

iPolitics: Was the public interest and Canada's legal and moral obligation served in SNC-Lavalin conviction?

<https://ipolitics.ca/2020/01/02/was-the-public-interest-and-canadas-legal-and-moral-obligation-served-in-snc-lavalin-conviction/>

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Published on Jan 2, 2020 11:12am

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SNC-Lavalin's head office in Montreal. (SNC-Lavalin photograph)

Has the public interest and Canada's legal and moral obligation to combat corruption by Canadian companies internationally been served better by the single fraud conviction of a construction subsidiary of SNC Lavalin than if the

holding company itself had been given a deferred prosecution agreement (DPA)? There are substantial reasons why Canada's legal, moral and indeed the public interest may well have been better served if the DPA had been granted to the parent company, and not only settle for a guilty plea and conviction of one of its subsidiaries.

First, the guilty plea and conviction of fraud of the construction subsidiary did result in a three-year probation and a net of \$280 million to be paid over five years, which seem well short of what U.S. and U.K. guidelines would have suggested for conviction of companies in similar situations, with fines ranging between \$462- and \$705-million. The comparatively lower fine is not perhaps the main reason why the subsidiary company jumped at the settlement and the guilty plea. The main charge of bribery against the parent company under the Corruption of Foreign Public Officials Act (CFPOA) was dropped as part of the settlement. A conviction on that charge, under Canada's commitment under its own law and under its treaty with the OECD's Anti-Bribery Convention, could have resulted in a devastating 10-year ban on federal contracts. It would probably also have impacted on other domestic and foreign potential contracts due to reputational damage.

In essence, what happened with the conviction of the subsidiary company was that the parent got a DPA by another means. This is because a fraud conviction as opposed a bribery conviction does not trigger a debarment under the CFPOA law unless it can be considered a fraud against the government as opposed to the charges looking more like a fraud against the Libyan government and people.

However, if SNC Lavalin had been granted a DPA, the parent company potentially could also have avoided a debarment based on what it had agreed to do and settle in terms also of compliance reforms, probation and potentially similar or



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larger fines. The main benefit of such a DPA process is that it would likely have been substantially more transparent than the settlement agreement with a subsidiary of SNC Lavalin.

What would have been more critical in protecting the public interest and the legal and moral obligation of Canada regarding its commitment to domestic and international anti-corruption laws would have been the focus in the DPA on the extent, if any, of the parent company's involvement of the appalling corruption in Libya that resulted in the conviction of the subsidiary. That corruption that included spending \$47.7 million on various forms of gifts, yachts and money to Saadi Gadhafi, son of the murderous dictator Moammar Gadhafi, that helped influence contracts worth \$2 billion in Libya. The enormity of the corruption and the immorality of what the son of the world's most notorious dictator was demanding and receiving would require some moral obligation on the part of Canada to denounce any Canadian company complicity.

While some who have argued that the limited conviction for fraud of the subsidiary does advance the warning to Canadian companies of the high cost of such corrupt activities, it could be argued that it does not provide sufficient warnings to the senior officials and especially the boards of parent companies that they must ramp up their fiduciary and legal duties to prevent similar corrupt activities in their subsidiaries around the world or face fines and potentially criminal liabilities themselves. There is nothing that focuses the mind of the top officials of parent companies more than that potential. The DPA could have focused any final settlement that while excusing the company from disbarment and conviction have addressed the responsibilities of these top officials.

It is significant that Transparency International Canada, the leading anti-corruption civil society group in Canada, made a statement that it "regrets" that the bribery charge against SNC Lavalin was dropped and called the result of the conviction a "modest win." So those that opposed the company seeking a DPA, including some in the opposition parties and others who set their minds against it,

should not be too triumphant in the outcome of the single fraud conviction of a subsidiary of SNC Lavalin. Blinkered minds should be careful what they wish for.

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