,

Brooke Malinoski

Executive Assistant to the Chief of Staff and Principal Secretary | Adjointe exécutive de la chef de cabinet et du secrétaire principal

Office of the Prime Minister | Cabinet du premier ministre

brooke.malinoski@pmo-cpm.gc.ca

T: 613-960-4019 | C: 613-294-4827

Government of Canada | Gouvernement du Canada

Office of the
Prime Minister



Cabinet du
Premier Ministre

Minister Jody Wilson-Raybould

- Hey boss - you free to chat? G+K summoned me to their office just now "urgently" to discuss the DPA/RA matter.

- For context they are speaking to the Clerk now, but asked if - and they haven't finally decided this yet - you might be free to speak to the PM and the Clerk tmrw, should they decide later tonight that is a good idea.

Dec 18 6:12 PM

- What?
- What did they say?

Dec 18 7:42 PM

- Basically, they want a solution
- Nothing new
- They want external counsel retained to give you an opinion on whether you can review the DPP's decision here and whether you should in this case

Someone like Scott McLaughlin

10:38 AM
Minister Jody Wilson-Raybould

- Someone like Bev McLachlan
- I told them that would be interference
- Gerry said "Jess, there is no solution here that doesn't involve some interference".
- At least they are finally being honest about what they are asking you to do!
- Don't care about the PPSC's independence. Katie was like "we don't want to debate legalities anymore." They want to save peoples jobs. Same as what they were saying before
- Gerry told some story about how Mulroney met with David Milgaard's mom, walked into the Cab room, and told Kim Campbell she had to fix it. She gave him all these AG reasons why she couldn't interfere, but then she ultimately did what Mulroney wanted and was right.
- He kept saying "this is economic policy. We have to save jobs".

Dec 18 7:50 PM

Replying to message



10:38 AM

Minister Jody Wilson-Raybould

~~He kept saying this is economic~~
policy. We have to save jobs".

Dec 18 7:50 PM

• OMG.

• I do not even know what to say to that

Dec 18 7:54 PM

• I made the point about how this is about protecting the AG role, and how if you interfere here, then you will be expected to all over the place [redacted] [redacted]. They didn't seem to get or even care.

• Yup. I was floored.

• They kept being like "we aren't lawyers but there has to be some solution here"

Dec 18 7:55 PM

• So where were things left? Lol

Dec 18 7:57 PM

• So unclear. I said I would of course let you know about the convo (check) and [redacted] they were going to [redacted] the

Enter a message [smiley face icon] [paperclip icon] [envelope icon]

10:38 AM

Minister Jody Wilson-Raybould

- ☑ So unclear. I said I would of course let you know about the convo (check) and they said they were going to "kick the tires" with a few more people on this tonight. The Clerk was waiting outside when I left.
 - ☑ But they said they may want to set up a call between you and the PM and the Clerk tmrw.
 - ☑ I said that of course you would be happy to speak to your boss!
 - ☑ They seem quite keen on the idea of you retaining an ex SCC judge like the former Chief to get advice on this. KT thinks it gives us cover in the business community and the legal community, and that it would allow the PM To say we are doing something
 - ☑ She was like "if Jody is nervous, we would of course line up all kinds of people to write op eds saying that what she is doing is proper"
 - ☑ PSI hate that they call you Jody
- Dec 18 8:03 PM

Enter a message



10:38 AM

Minister Jody Wilson-Raybould

PS I hate that they call you Jody
Dec 18 8:03 PM

[REDACTED]

[REDACTED]

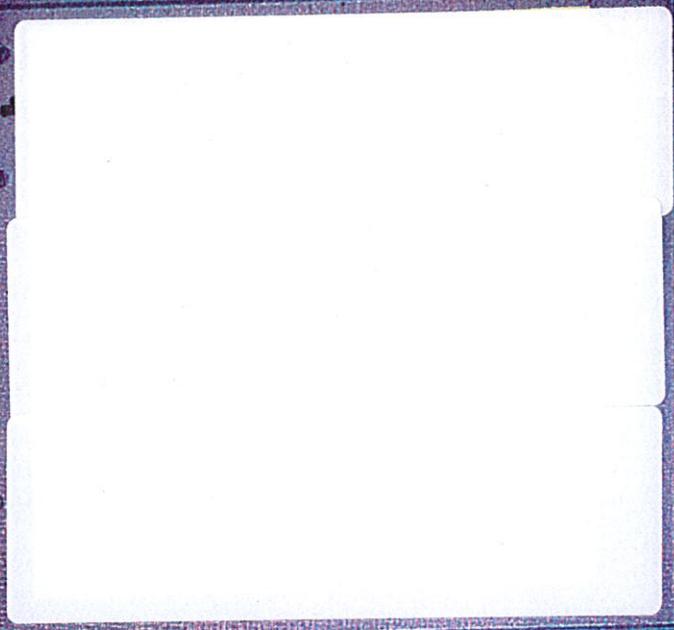
[REDACTED]

[REDACTED]

[REDACTED]

10:39 AM

Minister Jody Wilson-Raybould



✔ For sure.
Dec 18 8:12 PM

• Do you know what the story re
milgaard is?
Dec 18 8:22 PM

✔ All Gerry said was that Mulroneymet
David Milgaard's mom and I think she
was asking for a review of his case.
Campbell as AG said she could not
interfere in an independent process.
But then I think she ultimately ordered
the SCC to look at his case.

Send message



10:39 AM
Minister Jody Wilson-Raybould

But then I think she ultimately ordered the SCC to look at his case.

- By Gerry's telling, it was because Mulroney told her that she had to find a solution

Dec 18 8:28 PM

- Can you send Kim Campbell's cell number again - if you still have it? Pls and thx

Dec 18 8:31 PM

- Of course. And great idea.

Dec 18 8:31 PM

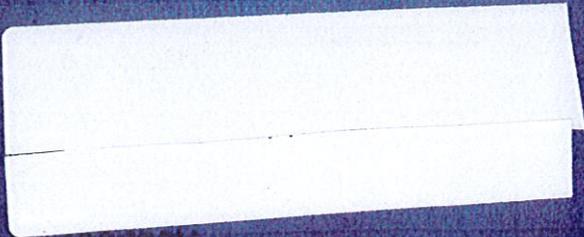
- Thx

- Good grief - this is absurd.

Dec 18 8:32 PM

- It is.

Dec 18 8:33 PM



Enter a message



Minister Jody Wilson-Raybould

[REDACTED]
Dec 18 8:37 PM

- They clearly do not care about the PPSC'S. Gerry kept talking about how it was created by Harper.
- I was like "sure but it is what we have and we have to respect the statute."

• No scruples.

Dec 18 8:39 PM

- So crazy. Gerry said the same thing to me

Dec 18 8:40 PM

- Like, he obviously doesn't like their institutional independence. But the solution is not to interfere but to properly reform their structure, if you think that is required

[REDACTED]
Dec 18 8:44 PM

- Going to meet PMKC in about an hour. [REDACTED]

Enter a message



18 10:39 AM
Minister Jody Wilson-Raybould

Dec 18 8:44 PM

• Going to meet PMKC in about and hour. [REDACTED]

[REDACTED]
Dec 19 10:55 AM

[REDACTED]
Dec 19 11:08 AM

[REDACTED]
Dec 19 11:09 AM

[REDACTED]
Dec 19 11:10 AM

• Thx. Also do we have any update as to what happened in court? And do you remember day I met with Clerk?

Dec 19 11:11 AM

• No update Re court. Just at Dr Office. Will ask FG, I will check Re clerk date.

• Sept 19 is when you met the Clerk

Dec 19 11:13 AM

10:39 AM

Minister Jody Wilson-Raybould

• Okey dokey. All ok? Or just a check up?
Dec 19 11:14 AM

☑ Just a check up
Dec 19 11:14 AM

• Okey dokey
Dec 19 11:20 AM

☑ Sent you the materials. hope the meeting goes well!!!
Dec 19 11:49 AM

☑ Hey boss - we just heard that the Clerk would like to speak with you today. Let me know if you want to make this happen or if we can bump this to tomorrow. I think we know what it is about 🍷
Dec 19 1:58 PM

• He texted me. I will follow up. Just in meetings right now
Dec 19 2:26 PM

1/4

10:39 AM

Minister Jody Wilson-Raybould

☑ Of course. Danke.

Dec 19 2:38 PM

- Call you
- Calling you now I mean
- Not answering will try again in a bit.

Dec 19 3:36 PM

☑ Gotcha. Thx

Dec 19 3:36 PM

- Cal me please. [REDACTED]
- Just talked to the clerk

Dec 19 5:56 PM

☑ Just on the bus. Can you give me 10 mins?

Dec 19 5:56 PM

- Ok the shite is going to hit the fan

Dec 19 5:57 PM

☑ Uh oh

☑ Should be off the bus in 5

Enter a message



JWR Discussion with Mr. Wernick on December 19, 2018

I had a telephone call with the Clerk, Michael Wernick on December 19, 2018. This call lasted 17.24 minutes. Normally, when I take an important call like this, I would often have a staff member with me to take notes, but in this case, I was alone in my condo in Vancouver. I was anxious to ensure that I had an exact record of what was discussed as I had reason to believe that it was likely to be an inappropriate conversation. So while I typed out some notes during the phone call, I took the extraordinary and otherwise inappropriate step of making an audio recording of the conversation without so advising the Clerk. This is something that I have never done before this phone call and have not done since. I did this simply to ensure that my notes were accurate and given the ongoing pressure and attempts to interfere in this case, the nature of conversations that had occurred on December 18, 2018 between my COS and the PMO, and my strong suspicion that this matter would continue to escalate in inappropriate ways.

While this recording was made simply as a personal aide memoire because I had no staff present to make notes, I am releasing the recording now given the Clerk's repeated assertions that he made no threats to me veiled or otherwise. The recording allows the members of the Committee to decide for themselves.

The following is a transcript of our conversation [see Appendix 3 – a copy of the audio recording has also been included]:

Clerk: Hello.

JWR: Hello Michael, it is Jody.

C: Hi, sorry about the phone tag.

JWR: That's ok.

C: Um...I am not calling you about litigation directive. I am calling about the other important one – the Deferred Prosecution thing / SNC and so one – I wanted to pass on where the PM is at... so our intelligence from various sources is that company is getting to serious point now... the board has asked consulting firms for options for the board for their next which could be selling out to somebody else, moving...you know, various things.

JWR: yep.

C: So it seems to be real and not a bluff. Um, there is another rising anxiety as you can imagine about a signature firm and job loss and all that coming after the Oshawa thing and what is going on in Calgary and what not. So the PM wants to be able to say that he has tried everything he can within legitimate toolbox to try to head that off. So he is quite determined, quite firm but he wants to know why the DPA route which Parliament provided for isn't being used. And I think he is gonna find a way to get it done one way or another. So, he is in that kinda mood and I wanted you to be aware of that.

JWR: ok

C: So, um, I don't know if he is going to call you directly – he might – um and he is willing – I think he is thinking about getting somebody else to give him some advice...you know he does not want to do anything outside the box of what is legal or proper – um...but his understanding is – you know – the DPA tool is there and you have options that we talked about before to ask for reason from the DPP or even take over the prosecution. He just wants to understand more at this point of why the DPA route is not taken up on this route. So he is thinking on bringing someone in like Bev McLachlin to give him advice on this or to give you advice on this if you want to feel more uncomfortable you are not doing anything inappropriate or outside the frame of...

JWR: I am 100 percent confident that I am doing nothing inappropriate.

C: Ya, no but would not be if you decided to use some of these tools under the law...cause I think he feels that the government has to have done everything that I can before we lose 9000 jobs...and a signature Canadian firm.

JWR: Right so – um – I again am confident in where I am at on my views on SNC and the DPA haven't changed – this is a constitutional principle of prosecutorial independence that Michael – I have to say including this conversation and previous conversations that I have had with Prime Minister and many other people around it – it is entirely inappropriate and it is political interference. And I...the Prime Minister obviously can talk to whomever he wants – but what I am trying to do is to protect him. I could have a conversation with Beverly McLachlin...I can call her right now...um...I am just – um – issuing the strongest warning I can possibly issue that decisions that are made by the independent prosecutor are their decisions. We gave her, and them, the tools – the additional tools – I made it very clear at the cabinet table and other places that these tools are at the discretion of the prosecutor – and everybody agreed to that and that there was no guarantee that there would be a DPA in this or any other case. So we are treading on dangerous ground here – and I am going to issue my stern warning – um – because I cannot act in a manner and the prosecution cannot act in a manner that is not objective, that isn't independent, I cannot act in a partisan way and I cannot be politically motivated. All of this screams of that. So I am actually uncomfortable having this conversation but I am happy to talk to you. I will call Beverly McLachlin...I cannot even imagine her feeling in any way, shape or form comfortable interfering with the independent prosecutor.

C: Ok but I think that is where people are talking past each other. I mean I think the view that he has formed – I share – I am not the lawyer in any of these conversations – and Elder and others is – um – it is not interference – the statute specifically has these other provisions in it that allow you to ask questions of the DPP and that is provided for and that is not interference...

JWR: But I would have to issue a Directive, I would have to Gazette this...

C: Yes.

JWR: the Prosecutor – the director – whom I know and understand after having several conversations with her about another directive on HIV that I issued – she is a by the book person. If this is gazette – this will be – and I hear you on the jobs and wanting to save jobs – I mean we all want to do that – this goes far beyond saving jobs – this is about the integrity of the Prime Minister and interference – there is no way that anybody would interpret this other than interference – if I was to step in. It does not matter how I would look in doing that – I would be a mockery – and that is not the problem – the bigger problem is what it would look like down the road for the government. It is not about jobs – and I know that jobs are important so I do not want anybody to misinterpret that I don't care about those jobs – this is about the integrity of the government and recognizing that there is the ability to issue a directive under the act...um...it is still irrespective of the ability that I have to do that – 1. it has never been done before but 2. this is going to look like nothing but political interference by the Prime Minister, by you, by everybody else that has been involved in this politically pressuring me to do this.

C: Well...um...

JWR: I actually really feel uncomfortable having this conversation because it is wrong and I hear the Prime Minister obviously can call me...like I said to you I will have a conversation...I am going to call Beverly Mclachlin and have a conversation with her about his.

C: Well...of course it has not been done before because parliament only created the instrument barely a year ago...

JWR: No no no...this instrument was... you mean the directive – the directive on a specific prosecution has never occurred... And this happened... cause Harper brought this law in as you probably know 10 years ago. The Directive – or the DPA has never been it just entered the Criminal Code back in September so I understand that this is the first case. The prosecutor sent me what is called a Section 13 – you told me that you hadn't seen it before – but I read it and I have reread it – and the Prime Minister's Office has a copy of it. She explains in it why she is not doing it in this case – we have to, I have to be – unless it is something outrageous – comfortable with the decision – recognizing it is the first one likely and obviously I am confident wasn't entered into lightly – made the decision not to enter into a DPA with respect to this case. And she explained why.

C: So when did she convey that to you?

JWR: She issued the Section 13 back in September when I was down in Australia for that...five eyes – and then all this transpired...I mean I have a timeline of every single conversation and everything that everybody has said to me on this so...um... So like...anyway...again – I am surprised that you and I are having this conversation but I am just saying that I really feel uncomfortable about the appropriateness of this conversation.

C: Ok I understand that – but I mean I think his view is that his is not asking you to do anything inappropriate or interfere. He is asking you to use all the tools that you lawfully have at your disposal...um.

JWR: I know I have a tool under the prosecution Act that I can use. I do not believe it is appropriate to use tool in this case.

C: ok alright ... that is clear – um – well his is in a very firm mood about this so um....

JWR: Does he understand the gravity of what this potentially could mean – this is not about saving jobs – this is about interfering with one of our fundamental institutions – this is like breaching a constitutional principle of prosecutorial independence.

C: Well I don't think he sees it as that...

JWR: No one is explaining that to him Michael. Like this is...we can stand up in the House of Commons on Norman on – totally appropriately on Norman - on extradition and we can talk about the rule of law – um.... The cases are not dissimilar – the principle or the integrity of how we act and respond to the tools we have available and what we should and shouldn't do – again...I just...I don't know...

C: Ok, then I am – I respect where you are coming from - ...I just think...

JWR: You know what – I hope that you do because I do not think anybody respects this... The conversation that Gerry and Katie had with my Chief of Staff and I have it – like she wrote down what was said – saying that they do not want to hear anymore about the legalities – but want to talk about jobs is entirely inappropriate.

C: Ok well I was not

JWR: Ok I have it...I have it all.

C: Ok but you are not just the Attorney General, you are the Minister of Justice in a cabinet and ... context in which you exercise your roles and responsibilities ... I am not seeing anything inappropriate here but...um... I mean ... you are right ... and the PM ... people are talking past each other...I think the

way he sees it and the advice he is getting is that you still have things you can do that are not interference and are still very much lawful...

JWR: It is not that they are not lawful...the perception and what will happen is that it will be deemed political interference from day one when people were talking about why we are entering into a DPA or putting in a DPA regime in place ... Everybody knows that it was because of SNC whether that is true or not that is what people will think.

C: It is a tool used in lots of other countries though...

JWR: Fair

C: ...for these kinds of purposes and especially if there has been a change of ownership or management of the company that is being prosecuted ... it is a public policy tool.

JWR: Fair, but in our MCs all the way up and in the law that we changed we gave the Director of Public Prosecutions the discretion to enter into the DPAs and the judge to oversee the regime. There is no guarantee in any particular case – this one or the ones that will come – that they will enter into the DPAs or think it is appropriate to do so. And that is what we consciously made the decision on when we decided as a cabinet to enter into this process and I amending the law.

C: Is there anybody that can talk to Kathleen then about the context around this or to get her to explain why she is ... or I guess the company has talked to her directly ...

JWR: The company has... but Michael there was a preliminary inquiry – I am still trying to get an update on what happened at the PI. Like the suggestion that I made ages ago which Gerry talked to you about in Montreal was ... no body from the company ever contacted me or sent me a letter expressing concern – had that happened I would have done what I believed to have been appropriate was to forward that letter on to the DPP.

C: I think they have made direct representations to the prosecutor though...and they tried to make the public interest argument and so on and so on. But they gave the impression that they are not being listened to so...

JWR: ya...

C: Alright...um...well I am going to have to report back before he leaves...he is in a pretty firm frame of mind about this so...I am a bit worried...

JWR: Bit worried about what?

C: Well...it is not a good idea for the Prime Minister and his Attorney General to be at loggerheads.

JWR: Well I feel that I am giving him my best advice and if he does not accept that advice then it is his prerogative to do what he wants... But I am trying to protect the Prime Minister from political interference or perceived political interference or otherwise.

C: Alright, I understand that... but he does not have the power to do what he wants... all the tools are in your hands so...

JWR: ... Ok so then...so I am having thoughts of the Saturday Night Massacre here Michael to be honest with you and this is not a great place for me to be in – I do not relish this place – but what I am confident of is that I have given the Prime Minister my best advice to protect him and to protect the constitutional principle of prosecutorial independence.

C: Ok...alright but...I am worried about a collision then because he is pretty firm about this...I just saw him a few hours ago and this is really important to him... Ok...um...there is not much more we can cover for now them... um...I understand where you are coming from ... Um...The section 13 response from Kathleen...you are saying Elder has that or had a version of that?

JWR: The Prime Minister's Office has had it since September since I have had it.

C: Since September...ok that is important. That is new to me so ... ok. Alright...um...

JWR: They will tell you that they have not received a copy of it... Elder and Mathieu said it to me when they came to my office...um...but we have documented evidence in terms of emails etcetera where that has been provided...so they do have it...maybe they have misplaced it. I can send it back over to them but I know that Jessica asked the other day when she was over at the PMO office...

C: And what did they tell her...that they didn't have it or that they never seen it...?

JWR: I have to ask and I will tell you exactly what they said. I will have to ask her.

C: My advice is that Jessica should send it to Elder then just to make it 'triple' sure they have it.

JWR: Ok, I will get her to do that right now.

C: Alright thanks for calling me.

JWR: Thanks.

C: Thanks for calling back so quickly.

JWR: No problem.

C: OK, he is still around tomorrow so(inaudible)

JWR: I am waiting for big...the other shoe to drop...so I am not under any illusion how the Prime Minister has and gets things that he wants...I am just stuck doing the best job that I can...

C: Ok alright.

JWR: Ok.
