

# iPolitics: Did the ethics commissioner misinterpret his own act and jurisdiction?

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Published on August 15, 2019 4:35 pm <https://ipolitics.ca/2019/08/15/did-the-ethics-commissioner-misinterpret-his-own-act-and-jurisdiction/>

*"There seems to have been a serious misinterpretation of his own act and his jurisdiction by the ethics commissioner. There needs to be far more in depth discussion of the accuracy of this report among government, the media and indeed the public deciding whether the report will influence their vote in the coming election."*

At the start of his report, Ethics Commissioner Mario Dion rightly limits his jurisdiction under Section 9 of the *Conflict of Interest Act* to the actions of the prime minister using his position to influence a decision of the attorney general on the criminal prosecution of SNC-Lavalin.

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

The commissioner then extensively details what he considers to be attempts by Prime Minister Justin Trudeau and his senior officials, along with SNC-Lavalin and their lawyers, to




*Ethics Commissioner Mario Dion. Office of the Conflict of Interest and Ethics Commissioner photo.*

influence the decision of then-attorney general Jody Wilson-Raybould regarding offering a remediation agreement to the company.

In the most significant and correct interpretation of both Section 9 and his own jurisdiction, the commissioner states that “simply seeking to influence the decision of another person is insufficient for there to be a contravention of Section 9.”

Given that, he notes, “the second step of the analysis was to determine whether Mr. Trudeau, through his actions and those of his staff, sought to improperly further the interests of SNC-Lavalin.”



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What is then gaping in the report is whether Section 9 is designed to catch conflicts of interest that further not only the personal interests of government officials like the prime minister, but, given that governments frequently advance private interest through subsidies, tax changes or exemptions in regulations, is limited only to situations where government can in no way claim it is advancing the public interest.

This is an especially important area for the commissioner to have examined, given that the prime minister and his senior staff have strenuously claimed that he was seeking to influence a remediation agreement for SNC-Lavalin in the public interest of saving 9,000 jobs.

Despite ignoring this gaping hole in the report, the Commissioner then seems to focus only on the fact that the goal of the actions of the Prime Minister and his officials were to advance the financial interests of SNC in deferring the prosecution. This seems to expand the scope of Section 9 to the myriad of government actions where government does advance the financial interests of the private sector when ever the Commissioner thinks it falls into the category of an improper advancing the financial interests of a private sector party. Where is the discussion of what types of public interest concerns could take it out of the improper advancing of a financial interest of a private sector party?

This seems to expand the scope of Section 9 to the myriad of government actions where government does advance the financial interests of the private sector whenever the commissioner thinks it falls into what he or she considers an improper purpose.

Where is the discussion of what types of public interest concerns will take it out of the improper purpose?

Finally, the commissioner then goes outside his jurisdiction in asserting that, given his reading that Section 9 covers any time government advances the financial interests of corporations, he has the jurisdiction to determine that, if the actions of the prime minister and his officials were contrary to the Shawcross doctrine, it becomes an improper purpose.

This approach is straying outside what can be regarded as a conflict of interest analysis and moving his mandate into the highly complex area of constitutional principles regarding prosecutorial independence, and the specific constitutional roles of ministers and senior government officials who interact with the attorney general.

This is the domain of constitutional experts providing advice to governments, the courts and especially the top courts of parliamentary systems.

While there can be legitimate discussions on whether the prime minister and his officials crossed a line in their attempts to influence the decision of the attorney general in terms of the Shawcross doctrine, in terms of ministerial and cabinet responsibility, it should not be part of any application of Section 9 of the *Conflict of Interest Act*.

There seems to have been a serious misinterpretation of his own act and his jurisdiction by the ethics commissioner.

There needs to be far more in depth discussion of the accuracy of this report among government, the media and indeed the public before deciding whether Dion's conclusions will influence their vote in the coming election.

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